

No. 81195-4

SUPREME COURT  
OF THE STATE OF WASHINGTON

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JOSIE ARMANTROUT, personal representative of the estate  
of KRISTEN ARMANTROUT; JOSIE ARMANTROUT and  
WARREN ARMANTROUT, husband and wife and the  
marital community composed thereof,

Petitioners

vs.

CASCADE ORTHOPAEDICS, a partnership

Respondent

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SUPREME COURT  
STATE OF WASHINGTON

**SUPPLEMENTAL BRIEF OF RESPONDENT**

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## SUPPLEMENTAL ARGUMENT

The primary issue accepted for review is whether, for purposes of Washington's wrongful death statute, RCW 4.20.020, services provided by deceased adult children and which can be assigned economic value may be used to show their parents were financially dependent on the children for support. Respondent respectfully submits this court's decision in *Philippides v. Bernard*, 151 Wn.2d 376, 88 P.3d 939 (2004), the ordinary meaning and common understanding of the terms, and respect for the legislative process, dictate that the correct answer is "no."

RCW 4.20.020, one of Washington's wrongful death statutes, has, with regard to its support requirement, remained substantially unchanged since originally enacted. Compare RCW 4.20.020, Rem. Rev. Stat. § 183-1, and Rem. & Bal. Code § 194. Just over four years ago, in *Philippides v. Bernard*, this Court said again what it had been saying since the early 20th century regarding the interpretation of these statutes: "The 'courts of this state have long and repeatedly held, causes of action for wrongful death are strictly a matter of legislative grace and are not recognized in the common law.'" 151 Wn.2d at 390, quoting *Tait v. Wahl*, 97 Wn. App. 765, 771, 987 P.2d 127 (1999). "The legislature has created a comprehensive set of statutes governing who may recover for wrongful death and survival, and there is no

room for this court to act in that area.” *Id.*, citing *Windust v. Dep't. of Labor & Indus.*, 52 Wn.2d 33, 36, 323 P.2d 241 (1958). “It is neither the function nor the prerogative of courts to modify legislative enactments.” *Id.* quoting *Anderson v. Seattle*, 78 Wn.2d 201, 202, 471 P.2d 87 (1970). “Washington's four interrelated statutory causes of action for wrongful death and survival each require that parents be ‘dependent for support’ on a deceased adult child in order to recover.” *Id.* at 386, citing RCW 4.20.010 (child injury/death); RCW 4.20.020(wrongful death); RCW 4.20.046 (general survival statute); RCW 4.20.060 (special survival statute). And, “the phrase ‘dependent for support’ as used in these statutes has consistently been interpreted by the courts to mean financial dependence.” *Id.* citing *Bortle v. Nor. Pac. Ry. Co.*, 60 Wash. 552, 111 P. 788 (1910); *Tait v. Wahl*, 97 Wn. App. 765, 987 P.2d 127 (1999); *Schumacher v. Williams*, 107 Wn. App. 793, 802, 28 P.3d 792 (2001).

If being financially dependent for support remains a part of the standard for eligibility as a second tier beneficiary under RCW 4.20.020, then the task in this case is to decide whether providing services is “financial” support. As the Court does that, it is worth noticing what is not at issue. Not at issue in this case is what are the broad range of actions that might constitute “support.” As noted above, this court has clearly stated that to

qualify as a second tier beneficiary under the wrongful death statutes, the support must be financial. Accord *Philippides, supra*, at 394 (Chambers, J. dissenting)(“Prior to 1998, [RCW 4.24.010] did not define ‘support’ but we had interpreted it to mean financial support.”) The Armantrouts acknowledge that financial support is the kind of support required in Washington. Unless a form of support falls within that qualification, it may not be used to establish the support element. See *Philippides, supra* (emotional support not sufficient to qualify parent as second tier beneficiary).

Also not at issue in this appeal is what constitutes dependency. The petition for review did not raise the question of what constitutes dependency. The trial court and the Court of Appeals settled that issue and neither party appealed from those determinations. Thus, while the services Kristen provided undoubtedly were important to her family, evidence of how dependent Mr. and Mrs Armantrout were upon those services is not, at this stage, germane.

Also not at issue is whether Mr. and Mrs. Armantrout’s dependency, assuming it was present to any degree, was “substantial” dependency. Thus, facts comparing the services Kristen provided to other services Mr. and Mrs. Armantrout used or needed also is not germane.

