

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
3/31/2022 1:31 PM  
BY ERIN L. LENNON  
CLERK

NO. 100429-0

SUPREME COURT OF THE STATE OF WASHINGTON

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MINNIE THOMAS,

Appellant,

v.

SWEDISH MEDICAL CENTER,

Respondent.

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RESPONDENT'S ANSWER TO MOTION  
FOR DISCRETIONARY REVIEW

---

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## **I. IDENTITY OF RESPONDING PARTIES**

Respondent Swedish Medical Center (“Swedish”) submits this Answer to Appellant Minnie Thomas’s “Request to Review the Decision Not to Publish the Opinion,” which the Court of Appeals routed to this Court and is being treated as a Motion for Discretionary Review.

## **II. COURT OF APPEALS DECISION**

On September 27, 2021, in an unpublished opinion, Division I of the Court of Appeals unanimously affirmed, and subsequently denied reconsideration of, the trial court’s (1) summary judgment dismissal of Ms. Thomas’s medical malpractice lawsuit due to lack of expert medical testimony on standard of care or causation and (2) denial of her request for a second continuance when she failed to provide a good reason for further delay. Ms. Thomas moved for publication of Division I’s opinion. Division I summarily denied Ms. Thomas’s motion to publish without requesting an answer from Swedish. *Order on*

*Publ'n at 1.*<sup>1</sup> Ms. Thomas now moves for discretionary review of Division I's order denying her motion to publish, arguing that publication is necessary because the "general public will have an interest in the outcome," *Mot. at 2*, of her case.

This Court should decline to accept review because, in rendering its unpublished decision and denying Ms. Thomas's subsequent motion to publish, Division I did not commit obvious or probable error, RAP 13.5(b)(1) and (2), nor did it substantially depart from the normal course of judicial proceedings. RAP 13.5(b)(3). Rather, Division I appropriately denied Ms. Thomas's request because her motion did not comply with RAP 12.3(e), and the opinion of which she sought publication did not qualify under any RAP 12.3(d) criteria. Division I's decision is also supported by existing case law. This Court should deny Ms. Thomas's motion for discretionary review.

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<sup>1</sup> Ms. Thomas's motion to publish and Division I's ruling that denied it are attached in an appendix.

### **III. COUNTERSTATEMENT OF ISSUES PRESENTED FOR REVIEW**

Should this Court decline to accept discretionary review when Division I's decision not to publish comports with RAP 12.3(d) and (e) and existing case law?

### **IV. COUNTERSTATEMENT OF THE CASE**

#### **A. Factual Background**

Swedish respectfully refers the Court to the facts within its accompanying answer to Ms. Thomas's Petition for Review.

#### **B. Additional Procedural History Pertinent to Motion to Publish.**

After the parties completed briefing, Division I determined on September 16, 2021, that it would decide Ms. Thomas's appeal without oral argument. Ten days later, Division I issued its unpublished opinion affirming the trial court's summary judgment dismissal of Ms. Thomas's lawsuit and denial of her requests for additional continuances:

Because the evidence presented on summary judgment failed to establish genuine issues of material fact whether Swedish Hospital breached the standard of care or how the alleged breach

proximately caused Thomas any injury, summary judgment was proper. And because the court granted Thomas a one-month continuance to obtain evidence substantiating her medical malpractice claims, the court did not abuse its discretion in denying Thomas an additional continuance.

Therefore, we affirm.

*Slip Op.* at 1.

On October 18, 2021, Ms. Thomas moved to publish, stating only:

I, Minnie Thomas, am petitioning the court of appeals to publish the court of appeals' decision to affirm the trial court's unfair decision to affirm my legit complaint against the defendant for denying me care in the emergency room for chest pains and difficulty breathing; and also for affirming the trial court's unfair discretion to deny me a continuance to gather crucial irrefutable evidence to support my "legit claim" against the Defendant.

*Mot. for Publ'n.* at 1. Division I did not request a response from Swedish, and on November 4, 2021, denied Ms. Thomas's motion to publish. *Order on Publ'n.* at 1.

