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OCT 29 2010

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

NO.: 291537

STATE OF WASHINGTON, COURT OF APPEALS  
DIVISION III

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In re the Matter of the Estate of:

AUDREY P. BLESSING,

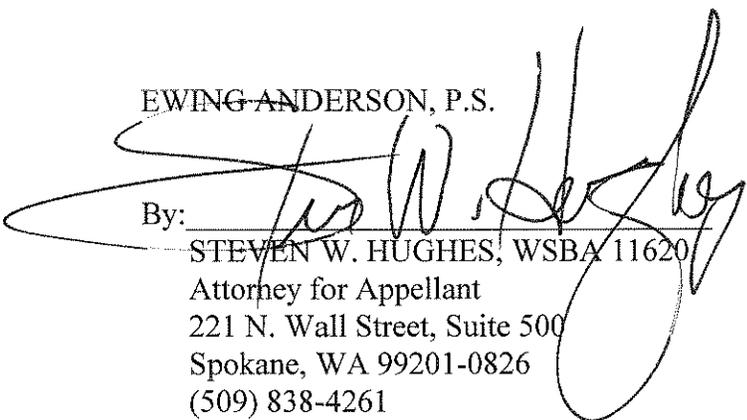
Deceased.

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REPLY BRIEF OF APPELLANT ESTATE OF AUDREY P. BLESSING

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EWING ANDERSON, P.S.

By: 

