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NO. 72736-2-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

GREGORY TAYLOE-MCCANDLESS, individually, and BECKY GEARHART, individually, and SARA ANDERSON, Personal Representative for the Estate of Hunter L. McCandless and on behalf of the Estate of Hunter L. McCandless,

Appellant,

v.

STATE OF WASHINGTON, and its subsidiaries, DEPARTMENT OF SOCIAL AND HEALTH SERVICES AND CHILD PROTECTIVE SERVICES, JOHN DOES 1-10, JANE DOES 1-10 and CORPORATIONS ABC, DEF & GHI,

Respondents.

RESPONDENT'S BRIEF

ROBERT W. FERGUSON
Attorney General

KENT LIU
Assistant Attorney General
WSBA #21599
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
206-464-7352
OID #91019

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I. INTRODUCTION

Appellants, Gregory Tayloe-McCandless and Becky Gearhart (collectively McCandless), applied to the Department of Social and Health Services (DSHS) and the Department of Early Learning (DEL) for child care benefits because Gearhart worked during the day while Tayloe-McCandless, who suffered from epilepsy, stayed home to care for their three-month-old son Hunter. Tragically, Hunter died while under Tayloe-McCandless's care.

McCandless (including Hunter's estate) filed suit, seeking to place blame for the death of their son on DSHS and DEL by claiming that the denial of child care assistance was the proximate cause of their son's death.[1] McCandless also claimed DSHS and DEL were negligent in failing to make a report of child neglect to Child Protective Services (CPS) and failing to conduct a child neglect investigation when it received their application for child care benefits.

There is no legal basis for any of McCandless's claims. Under the facts of this case, Washington law recognizes no cause of action that would allow McCandless to hold DSHS and DEL (collectively DSHS[2]) liable for their son's death.

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[1] On appeal, McCandless appears to abandon this claim for negligent failure to award benefits. Br. of Appellant at 1-19.

[2] Hereafter, DSHS and DEL will be referred to collectively as DSHS for convenience.

II. ISSUES PRESENTED

1. Whether the trial court properly granted DSHS's motion for judgment on the pleadings when McCandless failed to establish a claim for "failure to investigate" where McCandless's application for services was based on a disability and not based on any allegations of child abuse or neglect.

2. Whether the trial court properly granted DSHS's motion for judgment on the pleadings when McCandless failed to establish a claim for "failure to report" where McCandless's application for services was based on a disability and not based on any allegations of child abuse or neglect.

3. Whether the trial court correctly declined to rule on McCandless's motion to amend the complaint when he failed to properly bring the motion before the court.

III. STATEMENT OF THE CASE

A. McCandless's Application for Child Care Assistance

Appellants, Gregory Tayloe-McCandless and Becky Gearhart, were the father and mother of Hunter McCandless. Clerk's Papers (CP) at 36. At the time of his death, Hunter was three months-old and had been living with his parents and five year-old sister in an apartment in Everett, Washington. CP at 36. Tayloe-McCandless stayed home and cared for

Hunter while Gearhart worked during the day. CP at 36. Tayloe-McCandless suffered from epilepsy and experienced seizures. CP at 36. McCandless applied to DSHS for child care assistance because Gearhart worked during the day and Tayloe-McCandless suffered from epilepsy. CP at 36. Tayloe-McCandless's application contained a note from his doctor that stated "this is to confirm Mr. Tayloe-McCandless has epilepsy and should not be left solely caring for his young children." CP at 43. The application for child care assistance was denied because Tayloe-McCandless and Gearhart did not complete the application process for child care assistance. Brief of Appellant at 3; CP at 44.

McCandless alleged that on May 26, 2010, Tayloe-McCandless was home alone with Hunter. CP at 37. McCandless alleged that Tayloe-McCandless suffered a seizure, collapsed onto Hunter, resulting in Hunter's death. CP at 37.

B. The Proceedings Below

On June 13, 2013, McCandless filed a lawsuit against DSHS. CP at 34. McCandless claim DSHS was negligent in failing to "extend child care benefits and assistance to Plaintiffs." CP at 38. McCandless also claim DSHS failed to "investigate and take action to remove Hunter from an environment threatening his wellbeing." CP at 38. McCandless claim DSHS's failure to provide "appropriate benefits" and "failure to

investigate" were the proximate cause of Hunter's death. CP at 38. DSHS filed its answer to McCandless's complaint on July 31, 2013. CP at 41.

