

FILED
Court of Appeals
Division III
State of Washington
10/4/2019 3:00 PM

No. 36495-0-III

COURT OF APPEALS, DIVISION III,
OF THE STATE OF WASHINGTON

CARLTON EVANS and MARGARET EVANS,
husband and wife,

Appellants,

v.

SPOKANE COUNTY, a local governmental entity
doing business in Spokane County, Washington,

Respondents.

REPLY BRIEF OF APPELLANTS

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A. INTRODUCTION

Spokane County's lawyer told the jury that Instruction 21 was "important." RPII 1394. In fact, Instruction 21 was one of only three jury instructions that the County's lawyer mentioned during closing arguments, and the only instruction mentioned on the County's duty of care. The County's lawyer told the jury that Instruction 21 required proof of "notice that this specific tree was going to fall on this specific road on this specific day at this specific time." *Id.* Despite that presentation to the jury, on appeal the County downplays Instruction 21 as it tries various tacks to avoid the consequences of Instruction 21's misstatement of the law. All fail. In particular, the correct instructions did not cure the prejudice of an incorrect instruction that aggressively misstated the law. That is not how jury instructions work. If it were, parties would have a strong incentive to slip incorrect jury instructions into a set of otherwise correct instructions, because there would be no downside to doing so.

Instruction 21 was emblematic of the trial as a whole. From the outset, the County pulled every lever it could to keep testimony from the jury and to slant the jury instructions in their favor. The trial court committed several reversible errors by going along with it. The Evanses are entitled to a fair trial. Even with the deck stacked against them, two jurors voted against the verdict for the County. CP 4263-64, 4267; RPII

1424-27. The Evanses have the right to a new trial where the jury is properly instructed and key testimony is not excluded from the courtroom.

B. ARGUMENT IN REPLY

(1) The Trial Court's Jury Instructions Constituted Prejudicial Error

(a) The County's Defense of Instruction 21 Fails to Overcome the Presumption It Was Prejudicial and Incorrectly Relies on the Law of Actual Notice

Jury instructions that misstate the law are presumed prejudicial. *Fergen v. Sestero*, 182 Wn.2d 794, 803, 346 P.3d 708 (2015). Because of the County's choices during closing argument, the County cannot rebut this presumption of prejudice. Closing argument may be the "source of prejudice" from an erroneous jury instruction. *Anfinson v. FedEx Ground Package Sys., Inc.*, 174 Wn.2d 851, 876, 281 P.3d 289 (2012) (emphasis removed). Here, the County's lawyer told the jury that Instruction 21 was "important." RPII 1394. The County's lawyer argued that Instruction 21 meant that the Evanses needed to show "the county had notice that this specific tree was going to fall on this specific road on this specific day at this specific time." *Id.* "This argument took what had been a mere latent possibility of misunderstanding and actively encouraged the jury to apply an erroneous legal standard." *Anfinson*, 174 Wn.2d at 876. This argument magnified the prejudice from the error which the County had invited.

The County also is not saved by the jury instructions that were

correct. *See* Br. of Resp't at 25-26. The question is not whether other instructions allowed the Evanses to argue their theory of the case. The question is whether Instruction 21 "allowed the jury to misapply the law." *Falk v. Keene Corp.*, 113 Wn.2d 645, 656, 782 P.2d 974 (1989). It did.

The County is flat wrong that Instruction 21 did not misstate the law. *See* Appendix. Although the County is correct that Instruction 21 borrowed language directly from a published appellate decision, *Laguna v. Wash. State Dep't of Transp.*, 146 Wn. App. 260, 192 P.3d 374 (2008), that practice has been frowned on by our Supreme Court and this Court.¹ Thus, Instruction 21's incorporation of language from *Laguna* was not a feature, but a bug.

In defending its copying and pasting from *Laguna*, the County never acknowledges that *Laguna* was limited to the issue of actual notice, as this Court acknowledged in its opinion. *See* 146 Wn. App. at 263 n.5 ("Only actual notice is at issue here."). The Evanses did not argue that the County had actual notice. So *Laguna*, as only an actual notice case, offered nothing relevant to the jury instructions for the Evanses' claim.

¹ In *Turner v. City of Tacoma*, 72 Wn.2d 1029, 1034, 435 P.2d 927 (1967), for example, the Court held both parties improperly submitted "slanted" instructions that supplemented the basic instructions on the relevant points of law. The Court explained that, though the Court "may have used certain language in an opinion," it "does not mean that it can be properly incorporated into a jury instruction. *Id.* The danger is that a "rhetorical sentence" from an opinion might be taken out of context, or it might overemphasize a party's theory of the case. *Id. Accord, Braxton v. Rotec Industries, Inc.*, 30 Wn. App. 221, 227, 633 P.2d 897, review denied, 96 Wn.2d 1023 (1981).

By relying on *Laguna*, Instruction 21 misinformed the jury that “[t]he county cannot be negligent if it only knew that an unsafe condition might, or even probably will, develop.” CP 4256. However, if a public road operator knows that a dangerous road condition probably will develop, as Instruction 21 contemplates, then the constructive notice standard is satisfied. Where a public road operator “exercising ordinary care would have discovered the defective roadway condition,” *O’Neill v. City of Port Orchard*, 194 Wn. App. 759, 773-74, 375 P.3d 709 (2016), *review denied*, 187 Wn.2d 1003 (2017), the jury may find constructive notice. In other words, if a public road operator knows a dangerous condition *probably* will develop, the jury may conclude that ordinary care requires a follow-up inquiry. But Instruction 21 told the jury that, *as a matter of law*, the County could turn a blind eye to the danger.

Instruction 21 also conflicts with the County’s duty to take reasonable steps to correct or remove hazards that it created itself. *Nguyen v. City of Seattle*, 179 Wn. App. 155, 165, 317 P.3d 518 (2014) (citing *Batten v. S. Seattle Water Co.*, 65 Wn.2d 547, 550-51, 398 P.2d 719 (1965); WPI 140.01; WPI 140.02 cmt. In that circumstance, the County’s knowledge is irrelevant. The County contends that the jury could read another instruction to impute knowledge to the County if it found the County created a dangerous condition. But the instructions were still

contradictory. Where one jury instruction on an issue is correct but the other is incorrect, “their use is prejudicial, for the reason that it is impossible to know what effect they may have on the verdict.” *Hall v. Corp. of Catholic Archbishop of Seattle*, 80 Wn.2d 797, 804, 498 P.2d 844 (1972) (citations omitted). Although the Evanses tried to argue their case as best as they could, the reality remains that Instruction 21 “added confusion” and so was “prejudicial.” *Id.* at 803-04.