This appeal focuses solely on what constitutes “financial” support,

yet even that inquiry is limited. Also not at issue is whether buying and giving tangible or liquid assets such as a car, a home, utilities, food or other goods constitutes financial support. The Court of Appeals found that taking Kristen's monthly Social Security check created an issue of fact as to whether Mr. and Mrs. Armantrout were financially dependent upon Kristen. Because Kristen did not provide any other tangible or liquid assets – indeed the evidence showed she consumed tangible assets rather than supplied them (RP 7/18 at 47)–, the only additional evidence plaintiffs want the jury to consider is evidence of the services Kristen provided and the value of those services. Since those services are not tangible or liquid assets, the court need not decide whether providing such assets may constitute financial support.

With those limitations, several reasons show why the Armantrout's argument should be rejected and why "financial support" is not established by personal services. First, the ordinary meaning of the word "financial" differentiates between things monetary and things otherwise of value. Absent a contrary legislative intent, undefined terms in statutes are given their ordinary meaning. *State v. Wentz*, 149 Wn.2d 342, 352 68 P.3d 282 (2003). Standard dictionaries provide the ordinary meaning of a term. *Owest Corp. v. Seattle*, 157 Wn.2d 545, 553, 139 P.3d 1091 (2006). Webster's defines "financial" as "relating to finance or financiers." Merriam-Webster's

Collegiate Dictionary at 469 (11<sup>th</sup> Ed. 2008). When used as a noun the definition of “finance” is

1: money or other liquid resources of a government, business, group or individual 2: the system that includes the circulation of money, the granting of credit, the making of investments, and the provision of banking facilities 3: the science or study fo the management of funds 4: the obtaining of funds or capital : financing.”

*Id.* As a verb, “finance” is defined as:

1 a: to raise or provide funds or capital for < ~ a new house >  
b: to furnish with necessary funds < ~ a son through college >  
> 2: to sell something to on credit

*Id.* These, and the definitions of every variation on the word “finance,” has money or liquid assets at their core. Services in general, and in particular services of the type Kristen provided, are not money or liquid assets.

Second, the definitions comport with the common understanding of the term. One ordinarily thinks of contributions of services as distinct from financial contributions. Parents may “support” their children by transporting them to school and events, providing a loving environment and assuring they are clean and cared for. Parents provide their children’s financial support by paying for their college, paying for their necessities, and paying child support.

The common understanding is illustrated in other contexts as well. When charitable agencies request financial support they are seeking monetary

contributions, not contributions of services. When political campaigns ask for financial support, they are not seeking volunteers to ring doorbells or post yard signs. In its ordinary sense, the phrase “financial support” connotes contributions of money, not the contribution of services.

A third reason is even more practical. Financial dependence and dependence upon services exist independent of each other. A parent may be entirely financially independent and yet substantially dependent upon their child for services. Because following the Armantrouts’ approach equates dependence on services that have financial value with financial dependence, under their approach even financially independent parents could qualify as second tier beneficiaries if they could show only that they were dependent on the services the child provided.

Because financial support and personal service support exist independently, recognizing services as financial support would effectively rewrite the qualifying criteria in the very manner this Court refused to do in *Philippides*. The re-written statute would condition beneficiary status on dependency “on services or financial support.”

Fourth, broadening the meaning of financial support to include benefits that have economic value would write out the “financial” support limitation from the statute. All benefits – tangible and intangible, real and

emotional – may be assigned a monetary value. Indeed, that fact is fundamental to tort damage awards. *Penny Farms v. Heffron*, 24 Wn. App. 150, 152, 599 P.2d 536 (1979). The difference between economic and non-economic damages lies not in the absence of value of one, but only the precision with which that value may be measured. If economic value becomes the qualifying criteria, then any type of support would be considered and the “financial” limitation loses its affect. Implicit in *Philippides* is this Court’s refusal to recognize emotional support as financial support even though juries regularly are asked to assign value to the loss of emotional support. See WPI 30-01.01 et seq. Plaintiffs’ request here is no different.

Plaintiffs may counter that the term may be limited to services traditionally characterized as having pecuniary value. This argument fails because “pecuniary interest includes, in addition to monetary contributions, compensation for the loss of other services such as the ‘‘love, affection care, companionship, society and consortium’’ . . .” *Bowers v. Fibreboard Corp.*, 66 Wn. App. 454, 460, 832 P.2d 523, *rev. denied* 120 Wn.2d 1017 (1992)(quoting *Parrish v. Jones*, 44 Wn. App. 449, 453, 722 P.2d 878 (1986). Thus, even if so limited, plaintiffs’ approach is simply a way of getting through the back door what this Court in *Philippides* refused to allow through the front: a judicial broadening of eligibility under the wrongful

death statutes.

