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NO. 51545-8-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

CARLOS MENDOZA, et al

Appellants

v.

CITY OF VANCOUVER, et al,

Respondents.

REPLY BRIEF OF APPELLANTS

GARY A. PREBLE, WSB #14758
Attorney for Appellants,
Carlos Mendoza and LM

PREBLE LAW FIRM, P.S.
2120 State Avenue NE, Suite 101
Olympia, WA 98506
(360) 943-6960
Fax: (360) 943-2603
gary@preblelaw.com

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A. RESPONSE TO DEFENDANTS' STATEMENT OF CASE

There are several false or misleading statements in the Statement of Facts in the Brief of Respondents (RBrief).

1. Kipp states that when Carlos headed to Portland "with Landon", she was "**[c]oncerned that Carlos was taking Landon to see Tara, . . .**" RBrief, 1–2. The truth is that when Mr. Mendoza headed for Portland, not only was Kipp unaware that Landon was with him, she was "hoping [he] would lead us to where Landon and Tara were located." CP 441, 292. In other words, Kipp believed Landon was already with Tara somewhere else and not with his father. Kipp tries to downplay that fact here because the point is central to understanding that Kipp was acting not on fact but upon speculation.

The point is also very important regarding Kipp's credibility and truthfulness—which are certainly material to a summary judgment determination. Specifically, despite the above statement from her report, CP 441, which she placed under oath by her declaration, CP 283, 292, Kipp stated just the opposite in deposition that she followed Mr. Mendoza because she "was not sure" Landon was with him, CP 491–92. *See*, Brief of Appellants (ABrief), 19. The point is doubly important since Kipp's claim she thought Carlos was a liar was central to her taking Landon. CP 461.

Kipp herself has provided a genuine issue of material fact as to who was dishonest as between her and Carlos. A jury could believe that it was Kipp

who was not honest and that in fact the police misstated and took out of context Mr. Mendoza's statements seven months earlier. CP 402.

2. Kipp states: "**Carlos is investigated, arrested and charged with crimes of dishonesty related to protecting his son's abuser long before Kipp ever interacts with him.**" RBrief, 4. The fact is, Kipp was involved with the prior investigation and her name occurs on every page of Hernandez' police reports as "Approving Officer", CP 199–220, 24–48, 270–71, 273–81, including recommending Mr. Mendoza be prosecuted. CP 248. She also interviewed the key witness against Mr. Mendoza for the claim he lied to a public officer. CP 287–88. A jury could find that Kipp's investigation was unprofessionally biased based on her involvement in Mr. Mendoza's and Tara's cases seven months earlier.

3. Kipp falsely stated: "**Carlos admitted that sufficient evidence existed to believe he had committed crimes of dishonesty.**" RBrief, 9. Though Kipp accurately quoted Mr. Mendoza's *Alford/Newton* plea, she blatantly twists the meaning of his words. Mr. Mendoza did not make any agreement that there was any evidence he had committed crimes of dishonesty. Rather he pleaded guilty to blocking traffic, explicitly stating he did not believe he was guilty of *that* crime. Moreover, the reason for his *Alford/Newton* plea was to "be done with the[] harassment" by CPS and the police. CP 402–03. "[A]n *Alford* plea cannot be said to be preclusive of the underlying facts and

issues in a subsequent civil action." *Clark v. Baines*, 150 Wn.2d 905, 916, 84 P.3d 245 (2004). The "global resolution" noted by Kipp could just as easily have come about because the prosecutor recognized they could not prove their "crimes of dishonesty" against Mr. Mendoza, thus amending one, CP 46, and dismissing the others. CP 50, 55. Even if the later-occurring plea is relevant, the necessary conclusion for summary judgment purposes is that the prosecutor recognized the State's inability to prove the crimes of dishonesty.