On September 16, 2014, DSHS filed a motion for judgment on the pleadings under Civil Rule (CR) 12(c). CP at 24. DSHS argued that McCandless's claim for "failure to extend child care benefits" was not a cognizable cause of action. CP at 24-31. DSHS argued that even assuming the veracity of all well pleaded factual allegations in this case, McCandless cannot satisfy the elements of the "negligent investigation" cause of action under RCW 26.44 because this case does not involve a harmful placement decision or allegations of child abuse or neglect. CP at 4-10, 24-31.

A hearing on DSHS's CR 12(c) motion was held on October 23, 2014, before Snohomish County Superior Court Judge Ellen Fair.[3] CP at 1-3. After hearing argument from the parties, the trial court granted DSHS's motion and dismissed the McCandless's complaint. CP at 1-3. Counsel for McCandless then moved to amend the complaint but provided no information as to the nature of his proposed amendment. CP at 3. The trial court declined to rule on the motion to amend because the motion was

[3] Unfortunately, no transcript or recording of the hearing is available because, unbeknownst to the parties, Snohomish County Superior Court does not automatically record civil motions.

not properly before the court[4]. CP at 3. Notably, McCandless did not file a motion to amend the complaint any time prior to the October 23, 2014, hearing, nor did McCandless make any attempt to amend the complaint after the hearing.

On appeal, McCandless argue the trial court erred in dismissing their claims against DSHS for "negligent investigation," and "failure to report" under the mandatory reporting rules. Br. of Appellant at 1-2. However, McCandless did not assign error or advance any argument on their claim that DSHS "failed to extend child care benefits." CP at 66. Thus, McCandless appears to have abandoned this claim.[5]

IV. ARGUMENT

A. The Trial Court Properly Granted DSHS's Motion for Judgment on the Pleadings

1. Standard of review.

The standard of review for a CR 12(c) motion for judgment on the pleadings is *de novo*. *P.E. Sys., LLC v. CPI Corp.*, 176 Wn.2d 198, 203, 289 P.3d 638, 642 (2012).

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[4] McCandless incorrectly stated that Judge Fair "denied" their motion to amend the complaint. Br. of Appellant at 5. Judge Fair declined to rule on this motion because it was not before the court. CP at 3.

[5] A party abandons an issue by failing to pursue it on appeal by (1) failing to brief the issue or (2) explicitly abandoning the issue at oral argument. *Holder v. City of Vancouver*, 136 Wn. App. 104, 147 P.3d 641 (2006).

2. CR 12(c) motion for judgment on the pleadings.

After the pleadings are closed but within such time as not to delay trial any party may move for judgment on the pleadings. CR 12(c). When an answer is filed prior to a motion to dismiss for failure to state a claim upon which relief can be granted under CR 12(b)(6), the motion will be considered a motion for judgment on the pleadings pursuant to CR 12(c). *Blenheim v. Dawson & Hall Ltd.*, 35 Wn. App. 435, 437, 667 P.2d 125 (1983). A motion for judgment on the pleadings admits only facts well pleaded and not mere conclusions, the pleader's interpretations of statutes involved, or his construction of the subject matter. *City of Moses Lake v. Grant Cnty.*, 39 Wn. App. 256, 262, 693 P.2d 140 (1984).

The standard applicable to a CR 12(b)(6) motion also applies to a CR 12(c) motion that would otherwise have been a 12(b)(6) motion. *Suleiman v. Lasher*, 48 Wn. App. 373, 376, 739 P.2d 712 (1987) (citing J. Friedenthal, M. Kane & A. Miller, *Civil Procedure* § 294-95 (1985)). Dismissal under a CR 12(b)(6) claim is appropriate where it appears beyond a reasonable doubt that no facts exist that would justify recovery, even while accepting as true the allegations contained in plaintiff's complaint. *Reid v. Pierce Cnty.*, 136 Wn.2d 195, 201, 961 P.2d 333 (1998).