On December 6, 2021, Ms. Thomas filed in Division I a "Request to Review the Decision Not to Publish the Opinion," routed to this Court and construed as a Motion for Discretionary



Review of an interlocutory decision of the Court of Appeals. Ms. Thomas's singular argument for publication concerns supposed public interest in her case due to an alleged violation of a purported constitutional right:

I sincerely believe that the general public will have an 'interest' in the 'outcome' of my complaint in this action against the trial court to the court of appeals over the violation of my constitutional right for a continuance under the CR 56 to save my case after 11-18-2019 with a 'declaration' from my chosen designated medical expert per my request by 12-30-2019 stating precisely how the defendant, Swedish Hospital['s], 'refusal' of medical care in the emergency room while I was complaining about severe chest pains and difficulty breathing fell far below the standard of applicable medical care, especially for a person who has a 'Family History' of Heart Disease in her medical record.

*Mot.* at 2-3 (emphasis original).

Because Ms. Thomas does not establish that Division I erred or departed from the normal course of judicial proceedings, Swedish submits this response in opposition.

#### **V. ARGUMENT WHY REVIEW SHOULD BE DENIED**

Under RAP 13.5(b), this Court will only accept discretionary review of an interlocutory decision of the Court of

Appeals in the following circumstances:

- (1) If the Court of Appeals has committed an obvious error which would render further proceedings useless; or
- (2) If the Court of Appeals has committed probable error and the decision of the Court of Appeals substantially alters the status quo or substantially limits the freedom of a party to act; or
- (3) If the Court of Appeals has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a trial court or administrative agency, as to call for the exercise of revisory jurisdiction by the Supreme Court.

RAP 13.5(b).<sup>2</sup>

Interlocutory review is generally disfavored. *State v. Richardson*, 177 Wn.2d 351, 365, 302 P.3d 156 (2013) (noting that the appellate courts accept only about 10 percent of motions for discretionary review that are filed (citing *In re Dependency of Grove*, 127 Wn.2d 221, 235-36, 897 P.2d 1252 (1995))). The

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<sup>2</sup> The criteria for discretionary review of an interlocutory decision of the Court of Appeals by the Supreme Court parallel the criteria for discretionary review of an interlocutory trial court decision. *Compare* RAP 13.5(b) *with* RAP 2.3(b)(1)-(3).

purpose of a motion for discretionary review is thus to present authority and argument addressing whether this Court should accept review. *See* RAP 13.5(b). This question is not a mere formality, and appellate courts will decline review if the moving party fails to establish the requisite conditions. *See, e.g., Eide v. Dep't of Licensing*, 101 Wn. App. 218, 221-23, 3 P.3d 208 (2000). The party seeking review “bears a heavy burden.” *In re Grove*, 127 Wn.2d at 235.

Because Ms. Thomas has not met her burden, this Court should decline to accept discretionary review. Ms. Thomas does not even cite RAP 13.5(b), let alone explain with reasoned argument how she believes Division I erred or departed from the normal course of judicial proceedings. Arguments that are not supported by pertinent authority or meaningful analysis need not be considered by this Court. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992) (arguments not supported by authority); *State v. Elliott*, 114 Wn.2d 6, 15, 785 P.2d 440 (1990) (insufficiently argued claims); *Saunders v.*

*Lloyd's of London*, 113 Wn.2d 330, 345, 779 P.2d 249 (1989) (arguments not supported by adequate argument and authority); *Clam Shacks of Am., Inc. v. Skagit County*, 109 Wn.2d 91, 98, 743 P.2d 265 (1987) (issues not concisely stated).

Moreover, Division I complied with pertinent authorities in denying Ms. Thomas's request for publication because her motion was inadequate on its face, as it did not address any of the RAP 12.3(e) criteria. Under RAP 12.3(e), a motion to publish "*must* be supported by addressing the following criteria: ... (2) applicant's reasons for believing that publication is necessary; (3) whether the decision determines an unsettled or new question of law or constitutional principle; (4) whether the decision modifies, clarifies or reverses an established principle of law; (5) whether the decision is of general public interest or importance; or (6) whether the decision is in conflict with a prior opinion of the Court of Appeals." RAP 12.3(e) (emphasis added). Ms. Thomas's motion to publish addressed none of these.

