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EXHIBIT A

Court of Appeals No. 51827-9-II

IN THE WASHINGTON STATE COURT OF APPEALS
DIVISION II

LESA SAMUELS,

Plaintiff/Appellant,

v.

MULTICARE HEALTH SYSTEM, GLORIA LEM, CITY OF TACOMA

Respondents.

AMENDED APPELLANT'S OPENING BRIEF

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III. ASSIGNMENT OF ERRORS

1. The trial court erred in granting the City of Tacoma's motion for summary judgment.
2. The trial court erred in awarding costs to the City of Tacoma.
3. The trial court erred in granting judgment to the City of Tacoma.

IV. ISSUES PERTAINING TO ASSIGNMENT OF ERRORS

1. Were the City of Tacoma and its paramedics and EMTs entitled to qualified immunity under RCW 18.71.210 in this case? (Pertains to Assignments of Error Nos. 1-3)

2. Do triable issues of fact remain regarding the failure of the City of Tacoma's paramedics and EMTs to follow Pierce County EMS protocols? (Pertains to Assignments of Error Nos. 1-3)

3. If the City of Tacoma and its paramedics and EMTs were otherwise entitled to qualified immunity under RCW 18.71.210 in this case, do triable issues of fact remain regarding their gross negligence in this case? (Pertains to Assignments of Error Nos. 1-3)

V. STATEMENT OF THE CASE

A. Background and Procedural History

On December 24, 2015, a five member team from the Tacoma Fire Department, (the City of Tacoma), responded to a report that Ms. Lesa Samuels believed she was having a stroke. See "Facts" section, *infra*. According to the testimony of Lesa Samuels and Arnold Williams, the responders did not tell Samuels what was causing her symptoms or if she needed hospital treatment, but told her she was "not having a stroke." *Id.*

As a result, Samuels declined their offer to transport her to the hospital. *Id.* On January 5, 2016, after new and worsening symptoms developed, Ms. Samuels self-reported to Tacoma General Hospital where it was determined that she had, indeed, suffered a recent stroke. *Id.*

In her amended complaint, Ms. Samuels alleged the City of Tacoma was liable for damages resulting from the negligent conduct of its responders in misdiagnosing Ms. Samuels' condition and failing to properly assess, treat, or seek treatment for her stroke. CP 9. The City of Tacoma conceded that the responders were operating within the scope of their employment and, on that basis, the Court granted the City's motion to dismiss the responders as individual defendants and left the City as the responsible employer-defendant. 5/12/17 VRP, pp 3-5.

On 3/31/17, the City of Tacoma filed a motion for summary judgment to dismiss Ms. Samuels' claims on the grounds that its Fire Department responders had qualified immunity under RCW 18.27.210 and Samuels could not prove the responders acted with the fault level required to sue persons or entities entitled to qualified immunity under RCW 18.27.210, i.e., gross negligence. CP 18-35.

Ms. Samuels argued that there were disputes of fact as to whether the responders complied with the Protocols issued by the Pierce County Medical Program Director which would otherwise give the City and its Fire

Department qualified immunity, that the responders' actions breached or departed from the statutorily mandated protocols governing EMTs and paramedics and, in any event, that, even if the responders alleged acts and omissions were covered by qualified immunity, the qualified immunity statute simply provided a higher standard of fault, i.e., gross negligence, and the issue of gross negligence was a question of fact for the jury. CP 495-518 and 5/12/17 VRP, pp. 14-21.

Ms. Samuel's memorandum was supported by Fire Department records, witness depositions, and the declarations of her expert witnesses, medical doctor David Lombardi and medical doctor and licensed paramedic Kevin Brown. CP 140-162, 163-230, and 532-768.

At the summary judgment hearing, Samuels argued that:

> "... we have a massive ... breach in terms of the EMTs' and paramedics' failure to get a history, to make conclusions about the F.A.S.T. assessment when they failed to take a prerequisite step, and then leaving the scene when she had unresolved potential stroke symptoms. That's why the base station physician is available. That's why your tax dollars pay for them. That's why they get on the phone 24 hours a date with the EMTs and paramedics ... this case ... is [not] even a close call, your Honor. We have got differences of opinons about facts, we have got differences of opinions about whether the EMT and paramedics met the standards here." 5/12/17 VRP, p 21.

Nevertheless, the City's summary judgment motion was granted and the trial court awarded costs to the City. 05/12/17 VRP and CP 775-77 and 781-84.

In its oral rulings the trial court stated: "...there are now more than 800 pages that have been filed ... I've done my best to review all of them," 5/12/17 VRP, p 3, "I have read every one of what I counted to be 813 pages," 5/12/17 VRP, pp 24-25, "I believe ... the firefighters ... pursuant to RCW 18.71.210 ... are entitled to the immunity that the City seeks. Ergo, I think the only standard here would be gross negligence also including willfulness conduct. I find nothing that supports gross negligence." 5/12/17 VRP, pp 27-28.

In its written order, the trial court did not state its reasons for granting summary judgment. CP 775-77.

B. Facts

Appellant, Lesa Marie Samuels (hereinafter "Ms. Samuels") is a resident of Tacoma Washington. CP 706. As of 12/24/15, Ms. Samuels had been living with Arnold Williams for 14 years and sharing parenting duties with him for their twin daughters for 12 years. CP 706.

Pre-Response Events 12/24/15 - On 12/24/15, Arnold Williams and Ms. Samuels were at home in their apartment in Tacoma. CP 710 - 13. Ms.

Samuels had started feeling a squeezing headache in the week prior to December 24, 2015. CP 710.

Ms. Samuels did not consider seeing a doctor about her headache because she thought it was coming from her job as a cook at a retirement home. CP 711.

On December 24, 2015, Ms. Samuels had worked a 10:30 a.m. to 6:30 p.m. shift at the retirement home while experiencing a headache. CP 711-12 and 745. After work, Ms. Samuels returned home, had dinner, watched a little television, and talked to Mr. Williams. CP 711 - 12 and 745. Around 10:00 p.m., Ms. Samuels took a shower. CP 711 and 745.

As she was shampooing her hair, Ms. Samuels began to feel a rush of dizziness. CP 712. Ms. Samuels got dizzy and fell back into the shower and then tried to wash off, but she fell back again into the other wall of the shower. CP 712. Ms. Samuels tried to yell for help, but her throat closed up on her right side. CP 712. Ms. Samuels was also having trouble swallowing. CP 713. Ms. Samuels got out of the shower, went to her room, and laid down. CP 713 and 724.

As Ms. Samuels lay on her bed, her squeezing headache turned into a piercing pain in her right temple. CP 713. A few minutes later, numbness started in her face and spread to her right arm. CP 713.

Ms. Samuels got the attention of Mr. Williams who found her in her room. CP 713. Mr. Williams asked if she was all right. CP 713. Ms. Samuels said her head hurt. CP 713. Mr. Williams asked Ms. Samuels if he should call 911. CP 713. Ms. Samuels responded "no" because she thought the pain would subside. CP 713.

After about 15 minutes, Ms. Samuels got up and went to the bathroom to look in the mirror. CP 713. By that time, her piercing headache had subsided to a squeezing headache, but numbness persisted on the right side of her face and in her right arm. CP 714.