4. RAP 10.3(a)(5) states in relevant part: "Statement of the Case. A fair statement of the facts and procedure relevant to the issues presented for review, without argument." The following is not in keeping with the RAP: "[Mr. Mendoza] resorts to what can only be described as a sexist attack against Kipp, accusing her without any basis in the record of 'allowing her own emotions to drive her actions.'" RBrief, 2. Kipp, or more likely, her counsel, took exception to the claim that Kipp let her emotions drive her actions.[1] Though his emotional outburst does not merit a response, counsel's comment will be taken to mean Kipp denies she was swayed by her emotions. For summary judgment purposes, a jury could well find just that—that Kipp's motivation was something other than forensic. Most of the following points were addressed or mentioned in Brief of Appellant, but they are listed here

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[1] Counsel doth protest too much, methinks. And as the old aphorism goes: if you have the facts, argue the facts; if you have the law, argue the law; and if you have neither, pound the table and attack your opponent.

in direct response to the above specious accusation.

a. Kipp (*See*, ABrief, 16) : "I told [Carlos] that *I was fearful that he was seeing Tara with Landon.*" CP 442. (Emphasis added.)

b. After five hours since about 10:00 a.m., CP 295, Kipp said (*See*, ABrief, 16) that at 3:00 p.m. "time was of the essence." CP 284.

c. Kipp: "*I was very concerned* that Carlos was with Tara and exposing Landon to harm from being around Tara." CP 442. (Emph. added.)

d. Kipp: "I observed the vehicle southbound on Clairmont. It was dark out and the driver appeared to be Carlos. Myself and Graaff followed the vehicle *hoping it would lead us to where Landon and Tara were located*." CP 442. (Emph. added.) (Landon, of course, was with his father in his carseat.)

e. Carlos said the Vancouver Police Department (VPD) had it out for Tara, especially Hernandez. CP 401–03. Kipp was the "Approving Officer" on Hernandez' police report and thus partook of the VPD animus against Tara and Carlos. CP 199–220. *See also*, CP 287–88.

f. Kipp gave Sgt McCarthy the false information that "the judge lifted the no contact order between Carlos and Tara." CP 352–53.

g. At deposition, Kipp was either uncooperative, passive-aggressive and/or unable to understand or respond to questions. *See*, generally, CP 445, 454–58, 463–64, 485, 487–88, 493.

5. Kipp falsely stated: "**Kipp was told by fellow law enforcement and/or**

government officials that . . . (d) Carlos told the Court one day that he would protect Landon from Tara (CP 109-10, 138-39) only to reverse course a few days later and declare that he "want[ed] her in our son's life" (CP 38, 295-97)" RBrief, 33. The foregoing statement is false for this case because there is no evidence Kipp knew any of these details or the documents cited *at the time she took Landon* from his father on the freeway.

a. The most the record shows Kipp knew was stated in AAG Yamin's email that there was a criminal no contact order, a parenting plan allowing no visitation to Tara, that Landon was released to Carlos' full custody, that there was no dependency, and that it was her understanding Carlos was at his California duty station with Landon. CP 295–96, 300–301, 306–307.

b. Kipp's report, CP 440–443, which she swore was accurate, CP 283, was written December 12, two days after she took Landon on December 10. CP 443, 441. The second paragraph of Kipp's report narrative, CP 441, claims Carlos said he told the Department he was going to California, would keep Landon away from Tara and that the social workers believed him. Nothing in the record, however indicates that this information was known by Kipp as of the time she picked up Landon. The information could have been learned after the taking but before she signed the report two days later.

c. There is also nothing in the record that Kipp knew as of the time she picked up Landon what Carlos told the court when the dependency was

dismissed. *Cf*. CP 441–43, 283–85, 345–46.

(1) Kipp cites Mr. Mendoza's declaration in support of his motion to dismiss the dependency, CP 109–10, but there is nothing in the record she was aware of this document as of the time she picked up Landon.[2]

(2) Kipp cites the Order Dismissing Dependency, CP 138–39, but again there is nothing in the record she was aware of this document as of the time she picked up Landon. And contrary to Kipp's claim, the order says nothing about what Mr. Mendoza told the court.

(3) Kipp cites the Motion to Modify/Terminate Order, CP 38, but, as also previously noted, ABrief, 9, n. 8, there is yet again nothing in the record she was aware of this document at the time she picked up Landon.