Finally, the underlying decision she sought have published did not qualify as publishable under the factors set forth in RAP 12.3(d). Under RAP 12.3(d), the Court of Appeals uses at least the following factors in determining whether to publish its decision: (1) whether the decision determines an unsettled or new question of law or constitutional principle; (2) whether the decision modifies, clarifies or reverses an established principle of law; (3) whether a decision is of general public interest or importance; or (4) whether a case is in conflict with a prior opinion of the Court of Appeals. Ms. Thomas has not established that any of these factors apply.

While, for the first time in her motion for discretionary review to this Court<sup>3</sup>, Ms. Thomas appears to implicitly raise, *Mot. at 2-3*, RAP 12.3(d)(1) (constitutional principle), and RAP 12.3(d)(3) (public interest), her conclusory assertions are

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<sup>3</sup> Under RAP 2.5(a), this Court does not generally consider arguments raised for the first time on appeal. *See e.g., LK Operating, LLC v. Collection Grp., LLC*, 181 Wn.2d 117, 126, 330 P.3d 190, 195 (2014).

insufficient. Ms. Thomas's claim that the trial court somehow violated an unidentified, manufactured constitutional right in denying her additional continuances is unsupported and groundless, as discussed in Swedish's concurrently filed Response to Ms. Thomas's Petition for review. *See, e.g., Bennett v. Harmon*, 2001 Wash. App. LEXIS 1624 ("constitutional claims will not be reviewed in the absence of considered argument")<sup>4</sup>.

Likewise, Ms. Thomas fails to articulate how Division I's decision to deny her continuance will impact anyone aside from herself and Swedish so as to raise an issue of public interest. *See, e.g., Mount Vernon v. Municipal Court*, 93 Wn. App. 501, 973 P.2d 3 (1998) (because alleged breathalyzer printout error had occurred about 100 times per year, its validity impacted many more individuals than simply the petitioner in that case, raising

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<sup>4</sup> The appellant in *Bennett*, like Ms. Thomas here, baldly asserted constitutional claims. That decision was also properly unpublished, and Swedish cites it here simply to underscore this point as persuasive authority under GR 14.1.

an issue of public interest).

Rather than involving any RAP 12.3(d) criteria for publication, Division I's opinion was guided by well-established law: that medical malpractice plaintiffs must generally support their cases with expert medical testimony on standard of care and causation, and that CR 56(f) continuances are discretionary. *See Resp. to Pet. for Rev.* Division I thus correctly issued an unpublished decision. *See, e.g., State v. Fitzpatrick*, 5 Wn. App. 661, 668, 491 P.2d 262 (1971) (“To continue the publication of cases which merely restate well established principles of the law fills up our bookshelves, complicates legal research and will inevitably adversely affect the computerization of the case law of our state.”)

Given Ms. Thomas's deficient pleading and insufficient arguments, and Division I's compliance with applicable law, discretionary review is not warranted under any of the criteria set forth in RAP 13.5(b).

## **VI. CONCLUSION**

Because Ms. Thomas has failed to establish that any RAP 13.5(b) criteria applies to Division I's decision not to publish its opinion, this Court should deny Ms. Thomas's motion for discretionary review of that decision.

I declare that this document contains 1,899 words.

RESPECTFULLY SUBMITTED this 31st day of March,  
2022.

FAIN ANDERSON VANDERHOEF  
ROSENDAHL O'HALLORAN SPILLANE,  
PLLC

*s/Whitney A. Magnuson*  
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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that under the laws of the State of Washington that on the 31st day of March, 2022, I caused a true and correct copy of the foregoing document, “Respondent’s Answer to Motion for Discretionary Review,” to be delivered in the manner indicated below to the following counsel of record:

Pro Se Appellant:

Minnie Thomas  
8208 161st Avenue NE, Unit A-226  
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Ph: 425.891.1867

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- Regular U.S. Mail
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SENT VIA:

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- ABC Legal Services
- Express Mail
- Regular U.S. Mail
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DATED this 31st day of March, 2022, at Seattle,  
Washington.