When Ms. Samuels looked in the mirror, her face looked droopy, with her mouth and eye being turned down. CP 714. Ms. Samuels exited the bathroom and asked Mr. Williams to call 911, telling him, "I think I'm having a stroke." CP 714. Mr. Williams called 911 and told the 911 operator he thought Ms. Samuels was having a stroke. CP 714 and 747.

Ms. Samuels moved from her bedroom to the living room while she was waiting for the Tacoma Fire Department to arrive. CP 726. While she was waiting, Ms. Samuels attempted to call her son on the telephone, reaching only his girlfriend, who could not understand what Ms. Samuels was saying and hung up. CP 715.

Fire Department Parameters - Paramedics and EMTs "don't diagnose patients." See CP 575, 577, and 580, (Fire Lt. Jones' Depo., 46:18 - 47:13,

57:11-12, and 68:24 – 69:2), and CP 680, 685-86, 694, and 697, (Sr. Paramedic Johnson's Depo, 40:16-17, 59:4-12, 64:6-8, 94:14-23, and 108:5-9).

The Protocols do not allow responders to diagnose or rule out strokes. CP 575, 577, 580, 653, 694, and 697. They must, instead, follow state approved triage procedures, regional patient care procedures, and county Medical Program Director patient care protocols during treatment. RCW WAC 246-976-182(3).

The Fire Department responders in this case conceded they were all bound by the 2012 Pierce County Emergency Medical Services Patient Care Protocols, (aka, the "Protocols") in terms of what treatment they could offer Samuels on 12/24/15. CP 644-45 and 676-78.[1] [2] According to the highest-ranking paramedic involved in the response, paramedics and EMTs just "triage [patients] and give them options." CP 680.

He testified that "... we don't diagnose patients ..., we assist them in getting to their appropriate destination via the appropriate route." CP 680 and 685. "...We don't diagnose." CP 694. "Q. Okay. And it's not within the scope of your activities under the protocols to rule out a stroke; correct?

---

[1] The 2012 Protocols were still in effect as of 12/24/15. CP 676-77.

[2] The 2012 Protocols are referenced in the depositions of the above-described paramedics and EMTs, e.g., CP 676-78. In addition, the relevant portions of the 2012 Protocols appear, in stand-alone form, at CP 541-44.

A. Correct." CP 694. "... we don't diagnose ... that's not our job ..." CP 697.

Fire Department Procedures – It is standard Tacoma Fire Department procedure for the responders to create a one page double-sided handwritten report with carbon duplicates at the scene on a notepad and then create a computer-generated report upon return to the fire station. CP 570 – 71, 580-581, and 683-84. Responders are trained that during an assessment a patient or others on-scene should be asked what the patient was doing when the symptoms first appeared and whether there are any other associated symptoms, meaning not ones the patient is reporting, but other things going on at the same time and to write down these inquiries and whether they were answered by the patient. CP 624, 677, and 701. Finally, responders are trained to refer a patient to another provider if they cannot determine the cause of the patient's symptoms. CP 624, 675, 689 – 90, and 695.

The handwritten and computer-generated reports in the Samuels response were created by Fire Lieutenant William Jones. CP 570, 581, and 683-84.

On the back-side side of the handwritten report is a place for the patient to sign an "ROR" section. CP 576. "ROR" means "release of responsibility." *Id.* and CP 680. A patient is asked to sign the ROR section if the responders are terminating care and the patient is not going against

the responders' advice in terms of additional treatment. *Id.* If transportation has been offered but has been turned down, the responders must attempt to have an ROR signed by the patient. CP 619.

The back-side of the handwritten report also contains a place for a patient to sign an "AMA" section. CP 576 and 680. "AMA" means "against medical advice." *Id.* and CP 573 – 74.

Jones testified it would have been his "regular practice" to give Samuels, as a patient, an opportunity to sign an ROR or AMA on the back-side of his handwritten report, but he does not recall if he gave Samuels this opportunity. CP 577. He also testified that he shredded the double-sided handwritten report upon returning to the fire station following the treatment of Samuels. CP 570 and 577.

Jones's computer-generated patient report states:

> 45 year-old female called because she thought she was having a stroke because her face felt numb. The patient stated it started about an hour prior to the 911 call. CP 535 and 730.

The computer-generated report does not contain an explanation for the facial distortions or facial numbness that Samuels was experiencing. CP 535. It also does not contain any mention of any history taken from Mr. Williams about Ms. Samuels. CP 535 and 585.

The computer-generated report states Samuels thought she was having a stroke because her face felt numb, but that she denied any loss of

consciousness, chest pain, shortness of breath, nausea, vomiting, or diarrhea, or being on any prescription medications. CP 535, 585, and 588.

The computer-generated report does not state that anyone ever asked Samuels whether, prior to the responders arrival, she was having trouble swallowing. CP 535 and 594. The computer-generated report also does not mention that anyone ever asked Samuels or Williams, or that an answer was ever given, as to which, if either, side of Ms. Samuels' face or neck was, or had been, numb or painful or which arm, if either, was or had been, numb or painful CP 535 and 590.

It also did not state if Samuels or Williams had been asked, or an answer was ever given, as to whether Ms. Samuels had dizziness or slurred speech, had suffered a fall, blow or collision, had numbness on one side of her face, or had pain on either side of her head before the responders arrived. CP 535 and 590-92. Finally, it did not state whether Williams or Samuels had ever been asked, or given an answer, as to whether another adult had witnessed any of the above in Samuels prior to the responders' arrival. CP 535 and 592-93.

Nothing in the computer-generated report would have allowed the responders to rule in, or rule out, the occurrence of a stroke. CP 660-61, 689, 693, and 698.

Fire Department Training, the Protocols, and the FAST Exam – It is part of Fire Department responder training that sudden confusion, trouble speaking, numbness or weakness of the face, body, leg or arm, trouble seeing, trouble with balance, dizziness, coordination, or headaches with no known cause are potential stroke symptoms. CP 627.

The Protocols, themselves, and the testifying responders, refer to a "FAST exam" and transport criteria. CP 541-44, 682, and 686. The FAST exam is the Protocols' screening tool for assessing stroke risk. *Id.*, and CP 643.

Asking the patient to smile or make a face is part of the "F" or "face" portion of the FAST exam where the Protocols direct responders to "ask the patient to show his or her teeth or smile to see if each side of the face moves as well as the other." This step is described at Appendices D-1 and D-2 to the 2012 Protocols. CP 542-43, esp CP 543.

Appendix D-1 to the 2012 Protocols states that the initial step in completing a FAST exam is to get a "[r]eport from patient or bystander of one or more sudden: numbness or weakness of the face, arm, or leg, especially on one side of the body, confusion, trouble speaking or understanding, trouble seeing in one or both eyes, trouble walking, dizziness, loss of balance or coordination, [or] severe headache with no known cause." CP 542, 654, 677, and 701.

Appendix D-1 to the 2012 Protocols also states the "T" in FAST refers to inquiring about the "[t]ime last normal (determine time patient last known normal)." CP 542.

Appendix D-2 to the 2012 Protocols emphasizes that the "T" in FAST stands for "time" and indicates that the person performing the FAST exam must "[a]sk the patient, family or bystanders the last time the patient was seen normal." CP 543. See also CP 626, 654, 677, and 701-02.

Completion of a FAST exam does not rule in or rule out a stroke.CP 643, 660 – 61, 689, 693, and 698.