STEVEN W. HUGHES, WSBA 11620

Attorney for Appellant

221 N. Wall Street, Suite 500

Spokane, WA 99201-0826

(509) 838-4261

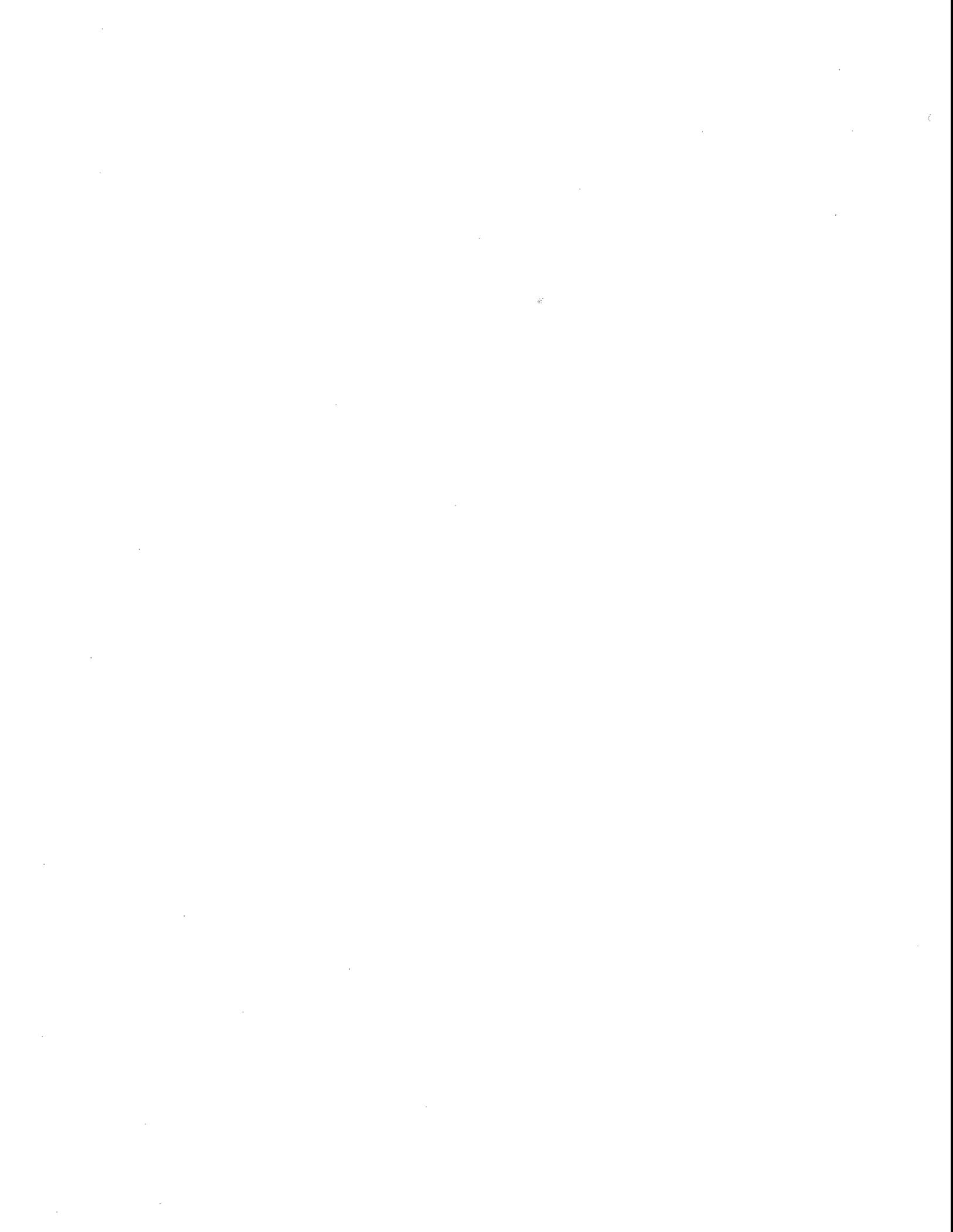


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## **I. REPLY TO RESPONDENTS' ARGUMENT**

Respondents raise three arguments to support their contention that they, as adult children of a deceased former husband of Audrey Blessing, are still “stepchildren” of Audrey Blessing and, therefore, her statutory heirs under the wrongful death statute (RCW 4.20.020). This despite the fact that Ms. Blessing subsequently remarried and outlived her next husband before being wrongfully killed. The Respondents’ arguments are summarized as follows:

1. Strickland v. Deaconess Hospital, 47 Wn.App. 262, 735 P.2d 74 (1987), does not require a valid legal marriage between a biological parent and a nonparent to currently exist in order for there to be a stepparent/stepchild relationship under Washington law.

2. The case cited by the Appellants known as In Re Combs, 257 Mich.App. 622, 669 N.W.2d 313 (2003), which interpreted the Michigan wrongful death statute to hold that children of a deceased spouse were not stepchildren, and thus were not statutory beneficiaries of the surviving nonparent who was thereafter killed, should not be followed. Rather, this Court should follow the dissenting opinion in that case.

3. The Rules of Statutory Construction, when applied to the Washington wrongful death statute, support the trial court's ruling in this case that the Respondents who were former stepchildren of the decedent, Audrey Blessing, remain stepchildren forever for the purposes of the wrongful death statute.

These arguments will be examined in turn.

**A. The Strickland Case Does Indeed Hold That There Must Be A Current Valid Marriage Between A Biological Parent And A Nonparent For There To Be A Stepparent/Stepchild Relationship Under The Wrongful Death Statute Of Washington.**

The Respondents attempt to argue that the court in Strickland v. Deaconess Hospital, 47 Wn.App. 262, 735 P.2d 74 (1987), does not require a valid current marriage between the biological parent and a nonparent for there to be a stepparent/stepchild relationship for the purposes of the wrongful death statute. The Respondents are incorrect.

The Strickland case involved a marriage between Gilbert Strickland and Joan Weaver. Ms. Weaver's adult sons, James and Robert, brought a claim for outrage against Deaconess Hospital based on care, or the lack thereof, provided to their mother's husband, Gilbert Strickland. The Court determined that neither James nor Robert Weaver were ever adopted by Mr. Strickland, and it had been many years since they had been members

of the Strickland household. The marriage of Gilbert Strickland and Joan Weaver had previously been invalidated upon discovery that Ms. Weaver was still bound by a prior marriage.

The Strickland court held that the class of “immediate family” entitled to sue for outrage were limited to the class of people entitled to sue under the wrongful death statute.

The court declared on page 269 the following:

Under that statute (the wrongful death statute) the legislature has expressed the policy that recovery is available to spouses, children, step-children, parents and siblings. RCW 4.20.020.

The Strickland court concluded as follows:

Here, the Weavers claim no blood relationship, either legitimate or illegitimate, nor do they come within the legally recognized definition of step-child, which is “a child of one’s wife or husband by a former marriage.” [Emphasis added] Id. at 269

The Strickland court dismissed the claims of James and Robert Weaver, finding that they were not stepchildren since Mr. Strickland’s marriage to their mother, Joan Weaver, was invalidated. That is to say there was no current, valid, existing marriage between their mother and Mr. Strickland. The Weavers were “former stepchildren,” not “stepchildren.”