3. McCandless cannot establish a negligent investigation cause of action.

To prove negligence, McCandless must establish four essential elements: duty, breach, proximate cause, and damages. *Couch v. Dep't of Corr.*, 113 Wn. App. 556, 563, 54 P.3d 197 (2002), *review denied*, 149 Wn.2d 1012 (2003). The threshold question in a negligence action is one of law: whether the defendant owes an actionable tort duty to the plaintiff. *Linville v. State*, 137 Wn. App. 201, 208, 151 P.3d 1073 (2007).

The existence of an actionable tort duty must be proved by a plaintiff just like any other element of negligence. *LaPlante v. State*, 85 Wn.2d. 154, 159, 531 P.2d. 299 (1975). There are several facets to this legal question, particularly where a sovereign entity is a defendant. Where the State, or a state agency, is a defendant, the primary focus for determining whether an actionable tort duty exists is on statutes which create governmental functions and corresponding tort liability. *Linville*, 137 Wn. App. at 208. This is because, at common law, the State was immune from negligence lawsuits. *Id.* *See also* Const. art. II, § 26 (the Legislature, not the courts, has the power to "direct by law" what lawsuits may be brought against the State). "Only where the legislature has expressly waived sovereign immunity by statute can there be the possibility of an actionable duty owed by the State."

Linville, 137 Wn. App. at 208. If sovereign immunity is statutorily waived for the acts or omissions at issue, then the question becomes whether a statute or regulation expressly or implicitly creates an actionable tort duty. *Id.* This is because "State agencies are creatures of statute, and their legal duties are determined by the legislature . . . " *Murphy v. State,* 115 Wn. App. 297, 317, 62 P.3d 533, *review denied*, 149 Wn.2d 1035, 75 P.3d 968 (2003).

State statutes cannot be construed as imposing a duty unless that statute expressly imposes a duty or is found to contain an implied duty. *Bennett v. Hardy*, 113 Wn.2d 912, 920-21, 784 P.2d 1258 (1990). Here, McCandless failed to articulate either an express or implied duty owed to them by DSHS.

a. A negligent investigation claim is narrowly limited to harmful placement decisions.

There is only one narrow circumstance in which child welfare statutes have been held to impose a tort duty on the State. The Washington Supreme Court concluded that a private cause of action is available for a harmful placement decision resulting from a negligent investigation of a referral of child abuse or neglect conducted pursuant to RCW 26.44.050. *Tyner v. Dep't of Soc. & Health Servs.*, 141 Wn.2d 68,

77-82, 1 P.3d 1148 (2000); *M.W. v. Dep't of Soc. & Health Servs.*, 149 Wn.2d 589, 598-99, 601-02, 70 P.3d 954 (2003).

RCW 26.44.050 provides as follows:

> Upon receipt of a report concerning the possible occurrence of abuse or neglect, the law enforcement agency or the department of social and health services must investigate and provide the protective services section with a report in accordance with chapter 74.13 RCW, and where necessary to refer such report to the court.

In explaining the duty under the negligent investigation cause of action, the *M.W.* court clarified that there is no "general tort claim for negligent investigation." *M.W.*, 149 Wn.2d at 601. Instead, there is a narrow exception allowing a cause of action only when, during a child abuse or neglect investigation conducted pursuant to RCW 26.44.050, "DSHS has gathered incomplete or biased information that results in a harmful placement decision such as removing a child from a non-abusive home, placing a child in an abusive home or letting a child remain in an abusive home." *M.W.*, 149 Wn.2d at 596, 602.[6]

The court in *M.W.* declined to expand the negligent investigation cause of action beyond these bounds because the statute (RCW 26.44)

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[6] The Supreme Court's analysis in *M.W.* was based, in part, upon the analysis conducted by Judge Morgan in his lengthy dissent to *M.W. v. Dep't of Soc. & Health Servs.*, 110 Wn. App. 233, 255-56, 39 P.3d 993 (2002) (Morgan, J., dissenting). 149 Wn.2d at 594-95. Judge Morgan examined each of the twelve Washington cases (decided prior to *M.W.*) analyzing DSHS liability under RCW 26.44, et seq. and divided them into three categories: a decision to place, leave, or remove a child from a home. 110 Wn. App. at 255-56.

from which the tort is implied does not contemplate other types of harms. In *M.W.*, the plaintiff alleged emotional harm after a DSHS investigator physically examined her during the course of investigating a report of child abuse. *Id.* at 591. The court declined to extend the negligent investigation cause of action to imply a general duty of reasonable care during the course of an investigation. *Id.* at 599. The *M.W.* court stated that there was "no indication that when the legislature created the duty to investigate child abuse, it contemplated protecting children from *all* physical or *emotional* injuries that may come to them directly from the negligence of DSHS investigators." *Id.* at 598 (emphasis added). The *M.W.* court went on to say that other statutory provisions in the child welfare program are not directly relevant to the scope of the duty to investigate under RCW 26.44.050 and that there is no general statutory duty of reasonable care. *M.W.*, 149 Wn.2d at 599.