The 12/24/15 Response – The Tacoma Fire Department was dispatched to Samuels and Williams' apartment due to a report of a potential stroke. CP 568 – 69 and 607. Within minutes of 911 being called, Tacoma Fire Department responders arrived at Williams' and Samuels' apartment. CP 537 and 713. The Tacoma Fire Department's event history lists EMTs William Jones, Nate Kaiel, and Benjamin Baker,[3] and paramedics Kristopher Johnson and Anthony Brakebush as the responders.[4] CP 537, 603, and 614. At the top of the event history for the response, it indicates

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[3] Baker was a probationary firefighter as of 12/24/15. CP 603.

[4] A paramedic is one level above an EMT and obtains an additional certification. CP 644.

the Fire Department was on-scene at 11:19 P.M. and closed the response at 11:29 P.M. CP 537.

The arrival time of 11:19 P.M. indicates when the truck carrying the EMTs arrived, but responders need to chock the fire truck's wheels, grab their gear and, as per their training, size up the scene to determine if there are any on-scene safety concerns before making their way from the truck to the scene, so arrival time in Samuels' apartment was actually sometime after 11:19 P.M. CP 569, 603, 612, 619 and 682.

The "close response" time of 11:29 P.M. actually indicates the moment when the responders get back to their vehicle, not when they terminated care and left the patient. CP 619 and 694.

Lieutenant Jones does not recall if he spoke with Mr. Williams or not, CP 569, but he testified that his job was to document the response. CP 570. That task matches the task performed by the responder described as Responder 4 by Samuels. See description below.

Ms. Samuels, Mr. Williams, the response team, and/or the Tacoma Fire Department patient report describe the actions of the responders as follows:

Ms. Samuels remembers there being four responders. CP 726. The patient and CAD reports indicate there were five. CP 535-37.

Responder 1 was a male with dark hair who knelt down on the floor on the other side of couch arm from where Samuels was sitting and took Samuels' vital signs, blood pressure, and glucose. CP 726-28.[5]

Ms. Samuels' blood pressure was 176/98, CP 535, just under the 180 systolic blood pressure level for which the Protocols mandate an advanced life support transport to a hospital. CP 544.

While Responder 1 took Samuels' vital signs, blood pressure, and glucose, Responder 2, a dark-haired male with an athletic build who Ms. Samuels thought looked "mixed" in terms of ethnicity, asked Ms. Samuels questions and examined her. CP 726-27.

Responder 2 told Ms. Samuels her vital signs were fine. CP 728.

Responder 2 looked in Ms. Samuels' eyes, looked in her throat and did resistance testing by pushing down on her outstretched hands. CP 728.

Responder 2 did not ask Ms. Samuels to smile or make a face. CP 728.

Asking the patient to smile or make a face is part of the "F" or "face" portion of the FAST exam where the Protocols direct responders to "ask the patient to show his or her teeth or smile to see if each side of the face moves as well as the other." CP 542-43, esp CP 543.

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[5] Responder 1 pricked her finger with a glucometer. CP 726.

Responder 2 used a little flashlight to look in Ms. Samuels' eyes. CP 728. Responder 2 said her eyes looked normal. CP 728.

Responder 2 looked at Ms. Samuels' throat because she told him her throat felt like it was closing up. CP 728. Responder 2 used a little flashlight to do this and said her throat looked fine, not swollen. CP 728.

Responder 2 asked Ms. Samuels her name and what county she lived in. CP 729. Responder 2 also asked Ms. Samuels if she knew why the responders were there. CP 729. Ms. Samuels responded by telling him her name and that she lived in Pierce County, and stating, "I think I'm having a stroke." CP 729.

Responder 2 did not ask Ms. Samuels why she thought she was having a stroke. CP 729.

Responder 3 was a male with short blonde hair and stood in a different part of the room and did not ask Ms. Samuels any questions or take any notes. CP 727.[6]

Responder 4 was a Caucasian male who took notes. CP 727. Lietenant Jones testified that he was the one who asked Ms. Samuels questions and took notes. CP 569-71.

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[6] Lieutenant Jones testified it would be "standard operating procedure" that the senior paramedic would watch an examination. CP 595. Kristopher Johnson was the senior paramedic. CP 644. Kristopher Johnson had short blonde hair at the time of his deposition on 3/17/17.

Jones initially testified that he did not recall if he spoke with Mr. Williams, but then later testified that he did speak with Mr. Williams. CP 569 and 572.

Jones testified that Ms. Samuels told him she had a headache and her face was numb and pointed to a specific spot on one of her cheeks. CP 571 and 582.

Jones testified that he asked Samuels about what symptoms she was experiencing before the responders showed up, but his computer-generated patient report, while indicating the answers or denials he received to other questions, does not indicate if he asked, or if Williams or Samuels answered, questions concerning whether Samuels had experienced numbness or weakness of am arm, or leg, especially on one side of the body, confusion, trouble speaking or understanding, trouble seeing in one or both eyes, trouble walking, dizziness, loss of balance or coordination, or a severe headache with no known cause or the last time she had been clear of any of those symptoms. CP 535 and 572.

Jones testified that he has been trained that high blood pressure correlates with a segment of the population that has a higher incidence of strokes and he knows that strokes involve oxygen and blood to the brain being blocked or inhibited. CP 573-74 and 582. The other responders

testified, in slightly different terms, that this was also their understanding. CP 607, 613, 622, 652, 660, and 698.

Paramedic Anthony Brakebush testified that slurred speech and numbness in the face were potential stroke symptoms as are numbness in one or more extremities or dizziness. CP 652 and 662-63.

EMT Nathaniel Kaiel testified that he understood that facial numbness was a potential stroke symptom and if oxygen is inhibited or blocked from reaching a part of the brain that the brain and the person suffering the stroke would have brain damage or die and a stroke can never really be ruled out completely even if signs and symptoms of a stroke are not present. CP 607, 610, and 613. He also testified that none of the vital signs taken ruled in or ruled out a stroke. CP 613

At the end of Responder 2's examination of Samuels, he turned to another of the responders and said "she's not having a stroke." CP 732-33.

Ms. Samuels then asked: "Well, what's wrong with my face then?" and the other responder that Responder 2 had directed his statement at said: "Your face looks a little off, but you're not having a stroke." CP 732-33.

Responder 4 then told Ms. Samuels "We could take you to the hospital to ease your mind or (pointing to Mr. Williams) … he could take [you]." CP 733.

Samuels declined this offer and the responders left. CP 535 and 733.

Ms. Samuels and Mr. Williams both testified that, although the "we could take you to the hospital" statement was made by Responder 4, Mr. Williams did not reply to it and neither Ms. Samuels, nor Mr. Williams, at any point, indicated that Ms. Samuels would be going to the hospital in anyone's private vehicle. CP 732-33.

Ms. Samuels testified she turned down the Fire Department's offer to transport her to the hospital because the responders told her they didn't think she was having a stroke and she "...trusted that these guys knew what they were looking at." CP 733-34, (esp. CP 733, Samuels Dep, 116:5-12 and CP 734, Samuels Dep, 118:4-8).

She denied that the responders recommended that she go get checked out at an ER. CP 734.

See CP 734, (Samuels Dep at 118:9 – 119:13), below.

> Q Did they make clear to you that they were not physicians and that's why they were recommending that you go get checked out at the ER?
>
> ...
>
> A Nobody said anything like that.
>
> Q Okay. Did they – did they tell you that they didn't know what was causing your symptoms and that you needed to go be checked out by a physiciam?
>
> A No.
>
> Q What did they say in this regard?