By its terms, Instruction 21 also contradicted the well-established law that public road operators must use reasonable care to remove or correct road hazards that are reasonably foreseeable or should reasonably be anticipated. This feature of public road operators’ duty has been well settled for nearly 80 years.² Plainly, if the County was charged with “reasonably anticipating” road hazards that “would develop,” *Nguyen*, 179 Wn. App. at 165, and “should have foreseen,” *Albin*, 60 Wn.2d at 748, Instruction 21 was wrong to tell the jury that the County was not liable if it “knew that an unsafe condition ... probably will ... develop.” CP 4256.

Albin did not hold that this element of public road operators’ duty

² In *Berglund v. Spokane Cty.*, 4 Wn.2d 309, 103 P.2d 355 (1940), the Court stated that road operators must give “reasonable regard for *possible or common* dangers that may be expected.” *Id.* at 314 (quotation omitted) (emphasis added). It was restated in *Albin v. Nat’l Bank of Commerce*, 60 Wn.2d 745, 748, 375 P.2d 487 (1962), which reaffirmed that counties have a duty to mitigate road hazards if “the danger was one it should have foreseen and guarded against.” This Court recognized it in *Nguyen*, 179 Wn. App. at 165 (“Nor is notice required where the City should have reasonably anticipated the condition would develop.” (citations omitted)).

of care is inapplicable to roadside trees in every case. Rather, *Albin* held that the county there did not breach its duty under the circumstances of that case, which arose from a mishap on a remote road in a mountain forest. 60 Wn.2d at 748. By contrast, Big Meadows Road serves the growing North Spokane area, carrying traffic to and from Highway 2, with an average of 1,336 vehicles, including school buses, traveling on it daily. Ex. P-16; CP 42, 873, 879, 883, 910-11. Motorists have collided with trees on the side of Big Meadow Road on at least five occasions. CP 971, 980, 982, 999, 1006. The County Engineer agreed the County “should remove trees that are a hazard to falling on the roadways.” RPII 290, 292, 312, 452. The County’s road maintenance personnel were on Big Meadows every month. RPII 398. In fact, shortly before the tree fell here, a team of County employees was on Big Meadows Road for four days clearing brush and trimming trees. Ex. P-198, RPII 348-52. Plus, the Supreme Court recently held in *Wuthrich v. King County*, 185 Wn.2d 19, 25-26, 366 P.3d 926 (2016), that public road operator’s duty of care extends to roadside vegetation.³ Given the circumstances here, *Albin* did not negate

³ Contrary opinions from the past “are no longer good law.” *Wuthrich*, 185 Wn.2d at 26. Consistent with *Wuthrich*, this Court applied road operators’ duty of care to a large roadside hawthorn bush in *Tapken v. Spokane County*, 9 Wn. App. 2d 1027, 2019 WL 2476445, at *15, *17 (2019) (*Tapken* is unpublished. It has no precedential value, is not binding on any court, and is cited only for such persuasive value as this Court deems appropriate.)

the County's duty to reasonably anticipate the hazards posed by the giant, leaving tree along Big Meadows Road.⁴

The County argues that the Evanses waived this argument (that Instruction 21 was incorrect because the County was liable for road hazards which it should have anticipated or foreseen) by not objecting to Instruction 18's omission of the optional language from WPI 140.02 on hazards that may be reasonably anticipated. *See* Br. of Resp't at 27-28. In other words, the County believes the Evanses had to object to Instruction 21 *and* offer an alternate instruction. But the objecting party need not propose "a correct, alternate instruction to preserve an objection." *Washburn v. City of Fed. Way*, 178 Wn.2d 732, 748, 310 P.3d 1275 (2013) (citation omitted).⁵

Even though they had no obligation, the Evanses offered a correct

⁴ "Whether the roadway was reasonably safe and whether it was reasonable for the County to take (or not take) any corrective actions are questions of fact that must be answered *in light of the totality of the circumstances*." *Wuthrich*, 185 Wn.2d at 27 (emphasis added).

⁵ Jury instructions are reviewable for error if the appellant made a sufficient objection at trial under CR 51(f). An objection suffices if it "state[s] distinctly the matter to which counsel objects and the grounds of counsel's objection." CR 51(f). Our Supreme Court takes a liberal approach to this standard. The "the failure to give a rationale" does not waive an objection to a jury instruction, *Crossen v. Skagit County*, 100 Wn.2d 355, 355, 669 P.2d 1244 (1983), and "[c]larity of argument is not determinative," *Trueax v. Ernst Home Ctr., Inc.*, 124 Wn.2d 334, 339, 878 P.2d 1208 (1994). The record must show simply that "the trial judge understood the basis of counsel's objection." *Crossen*, 100 Wn.2d at 358. The Court recently applied this liberal construction of CR 51(f) in *Washburn v. City of Fed. Way*, 178 Wn.2d 732, 747-48, 310 P.3d 1275 (2013). More recently, the Court reiterated that, under CR 51(f), "[h]ypertechnicality is not required." *Millies v. LandAmerica Transnation*, 185 Wn.2d 302, 310, 372 P.3d 111 (2016).

instruction anyway, including the optional language from WPI 140.02 in their proposed instruction P-9. CP 2581. The trial court said it was aware of P-9, and it assured the parties that Instruction 18 would be “crafted after P-9, Plaintiffs’ 9 and D-15, Defense 15, which reflects the 140.02 from WPI.” RPII 1335-36.

But it turned out that the trial court did not adopt P-9, and the Evanses never had the opportunity to object. The Evanses had no way of knowing that the trial court would omit the optional language from WPI 140.02. During the jury instructions conference, the trial court’s proposed instructions did not include any instruction based on WPI 140.02. RPII 1335-36. The trial court noted this omission and explained the intended instruction on WPI 140.02 “will be inserted as new Instruction 18.” RPII 1335-36. The record does not show that the Evanses were given copies of the court’s final instructions before they were read to the jury or, even if they were, they were given the opportunity to object. Instead, the record shows that the court went into recess, the jury was brought in, and the court instructed the jury. *See* RPII 1341-44. The trial court’s approach violated CR 51(f). The trial court was required to “supply counsel with copies of its proposed instructions” and to “afford[] an opportunity in the absence of the jury” for the Evanses “to make objections ... to the refusal to give a requested instruction.” CR 51(f). Because they were not given

the opportunity, they cannot be faulted for not objecting to the trial court's failure to include the optional language from WPI 140.02.