This same analysis reveals a fifth reason the court should reject plaintiffs' proposal: the proposal equates the qualifications for becoming a beneficiary with the damages those beneficiaries may recover. "The purpose of the wrongful death statute is to compensate certain relatives of the deceased for injuries to their pecuniary interest, suffered as the result of the wrongful death." *Bowers v. Fibreboard Corp.*, 66 Wn. App. at 460. Because under the plaintiffs approach, financial support would include the very pecuniary losses for which RCW 4.20.020 allows compensation, under the Armantrouts' approach anyone able to show they suffered the damages allowed by the statute would be eligible to argue their qualification as a beneficiary. The Armantrouts' approach would thereby effectively read the beneficiary qualification out of the statute altogether, not merely the financial support requirement.

Finally, accepting plaintiffs' argument would undermine the separation between the legislative and judicial functions. In *Philippides*, this court said: "the legislature has created a comprehensive set of statutes governing who may recover for wrongful death and survival, and there is no room for this court to act in that area." 151 Wn.2d at 390. Consistent with that statement, the legislature recently considered whether to amend RCW

4.20.020 to include the provision of services that have economic value within the definition of financial dependence. Substitute S.B. 6696, at 2, 60th Leg., Reg. Sess. (Wash. 2008). The legislature declined. Regardless of whether declining to adopt that change evidences a deliberate decision that the proposed standard is unwanted, to enact by judicial interpretation the very change the legislature considered necessary to be made by statute intrudes on the legislature's exclusive role in the area of wrongful death.

From their petition it appears the Armantrouts will offer three arguments in support of their proposed change: 1. Limiting recovery only to those who receive actual financial support is harsh and unfair; 2. The decision in *Cook v. Rafferty*, 200 Wash. 234, 93 P.2d 376 (1939), holds that services may be considered as an element of financial support; 3. Other states allow consideration of services. But, as the Court of Appeals recognized, in *Philippides* this Court already acknowledged that the financial support requirement, while arguably harsh, was a proper standard for legislation:

The legislature has identified the statutory beneficiaries. While we may agree that the value parents place on children in our society is no longer associated with the child's ability to provide income to the parents, the legislature has defined who can sue for the wrongful death and injury of a child and we cannot alter the legislative directive. The change the plaintiffs seek must come from the legislature rather than this court.

151 Wn.2d at 390. Moreover, the Cook Court's use of the phrase "continued to care for her parents," the sole passage on which the Armantrouts rely, was in passing and without analytical support. The decision as a whole gives no indication the court was declaring a new, broadened interpretation of financial support.

Finally, the decisions from other states to which the Armantrouts point are of no help. They either lack analysis, see Chavez v. Carperter, 91 Cal. App. 4th 1433, 111 Cal. Rptr. 2d 534 (2001) (court discussed without analysis decedent's provision of services as evidence of financial support), or they interpret the support element as including both financial support and support with services. Hogan v. Williams, 193 F.2d 220 (5<sup>th</sup> Cir. 1951); Deaconess Hosp. v. Gruber, 791 N.E.2d 841 (Ind. App. 2003); Hines v. Hines, 32 Or. App. 209, 573 P.2d 1260 (1978). Here, the meaning of "support" is not at issue. As the Armantrouts have conceded, in contrast to other jurisdictions, through a century of consistent decisions Washington has limited "support" to "financial support." Unless this court is prepared to retreat from that history, unequivocally reaffirmed just four years ago, guidance from these other states is unhelpful.

## CONCLUSION

At its heart, the Armantrouts' argument is not that the term "financial" support reasonably includes support with services. Rather, it is that "financially" should be read out of the statute so that any support with economic value, including support through services, can serve as the basis for beneficiary status. The Armantrouts' arguments do not justify reversing this Court's clear refusal to invade the province of the legislature or to reverse a century of decisions. Respondent, therefore, respectfully asks this court to affirm the Court of Appeals.

Submitted this 10<sup>th</sup> day of November, 2008.

GOSSELIN LAW OFFICE, PLLC

By: 

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Attorney for Respondent

# **APPENDIX**

SUBSTITUTE SENATE BILL 6696

State of Washington 60th Legislature 2008 Regular Session

By Senate Government Operations & Elections (originally sponsored by Senators Fairley, Prentice, Kohl-Welles, Tom, Weinstein, Kline, McDermott, and Murray)

READ FIRST TIME 02/08/08.