A Just that my face looks a little off, but I wasn't having a stroke.

Q But did they have an explanation for what was causing your symptoms?

A No.

Q. Did – did – when they – did they tell you they had no explanation for what was causing your symptoms?

A No

Q But you knew they didn't have an explanation, right?

A Yes.

Q They didn't give you an explanation, did they?

A No.[7]

Ms. Samuels testified that she had facial droop while the 911 responders were at her apartment. CP 730.

There is no record of the 911 responders performing a sensory exam of Ms. Samuels, in other words, actually touching her face to determine the location and extent of the numbness. CP 143 and 535. The failure to perform a sensory exam is odd, according to both of Ms. Samuels' medical experts, because numbness in the face is the one symptom of

[7] CP 734, i.e., Samuels Dep at 118:9 – 119:13.

stroke specifically noted in the responders' report, CP 535, and is a symptom that all the paramedics and EMTs testified was a potential stroke symptom. CP 612, 650, and 683.

Ms. Samuels did not go to a hospital or emergency room on 12/24/15. CP 535 and 733.

Symptoms and Risks Encountered on 12/24/15 - According to the Fire Department's patient report, Ms. Samuels stated: "her face felt numb," CP 535 and 683, but nothing in the report indicates the numbness went away during the Fire Department's visit to Samuels' apartment. CP 535 and 686.

The responders had no explanation as to what was causing the facial numbness. CP 683 and 686. In the words of the highest-ranking paramedic on-scene: "We couldn't explain it." CP 571 and 683.[8]

During that same paramedic's deposition, he conceded that facial numbness was known to him to be a potential stroke symptom. CP 686.

He was asked repeatedly to show Ms. Samuels' counsel where, in the Protocols, it stated that responders could terminate treatment or leave the scene when a patient had an unresolved potential stroke symptom. CP 685-88.

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[8] Both paramedic Kristopher Johnson and Fire Lietenant Jones acknowledged that Johnson had seniority and final decision-making authority for any treatment or transport questions. CP 594, 683 and 686.

The paramedic's "final answer" to that question was:

> It doesn't say in the protocol where you leave the scene after you give the patient options and explain risks. Then it's okay to leave the scene. CP 688.

Actions and Activities After 12/24/15 - Ms. Samuels went to work on 12/25/15 and worked the 5:00 a.m. to 1:00 p.m. shift. CP 716. During her shift, Ms. Samuels still had a headache and still felt a little dizzy and numb in her face, but the numbness in her arm went away. CP 716. Her facial droop also was gone on Christmas Day. CP 716. After work on Christmas Day, Ms. Samuels came home and laid down. CP 717.

Ms. Samuels also worked a 5:00 a.m. to 1:00 p.m. shift on Saturday, 12/26/15. CP 717-18. On 12/26/15, Ms. Samuels' head still hurt and she was still a little dizzy and numb in the face. CP 718. Ms. Samuels testified she did not go to the emergency room on 12/26/15 because the responders told her she was not having a stroke. CP 718.

On 12/27/15, Ms. Samuels worked a shift from 10:30 a.m. to 6:30 p.m. CP 718. On that day, Ms. Samuels was feeling the same as she felt the day before. CP 718. The squeezing headache, dizziness when walking, and numbness on her face persisted. CP 718. After work, Ms. Samuels went home, ate dinner, took a shower and went to bed. CP 718.

Ms. Samuels worked a 10:30 a.m. to 6:30 p.m. shift on 12/28/15. CP 718 - 719.

Ms. Samuels was off work on 12/29/15. CP 719. Ms. Samuels was still feeling the same symptoms on 12/29/15. CP 719. Her facial numbness had lessened, but her headache remained constant. CP 719.

Ms. Samuels did not work on 12/30/15 and went to MultiCare Urgent Care on that day at 5:05 p.m. CP 719. Ms. Samuels went to urgent care because she was tired of her headache, wanted to know what was going on with her head, and because the Urgent Care was close to her apartment. CP 720.

Ms. Samuels told the LVN/LPN (Amber Meshar Galland) and the nurse practicioner, (ARNP Gloria Lem), that she had a headache which would not go away and also relayed the events of 12/24/15. CP 720 - 22.

Ms. Samuels' vital signs were taken at Urgent Care and she reported her headache pain level as a 7 out of 10. CP 720 -22. Ms. Samuels told the LVN/LPN and the nurse practicioner that she was there for headache, numbness and dizziness. CP 720 - 22.

Ms. Samuels told ARNP Lem about the events of Christmas Eve and those that followed afterward and stated she was not having numbness in her arm on the date of her 12/30/15 Urgent Care visit, but was still experiencing a little numbness in her face. CP 722-23.

ARNP Lem gave Ms. Samuels two injections, a pain reliever and an anti-nausea medication. CP 723. Ms. Samuels was instructed to wait 20

minutes to see if she had a reaction. CP 723. Ms. Samuels did not have a reaction. CP 723. ARNP Lem then terminated treatment. CP 723.

Ms. Samuels continued to report to work through January 4, 2016, but on January 5, 2016, she self-reported to the Tacoma General Hospital ER after waking up with additional, increasing, and worsening symptoms which would not go away. CP 6, 143 – 45, 708, and 735. After being admitted at Tacoma General, she was diagnosed as having previously suffered a stroke. CP 6, 143 – 44 and 167. Specifically, the Tacoma General Hospital staff determined that Samuels had suffered a "posterior circulation stroke…in the left midbrain probably secondary to vertebral artery dissection." CP 6 and 143 - 45.

Ms. Samuels' stroke expert, Dr. Lombardi, testified that she likely suffered an initial stroke event on 12/24/15, that the stroke event would very likely have been correctly diagnose on 12/24/15 if Samuels had been taken to an emergency room, and treatment would have very likely have begun immediately. CP 143-47.

Ms. Samuels was transferred from Tacoma General Hospital to Good Samaritan Hospital after several days and underwent in-patient rehabilitation treatment for about a week. CP 6 – 7. She then engaged in outpatient treatment.

Ms. Samuels quit her job due to her inability to perform the functions required after her stroke. CP 734-36. Ms. Samuels is now on Social Security Disability. CP 708 and 734. Ms. Samuels believes she is not fully recovered from the stroke. CP 734-36. Her right leg is still numb and a little weaker than her left leg. CP 735-36. Her right arm is still numb and not as strong as before. *Id.* Ms. Samuels also has an aversion to being around people. CP 734-36.

Ms. Samuels does not feel like her face looks right and people stare at her. CP 734-36. Ms. Samuels feels like her face is asymmetrical. *Id.* She has gone through mental health counseling to manage this condition. *Id.*

Base Station Physicians – The availability of a supervising or "base-station" physician for paramedics and EMTs is mandated by statute. See citations at pp 30-32 in "Argument" section, *infra.*

The base-station physician's duty under the Protocols is to supervise and confer with responders to provide treatment direction. CP 624, 650, and 678 - 79. The base-station physician can, if necessary, overrule responders' decisions. CP 624 and 678 - 79.

A base-station physician is available, via telephone or radio on a 24-hour a day basis, 365 days a year, to all paramedics and EMTs employed by, or acting for, the Tacoma Fire Department. CP 617, 650, 678-79, and

681.[9] If a base-station physician is contacted by responders, that communication must be documented in the patient report. CP 577 and 685. There is no documentation of any communication with a base station physician in the Fire Department's patient report. CP 535.