6. Kipp also falsely stated: "**Kipp was told by fellow law enforcement and/or government officials that . . . (e) Carlos lied on December 10 saying he was in North Carolina when he was actually in Vancouver (CP 300, 345-48).**" RBrief, 33. Kipp continues her pattern of "shad[ing] the truth to suit her purposes". *See*, ABrief, 19, 31–36. While Kipp clearly *concluded* Mr. Mendoza lied to Hoffman, nowhere in the record does anyone *tell* Kipp

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[2] Though Mr. Mendoza does not agree that Kipp knew of his declaration by the time Kipp picked up Landon, had she in fact read it, she would have had additional information that could have calmed her fears. He had been reassigned out of state by the Marines, he was not due to his new station until two days later on December 12 (contrary to what AAG Yamin had understood), Landon had been in his care for 2 ½ months already, there were no contact orders, and that Landon would remain protected under his care.

that he lied. Colin Hayes' email does not say Cheri Hoffman said Carlos lied. CP 300. Hoffman's declaration does not say Carlos lied. How could she know? The most she knew would be what Carlos told her and that she was aware Kipp was going to ping Carlos' phone. CP 345–46. And as already discussed, ABrief, 12–13, Hoffman's contemporaneous notes do not indicate she even spoke with Kipp until December 12. CP 348.

B. ARGUMENT

Mr. Mendoza does not agree that Kipp exercised slight care in her investigation because she based her actions upon unverified speculation. The primary issue is that Kipp was a mere citizen in Oregon when she took Landon from his father in Oregon because she was not acting within the authority of the Interlocal Agreement (ILA)—and she therefore cannot avail herself of the limited liability provision of the ILA. Kipp, however, claims she acted with authority and thus addresses gross negligence as the issue of primary importance. That Kipp's arguments are addressed here in the order she raised them should not detract from the primary issue of lack of authority.

1. Kipp claims incorrectly, and inexplicably, that Mr. Mendoza argues that his case can proceed under traditional negligence principles. RBrief, 23. Her entire argument at pages 24–28 is unnecessary. Apart from misreading the Appellant's Brief, ABrief, 40, Kipp also disregards the clear language of *Nist v. Tudor*, 67 Wn.2d 322, 407 P.2d 798 (1965).

> . . . First, there can be no issue of gross negligence unless there is substantial evidence of serious negligence. If there is substantial evidence of seriously negligent acts or omissions on the part of the host driver, then the issue of gross negligence should be resolved by the jury under proper instructions.
>
> Because gross negligence is a species of aggravated negligence, the jury should have an understanding of what the law means by ordinary negligence so that it may have a basis of comparison; consequently, the jury should be given the benefit of the law's classic definition of negligence . . .
>
> Finally, we believe the jury—having received the classic definition of ordinary negligence—will better understand the idea of gross negligence if it is informed that gross negligence means what the term implies-great negligence, negligence substantially or appreciably greater than ordinary negligence.

67 Wn.2d at 332–33.

Appellant listed examples of Kipp's negligence because a jury could find them as evidence Kipp was grossly negligent—that she failed to exercise slight care for the facts. Appellant's listing of Kipp's negligent acts was not meant to say they were not grossly negligent. Because Kipp did not show slight care, her negligent acts were in fact grossly negligent. But that is for a jury to decide. Though Appellants cited authorities existing before the enactment of RCW 4.24.595 in 2012, the new statute did not eradicate the standards of those prior authorities, it only raised the level of actionable culpability to gross negligence. *Tyner* remains true:

> RCW 26.44.050 has two purposes: to protect children and preserve the integrity of the family. . . . "Accountability through tort liability ...may be the only way of assuring a certain standard of performance from governmental entities." *Bender v. City of Seattle*, 99 Wn.2d 582, 590, 664 P.2d 492 (1983).

Tyner v. State Dep't of Soc. & Health Servs., *Child Protective Servs.*, 141 Wn.2d 68, 80–81, 1 P.3d 1148 (2000). The passage of RCW 4.24.595 imposes on the principles elucidated in *Tyner* the requirement of gross rather than mere negligence. But the principles remain intact.