In the present matter, the Respondents, like the Weavers, are not “stepchildren” of Audrey Blessing since Audrey Blessing’s marriage to the Respondents’ father, Carl L. Blaschka, terminated in 1994 upon the death of Mr. Blaschka. They are only “former stepchildren.”

The Respondents engage in quotation harvesting from inapposite cases in an attempt to support their argument that the Strickland case above does not require a current valid marriage to exist between the biological parent and a nonparent for there to be a stepparent/stepchild relationship. The cases cited by the Respondents include Continental Casualty Co. v. Weaver, 48 Wn.App. 607, 739 P.2d 1192 (1987), which involved the construction of a car rental agreement for the purposes of an insurance policy and coverage. That case held that the policy in question required an “immediate family” member for coverage purposes under the rental agreement. The driver, who simply lived with the lessee of the car, was not related to the covered individual by blood or marriage, and therefore was not a member of the lessee’s “immediately family” for coverage purposes. Those facts have no relevance here.

The court in Continental Casualty, cited above, however, appropriately quoted Strickland v. Deaconess Hospital on page 612 as follows:

If we were to define the class of people who may bring this action to include the...[boys], we would include within the definition of immediate family members not only spouses, children, stepchildren, parents and siblings, but also individuals who are “like” spouses, children, stepchildren, parents or siblings. Such an interpretation would be so ambiguous as to limit the class of plaintiffs who could assert a claim...only by the imagination of counsel drafting the pleadings. [Emphasis added]

The Continental Casualty case, like the Strickland case, recognized that courts should not redefine classes of statutory beneficiaries, such as stepchildren, to include individuals who are “like stepchildren” or, in the present case, “former stepchildren.” Such a classification would render the categories meaningless.

The Respondents cite Schumacher v. St. Joseph Hospital & Care Center, 55 Wn.App. 575, 784 P.2d 562 (1990); Zimny v. Lovric, 59 Wn.App. 737, 801 P.2d 259 (1990); and Hegel v. McMahan, 85 Wn.App. 106, 931 P.2d 181 (1997), all of which simply uphold the reasoning in Strickland v. Deaconess Hospital cited above. Moreover, Hegel v. McMahan (above) rejected Schumacher v. St. Joseph Hospital & Care Center (see above).

Contrary to the Respondents' arguments, each of the cases cited stands for the proposition that the courts are correct in limiting recovery to the specific statutory classes of individuals, and should not expand them beyond the strict language of the statute.

**B. Contrary To The Respondents' Tortured Logic, The Michigan Case Known As In Re Combs, 257 Mich.App. 622, 669 NW.2d 313 (2003) Does Stand For The Proposition That A Current Marriage Between The Biological Parent And The Nonparent Is Required For There To Be A Stepparent/Stepchild Relationship For The Purposes Of Receiving A Recovery From A Wrongful Death Action.**

The Respondents somehow find it significant that the Combs case (above) decided in Michigan does not cite the Washington case of Strickland v. Deaconess Hospital (cited above). The Respondents attempt, without the benefit of logic, to distinguish Combs from the Washington case by pointing out that instead of "stepchildren," the Michigan wrongful death statute included as beneficiaries "children of the deceased's spouse" (i.e., stepchild).

The Combs case involved the wrongful death of Ellen Combs. The children of her husband, who predeceased Ellen, sued for her wrongful death as "children of the deceased's spouse." The court found that Ellen had no spouse at the time of her death, since her husband died previously.

The claim was dismissed. Just like the present case, the claimants in Combs were “former children of a deceased’s spouse” (i.e., former stepchildren).

Respondents ask this Court to adopt the dissent in Combs, which asked the trial court, instead of using statutory classifications, to hear evidence in each individual case to determine “which child of the deceased spouse truly suffered loss, and which did not...,” including anyone in a parent/child-like relationship. Coombs at page 625 and 626. The Combs majority rejected this unworkable expansion of the Michigan statute.

The Respondents ask this Court to ignore the statutory requirement that an individual be a “stepchild” and not a “former stepchild” of the decedent in order to recover under the Washington wrongful death statute and the cases such as Strickland (cited above) and In Re Combs (cited above). That is obviously why the Michigan court in Combs (cited above) did not adopt the dissent’s reasoning, and instead held that in order to be the child of a deceased’s spouse (i.e., a stepchild), and therefore, a wrongful death beneficiary must be a current marriage between the biological parent and the nonparent.