In any event, the record shows that the trial court manifested an understanding of the substance of the Evanses' position that Instruction 21 conflicted with the law on the County's liability for unsafe conditions which it reasonably should have anticipated would develop. During the conference on jury instructions, the Evanses' attorney explained that their liability theory was *not* based on actual notice, contrary to the premise of Instruction 21. RPII 1319. Their attorney argued the Evanses' liability theory rested on the County creating the unsafe conditions through application of herbicides, on the County having constructive knowledge of the Road's hazard, and on the County having "objective" evidence allowing it to "discover" the unsafe condition even if it "had not yet developed." RPII 1319-20. Ordinarily, a jury instruction based on WPI 140.01 allows the plaintiff to argue that the unsafe condition was created by the public road operator or should have been reasonably anticipated. *See* WPI 140.01 cmt. The trial court expressed this understanding, saying, "If the unsafe condition was created by the governmental entity, either directly or it was a condition that the governmental entity should have anticipated, then you use 140.01; right?" RPII 1295.

Even if this Court concludes that the Evanses did not sufficiently apprise the trial court of this specific argument, Instruction 21’s conflict with the County’s duty to “reasonably anticipate” unsafe conditions was just the cherry on top of this prejudicial error sundae. Instruction 21 still obliterated the law on the other two grounds for the County’s liability—its creation of the unsafe condition or, alternatively, its constructive notice of the unsafe condition. The substance of those grounds for the Evanses’ objection was discussed at length, and the trial court manifested an understanding of it. Instruction 21 is properly before this Court.

(b) The Trial Court Correctly Instructed the Jury on Liability as a Possessor Land

The County argues⁶ that “[t]he trial court erred by giving Instruction 19,” br. of resp’t at 48, regarding the County’s liability as a possessor of land. But the record does not support the County’s claim that it denied owning that land. In the only document that matters—the County’s answer to the Evanses’ complaint—the County averred that “Defendant admits that the tree was on property owned and maintained by the Defendant.” CP 42. The County never moved to amend its answer.

⁶ Although some appellate decisions refer to “conditional cross appeal,” e.g., *Mut. of Enumclaw Ins. Co. v. Gregg Roofing, Inc.*, 178 Wn. App. 702, 732, 315 P.3d 1143 (2013), *review denied*, 180 Wn.2d 1011 (2014), the County is not *cross appealing* because it does not seek affirmative relief. *See* RAP 2.4(a). Instead, the County merely seeks review of issues that might arise on remand. *See* RAP 2.4(a). The Evanses reserve the right to object to any “reply brief” submitted by the County in support of its putative “conditional cross appeal.”

The County hangs its hat on the trial court granting a motion in limine not to discuss the County's ownership or possession of the land. CP 2936-37; RPII 119-20. That pretrial ruling is inconsequential, for two reasons. First, the trial court reversed course, going so far as to instruct the jury on the County's liability as possessor of land. CP 4253. Second, admissions in pleadings are binding and remove the need for proof at trial. *See, e.g., Mukilteo Ret. Apartments, L.L.C. v. Mukilteo Inv'rs L.P.*, 176 Wn. App. 244, 256 n.8, 310 P.3d 814 (2013), *review denied*, 179 Wn.2d 1025 (2014); *Am. Title Ins. Co. v. Lacelaw Corp.*, 861 F.2d 224, 226 (9th Cir. 1988). The County is bound to its admission in its own answer.

Even if the County did not own the land, it would still be liable as a possessor. The County relies on *Nguyen*, a case which did not yet have the guidance from *Adamson v. Port of Bellingham*, 193 Wn.2d 178, 187, 438 P.3d 522 (2019). In *Adamson*, our Supreme Court made clear that a "possessor of land" is "one who occupies the land with the intent to control." *Id.* at 188 (quotation omitted). The Court held that this standard is met where a party has "the authority to unilaterally make changes to the property" and actively performs repairs and maintenance. *Id.* Consistent with the *Adamson* standard, County witnesses here admitted, "We do have the authority" to cut a tree in the right of way or to otherwise perform maintenance. RPII 302. And numerous County witnesses discussed how

the County maintains the vegetation on the roadside along that part of Big Meadows Road. *E.g.*, RPII 348-52. Under *Adamson*, the County was a “possessor” of land and Instruction 19 was correct.

(c) The County’s Proposed Instruction for Retrial on the Duty of Inspection Would Misstate the Law

The County argues that on remand the jury should be instructed that the County “has no duty to conduct inspections of roadside trees.” Br. of Resp’t at 49. The County’s responsibility for inspections is not an issue that should be decided as a matter of law, for two reasons.⁷ First, public road operators must proactively address roadside hazards. Their duty requires them “*to take reasonable steps to remove or correct for hazardous conditions.*” *Wuthrich*, 185 Wn.2d at 27 (emphasis added). This rule implies that public road operators should not close their eyes to potential hazards, but should keep a watchful eye on their roads. Second, as this Court recognizes, “[c]onstructive notice arises where the defective condition has existed for such time that a municipality in *exercising ordinary care would have discovered* the defective roadway condition.” *O’Neill*, 194 Wn. App. at 773-74 (emphasis added). This is a case-specific

⁷ *Nguyen v. City of Seattle*, 179 Wn. App. 155, 317 P.3d 518 (2014) does not hold as a matter of law that public road operators never have a common-law duty to inspect roadside trees for danger. Rather, Division I decided only that the plaintiff had not cited any authority to support such a conclusion. *Id.* at 171. Division I did not consider whether the standard for a jury to find constructive notice implies that the jury may find a public road operator exercising ordinary care would have conducted an inspection under the circumstances of the case. *See id.*

question of fact for a jury, which must account for all the surrounding circumstances, including the road's location and traffic volume. *Id.* at 774. The responsibility to use "ordinary care" to "discover[]" a road hazard, *id.* at 773, implies that a jury may find an inspection should be conducted, depending on the circumstances. Does the County truly believe that a jury may never find circumstances where "ordinary care" would require an inspection to discover dangerous road conditions, such as on a creaky old bridge or a highly trafficked road? The County remains free to argue to a jury as a factual matter that an inspection program was not reasonable in this case's circumstances. *See Berglund*, 4 Wn.2d at 319 ("The financial burden, technical considerations, and other factual circumstances are all factors to be considered in determining whether or not the county complied with its duty to use reasonable care.").