*s/Carrie A. Custer*  
\_\_\_\_\_  
Carrie A. Custer, Legal Assistant

# FAVROS LAW

March 31, 2022 - 1:31 PM

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NO. 100429-0

SUPREME COURT OF THE STATE OF WASHINGTON

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MINNIE THOMAS,

Appellant,

v.

SWEDISH MEDICAL CENTER,

Respondent.

---

APPENDIX TO RESPONDENT'S ANSWER  
TO MOTION FOR DISCRETIONARY REVIEW

---

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<b><u>Document Description</u></b>	<b><u>App. No.</u></b>
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Court of Appeals 9/27/21 Order Denying Motion to Publish	4

CASE NO 809181

COURT OF APPEALS

Division 1

OF THE STATE OF WASHINGTON

MARION THOMAS

Appellant

v

SWEDESH HOSPITAL

FILED  
COURT OF APPEALS DIV 1  
STATE OF WASHINGTON  
2021 OCT 18 PM 4:11

Re: THE DESIRE TO HAVE THE  
OPINION PUBLISHED

I, Marion Thomas, am petitioning the Court of Appeals to publish the Court of Appeals' decision to affirm the Trial Court's certain decision to affirm my legit complaint against the defendant for denying me care in the emergency Room for chest pains and difficulty breathing; and also for affirming the Trial Court's certain discretion to deny me a continuance to gather crucial favorable evidence to support my legit claim.

against the defendant

DATED this 14th day of October,  
2021

By: Marie Thomas  
Procurer Litoral

MOTION TO REQUEST  
THE DEBRIEF TO HAVE  
THE COURT OF APPEALS'  
OPINION PUBLISHED

CERTIFICATE OF SERVICE

The undersigned hereby certifies under penalty of perjury under the laws of the state of Washington, that I am now, and at all times material hereto, a citizen of the United States, a resident of the state of Washington, over the age of 18 years, not a party to, nor interested in the above entitled action, and competent to be a witness herein. I caused to be served, pursuant to CR5(b)(7), on this date the foregoing in the manner indicated to the parties listed below:

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  - ECF/Email
  - 1st Class mail
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- Hand delivered

Attorney  
Michelle Allias  
701 5th Ave # 4750  
Seattle, WA

Dated this 15th day of October, 2021  
at Redmond, Washington 98052

MOTION FOR RE-  
CONSIDERATION OF  
THE OPINION TO  
AFFIRM THE TRIAL  
COURT'S DECISION

MARENNE THOMAS  
8208 161st Ave NE #A-22L  
Redmond, Washington 98052  
425-891-1867



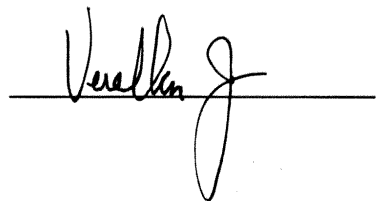
IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE

MINNIE THOMAS,	)	No. 80918-1-I
	)	
Appellant,	)	
	)	
v.	)	
	)	
SWEDISH HOSPITAL,	)	ORDER DENYING MOTION
	)	TO PUBLISH OPINION
Respondent.	)	
_____	)	

Appellant filed a motion to publish the court's September 27, 2021 opinion.  
The panel has determined the motion should be denied. Now, therefore, it is  
hereby

ORDERED that the appellant's motion to publish the opinion is denied.

FOR THE PANEL:



A handwritten signature in black ink, appearing to read "Verellen J.", is written over a horizontal line.

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that under the laws of the State of Washington that on the 31st day of March, 2022, I caused a true and correct copy of the foregoing document, “Appendix to Respondent’s Answer to Motion for Discretionary Review,” to be delivered in the manner indicated below to the following counsel of record:

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DATED this 31st day of March, 2022, at Seattle,  
Washington.

s/Carrie A. Custer  
Carrie A. Custer, Legal Assistant

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