Here there was "substantial evidence of serious negligence" that is "directly related to the hazards of the occasion in which it is invoked." *Nist v. Tudor*, 67 Wn.2d at 330. The "hazards of the occasion" in the present case were twofold, as stated in *Tyner*, *supra*: children not protected and the integrity of the family not preserved. But Kipp still had a duty to investigate, and to fulfil that duty without gross negligence, or with slight care. Moreover, for the purpose of an "emergent placement investigation," RCW 4.24.595(1), the question to be addressed is whether Kipp had probable cause to believe that Landon was abused or neglected and that Landon would be injured or could not be taken into custody if it were necessary to first obtain a court order "pursuant to RCW 13.34.050". Former 26.44.050. ABrief, n. 1.

2. Kipp misreads the effect of RCW 26.44.280. Another red herring is Kipp's claim that RCW 4.24.595 and RCW 26.44.280 must be read together as constituting one law because they were sections 13 and 14 of the same chapter law, Laws of 2012, ch. 259, and that courts presume that all words in a statute have meaning. RBrief, 29. Mr. Mendoza has no argument with

these well-settled legal principles, but they do not support Kipp's position.

a. First, RCW 4.24.595 says nothing about "paramount concern". It merely established the gross negligence standard for emergency placement investigations under chapter 24.44 RCW.

b. And because, as Kipp correctly states, all words in a statute have meaning, RCW 26.44.280 applies not to law enforcement, but to DSHS. Former RCW 26.44.020(9). It only states the limitation of liability provided in RCW 4.24.595 is

> [c]onsistent with the paramount concern *of the department* to protect the child's interests of basic nurture, physical and mental health, and safety, and the requirement that the child's health and safety interests prevail over conflicting legal interests of a parent, custodian, or guardian . . .

(Emphasis added.) Similarly, the Department alone is the subject of section 12 of chapter 259, Laws of 2012, which Kipp chose to disregard, and which amended RCW 26.44.010 in part:

> When determining whether a child and a parent, custodian, or guardian should be separated during or immediately following an investigation of alleged child abuse or neglect, the safety of the child *shall be the department's paramount concern*.

(Emphasis added.) That amendment also included language similar to RCW 26.44.280 regarding the child's health and safety prevailing over a parent's rights. Similar language applying to the department has also long been part of RCW 13.34.020. This principle is thus not new as Kipp would suggest.

c. Kipp, however did have an obligation of long-standing to recognize a paramount importance that was not limited to the department.

> The Washington state legislature finds and declares: *The bond between a child and his or her parent, custodian, or guardian is of paramount importance*, and any intervention into the life of a child is also an intervention into the life of the parent, custodian, or guardian; however, instances of nonaccidental injury, neglect, death, sexual abuse and cruelty to children by their parents, custodians or guardians have occurred, and in the instance where a child is deprived of his or her right to conditions of minimal nurture, health, and safety, the state is justified in emergency intervention *based upon verified information . . .*

RCW 26.44.010 Declaration of Purpose. (Emphasis added.) As the declaration of purpose for chapter 26.44 RCW, the foregoing language was to inform Kipp as she carried out her duty to investigate under RCW 26.44.050. Kipp's emergency intervention based on speculation was thus in violation of RCW 26.44.010 because her information was not "verified".

3. *Kelley* and *Whitehall* are distinguishable and do not control here.

Kipp claims *Kelley v. State*, 104 Wn. App. 328, 17 P.3d 1189 (2000) and *Whitehall v. King Cty.*, 140 Wn. App. 761, 167 P.3d 1184 (2007) control, but they are not applicable. They each concern cases where the defendant community corrections officer had not fulfilled all their supervision duties and their supervisees had committed crimes against the plaintiffs. In each case, the CCO could have learned more that would have led to their supervisees being arrested prior to (and presumably thus precluding) harming

the plaintiffs. The court ruled in each case that though the CCOs could have done more, they had exercised slight care. Other cases cited involve cases, like *Kelley* and *Whitehall*, where the defendants exercised at least slight care and were thus not grossly negligent.[3]

The cases Kipp cited where the defendant was alleged to have done too much, as here, are also both distinguishable. In *Brownell v. LeClaire*, 96 A.D.3d 1336, 1338, 948 N.Y.S.2d 168, 171 (N.Y. App. Div. 2012) the plaintiff's claim for malicious prosecution was "completely without merit and totally unsupported in the record" where the plaintiff had confessed to the burglary and where his fingerprints were similar to those found at the scene. In *Cullison v. City of Peoria*, 120 Ariz. 165, 167, 584 P.2d 1156, 1158 (1978), the police had reason to believe that the information on which they based their arrest—including eyewitness identification in two lineups—was trustworthy, and they were therefore not grossly negligent.