The County's argument also conflicts with the County's liability as the owner or possessor of the land where the tree stood. Washington law requires "a possessor of property to exercise reasonable care to protect an invitee against a condition that creates an unreasonable risk of harm, including inspecting for said conditions." *Adamson*, 193 Wn.2d at 188. Thus, even if the County wiggles out of its duty as a public road operator to use ordinary care to discover road hazards, its duty as the owner or possessor of the land conflicts with the County's argument.

(d) The County Must Exercise Reasonable Care to Make a Roadway Safe from a Dangerous Condition Even if It Is Not “Patent” or “Readily Observable”

The County argues that the jury should have been given the defense’s proposed jury instructions D-18, D-27, and D-28 limiting the County’s duty of care as a public road operator to conditions that are “patent” and “readily observable” to a “layperson.” Br. of Resp’t at 49 (citing CP 2624, 4134-35). The County has done a 180-degree flip-flop. In *Tapken*, the County told this Court that the County has no duty of care to the traveling public if a condition is known or obvious. 2019 WL 2476445 at *19. After losing both appeals in *Tapken*, the County now argues that its duty of care is limited to conditions that are known or obvious. The County wants it both ways: “If the condition *is* known and obvious, we shouldn’t have to do anything. But also if the condition is *not* known and obvious, we shouldn’t have to do anything.” Essentially, the County wants the people of Spokane to travel their roadways entirely at their own risk.

That is not the law. As this Court already held in *Tapken*, whether a condition is known or obvious does not define the County’s duty of care as a public road operator. *Id.* at *15, 19-20.⁸ The County’s duty as a public

⁸ The County’s reliance on *Lewis v. Krussel*, 101 Wn. App. 178, 183, 2 P.3d 486, review denied, 142 Wn.2d 1023 (2000) is misplaced, because *Lewis* involved a landowner’s duty to a neighbor, not an invitee. The Evanses are unaware of any recent case on the premises liability of landowners to invitees holding that the hazard must be

road operator extends to any hazardous condition that it creates, that it “would have discovered” by using “ordinary care,” *O’Neill*, 194 Wn. App. at 773-74, or that it “should have reasonably anticipated the condition would develop,” *Nguyen*, 179 Wn. App. at 165. To protect public safety, the law thus compels public road operators to attempt to foresee and discover road hazards. By limiting its duty of care to only conditions that are “known” or “readily observable,” the County’s proposed instructions would sharply limit its accountability to the traveling public.

County’s proposed instructions also would sharply limit its duty of care to what a “layperson” could perceive. CP 2624. The County cites no authority holding that, as a matter of law, reasonable care requires public road operators to know no more than a “layperson” would. Public road operators are liable for any condition if it created the condition, whether appreciable by a layperson or not. Plus, for all other conditions, the matter is for the jury. Juries are tasked with evaluating road operator’s care under “the totality of the circumstances,” *Wuthrich*, 185 Wn.2d at 27, and “technical considerations” and “[t]he financial burden” are among the circumstances for a jury to consider, *Berglund*, 4 Wn.2d at 319. So the County is free to argue to the jury as a matter of fact that it was reasonable

“patent” or “readily observable.” *See, e.g., Adamson*, 193 Wn.2d at 187-88; *Tincani v. Inland Empire Zoological Soc.*, 124 Wn.2d 121, 138-39, 875 P.2d 621 (1994).

for its road maintenance employees to know no more than a layperson, and the Evanses are free to argue as a matter of fact that the County should have better equipped itself to foresee and anticipate the danger.

The trial court was right not to give the County's proposed instructions D-18, D-27, and D-28.

(e) The County Fails to Show the "Act of God" Instruction Was Proper

The Evanses' assignment of error to the "act of God" instruction was preserved for review. The Evanses filed a motion for judgment under CR 50(a)(1) on the County's "act of God" defense. CP 4158-69. The Evanses argued that insufficient evidence supported the defense and that the danger was reasonably foreseeable. CP 4163-68. The Evanses argued also that an "act of God" could not relieve the County of liability as a matter of law under both *Wells v. City of Vancouver*, 77 Wn.2d 800, 467 P.2d 292 (1970) and *Burton v. Douglas Cty.*, 14 Wn. App. 151, 154-56, 539 P.2d 97, *review denied*, 86 Wn.2d 1007 (1975). CP 4164-65. The trial court denied the motion. RPII 1261-63. The next day, the trial court held the jury instruction conference. RPII 1282-1337. At that time, the Evanses offered another reason to not instruct the jury on the County's "act of God" defense. RPII 1316-17.

Under the Supreme Court's liberal approach for reviewing

objections to jury instructions, the Evanses' objection must be considered "[i]n the context of the litigation." *Trueax*, 124 Wn.2d at 340. The Evanses would have wasted everyone's time had they re-stated all their arguments against the "act of God" defense, which they had just made the day before in the form of a written motion and oral argument. Objections must be made "*in some manner*," *id.* at 339, and the Evanses did so via their motion. The County reminded the trial court that the Evanses had objected the day before on the sufficiency of the evidence supporting it, RPII 1321, and the judge said that he "did review the case law," RPII 1322. In context, the record shows "the trial court manifested an understanding of the [objecting party's] position." *Washburn*, 178 Wn.2d at 748.

The County fails to show that its experts' testimony was substantial evidence justifying the jury instruction. The Evanses' brief pointed out that "[t]he County's experts acknowledged their opinions did not include any opinion that the tree actually fell during the claimed maximum wind gust of 68-70 mph." Br. of Appellants at 30 (citing RPII 513, 970). The County's response brief cites no testimony or any other evidence showing that this so-called microburst was the cause of the tree to fall, as opposed to the other wind gusts that were high but under 50 mph. *See* Br. of Resp't at 33-34. There was no testimony or other evidence that any "microburst" was the "*sole proximate cause*," as Instruction 14

required, CP 4248 (emphasis added), let alone *a* proximate cause.

And, at most, the winds were merely an “unusual or rare occurrence,” which was not enough to constitute an “act of God.” CP 4248. The County’s meteorologist admitted that wind gusts up to 50 mph were normal for the Spokane area, that windstorms have occurred more frequently in recent years, that wind gusts had reached 71 mph in 2005, and that there was a 1.25% chance of winds reaching 68 mph in a given year. RPII 498, 503, 767-68. Rare events like this are not enough to warrant an “act of God” instruction.