Washington courts have been unwilling to imply actionable tort duties from child welfare statutes due to the broad purposes underlying those statutes. Outside of RCW 26.44.050, Washington courts have consistently refused to imply actionable tort duties from other child welfare statutes. *E.g., Braam v. State*, 150 Wn.2d 689, 711-12, 81 P.3d 851 (2003) (no private cause of action can be implied from RCW 74.14A.050, RCW 74.13.250, .280); *Sheikh v. Choe*, 156 Wn.2d

441, 457-58, 128 P.3d 574 (2006) (no private cause of action can be implied from three WAC regulations pertaining to dependent children). These courts have consistently found that child welfare statutes provide "no evidence of legislative intent to create a private cause of action, and that implying one is inconsistent with the broad power vested in DSHS to administer these statutes." *Braam*, 150 Wn.2d at 712 (quoted in *Sheikh*, 156 Wn.2d at 458 n.5). *See also Linville v. State*, 137 Wn. App. 201, 211-13, 151 P.3d 1073 (2007) (no implied legislative intent in daycare insurance statutes to create a remedy against the State for child sexual abuse victims who allegedly were abused in licensed daycare facilities).

McCandless asserts that this Court's decision in *Lewis v. Whatcom Cnty.*, 136 Wn. App. 450, 149 P.3d 686 (2006) narrowed the scope of the Supreme Court's holding in *M.W.* Br. of Appellant at 14. McCandless argues that this Court "rejected the notion that an investigation without a placement decision precluded DSHS from owing a duty toward an abused child . . . " Br. of Appellant at 14. In other words, McCandless reads *Lewis* as permitting a negligent investigation claim to go forward even in cases not involving a harmful placement decision. McCandless's reading of *Lewis* is inaccurate.

In *Lewis*, the victim (Lewis) sued Whatcom County for negligent investigation of child abuse. Lewis alleged she was sexually molested by

her uncle and despite a doctor's report and a police report indicating the possibility she was being abused, the County failed to investigate the allegations. *Lewis*, 136 Wn. App. at 452-53. Whatcom County asserted that no placement decision was made, thus, Lewis' claim for negligent investigation was precluded under *M.W.* *Id.* at 458. However, this Court held that when Whatcom County left a child in an abusive home situation where a parent is sending her child to an uncle who molests her, she was subjected to a placement decision. *Lewis*, 136 Wn. App. at 458. This Court also observed that the facts in *Lewis* were indistinguishable from *Yonker v. Dep't of Soc. & Health Servs.*, 85 Wn. App. 71, 930 P.2d 958 (1997). In *Yonker*, the child lived with his non-abusive mother but had regular visitation with his abusive father. Because DSHS failed to investigate, the visitations continued and so did the abuse. *Id.* at 73-74.

In both cases, the child was allowed to remain in a home after allegations of abuse came to light. In *Lewis*, a doctor's report and a police report indicated a likelihood that the victim was being abused. *Lewis*, 136 Wn. App. at 452-53. In *Yonkers*, the mother reported to CPS her suspicions that her child was being sexually abused by her ex-husband. *Yonkers*, 85 Wn. App. at 73-74. In both instances, even though the abuse occurred outside of the child's primary residence, the child was placed regularly in the care of the abuser. Under these circumstances, this Court

determined that the child was subjected to a placement decision. However, no such facts exist in this case. Hunter was not a subject of an abuse or neglect report, and he was not placed in the care of an abuser outside the home.

b. This case does not involve a harmful placement decision.