4. Kipp's taking Landon from his father was qualitatively different than the cases she cited because her investigation, such as it was, was both in error and speculation.

Unlike the cases cited by Kipp, the additional information Kipp could

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[3] Lurking in the background of most of these cases, but not usually addressed, is a question of proximate cause. For example, even if Ingalls in *Kelley* had been arrested for curfew violation, would he still have been out of circulation a month later such that Kelley would not have been assaulted? In *Nist*, however, the gross negligence of Mrs. Tudor who turned into oncoming traffic was unquestionably the proximate cause of Nist's injuries.

have obtained, but did not, was information necessary to correct her *own* errors and to verify or disprove her *own* speculation. Her speculation was based on her own errors and wilful ignorance. And even after her speculation was disproved (on seeing Landon in the car), she continued on her course.

Kipp was grossly negligent because her investigation was fundamentally flawed. Her own errors, in reading and understanding the Motion Mr. Mendoza filed, created the need for more information. She then compounded her grossly negligent fact collecting by speculating based on that error. And she compounded her gross negligence even further in taking action based on her speculation, notwithstanding contrary facts staring her in the face. Finally, having run several "stop" and "yield" signs, as it were, she committed her final act of gross negligence when she failed to take the opportunity along the side of I-5 to test the validity of her facts and speculation.

Unlike *Kelley*, where information was in the possession of others and the defendant failed to failed to discover the actual time when told that an event had occurred "in the morning," Kipp herself created her own circumstances of having limited information.[4] In the terms of the scientific method, it might

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[4] In actuality, Kipp's investigation violated basic principles of inquiry generally called the scientific method. It is used by everyone in one form or another, from the parent who seeks to discover who took the cookies out of the cookie jar to the university researcher with a federal grant. As stated in a recent unpublished case, "Typically, data is used to test a hypothesis, and it is contrary to the scientific method to test a hypothesis using speculative or

be said that Hayes stated the problem, CP 295, and Kipp formed the hypothesis that Mr. Mendoza was allowing Tara to see Landon. But based on her grossly negligent collection and interpretation of the data, Kipp necessarily drew wrong conclusions and took wrong actions.

Kipp said she "confirmed the contents," CP 441, 485, of Carlos' Motion, CP 297. Whatever she meant by "confirm," she failed to exercise slight care. *See*, ABrief, 34–38, addressing these matters. As a minor point in the first place, the document clearly identified itself as a Motion, yet she persisted in calling it a "petition". CP 441.

If Kipp "confirmed" what the Motion said, CP 442, what did Carlos mean when he said the allegations appear to be untrue but he acknowledged that "the incident" occurred? CP 297. To what allegations was he referring? To what incident? The apparent contradictions between an incident occurred

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unverified information." *State v. Arndt*, 1 Wn. App.2d 1040, 48525-7-II, 2017 WL 6337458, at 4, 5 (2017). The simplest explanation this writer has found in searching for <the scientific method in everyday life>, is found at http://scienceprojectideasforkids.com/2011/scientific-method-for-daily-problem-solving/: "The scientific method is nothing more than a process for discovering answers. While the name refers to 'science,' this method of problem solving can be used for any type of problem." One iteration is found at https://www.ncjrs.gov/App/publications/Abstract.aspx?id=78300 in the abstract of "Scientific Method and Criminal Investigation" published in Journal of Police Science and Administration, Vol. 9 (June 1981):

> Stating the problem, forming the hypothesis, collecting the data by observing and experimenting, interpreting these data, and drawing conclusions.

and allegations that appear to be untrue should have caused Kipp to read the order to understand what Carlos meant. At the very least, Kipp should have asked Carlos at the I-5 roadside. If Kipp had read the order she would have learned that the "incident" was Tara assaulting him with a vehicle. CP 493–94. Instead, Kipp made up for herself that the order Carlos sought to have rescinded protected Landon from Tara. CP 441, 352–53.