The instruction was prejudicial. To be sure, the jury did not reach proximate causation. But Instruction 14 helped push the jury towards the County’s theory of the case. The trial court read instructions to the jury about “natural phenomenon” that should not have been in the instructions, all but telling the jury to focus on the County’s theory that the wind was a freak event. By giving “[d]etailed instructions” on the wind, Instruction 14 was an instruction of the impermissible type that “‘point up,’ ‘underline,’ or ‘buttress’ portions of counsel’s argument.” *Laudermilk v. Carpenter*, 78 Wn.2d 92, 101, 457 P.2d 1004 (1969), 469 P.2d 547 (1970).

(f) The County Fails to Show the Superseding Cause Instruction Was Proper

The County argues that Instruction 13, regarding superseding

cause, was proper. Br. of Resp't at 35-36. The Evanses continue to maintain that it was prejudicial error. See Br. of Appellants at 31-34.

(2) The Exclusion of the Evanses' Expert Witnesses' Testimony Relied on Incorrect Interpretations of the Law and Slanted the Evidence Towards the County

(a) The County Fails to Show that the Evanses Committed a Discovery Violation or that Exclusion of Timothy Wright Was Warranted under *Burnet*

The trial court erred in compelling the Evanses to respond to the County's request for production regarding Timothy Wright. In arguing otherwise, the County ignores the text of CR 26(b)(5), which shows that the County had no right in the first instance to use requests for production to avoid the proper procedures for expert-witness discovery. CR 26(b)(5) provides, “[d]iscovery of facts known and opinions held by experts ... and acquired or developed ... for trial, may be obtained *only* as follows,” then lists only two permissible discovery methods for testifying experts—certain interrogatories, CR 26(b)(5)(A)(i), and depositions as set out in (b)(A)(ii), but not requests for production. The “only as” language in CR 26(b)(5) must mean something.

The Supreme Court's analysis of CR 26(b)(5) in *In re Detention of West*, 171 Wn.2d 383, 256 P.3d 302 (2011) applies here. Even though the issue was the permissibility of subpoenas *duces tecum*, not requests for production, the Court explicitly recognized that CR 26(b)(5) limited the

methods of discovery for expert work product. The Court concluded that “CR 26(b)(5)(A) explicitly permits only interrogatories and depositions, not requests for production of documents.” *Id.* at 408. The trial court was wrong to conclude the Evanses had to comply with the County’s requests for production of documents regarding Wright’s expert work product.

The County never cites the actual oral ruling that formed the basis for the Evanses’ purported discovery violation. *See* Br. of Resp’t at 37-42. The record shows that the trial court directed the Evanses during trial to “provide[] all the statistical raw data relied upon by Mr. – or compiled by Mr. Wright.” RP 204. The Evanses then disclosed several computer files, including weather data and a spreadsheet containing wind calculations. CP 3639, 3655-64. That was all they had been ordered to do. The County, like the trial court, faults the Evanses for not *also* producing other materials. *See* Br. of Resp’t at 38-39. But, because the Evanses complied with the trial court’s order as given, there was no basis to find the Evanses willfully violated the court’s discovery order. *See Burnet v. Spokane Ambulance*, 131 Wn.2d 484, 494, 933 P.2d 1036 (1997).

The County still fails to show that any violation “substantially prejudiced” the County’s “ability to prepare for trial.” *Teter v. Deck*, 174 Wn.2d 207, 216–17, 274 P.3d 336 (2012) (citing *Burnet*, 131 Wn.2d at 494). The County does not acknowledge, but it cannot dispute, that it

waited until trial to raise an objection regarding Wright. Wright was not a late-disclosed witness; the County knew about him *for months*. CP 3638. Still, the County chose not to depose him, despite having the right to do so and to serve a subpoena *duce tecum* in conjunction with a deposition under CR 26(b)(5)(A)(i). *West*, 171 Wn.2d at 409. The County chose not to bring a motion regarding Wright until filing a cursory one-paragraph motion “in limine”—perfunctory boilerplate that shows the County was not suffering prejudice and was instead throwing motions at the wall in hopes that something would stick. *Burnet* is meant to protect parties against the prejudice of last minute disclosures, not to be used as a tactical tool for ambushing an opposing party.

The “backdrop” of pretrial discovery hardly shows that the County was a victim. Br. of Resp’t at 39. The County fought hard during discovery, bringing motions to compel and prompting the Evanses to bring motions of their own. CP 48-50, 52-69, 71-75, 76-92, 170-99, 200-29, 355-76, 862-71, 1485-95, 1573-82, 1913-15, 2170-90, 2636-44, 2823-36. In one instance, the trial court ordered the County to respond to nine interrogatories and seven requests for production, with an award of attorney fees to the Evanses. CP 71-75. After being so obstreperous⁹

⁹ The Evanses’ attorney told the trial court about the County’s lawyer using foul and uncivil language during at least one CR 26(i) conference. RPII 71.

during pretrial discovery, the County cannot now argue that the course of pretrial discovery supported the trial court's decision to levy the most serious sanction against the Evanses under *Burnet*.

(b) The County Is Blind to the Helpfulness of Joellen Gill's Excluded Testimony Because It Misunderstands Its Own Duty of Care

As established during the trial court's *voir dire* of Joellen Gill, the Evanses offered her testimony not on whether the tree was dangerous. Rather, they offered her testimony on whether County's safety and risk management programs were deficient and a cause of the County's failure to realize the tree was dangerous and remove it. CP 3098; RP 276-77.

Contrary to the County's argument, *see* br. of resp't at 43-45, her testimony would have helped the jury. *See* ER 702. Although trial courts have discretion to exclude expert testimony, Washington appellate decisions show a liberal policy favoring the admission of expert testimony.¹⁰ Consistent with that liberal policy, courts "construe helpfulness to the trier of fact broadly." *Philippides v. Bernard*, 151 Wn.2d 376, 393, 88 P.3d 939 (2004).

The County misapprehends why Gill's testimony would have helped the jury because the County misapprehends the question for the jury. Gill, by educating the jury on proper systems for large organizations

¹⁰ *See* Br. of Appellants at 42 n.16.

to identify and mitigate safety dangers, would have helped the jury evaluate whether the County had “exercis[ed] ordinary care” sufficient to “have discovered the defective roadway condition,” *O’Neill*, 194 Wn. App. at 773-74, and whether the County should “reasonably” have “anticipated” the safety risk, *Berglund*, 4 Wn.2d at 314 (quotation omitted). Her testimony then would have further helped the jury understand what “reasonable steps” should have been available to a large organization such as the County “to remove or correct” the dangerous conditions. *Wuthrich*, 185 Wn.2d at 27. A County witness acknowledged the County had “a plan to deal with” “trees that can be dangerous.” RP 312. Gill’s testimony would have helped the jury evaluate whether the County’s plan was a reasonable approach to safety.