McCandless cannot establish that their son was the subject of a harmful placement decision: he was not placed in an abusive home; he was not removed from a non-abusive home; nor was he residing in an abusive home in which DSHS failed to remove him from. *See Roberson v. Perez*, 156 Wn.2d 33, 45, 123 P.3d 844 (2005). In fact, the decision confronting DSHS was whether or not to approve McCandless's application for child care assistance. A decision to grant or deny an application for assistance is clearly not a placement decision in the context of negligent investigation cases under RCW 26.44. Under the facts of this case, McCandless simply cannot overcome the "harmful placement decision" requirement of a RCW 26.44 negligent investigation claim.

Nonetheless, McCandless argues that his application for child care benefits should have triggered a child neglect investigation. Br. of Appellant at 11. However, the central purpose of RCW 26.44 is to protect children from "instances of non-accidental injury, neglect, death,

sexual abuse and cruelty." *See* RCW 26.44.010 "Declaration of Purpose." The narrow duty implied under this statute has never been expanded by our courts to impose a duty on DSHS to investigate the potential of accidental injury associated with the disability or medical condition of a parent. Indeed, the fundamental flaw in McCandless's claim is that this case has never been about child abuse or neglect, or a harmful placement decision; this case involved a concern of accidental harm due to a parent's disability or medical condition, and whether DSHS was under a duty to investigate such a concern. However, Washington courts have never implied such a duty upon the State. To imply such a duty would contradict the Legislature's recognition of the importance of the bond between parent and child:

> The Washington state legislature finds and declares: The bond between a child and his or her parent, custodian, or guardian is of paramount importance, and any intervention into the life of a child is also an intervention into the life of the parent, custodian, or guardian . . .

RCW 26.44.010 "Declaration of Purpose."

Our courts have been unwilling to imply actionable tort duties from child welfare statutes beyond harmful placement decisions. To recognize a cause of action under the facts of this case would serve to expand the narrow exception to the general rule that no tort claim for negligent investigation exists. *M.W.*, 149 Wn.2d at 601. In essence,

McCandless is asking this Court to expand the negligent investigation cause of action well beyond where Washington Courts have been willing to go; to impose a duty on DSHS to investigate a concern of accidental harm based on a parent's disability or medical condition. This Court should decline to do so because the intervention proposed by McCandless is substantial. McCandless suggests that DSHS should ignore the fundamental importance of the parent-child bond and intrude into the family unit based simply on a parent's disability. McCandless's proposal would result in the interference of the parent-child bond of other disabled parents such as the blind, deaf, or seriously ill, even where there has been no effect on the child. The expansion proposed by McCandless is unwarranted and unsupported by legislative intent or case law.

Although McCandless allege that they have a cause of action for negligent investigation and failure to investigate, it is clear that under the facts of this case, these claims exceed the limitations established in *Tyner, M.W.*, and *Braam*.

4. McCandless cannot establish a claim for failure to report.

McCandless claims that DSHS had a duty, under the mandatory reporting rules, to file a report of child neglect upon receiving information regarding Tayloe-McCandless's epilepsy. Br. of Appellant at 11-12.

However, McCandless's claim is groundless. DSHS had no basis to make a report where an application for child care assistance was based on a disability, not on alleged abuse or neglect.

The mandatory reporting rules provide that a mandatory reporter shall make a report when there is "reasonable cause to believe that a child has suffered abuse or neglect . . . " RCW 26.44.030(1)(a). "Reasonable cause" is defined as meaning "a person witnesses or receives a credible written or oral report alleging abuse, including sexual contact, or neglect of a child." RCW 26.44.030(1)(b)(iii).

Furthermore, "abuse or neglect" is defined under RCW 26.44 as:

> [S]exual abuse, sexual exploitation, or injury of a child by any person under circumstances which cause harm to the child's health, welfare, or safety, excluding conduct permitted under RCW 9A.16.100; or the negligent treatment or maltreatment of a child by a person responsible for or providing care to the child. An abused child is a child who has been subjected to child abuse or neglect as defined in this section.

RCW 26.44.020(1).