5. Kipp claims, RBrief, 38–39, that some federal standard required her to pick up Landon once she had determined to do so. A moment's reflection shows that argument to be **begging the question**. Such logic would justify any act once a person determined to take it—regardless of validity.

6. Kipp claims the **shelter care ruling of Commissioner Schienberg** "wholly" undermines Mr. Mendoza's position. Since the case is about what Kipp knew and did on December 10, 2014, the commissioner's ruling over two months later is not relevant. But even so, and on the contrary, the ruling shows the court had a mistaken view of the meaning of imminent.[5]

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[5] The commissioner made other questionable comments suggesting bias. Misquoting Mr. Mendoza's motion in the same way Kipp did, the commissioner said Mr. Mendoza said "the allegations are untrue." CP 169. (But *cf.* CP 297, "what appear to be untrue allegations.") Another comment was why Mr. Mendoza was in a rush to marry "this new girlfriend" who "may or may not" be pregnant with his child. *Id.* It should have been obvious (or reasonably inferred) that since Mr. Mendoza wanted to get on with his career as a Marine that Kipp and the state had interrupted, he would want Yesenia to be able to reside with him on base and otherwise enjoy the benefits of a military spouse. A third statement is the commissioner's statement she didn't

a. In the first place, the Commissioner complained about the parenting plan that she herself had signed, claiming there was "nothing" there that protected the child. CP 169. That was not true because the parenting plan required the mother to motion the court if she was found not guilty. *Id.* Thus, like Mr. Mendoza's motion (even if it had, as Kipp falsely thought, protected *Landon* from Tara) a judicial officer's discretion would stand between the mother's request and the requested visitation.[6] It is clear from the commissioner's statements that if she had not already convicted Tara in her own mind, she had nevertheless already determined without there ever having been an evidentiary hearing, CP 295, that Tara could only have supervised visits even if she was found not guilty. CP 169–170.

b. The court then went on to say:

> Everyone agrees that [Mr. Mendoza] would not physically harm this child. Everybody agrees to that and I agree with that.
>
> The question is if mom is available would he be willing to allow mom to have contact with this child even if she's found not guilty because not guilty doesn't necessarily mean she didn't do it.
>
> I think it's clear that he -- if there wasn't a restraining order in effect in the criminal matter that he would clearly allow the mother to not only have contact, but possibly have custody of this child.
>
> So there is an imminent risk. That's number one.

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necessarily believe Mr. Mendoza was married because she had not seen a certificate. She only accepted the social worker's verification.

[6] Even a child knows the asking does not constitute the granting of a request.

The commissioner apparently did not know the meaning of the word "imminent," which is defined as "likely to happen without delay; impending". Webster's New World Dictionary, Second College Edition 702 (1980). The case of *State v. Negrin*, 37 Wn. App. 516, 521, 681 P.2d 1287, 1291 (1984) (self defense) defined "imminent" as something reasonably believed to occur "in the near future". By definition almost, something is not imminent if something else must occur first. The commissioner acknowledged that it was if there was no criminal no contact order against Tara that she thought Mr. Mendoza would allow Tara to have contact with the child. But there was no imminent risk because Tara's criminal no-contact order existed and continued for at least nine months more. CP 75, 156.

c. In addition, the commissioner, though ruling after a hearing, was aware of Kipp's decision to take the child. She also considered the pending criminal charges against Mr. Mendoza and his having pleaded the 5th Amendment several times. CP 162. Kipp's taking of the child was thus a factor in the ruling of imminent harm and may in fact have justified in the commissioner's mind her ruling of imminence in the actual absence thereof.

7. Choice of law. Kipp's reference to choice of law issues is a red herring. Washington law obviously controls. And the ILA does not allow Kipp to claim that RCW 26.44.050 operates in Oregon.