1 AN ACT Relating to actions for wrongful injury or death; amending  
2 RCW 4.20.020, 4.20.046, 4.20.060, and 4.24.010; creating new sections;  
3 and providing an expiration date.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 Sec. 1. RCW 4.20.020 and 2007 c 156 s 29 are each amended to read  
6 as follows:

7 Every (~~such~~) action under RCW 4.20.010 shall be for the benefit  
8 of the (~~wife, husband~~) spouse, state registered domestic partner,  
9 (~~child~~) or children, including stepchildren, of the person whose  
10 death shall have been so caused. If there (~~be~~) is no (~~wife,~~  
11 ~~husband~~) spouse, state registered domestic partner, or (~~such~~) child  
12 (~~or children, such~~), the action may be maintained for the benefit of:  
13 (1) The parents(~~r~~) of a deceased adult child if the parents are  
14 financially dependent upon the adult child for support or if the  
15 parents have had significant involvement in the adult child's life; or  
16 (2) an individual who is the sole beneficiary of the decedent's life  
17 insurance and has had significant involvement in the decedent's life.  
18 If there is no spouse, state registered domestic partner, child,  
19 parent, or such life insurance beneficiary, the action may be

1 maintained for the benefit of sisters((τ)) or brothers((τ)) who ((may  
2 be)) are financially dependent upon the deceased person for support((τ  
3 and who are resident within the United States at the time of his  
4 death)).

5 In every such action the jury may ~~((give such))~~ award economic and  
6 noneconomic damages as((τ)) under all circumstances of the case((τ))  
7 may to them seem just.

8 For the purposes of this section, "financial dependence" includes  
9 dependence based on the receipt of services that have an economic or  
10 monetary value, or dependence based on actual monetary payments or  
11 contributions.

12 Sec. 2. RCW 4.20.046 and 1993 c 44 s 1 are each amended to read as  
13 follows:

14 (1) All causes of action by a person or persons against another  
15 person or persons shall survive to the personal representatives of the  
16 former and against the personal representatives of the latter, whether  
17 such actions arise on contract or otherwise, and whether or not such  
18 actions would have survived at the common law or prior to the date of  
19 enactment of this section(~~(+ PROVIDED, HOWEVER, That)~~).

0 (2) In addition to recovering economic losses, the personal  
21 representative ((shall only be)) is entitled to recover on behalf of  
22 those beneficiaries identified under RCW 4.20.020 any noneconomic  
23 damages for pain and suffering, anxiety, emotional distress, or  
24 humiliation, personal to and suffered by ((a)) the deceased ((on behalf  
25 of those beneficiaries enumerated in RCW 4.20.020, and such)) in such  
26 amounts as determined by a jury to be just under all the circumstances  
27 of the case. Damages under this section are recoverable regardless of  
28 whether or not the death was occasioned by the injury that is the basis  
29 for the action.

30 (3) The liability of property of a husband and wife held by them as  
31 community property and subject to execution in satisfaction of a claim  
32 enforceable against such property so held shall not be affected by the  
33 death of either or both spouses; and a cause of action shall remain an  
34 asset as though both claiming spouses continued to live despite the  
35 death of either or both claiming spouses.

36 ~~((+2+))~~ (4) Where death or an injury to person or property,  
37 resulting from a wrongful act, neglect or default, occurs

1 simultaneously with or after the death of a person who would have been  
2 liable therefor if his death had not occurred simultaneously with such  
3 death or injury or had not intervened between the wrongful act, neglect  
4 or default and the resulting death or injury, an action to recover  
5 damages for such death or injury may be maintained against the personal  
6 representative of such person.

7 Sec. 3. RCW 4.20.060 and 2007 c 156 s 30 are each amended to read  
8 as follows:

9 (1) No action for a personal injury to any person occasioning death  
10 shall abate, nor shall such right of action ~~((determine))~~ terminate, by  
11 reason of ~~((such))~~ the death~~((7))~~ if ~~((such))~~ the person has a  
12 surviving ~~((spouse, state registered domestic partner, or child living,~~  
13 ~~including stepchildren, or leaving no surviving spouse, state~~  
14 ~~registered domestic partner, or such children, if there is dependent~~  
15 ~~upon the deceased for support and resident within the United States at~~  
16 ~~the time of decedent's death, parents, sisters, or brothers, but such~~  
17 ~~action may be prosecuted, or commenced and prosecuted, by the executor~~  
18 ~~or administrator))~~ beneficiary in whose favor the action may be brought  
19 under subsection (2) of this section.