While the testimony of a safety professional such as Gill might not have been dispositive on these matters, it would have helped the jury. The trial court abused its discretion in ruling otherwise, as elaborated in the Evanses’ opening brief. *See* Br. of Appellants at 48-49.

(c) The County Misunderstands the Helpfulness of James Valenta’s Excluded Testimony Because It Misunderstands Its Own Duty of Care

On appeal, the County does not renew the arguments it made below about James Valenta’s qualifications to give his opinions on the County’s inadequate training of its employees and its ill-considered use of

available budget funds. *See* Br. of Resp't at 45-47. The County persists, however, in arguing these opinions were properly excluded. *See id.*

But when the helpfulness criterion is “broadly” construed as it must be, *Philippides*, 151 Wn.2d at 393, the County’s argument lacks merit. The law empowered the jury to consider several factors when evaluating the reasonableness of the County’s conduct, including “[t]he financial burden” and “technical considerations.” *Berglund*, 4 Wn.2d at 319. Without the assistance of Valenta’s testimony, however, the jury had only its common sense when evaluating these factors. The expertise of a witness such as Valenta, who had experience as a road engineer and as the director of a municipality’s roads department, RP 613, 615, 618; RPII 1144-47, would have helped the jury evaluate the evidence.¹¹ There was no tenable reason for finding Valenta’s testimony unhelpful.

(3) The County Misconstrues the “Clear Zone” Road Standards and Is Not Immune from Its Failure to Implement Them

The County raises two basic arguments in favor of affirming the partial summary judgment on the Evanses’ claim of negligence based on the County’s non-compliance with its “clear zone” road standard. Br. of Resp't at 11-20. First, the County argues that the 2010 Road Standards are

¹¹ *See, e.g., Johnston-Forbes v. Matsunaga*, 181 Wn.2d 346, 354, 333 P.3d 388, 394 (2014) (“[T]he rules of evidence reflect the widely held view that a reasoned evaluation of the facts is often impossible without the proper application of scientific, technical, or specialized knowledge.”).

inapplicable. *Id.* at 11-17. Second, the County argues it was entitled to legislative and discretionary immunity from liability for breaching its own road standards. *Id.* at 17-21. The County is incorrect on both contentions.

(a) The “Clear Zone” Road Standard Was Evidence of the County’s Negligence

The County’s compliance with its “clear zone” road standard was relevant to the County’s negligence. The 2010 Road Standards were “adopted by ordinance,” br. of resp’t at 14 (citing Spokane County Code § 9.12.030, and the “breach of a duty imposed by ... ordinance ... may be considered by the trier of fact as evidence of negligence.” RCW 5.40.050 (emphasis added)).¹² Accordingly, the County’s “clear zone” standards were relevant to whether the County knew or should have known that a tree so close to the roadway was a danger, or should have reasonably anticipated it.

The County builds a strawman, suggesting the Evanses want the County to clear cut every roadside and to bring every old road up to modern standards. *See* Br. of Resp’t at 12-15. But the Evanses’ “clear zone” theory of negligence was based on this particular section of Big Meadows Road. Indeed, the Standards apply by their own terms only “as

¹² The County also does not dispute that the government’s own standards are evidence of negligence. *See, e.g., Joyce v. Dep’t of Corr.*, 155 Wn.2d 306, 323-24, 119 P.3d 825 (2005) (agency’s policy directive).

far as practicable and feasible to reconstruction, resurfacing, restoration, and rehabilitation of old roads.” CP 1045 (emphasis added). The jury was thus free to decide a “clear zone” was not “practicable” or “feasible” here.

The County selectively cites the record to argue that “reconstruction, resurfacing, restoration, and rehabilitation” did not occur on that stretch of Big Meadows Road. But the County *admitted* in discovery that it had “paved and resurfaced the road surface of Big Meadows Road.” CP 1322-23. And according to the Evanses’ expert, the County’s fiscal year 2014 expenditures show “3-R” project work occurred on the road. CP 1404. This expert’s opinion was enough to create a jury question, even in the face of the County’s competing evidence.¹³

Albin does not preclude the 2010 Standards’ application here, because *Albin* involved a remote mountain road in a forest. 60 Wn.2d at 747.

¹³ This Court has stated that “when experts offer competing, apparently competent evidence, summary judgment is inappropriate.” *C.L. v. State Dep’t of Soc. & Health Servs.*, 200 Wn. App. 189, 200, 402 P.3d 346 (2017), *review denied*, 192 Wn.2d 1023 (2019). But the County Engineer’s declaration is not to the contrary. The County Engineer stated only that the Road Standards “do not apply to the design or construction of East Big Meadows Road,” because the Standards “did not exist when East Big Meadows Road was designed and constructed.” CP 552. Everyone agrees on that point. But the County Engineer’s declaration did not say anything about work constituting “reconstruction, resurfacing, restoration, and rehabilitation” since adopting the Standards in 2010. *See* CP 551-53. In any event, by the terms of the Standards themselves, the County Engineer’s authority to interpret the Standards is confined to the County’s internal administrative process for issuing permits. CP 1045, 1051.

The County incorrectly relies on negligence *per se* cases like *Christen v. Lee*, 113 Wn.2d 479, 502-03, 780 P.2d 1307 (1989); *Wells*, *supra*; and *Mortensen v. Moravec*, 1 Wn. App. 2d 608, 619-20, 406 P.3d 1178 (2017), *review denied*, 190 Wn.2d 1009 (2018). But the Evanses rely on the 2010 Road Standards as *evidence* of negligence, not to establish negligence *per se*. Thus, the applicable section of the *Restatement (Second) of Torts* is § 288B(2), which says that a statute need not protect against the same hazard for the statute to be evidence of negligence.¹⁴

Regardless, as this Court has recognized, a jury question on the defendants' negligence may arise even though "the precise manner in which this accident occurred may not have been foreseeable to [the defendant]." *Anderson v. Dreis & Krump Mfg. Corp.*, 48 Wn. App. 432, 445, 739 P.2d 1177, *review denied*, 109 Wn.2d 1006 (1987). Thus, even if the tree falling was not one of the specific hazards against which the "clear

¹⁴ Under *Restatement (Second) of Torts* § 288B:

[T]he fact of the violation may still be accepted as relevant evidence bearing upon the conduct of a reasonable man in the actor's position. This is true particularly where the provision in question prescribes standard precautions for a purpose other than the protection of the person who is injured, or for protection against a hazard other than that from which the harm has resulted. The fact that such precautions have been prescribed for another purpose may be a relevant fact for the consideration of the triers of fact, as indicating that a reasonable man would have taken the same precautions in the particular case.