Disputed Testimony Regarding Standard of Care - Ms. Samuels' experts, (medical doctors Brown and Lombardi), concluded that no pre-arrival FAST exam history of Samuels was taken by the responders and, therefore, the FAST exam attempted by the responders was incomplete. CP 146-47 and 171-75.

Samuels' expert testimony, in sum, is that by failing to obtain a history of what occurred prior to their arrival, the responders skipped steps in the FAST exam and this constituted a breach of the 2012 Protocols. *Id.*

In addition, Samuels' experts testified that the responders' failure to perform all of the steps rendered the FAST exam incomplete and minimally useful as a stroke risk assessment tool. *Id.*

Finally, Samuels' experts testified that the responders breached the Protocols:

1. by failing to contact a supervising, aka "base-station," physician when the Protocols did not provide a treatment

[9] The emergency responder statutes refer to this doctor as the "supervising physician," but the paramedic testimony in this case refers to that doctor as the "base-station physician" when describing the person who is available to Tacoma Fire Department paramedics and EMTs 24 hours per day and 365 days per year for consultation on treatment and assessments not directed or described by the Protocols. CP 678-81

regimen for Samuels' unresolved stroke symptom, e.g., facial numbness and high blood pressure, CP 143-47 and 171-75,

and

2. by leaving the scene while Samuels still had an unresolved stroke symptom. *Id.*

The testimony of Samuels' experts was offered at summary judgment to impeach the City's testimony from its on-scene Fire Lieutenant that Samuels' FAST exam was negative and, therefore, the City had no reason to render any additional care. CP 140-230. Samuels' experts disputed whether the results of the FAST exam could be viewed as negative when the FAST exam was incompletely, and therefore incorrectly, performed. CP 144, 146-47 and 171-75.

Finally, Ms. Samuels' experts testified that the responders seriously departed from any minimal standard of care to be expected from paramedics and EMTs in failing to take a patient history for the items that the FAST exam, (Protocol Appendices D-1 and D-2), explicitly told them to ask about before conducting the physical portion of the FAST exam because, had they done so and communicated with a base-station physician, they would have been told by any competent physician that there was a high risk of stroke and to transport Ms. Samuels to a hospital immediately. CP 144, 147, 169, and 171-75.

Ms. Samuels' experts also testified that the decision to terminate care without phoning a base-station physician was not a harmless error because termination of care is especially injurious for stroke victims, as is making an unqualified off-the-cuff diagnosis like "you're not having a stroke." CP 143-47 and 171-75.

That diagnosis is an action that is beyond the responders' authority, duties, and training. See CP 169, (Declaration of Kevin Brown, M.D., p. 7, lines 13-14, "There is nothing in the EMS protocols that allows paramedics to determine that a patient is not having a stroke.").

See also CP 147, (Declaration of David Lombardi, M.D., p. 8, lines 12-15, "The paramedics and EMTs ... compounded their error by telling Samuels, before they left, that 'you're not having a stroke' which is a determination that is clearly outside of the scope of the 2012 Protocols' approved actions for paramedics and EMTs and is an act that the paramedics and EMTs, themselves, admitted is outside of their field of expertise.").

VI. ARGUMENT

A. Standards of Review

An appellate court reviews *de novo* an order granting summary judgment. *Kim v. Lakeside Adult Family Home*, 185 Wn. 2d 532, 547, 374 P. 3d 171 (2016). The court considers all the evidence presented to the trial court and engages in the same inquiry as the trial court. *Id.* The moving

party has the burden of showing that there is no genuine issue as to any material fact. *Indoor Billboard/Washington, Inc. v. Integra Telecom of Washington, Inc.,* 162 Wn. 2d 59, 70, 170 P. 3d 10 (2007). The burden is on the moving party to show there is no genuine issue as to any fact that could influence the outcome at trial. *Jacobsen v. State,* 89 Wash.2d 104, 108, 569 P.2d 1152 (1977), overruled on other grounds by *Peeples v Port of Bellingham*, 93 Wn2d 766, 771, 613 P2d 1128 (1980).

The court will affirm a grant of summary judgment only if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CR 56 (c).

The court must consider all facts in the light most favorable to the nonmoving party and can affirm a grant of summary judgment only if it determines, based on all the evidence, that reasonable persons could reach but one conclusion. *Kim*, 185 Wn. 2d 547. Therefore, summary judgment must be denied if contradicting testimony is presented by the parties on a material issue because such contradicting evidence presents issues of credibility which belong to the trier-of-fact. *Riley v Andres*, 107 WnApp 391, 397, 27 P3d 618 (Div 2, 2001), *Meadows v Grant's Auto Brokers, Inc.*,

71 Wn2d 874, 881-82, 431 P2d 216 (1967), and *Powell v Viking Ins. Co.*, 44 WnApp 495, 502-03, 722 P2d 1343 (Div 3, 1986).

B. The trial court erred in granting the City's motion for summary judgment.

Error is assigned to the order granting the City's motion for summary judgment. CP 775-777. Error is also assigned to the judgment summary. CP 781-782.

1. The Tacoma Fire Department, ("TFD"), and its employees are not entitled to qualified immunity for their acts. and omissions in treating Ms. Samuels.

The Secretary of the Department of Health ("DOH") determines the practice parameters and standards for EMTs and paramedics. RCWs 18.71.205(1)(a), 18.73.030 (12), and RCW 18.73.081(1)(b). Actions taken by EMTs and paramedics are limited to those "taken under the express written or oral order of a medical program director certified by the department of health for a county, group of counties, or cities with populations of over 400,000. RCW 18.71.205(1), (4), and (6).

Only EMTs and paramedics trained under the supervision of an approved medical director, among other things, are subject to, and the beneficiaries of, RCW 18.71's rules and privileges. RCW 18.71.200. The

MPD is responsible for the medical control of EMS providers. WAC 246-976-010 (46).[10]

There are no specific medical procedures listed in any statute which paramedics or EMTs are authorized to perform. The authorized medical procedures for paramedics and EMTs are listed in WAC 246-976-182.

Under WAC 246-976-182, EMS personnel[11] are only authorized to provide patient care which is within the scope of care included in:

- approved guidelines/curriculum for the individual's level of certification or included in approved specialized training; **AND**

- included in State-approved county Medical Program Director, ("MPD"), protocols. WAC 246-976-182 (1) (c).[12]

Under WAC 246-976-182(3), "[a]ll prehospital providers must follow state approved triage procedures, regional patient care protocols and county MPD patient care protocols."

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[10] "Medical control" means oral or written direction of medical care that certified prehospital EMS personnel provide to patients of all age groups. WAC 246-976-010(44).
[11] "Emergency medical service" means medical treatment and care which may be rendered at the scene of any medical emergency or while transporting any patient in an ambulance to an appropriate medical facility including ambulance transportation between medical facilities." RCW 18.73.030 (10). "EMS" means Emergency Medical Services and Trauma Care. WAC 246-976-010 (34). The emergency medical services and trauma care system includes prevention activities, prehospital care, hospital care, and rehabilitation. WAC 246-976-010 (31).
[12] Medical program director, ("MPD"), means "a person who meets the requirements of chapters 18.71 and 18.73 RCW" and is certified by the DOH. WAC 246-976-010 (46).