8. The Interlocal Agreement. Though Kipp attempts to shield her acts behind a claim of Washington statutory immunity, *supra*, the primary issue is what authority did she have under the ILA. *See*, ABrief, 41–51. The answer is determined by well-established principles of contract analysis. Focusing on only the language regarding "special law enforcement units," Kipp misstates and thus obfuscates the extent of authority granted her by the ILA—beginning with her disregard of its clearly stated purpose.

a. Statutory Authorization. The ILA is authorized by chapter 39.34 RCW, and "shall specify . . . (c) Its purpose or purposes". RCW 39.34.030(3).

b. **Purpose of Agreement**. The ILA twice specifies purpose: the initial general paragraph, CP 309; and, relevant here, the more detailed Purpose and Function, ¶ 2(3), CP 312, each specifying enforcement of "applicable criminal and traffic laws." ABrief, 42, 43. The latter provision states:

> **2. Purpose and Function.** The purpose of this agreement is: . . .(3) To commission or specially commission personnel in each party's specialized law enforcement units to enforce applicable criminal and traffic laws within the primary or geographic territory of other parties;

Disregarding the foregoing, Kipp cites only ¶ 2d)(i)(a) and (iii), which address "Function" in carrying out the "Purpose".

c. The CJC is not a "specialized law enforcement unit" (SLEU). Kipp states the Children' Justice Center (CJC) was a Children's Advocacy Center, a "multi-disciplinary team" including other "specialities" in addition

to law enforcement.[7] CP 285. *See* former RCW 26.44.020(24) (now (6)); *cf.* RCW 26.44.180, 185. Kipp says without any evidence that the CJC was "always . . ., to my knowledge, considered to be a '[s]pecial law enforcement unit'" while she was "assigned to the CJC", CP 285, which Kipp saw as a different entity from VPD. CP 283. The ILA defines an SLEU as follows:

> **Special law enforcement unit** means specialized investigative or enforcement units, and includes: detective units or divisions; [other law enforcement squads, teams, units listed].

CP 311. An SLEU does not include doctors, social workers, the prosecutor's office, therapists or other non-law enforcement personnel. The CJC was thus not a "special law enforcement unit".

d. Paragraph 2d) does not grant independent authority to Kipp. Even if the CJC is an SLEU, the provisions of ¶ 2d) grant no authority, CP 314–15, they just explain how the authority granted elsewhere in the ILA is to be exercised. Specifically it addresses the cross-commissioning of another party's officers, setting forth the responsibilities of each party and the cross-commissioned officer. The authority given a cross-commissioned officer—enforcement of "traffic and criminal laws"—is in ¶ 2(3). CP 312.

e. RCW 26.44.050 is not a criminal law statute. While police investigating abuse according to RCW 26.44.050 may lead to criminal

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[7] Other specialties mentioned to be on the multi-disciplinary team included medical doctor, CP 146, social worker, *id.*, CP 207, victim advocate (prosecutor's office), CP 345, 487.

charges, the authority to take a child from its parent without court order is not a criminal law, but a civil statute for the civil purpose of protecting a child from imminent harm. And Kipp also saw no reason to arrest Carlos. CP 489.

f. Kipp was not cross-commissioned by Portland. Since RCW 26.44.050 is not a "traffic" or "criminal" law, it could not be among the "applicable traffic and criminal laws"[8] for which Portland was authorized by the ILA to commission Kipp to enforce in its "primary or geographic territory" (even if the CJC were considered an SLEU). Moreover, Kipp testified in deposition that she did not take Landon into custody under the authority of her commission through Multnomah County, Oregon; nor did she recall if she was even so commissioned in December 2014. CP 451–52. Kipp seems to be claiming a sort of "fresh pursuit" authority inherent in being in a special law enforcement unit. The ILA, however, grants no such authority.

g. Kipp did not follow the ILA requirements. See, ABrief, 46.

C. CONCLUSION

Based on the foregoing, Plaintiffs request reversal, a determination that Kipp had no legal authority to take Landon, and remand for trial.

Respectfully submitted this 5th day of November, 2018.

/s/ Gary A. Preble
GARY A. PREBLE, WSB# 14758
Attorney for Appellant

[8] The ILA does not define which state's laws would be "applicable".

PREBLE LAW FIRM, P.S.

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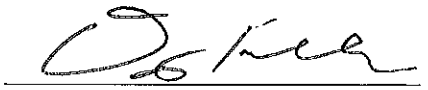
I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Signed this 5th day of November, 2018, at Olympia, Washington.



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