Id. cmt. d.

zone” standard was meant to guard, a jury question was presented on whether the “clear zone” standard showed negligence. The tree falling here was within the general field of danger—roadside trees damaging cars—which a clear zone was meant to protect against. Viewed in the light most favorable to the Evanses, the summary judgment record created a jury question on negligence under the “clear zone” standard.

(b) Discretionary and Legislative Immunity Do Not Apply

Even if the doctrines of legislative immunity and discretionary immunity apply to government’s proprietary functions,¹⁵ they do not apply to the Evanses’ “clear zone” claim, because the Evanses do not allege that the County was negligent for not making appropriations or for the roads

¹⁵ Before the Legislature waived sovereign immunity in 1961, RCW 4.92.090, Washington state and local governments were liable for their torts when performing proprietary functions, as opposed to government functions. *See, e.g., Hutton v. Martin*, 41 Wn.2d 780, 786, 252 P.2d 581 (1953). Accordingly, local governments were liable in tort for negligence when operating garbage disposal functions, *id.*, waterworks, *Russell v. Grandview*, 39 Wn.2d 551, 236 P.2d 1061 (1951), sewer systems, *Hayes v. Vancouver*, 61 Wash. 536, 112 P. 498 (1911), electric utilities, *Abrams v. Seattle*, 60 Wash. 356, 111 P. 168 (1910), streetcars, *Koch v. Seattle*, 113 Wash. 583, 194 P. 572 (1921), and public road maintenance, *Berglund*, 4 Wn.2d at 313. The Legislature’s waiver of sovereign immunity expanded liability to any state and local government “acting in its governmental ... capacity,” in addition to its “proprietary capacity.” RCW 4.92.090; RCW 4.96.010. The immunity doctrines which the County cites were meant to discern a limit to this expansion of government liability. *See, e.g., Evangelical United Brethren Church of Adna v. State*, 67 Wn.2d 246, 255, 407 P.2d 440 (1965) (adopting doctrine of discretionary immunity to demarcate the boundaries of the waiver of sovereign immunity); *Fabre v. Town of Ruston*, 180 Wn. App. 150, 153-54, 163, 321 P.3d 1208 (2014) (same for legislative immunity). These doctrines should not be construed as constraining the liability of government acting in their proprietary capacity. Such liability preceded the waiver of sovereign immunity, which was meant to expand government liability, not narrow it. *But see Avellaneda v. State*, 167 Wn. App. 474, 273 P.3d 477 (2012) (applying legislative immunity to road maintenance).

department for not including Big Meadows Road in its “priority array.” Critically, the County does not dispute that funds *were available in its budget to pay to cut the tree down*. The “clear zone” road standard was simply evidence under RCW 5.40.050 of whether the road was “reasonably safe,” *Wuthrich*, 185 Wn.2d at 27, and whether a tree so close to the road presents a danger that “may reasonably be anticipated,” *Berglund*, 4 Wn.2d at 314, or the County “should have discovered the condition in the exercise of ordinary care,” WPI 140.02. If the County’s own 2010 Road Standards recognized the danger of hazards in close proximity to roadways, the jury could reasonably have found that the County should not have been so clueless about this tree.

These immunity doctrines are still inapplicable here even if the “clear zone” standard were connected to the County’s budget and its road department’s “priority array.” Under RCW 4.96.010(1),¹⁶ counties are generally liable for their torts, not immune. “Discretionary immunity is a narrow court-created exception.” *Haberman v. Washington Pub. Power Supply Sys.*, 109 Wn.2d 107, 157-58, 744 P.2d 1032, 1065 (1987), *as*

¹⁶ The statute provides, in relevant part: “All local governmental entities, whether acting in a governmental or proprietary capacity, shall be liable for damages arising out of their tortious conduct, or the tortious conduct of their past or present officers, employees, or volunteers while performing or in good faith purporting to perform their official duties, to the same extent as if they were a private person or corporation.” RCW 4.96.010(1).

amended, 109 Wn.2d 107, 750 P.2d 254 (1988). The design, construction, and operation of a public road is not a basic policy decision that implicates discretionary immunity. *See Stewart*, 92 Wn.2d at 294-95 (highway design). As the County Engineer admits, the County’s “priority array” is developed by “a group of engineers” and “administrators” in the roads department. CP 552. And a public works project is not protected by discretionary immunity where it involves “an exercise of technical engineering and scientific judgment.” *Miotke v. City of Spokane*, 101 Wn.2d 307, 337, 678 P.2d 803, 819 (1984), *abrogated on other grounds by Blue Sky Advocates v. State*, 107 Wn.2d 112, 727 P.2d 644 (1986).

Legislative immunity is a narrow, judge-made exception that applies only to the legislative acts of elected legislators. *Miller v. Pac. Cty.*, 91 Wn.2d 744, 747, 592 P.2d 639 (1979); *Fabre v. Town of Ruston*, 180 Wn. App. 150, 153-54, 163, 321 P.3d 1208 (2014). While the Spokane County Commissioners may have made some budgeting decisions about whether to allocate funds for upgrading roads, CP 552-53, those were not legislative acts. Not every act or ordinance adopted by a municipal legislative body is legislative in nature. *Mission Springs, Inc. v. City of Spokane*, 134 Wn.2d 947, 969, 954 P.2d 250 (1998). In distinguishing between a municipal legislative body’s administrative acts from its legislative acts for purposes of legislative immunity, the Court in

Mission Springs cited *Durocher v. King County*, 80 Wn.2d 139, 152-53, 492 P.2d 547, 555 (1972). In *Durocher*, the Court adopted two tests: an act is administrative if it is “of a temporary and special character,” or “if it merely pursues a plan already adopted by the legislative body itself, or some power superior to it.” *Id.* (quotations omitted).