Where the Protocols do not direct a responder as to what to do, he or she must contact a supervising, aka "base-station," physician.

> "If protocols and regional patient care procedures do not provide off-line direction for [a] situation, the certified person in charge of the patient must consult with their online medical control as soon as possible." WAC 246-976-182 (2).
>
> "[t]he ... directions for medical control are provided by the MPD or MPD delegate." WAC 246-976-010(44). "MPD delegate" means a physician appointed by the MPD and recognized and approved by the DOH, WAC 246-976-010 (47).[13] [i.e., the base-station physician.]

WAC 246-976-182 (2)'s requirement for paramedics and EMTs to consult with their online medical control, i.e., base-station physician, when "protocols and regional patient care procedures do not provide off-line direction," plainly should apply when unresolved potential stroke symptoms, including numbness in the face, very high blood pressure,[14] facial droop, and a self-diagnosis of stroke by the patient are known to the responder, especially when the FAST exam history was not completed, because paramedics and EMTs are not, under the statutes and WACS,

---

[13] An MPD delegate may be "a prehospital training physician who supervises specified aspects of training EMS personnel" or "a prehospital supervising physician who provides online medical control of EMS personnel." WAC 246-976-010 (47).

[14] Appendix E to the 2012 Protocols requires transport of a patient with greater than 180 systolic blood pressure by the crew of a licensed, verified, Advanced Life Support ambulance agency. Ms. Samuels systolic blood pressure was measured by the paramedics and EMTs as 176. Her overall blood pressure was 176/98. CP 535.

competent to evaluate what care needs to be rendered when unresolved symtoms remain.

Calling the base-station physician, in other words, was an obvious required step before terminating care because the responders admit they knew facial numbness and high blood pressure are potential stroke symptoms and strokes present an attendant risk of paralysis, brain damage, or death. CP 147; CP 171-75. In fact, WAC 246-976-182 (2)'s language indicates Ms. Samuel's situation was exactly the type of scenario requiring consultation because both of Ms. Samuels experts have testified that, in light of just the numbness, high blood pressure, and self-diagnosis of stroke, the paramedics and EMTs would have known, or should have been trained, that they were beyond their field of medical expertise. CP 147; CP 167, 169, 171-75. Therefore, they should have been on high alert that a serious stroke risk was present. CP 147; CP 167, 169, 171-75, especially 173.

The responders' communication to Samuels of their diagnosis that "you're not having a stroke," was also a violation of the 2012 Protocols because the 2012 Protocols, being the State-approved county MPD protocols, constitute the entire scope of a paramedic's or EMTs licensed treatment authority, not options he or she can choose from. See RCW 18.73.020 and CP 541-44. Therefore, the Tacoma Fire Department responders stripped themselves of the qualified immunity otherwise

provided to them when they failed to perform a complete FAST exam and then grossly departed from the 2012 Protocols by failing to communicate with a base station physician.

Qualified immunity must be stripped from the responders because RCW 18.71.210, the statute at issue, states, in pertinent part, that it is only applicable to acts or omissions of:

> physician's trained advanced emergency medical technician[s] and paramedic[s] … [and other] emergency medical technician[s] … done or omitted in good faith while rendering emergency medical service **under the responsible supervision and control of a licensed physician or an approved medical program director or delegate(s)** …[15]
>
> …
>
> **and not in the commission or omission of an act which is not within the field of medical expertise** of the physician's trained advanced emergency medical technician and paramedic, emergency medical technician, or first responder ... (Emphasis added).

Therefore, the grant of summary judgment and the trial court's conclusion that the responders were entitled to qualified immunity must be reversed because none of the acts or omissions alleged to have caused Ms. Samuels harm consisted of choices or actions authorized by the Protocols and none were made under the supervision and control of a physician. As such, none of them could have been acts or omissions within the paramedic

[15] Emphasis added by drafter of this brief.

and EMT responders' fields of expertise because those responders[16] are only authorized to provide patient care which is within WAC 246-976-182 (1)(c), i.e., that which is:

- approved guidelines/curriculum for the individual's level of certification or included in approved specialized training; **AND**

- included in State-approved county Medical Program Director, ("MPD"), protocols. WAC 246-976-182 (1)(c).[17]

This directive is repeated at WAC 246-976-182(3). "All prehospital providers must follow state approved triage procedures, regional patient care procedures and county MPD patient care protocols." *Id.*

It is clear from Ms. Samuels' and Mr. Williams' testimony that Ms. Samuels experienced most of the symptoms that Appendices D-1 and D-2 to the Protocols indicate are signs of potential stroke risk in the moments leading up to the responders' arrival. Therefore, the WACs and the 2012 Protocols were violated when the paramedics and EMTs skipped the FAST exam steps required by Appendices D-1 and D-2. CP 542.

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[16] "EMS" means emergency medical services and trauma care. WAC 246-976-010(34).

[17] This directive is also re-emphasized at WAC 246-976-182 (3) which states "*[a]ll prehospital providers must follow state approved triage procedures, regional patient care procedures and county MPD patient care protocols.*"

The WACs and the 2012 Protocols were then violated again when the responders neglected to call a base-station physician to determine a course of action for Ms. Samuels unresolved facial numbness, high blood pressure,[18] and accurate self-diagnosis that she was having a stroke because "[i]f protocols and regional patient care procedures do not provide off-line direction for the situation, the certified person in charge of the patient must consult with their online medical control as soon as possible." WAC 246-976-010 (47).

Finally, the WACs and 2012 Protocols were violated when the responders gave Ms. Samuels the opinion that "you're not having a stroke" (CP 731) because neither the WACs nor the 2012 Protocols, nor the responders' training authorizes them to diagnose or rule out conditions.

2. The trial court erred in ruling that qualified immunity under RCW 18.71.210 applies to the Fire Department's acts and omissions and this matter must be remanded with an order that negligence is the correct fault standard, not gross negligence.

RCW 18.71.210 does not provide complete immunity even if all of the Protocols are followed by a team of responders. See RCW 18.71.210(1)

[18] Appendix E to the 2012 Protocols requires transport of a patient with greater than 180 systolic blood pressure by the crew of a licensed, verified, Advanced Life Support ambulance agency. Ms. Samuels systolic blood pressure was measured by the paramedics and EMTs as 176/98. CP 535.

and (5). It simply provides a standard of fault greater than simple negligence when the Protocols are followed. *Id.*

The lay language in the Protocols shows that the responders did not follow the Protocols in, at minimum, communicating with a base-station physician when they encountered a situation where the Protocols did not provide off-line directions to the responders. Therefore, the undisputed evidence before the trial court can only lead to a conclusion that the qualified immunity statute, RCW 18.71.210, does not apply to the responders. As a result, the trial court erred in ruling the Fire Department was entitled to qualified immunity under RCW 18.71.210. It did not follow the Protocols and it is not entitled to qualified immunity. Therefore, a simple negligence standard applies when determining fault.

3. Even if gross negligence is the correct fault standard, the trial court erred in resolving the issue of the Fire Department's gross negligence as a matter of law.