20 (2) An action under this section shall be brought by the personal  
21 representative of the deceased((7)) in favor of ((such)) the surviving  
22 spouse or state registered domestic partner, ((or in favor of the  
23 surviving spouse or state registered domestic partner)) and ((such))  
24 children((, or if)). If there is no surviving spouse ((or)) state  
25 registered domestic partner, ((in favor of such child)) or children,  
26 ((or if no surviving spouse, state registered domestic partner, or such  
27 child or children, then)) the action shall be brought in favor of the  
28 decedent's: (a) Parents((7)) if the parents are financially dependent  
29 upon the decedent for support or if the parents have had significant  
30 involvement in the decedent's life; or (b) sole beneficiary under a  
31 life insurance policy, if the beneficiary is an individual who had a  
32 significant involvement in the decedent's life. If there is no  
33 surviving spouse, state registered domestic partner, child, parent, or  
34 such life insurance beneficiary, the action shall be brought in favor  
35 of the decedent's sisters((7)) or brothers who ((may be)) are  
36 financially dependent upon ((such person)) the decedent for support((7  
37 and resident in the United States at the time of decedent's death)).

1       (3) In addition to recovering economic losses, the persons  
2 identified in subsection (2) of this section are entitled to recover  
3 any noneconomic damages personal to and suffered by the decedent  
4 including, but not limited to, damages for the decedent's pain and  
5 suffering, anxiety, emotional distress, or humiliation, in such amounts  
6 as determined by a jury to be just under all the circumstances of the  
7 case.

8       (4) For the purposes of this section, "financial dependence"  
9 includes dependence based on the receipt of services that have an  
10 economic or monetary value, or dependence based on actual monetary  
11 payments or contributions.

12       Sec. 4. RCW 4.24.010 and 1998 c 237 s 2 are each amended to read  
13 as follows:

14       (1) A ((mother or father, or both,)) parent who has regularly  
15 contributed to the support of his or her minor child, ((and the mother  
16 or father, or both, of a child on whom either, or both, are)) or a  
17 parent who is financially dependent on a child for support or who has  
18 had significant involvement in a child's life, may maintain or join  
19 ((as a party)) an action as plaintiff for the injury or death of the  
20 child.

21       (2) Each parent, separately from the other parent, is entitled to  
22 recover for his or her own loss regardless of marital status, even  
23 though this section creates only one cause of action((, but if the  
24 parents of the child are not married, are separated, or not married to  
25 each other damages may be awarded to each plaintiff separately, as the  
26 trier of fact finds just and equitable)).

27       (3) If one parent brings an action under this section and the other  
28 parent is not named as a plaintiff, notice of the institution of the  
29 suit, together with a copy of the complaint, shall be served upon the  
30 other parent: PROVIDED, That notice shall be required only if  
31 parentage has been duly established.

32       Such notice shall be in compliance with the statutory requirements  
33 for a summons. Such notice shall state that the other parent must join  
34 as a party to the suit within twenty days or the right to recover  
35 damages under this section shall be barred. Failure of the other  
36 parent to timely appear shall bar such parent's action to recover any  
37 part of an award made to the party instituting the suit.

1       (4) In (~~such~~) an action under this section, in addition to  
2 damages for medical, hospital, medication expenses, and loss of  
3 services and support, damages may be recovered for the loss of love and  
4 companionship of the child and for injury to or destruction of the  
5 parent-child relationship in such amount as, under all the  
6 circumstances of the case, may be just.

7       (5) For the purposes of this section, "financial dependence"  
8 includes dependence based on the receipt of services that have an  
9 economic or monetary value, or dependence based on actual monetary  
10 payments or contributions.

11       NEW SECTION. Sec. 5. This act applies to all deaths occurring  
12 before, on, or after the effective date of this act only if the cause  
13 of action occurred within the limitation period set forth in RCW  
14 4.16.080; no claims outside that period shall be revived or created as  
15 a result of this act.

16       NEW SECTION. Sec. 6. (1) On December 1, 2009, and every December  
17 1st thereafter, the risk management division within the office of  
18 financial management shall report to the house appropriations  
19 committee, the house state government and tribal affairs committee, the  
20 senate ways and means committee, and the senate government operations  
21 and elections committee, or successor committees, on the incidents  
22 covered by this act that involve state agencies.

23       (2) On December 1, 2009, and every December 1st thereafter, each  
24 local government risk pool or local government risk management  
25 division, or the equivalent in local governments, shall report to the  
26 legislative body of the local government on the incidents covered by  
27 this act that involve the local government.

28       (3) This section expires December 2, 2014.

--- END ---