Under these tests, the County Commissioners’ acts on Big Meadows Road were *administrative*. The County was merely carrying out its statutory responsibility as an “agent of the state” to provide for the construction and maintenance of county roads. RCW 36.75.020. Moreover, when the County excluded Big Meadows Road from the “priority array” for the road budget, the Commissioners were making a limited decision with respect to that one road. Just as the Spokane City Council did not engage in a legislative act in *Mission Springs* when it rejected a permit for a single project, 134 Wn.2d 947, the Spokane County Commission did not engage in a legislative act when it declined to include specific funding for Big Meadows Road upgrades in the “priority array.” The decision was not “purely legislative.” *Fabre*, 180 Wn. App. at 162. And again, the government’s budgetary concerns about road maintenance are one consideration among many within the reasonableness inquiry, not a basis for immunity. *See Berglund*, 4 Wn.2d at 319.

The County’s immunity arguments are backdoor attempts to

reenact the government immunity that was waived by the Legislature. The County improperly tries to elevate these matters into discretionary and legislative acts that are protected by immunity.

C. CONCLUSION

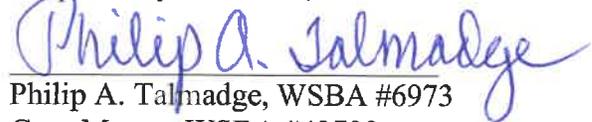
The Evanses were deprived of the opportunity to present their “clear zone” argument and a fair trial generally by the trial court’s actions. Nothing in the County’s brief ultimately detracts from these two key points.

Instruction 21 alone was grounds for a new trial. To ensure that a new trial is fair to the Evanses and does not repeat all the same errors, this Court should reach the other issues. The “act of God” and “superseding cause” instructions should not have been given, and the testimony of the Evanses’ expert witnesses should be allowed.

This Court should reverse the judgment on the jury’s verdict and remand for a new trial. Costs on appeal should be awarded to the Evanses.

DATED this 4th day of October, 2019.

Respectfully submitted,



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APPENDIX

Court's Instruction 13:

A superseding cause is a new independent cause that breaks the chain of proximate causation between a defendant's negligence and an injury.

If you find that the defendant was negligent but that the sole proximate cause of the injury was a later independent intervening force that the defendant, in the exercise of ordinary care, could not reasonably have anticipated, then any negligence of the defendant is superseded and such negligence was not a proximate cause of the injury. If, however, you find that the defendant was negligent and that in the exercise of ordinary care, the defendant should reasonably have anticipated the later independent intervening force, then that act does not supersede defendant's original negligence and you may find that the defendant's negligence was a proximate cause of the injury.

It is not necessary that the sequence of events of the particular resultant injury be foreseeable. It is only necessary that the resultant injury fall within the general field of danger which the defendant should reasonably have anticipated.

CP 4247.

Court's Instruction 14:

An "act of God" is a natural phenomenon which caused the injury and which is so far outside the range of human experience that ordinary care did not require that it should be anticipated or provided against. Merely because a natural phenomenon is unusual or of rare occurrence is not sufficient to find that such natural phenomenon constituted an "act of God." If you find from the evidence that the defendant has proved that an "act of God" was the sole proximate cause of the plaintiff's injuries and damages, then the plaintiffs cannot recover.

CP 4248.

Court's Instruction 18:

In order to find a county liable for an unsafe condition of a road that was not created by its employees, you must find that the county had notice of the condition and that it had a reasonable opportunity to correct the condition.

A county is deemed to have notice of an unsafe condition if the condition has come to the actual attention of its employees or agents, or the condition existed for a sufficient length of time and under such circumstances that its employees or agents should have discovered the condition in the exercise of ordinary care.

CP 4252.

Court's Instruction 19:

A possessor of land who has actual or constructive knowledge of dangerous conditions on the land has a duty to take action to correct the dangerous condition or warn of its existence. A possessor's duty attaches if the landowner knows or by the exercise of reasonable care should know of the condition and should realize that it involves an unreasonable risk. If the possessor of land caused the dangerous condition, then knowledge is established.

CP 4253.

Court's Instruction 21:

The county cannot be negligent if it only knew that an unsafe condition might, or even probably will, develop.

CP 4256.

Plaintiff's Proposed Instruction 9 (P-9):

In order to find a county liable for an unsafe condition of a road that was not created by its employees, and that was not a condition which its employees or agents should have reasonably anticipated would develop, you must find that the county had notice of the condition and that it has a reasonable opportunity to correct the condition.

A county is deemed to have notice of an unsafe condition if the condition has come to the actual attention of its employees or agents, or the condition existed for a sufficient length of time and under such circumstances that its employees or agents should have discovered the condition in the exercise of ordinary care.

CP 2581.

Defendant's Proposed Instruction 15 (D-15):

In order to find a county liable for an unsafe condition of a road that was not created by its employees, you must find that the county had notice of the condition and that it had a reasonable opportunity to correct the condition.

A county is deemed to have notice of an unsafe condition if the condition has come to the actual attention of its employees or agents, or the condition existed for a sufficient length of time and under such circumstances that its employees or agents should have discovered the condition in the exercise of ordinary care.

CP 2621.

Defendant's Proposed Instruction 18 (D-18):

The county has a duty to take corrective action with respect to a roadside tree only if it has notice of a patent danger that is readily observable to a layperson. The county's duty does not require it to consistently and constantly check for defects in roadside trees.

CP 2624.

Defendant's Proposed Instruction 27 (D-27):

A patently dangerous tree, or one with a readily observable defect, must be the type of defect or deficiency in a tree that does not require professional training or an arborist to discern.

CP 4134.

Defendant's Proposed Instruction 28 (D-28)

The county has a duty to take corrective action with respect to a roadside tree only if it has notice of a patent danger that is readily observable to a layperson. The county's duty does not require it to consistently and constantly check for defects in roadside trees and it does not require an arborist's inspection.

CP 4135.

DECLARATION OF SERVICE

On said day below, I electronically served a true and accurate copy of the *Reply Brief of Appellants* in Court of Appeals, Division III Cause No. 36495-0-III to the following:

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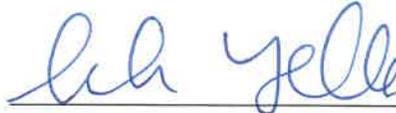
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I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED: October 4, 2019, at Seattle, Washington.



Sarah Yelle, Legal Assistant
Talmadge/Fitzpatrick

TALMADGE/FITZPATRICK

October 04, 2019 - 3:00 PM

Transmittal Information

Filed with Court: Court of Appeals Division III
Appellate Court Case Number: 36495-0
Appellate Court Case Title: Carlton Evans and Margaret Evans v. Spokane County
Superior Court Case Number: 17-2-00626-7

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