RCW 18.71.210 does not provide complete immunity even if all of the Protocols are followed. See RCW 18.71.210(1) and (5). It simply provides a fault standard greater than simple negligence if, the Protocols are followed. *Id.*

The Court of Appeals must reverse the trial court's grant of summary judgment on the issue of whether Samuels' evidence was sufficient for a jury to consider if the Fire Department's errors and omissions were grossly

negligent because the responders knew that the potential consequences of their actions, and decisions not to act, posed serious risks to Ms. Samuels. Therefore, a triable question of gross negligence existed because where a defendant places a plaintiff into the path of danger, there is a triable issue of gross negligence and what constitutes gross negligence is almost always a jury question. *Nist v Tudor*, 67 Wn2d 322, 324, 333-34, 407 P2d 798 (1965).

One of the reasons that gross negligence is almost always a jury question is that the definition of "gross negligence" is so ambiguous and the passage of time has not brought a clearer definition. See *Nist*, below.

> A review of the commentaries, scholarly treatises and case law on gross negligence shows the term to have universally escaped definition, and despite the most assiduous efforts to give it precision it retains its amorphous quality. Every qualifying word added to sharpen the phrase seems to obscure in about the same degree as it clarifies it and inevitably invites further definition ... standing alone in its self-contained significance, great negligence ... remains extremely difficult for the trial courts to apply in specific situations. The problem ever remains: Was there sufficient proof of great negligence to submit the issue to the jury? *Nist* at 325.

In *Nist*, the court ultimately arrived at the conclusion that the standard for gross negligence must be left to the discretion of the jury based on the specific facts of the case and the context in which the alleged negligence occurred:

> Although retaining slight care as a standard, this court has in recent years ... inclined toward leaving the question of gross negligence to the jury. *Id.* 326-27.
>
> The term gross negligence, then, to have practical validity in the trial of a cause, should be related to and connected with the law's polestar on the subject, ordinary negligence ... In determining the degree of negligence, the law must necessarily look to the hazards of the situation confronting the actor. *Nist* at 331.

Nist states that "[i]n determining the degree of negligence, the law must necessarily look to the hazards of the of the situation confronting the actor." *Id.* at 331. Given this standard, this is a matter for the jury.

Ms. Samuels presented with symptoms of high blood pressure, facial numbness, facial droop, and self-reported diagnosis of stroke. The need for the paramedics and EMTs to perform a sensory exam of Ms. Samuels, the need to take an accurate pre-FAST history of her symptoms, the need to communicate with a base-station physician, and the need to transport her to an ER or stroke center became all the more critical in view of the likely harm resulting from delay in treating a patient with her symptoms. Therefore, under *Nist v. Tudor*, Ms. Samuels is entitled to have the issue of respondents' gross negligence decided by a jury.

Similarly, in *Brainerd v. Stearns*,155 Wash. 364, 367, 284 P. 348 (1930), a triable case of gross negligence was ruled to exist where:

> The appellant knew, or to him is imputed the knowledge, that the probable consequence of [his/her] conduct would be to

> cause an accident. Such disregard of consequences warranted the jury in finding the appellant guilty of gross negligence.

Likewise, in *Bader*, *infra*, where the State was aware that a mentally ill person under its control, who later shot and killed his former neighbor, had violated several conditions of his release by missing several appointments and not taking his medicine, and was exhibiting paranoid behavior and threatening violence, the Court of Appeals ruled that the State, arguably, had acted in a grossly negligent manner by not acting to preserve the safety of third parties and the matter of gross negligence was an issue for trial. *Bader v State*, 43 WnApp 223, 228-29, 716 P2d 925 (Div 3, 1986)

Finally, *Brainerd*, *Bader* and *Nist*, have all, arguably, been outdistanced, recently, by *Schulte v Mullan*, an unpublished opinion from Division 1 of the Court of Appeals. *Schulte* found that a triable case of gross negligence existed even where a City presented proof that its probation officer had exceeded "the standard of care set by local court policies and procedures" to control the danger presented by a probationer because a matter of fact still existed as to whether collateral sources of information should have been pursued by the City concerning the probationer where a direct correlation existed between the danger of his continued drunk driving and the City's duty to supervise the probationer. *Schulte v Mullan* at pages 2 and 3 of 195 WnApp 1004 (Div 1, 2016).

In *Schulte*, it was determined that a trial would still be necessary, even if the City's duty of supervision was limited, because the issue of whether the City should have pursued available collateral sources of information to assess offender risks was presented. *Id.* at page 2 of 195 WnApp 1004 (Div 1, 2016). Thus, "a jury could find that the probation officer breached her duty by failing to track the … case and contact collateral sources" and "that the breach was a failure to use even slight care." *Id.* "Following *Nist* … the trial court did not err in allowing the issue of gross negligence to go to a jury." *Id.*

Here, the trier-of-fact could easily impute that the responders knew of the risk of a potentially very serious consequence to Samuels because the risk was that she might have a stroke and, in fact, she did have one. Therefore, the result of the responders' acts and omissions was exactly of the degree, and within the zone, of danger that should have been apparent based on Samuels' unresolved symptoms. As a result, the responders' failure to take a pre-FAST exam history, consult a base-station physician, perform a more thorough examination of Ms. Samuels, or to bring her to a hospital for examination should make the issue of gross negligence triable.

C. The trial court erred in awarding costs to the City of Tacoma.

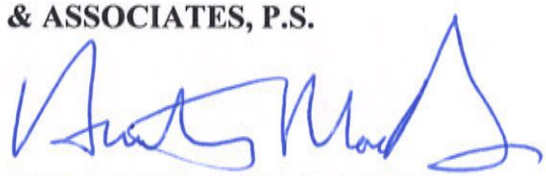
Error is assigned to the Order Regarding City of Tacoma's Costs. CP 783-84. Ms. Samuels incorporates the arguments and authorities in the preceding paragraphs.

VII. CONCLUSION

In light of the foregoing, the Order Granting Defendant City of Tacoma's Motion for Summary Judgment, the Order Awarding Costs to the City of Tacomas and the Judgment Summary should be reversed and the case remanded to the trial court for trial on the merits.

Respectfully submitted,

LUCE & ASSOCIATES, P.S.



By_____
F. HUNTER MACDONALD
WSBA #22857
Of Attorneys for Appellant Lesa Samuels

VIII. APPENDICES

1. Order Granting Defendant City of Tacoma's Motion for Summary Judgment.
2. Order Regarding City of Tacoma's Costs
3. Judgment Summary

IX. CERTIFICATE OF SERVICE

The undersigned does hereby declare that on May 15, 2018, the undersigned delivered a copy of the AMENDED APPELLANT'S BRIEF filed in the above-entitled case to the following persons:

VIA WASHINGTON APPELLATE COURTS FILING PORTAL

Clerk, Washington State Court of Appeals, Division II
950 Broadway, Suite 300 MS TB 06
Tacoma, WA 98402-4427

Monica Whitehead Cadagan
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1301 A Street, Suite 900
Tacoma, WA 98402

DATED this 15th day of May 2018.