**C. The Respondents Argue, Without Factual Or Legal Basis, That The Rules Of Statutory Construction, When Applied To The Washington Wrongful Death Statute, Support The Trial Court's Ruling In This Case To The Effect That These Former Stepchildren Of Decedent Audrey Blessing Remain Stepchildren Forever, Despite The Death Of Their Father; Despite The Remarriage Of Audrey Blessing Thereafter; Despite The Death Of Audrey Blessing's Subsequent Husband; And Despite The Fact That Audrey Blessing Was Unmarried At The Time Of Her Wrongful Death.**

The Respondents actually provide no legal or factual argument regarding the Rules of Statutory Construction in their Appellant's brief. Rather, the Respondents provide a graph of the cast of players in the present case and in Bordeaux and a generalized discussion of the case known as In Re Estate of Bordeaux, 37 Wn.2d 561, 225 P.2d 433 (1950). That case involved inheritance tax classification, and makes no mention of Washington's wrongful death statute. Bordeaux has no application to the present facts.

The Respondents go on to cite numerous cases which have no application to the present matter, such as In Re Ehler's Estate, 53 Wn.2d 679, 335 P.2d 823 (1959), which dealt with inheritance tax; State v. Gillaspie, 8 Wn.App. 560, 507 P.2d 1223 (1973), a case that held a stepfather is required to support his stepson after the separation of a married couple but before their dissolution; and Klossner v. San Juan

County, 93 Wn.2d 42, 605 P.2d 330 (1980), which was a Supreme Court case which held that stepchildren were not named as statutory beneficiaries at the time.

The Respondents cite cases from other jurisdictions having to do with insurance policies, inheritance tax, uninsured motorist coverage, fire insurance coverage, adoption, and the like. None of these facts or situations apply to the present dispute. It is difficult to conceive how those citations in the Respondents' brief advance the present argument. It does, however, demonstrate the total lack of legal support for the trial court's holding in this present case.

## **II. CONCLUSION**

The trial court's decision that the Respondents, who were former stepchildren of Audrey Blessing, remain stepchildren of Audrey Blessing for the purposes of the Washington wrongful death statute has absolutely no foundation in law or fact. This Court is respectfully requested to reverse its decision and hold that the Respondents are not stepchildren of decedent Audrey Blessing under the Washington wrongful death statute.

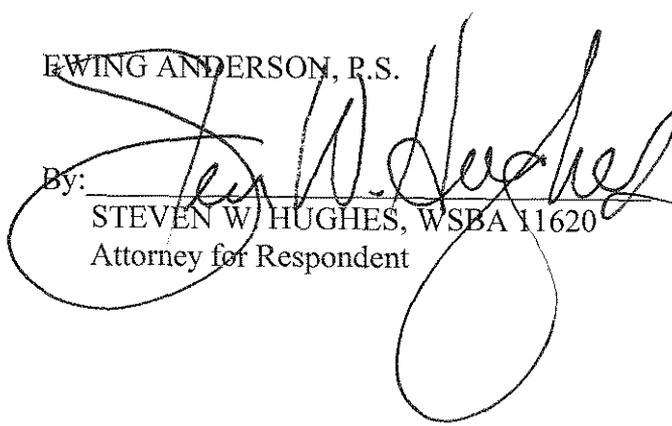
The Respondents' claim is without merit, advanced without reasonable cause or legal support, and frivolous. RCW 4.84.185. This Court is

respectfully requested to enter judgment in favor of the Appellant against  
the Respondents for reasonable attorney fees and costs herein and at trial.

(RCW 11.96A.150)

RESPECTFULLY SUBMITTED this 28<sup>TH</sup> day of October, 2010.

EWING ANDERSON, P.S.

By: 

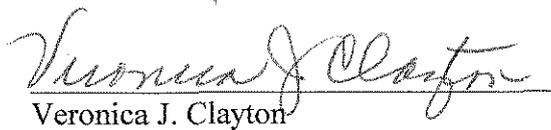
STEVEN W HUGHES, WSBA 11620

Attorney for Respondent

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of October, 2010, a true and correct copy of the foregoing document was served on the following in the manner set forth herein:

Jacke L. Blair	<input type="checkbox"/>	U.S. Mail
Mullin, Cronin, Casey & Blair, P.S.	<input checked="" type="checkbox"/>	Hand Delivery
Third Floor, Jockey Club Building	<input type="checkbox"/>	Overnight Courier
115 N. Washington Street	<input type="checkbox"/>	Fax
Spokane, WA 99201		

  
Veronica J. Clayton