By: _____
Printed Name: Sharon Rheinschild

APPENDIX 1

16-2-07199-1 49238756 ORGSJ 05-16-17

FILED
DEPT. 6
IN OPEN COURT
MAY 12 2017
Pierce County, Clerk
By _____
DEPUTY

The Honorable Jack Nevin

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

LESA M. SAMUELS, Plaintiff, v. MULTICARE HEALTH SYSTEM, and GLORIA N. LEM, ARNP, DOES 1-10, and THE CITY OF TACOMA, Defendants.	NO. 16 2 07199 1 [redacted]-ORDER GRANTING DEFENDANT CITY OF TACOMA'S MOTION FOR SUMMARY JUDGMENT

THIS MATTER regularly came before this Court on Defendant City of Tacoma's Motion for Summary Judgment. The Court is familiar with the records and files herein and has considered the court file and specifically the following documents:

1. The City of Tacoma's Motion for Summary Judgment;

2. Declaration of John A. Rosendahl in Support of The City of Tacoma's Motion for Summary Judgment;

3. Declaration of William Jones in Support of The City of Tacoma's Motion for Summary Judgment;

4. Declaration of Kyra Becker, MD, in Support of The City of Tacoma's Motion for Summary Judgment;

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FAM. FAM JAR
JAR and Amended Memorandum filed on May 8, 2017

5. Memorandum in Opposition to City of Tacoma's Motion for Summary Judgment;

6. Declaration of Plaintiff's Attorney Regarding Plaintiff's Exhibits to City of Tacoma's Motion for Summary Judgment;

7. Declaration of Kevin Brown, M.D. in Response to City of Tacoma's Motion for Summary Judgment;

8. Declaration of David Lombardi, M.D. in Response to City of Tacoma's Motion for Summary Judgment;

9. The City of Tacoma's Reply in Support of its Motion for Summary Judgment;

10. The Plaintiff's motion for continuance FAM JAR

11. Plaintiff's motion to strike and counsel's FAM JAR

12. Concession on the record ~~that~~ made it unnecessary to decide the motion to strike, FAM, JAR

and the Court having heard the arguments of counsel and being fully advised in the premises, now, therefore, it is hereby

and the motion for continuance FAM, JAR

ORDERED that Defendant City of Tacoma's Motion for Summary Judgment is GRANTED and all of plaintiff's claims against Defendant City of Tacoma are hereby dismissed with prejudice.

DONE IN OPEN COURT this 12 day of ~~April~~ May, 2017.

Jack Nevin
Judge Jack Nevin

FILED
DEPT. 6
IN OPEN COURT
MAY 12 2017
Pierce County, Clerk
By DEPUTY

Presented by:
FAIN ANDERSON VANDERHOEF
ROSENDAHL O'HALLORAN SPILLANE, PLLC

By: _____
John A. Rosendahl, WSBA #9394
Attorneys for Defendant City of Tacoma

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681469

Approved as to form; notice of presentation waived:
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By:_____
F. Hunter McDonald, WSBA #22857
Attorneys for Plaintiff

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LAW OFFICES OF FLOYD CHAPMAN, PLLC

By:_____
Floyd R. Chapman, WSBA #49357
Attorneys for Plaintiff

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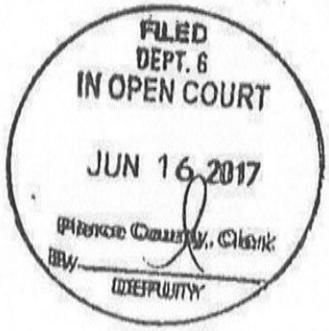
APPENDIX 2



The Honorable Jack Nevin
June 16, 2017, 9:00 A.M.
Civil Motions Calendar

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

LESA M. SAMUELS, Plaintiff, v. MULTICARE HEALTH SYSTEM, GLORIA N. LEM, ARNP, DOES 1-10, and CITY OF TACOMA, a municipal corporation and political subdivision of the State of Washington Defendants.	No. 16-2-07199-1 ORDER REGARDING CITY OF TACOMA'S COSTS

ORDER

The Court having reviewed the records in the above-captioned matter, including, but not limited to, the Court's May 12, 2017 order granting summary judgment in favor of Defendant City of Tacoma's, the City's May 19, 2017 cost bill, the City's June 8, 2017 note for Motions Calendar for presentation, Plaintiff Samuels June 13, 2017 objections to the City's cost bill and motion, and any documents filed in reply, ORDERS that the following relief be granted:

The statutory attorney's fees of $200.00 presented in the City's cost bill are awarded, pursuant to RCW 4.84.010, to the City as costs for its expenses in obtaining summary judgment dismissing

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Plaintiff Samuels' claims in the above-captioned matter.

No additional costs are to be awarded regarding the summary judgment entered on the City's behalf in the above-captioned matter.

DATED this 16 day of June, 2017.

Jack Nevin
JUDGE JACK NEVIN
Pierce County Superior Court

FILED
DEPT. 6
IN OPEN COURT
JUN 16 2017
Pierce County, Clerk
By _____
DEPUTY

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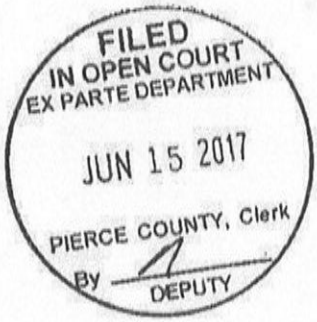
6/20/2017 926 OC

APPENDIX 3



6/16/2017 894

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

LESA M. SAMUELS, Plaintiff, v. MULTICARE HEALTH SYSTEM, GLORIA N. LEM, ARNP, DOES 1-10, and CITY OF TACOMA, a municipal corporation and political subdivision of the State of Washington Defendant	No. 16-2-07199-1 JUDGMENT SUMMARY **Clerk's Action Required**

JUDGMENT SUMMARY

Judgment Creditor:	The City of Tacoma, a political subdivision of the State of Washington
Attorneys for Judgment Creditor	John A. Rosendahl and Monica Cadagan of Fain, Anderson, VanDerhoef, Rosendahl O'Halloran, Spillane PLLC
Judgment Debtor:	Lesa Samuels
Attorney for Judgment Debtor:	F. Hunter MacDonald VSI Law Group, PLLC
Amount of Judgment:	The amount of the total taxable costs and attorney's fees below.

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6/16/2017 894 07

Interest to Date of Judgment: None

Total Taxable Costs and Attorney's Fees: $200.00

DATED this 15th day of June, 2017.

Judge / Commissioner
Pierce County Superior Court

MARK L GELMAN
COURT COMMISSIONER

FILED
IN OPEN COURT
EX PARTE DEPARTMENT
JUN 15 2017
PIERCE COUNTY, Clerk
By DEPUTY

Presented by:

FAIN ANDERSON VANDERHOEF, ROSENDAHL, O'HALLORAN, SPILLANE PLLC

John A. Rosendahl, WSBA No. 9394
Monica W. Cadagan, WSBA No. 48781
Attorneys for Defendant City of Tacoma

Approved as to form. Notice of presentation waived.

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LUCE & ASSOCIATES, PS

May 15, 2018 - 12:42 PM

Transmittal Information

Filed with Court:	Court of Appeals Division II
Appellate Court Case Number:	51827-9
Appellate Court Case Title:	Lesa Samuels, Appellant v. Multicare Health System, Respondent
Superior Court Case Number:	16-2-07199-1

The following documents have been uploaded:

- 518279_Motion_20180515123427D2194139_3290.pdf
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  This File Contains:
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  The Original File Name was Exhibit B to Amended Brief.pdf
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Comments:

We are filing Exhibits A and B to the Motion to Amend Appellant's Brief. One exhibit is a clean copy of the proposed Amended Brief and the other is a copy showing the changes made to the citations.

Sender Name: Sharon Rheinschild - Email: sharon.rheinschild@Lucelawfirm.com
Filing on Behalf of: F. Hunter Macdonald - Email: hunter.macdonald@lucelawfirm.com (Alternate Email:)

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