According to the plain language of the statute, mandatory reporting is triggered when there is reasonable cause to believe a child had been subjected to abuse or negligent treatment. Here, McCandless do not allege that their son had been subjected to abuse or negligent treatment. Instead, they assert that Tayloe-McCandless's epilepsy posed a danger to their

child and DSHS failed to "investigate and take action to remove Hunter from an environment threatening his wellbeing." CP at 38. Yet, many parents suffer disabilities or medical conditions that may pose a danger to children under their care. The risk to a child from a parent suffering from a disability or a medical condition such as epilepsy has never been determined by our courts to be tantamount to child abuse or neglect under RCW 26.44. If that were the case, any parent applying for assistance based on a disability may be subjected to mandatory reporting and investigation. Certainly, this is not what the Legislature intended. The Legislature's intent under RCW 26.44 is to protect children from abuse or neglect, not to subject parents to mandatory reporting, investigation, or removal of a child from the family home based on a disability or medical need.

In their brief, McCandless also argue that the court should "accept as true that DSHS and its employees had a duty to report under RCW 26.44.030 but failed to do so." Br. of Appellant at 11. However, this statement is a legal conclusion that this Court is not required to accept. A motion for judgment on the pleadings admits only facts well pleaded and not mere conclusions or the pleader's construction of the subject matter. *City of Moses Lake v. Grant Cnty.*, 39 Wn. App. 256, 262,

693 P.2d 140 (1984); *Pearson v. Vandermay*, 67 Wn.2d 222, 230, 407 P.2d 143 (1965).

Even accepting as true the well pleaded facts in this case: that Tayloe-McCandless suffered from epilepsy (CP at 36); that his doctor indicated he should not be left solely caring for his young children (CP at 36, 46); this case would still not fall under the scope of RCW 26.44 because this case simply does not involve a harmful placement decision or allegations of child abuse or child neglect. DSHS had no reasonable cause to believe Hunter had suffered abuse or neglect and therefore DSHS had no basis to file a report.

B. The Trial Court Correctly Declined to Rule on McCandless's Request to Amend the Complaint When McCandless Failed to Properly Bring the Motion Before the Court

1. Standard of review.

A trial court's ruling on a motion to amend the complaint is reviewed for abuse of discretion. *Caruso v. Local Union No. 690 of Int'l Bhd. of Teamsters*, 100 Wn.2d 343, 351, 670 P.2d 240 (1983). A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or reasons. *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971).

2. Civil Rule 15(a).

CR 15(a) governs amendments to pleadings and specifically provides that "a party may amend [his] pleading only by leave of court . . . and leave shall be freely given when justice so requires." However, "[i]f a party moves to amend a pleading, a copy of the proposed amended pleading, denominated 'proposed' and unsigned, shall be attached to the motion." CR 15(a). The word "shall" is presumptively imperative and operates to create a duty. *Hook v. Lincoln Cnty. Noxious Weed Control Bd.*, 166 Wn. App. 145, 159, 269 P.3d 1056 (2012) citing *Crown Cascade, Inc., v. O'Neal*, 100 Wn.2d 256, 261, 668 P.2d 585 (1983). Both the opposing party and the court have a legitimate need to see the proposed amended pleading in order to address and assess relevant issues of prejudice and futility. *Hook*, 166 Wn. App. at 159.

To amend a pleading after the opposing party has responded, the party seeking to amend must obtain the trial court's leave or the opposing party's consent. CR 15(a). A trial court must grant leave freely "when justice so requires." CR 15(a). However, a trial court may refuse to grant leave when the amendment would be futile. *Ino Ino, Inc., v. City of Bellevue*, 132 Wn.2d 103, 142, 937 P.2d 154 (1997).

Because DSHS had already filed a responsive pleading when McCandless sought to amend their complaint, their right to amend as a

matter of course had expired. CR 15(a). Thus, McCandless could amend the complaint "only by leave of court or by written consent of the adverse party." *Id.*

A trial court's denial of a motion for leave to amend will not be disturbed on appeal absent a manifest abuse of discretion or a failure to exercise discretion. *Hook*, 166 Wn. App. at 160. However, the trial court never had the opportunity to rule on McCandless's motion because the motion was procedurally deficient and the trial court declined to hear it. CP at 3. Thus, McCandless's argument that the trial court erred in denying his motion to amend is purely speculative. Br. of Appellant at 16.

3. McCandless failed to properly bring the motion before the trial court.

At no time after DSHS filed its motion for judgment on the pleadings on September 16, 2014, did McCandless note a motion to amend their complaint, or produce a proposed amended complaint, or assert any amended cognizable claims. McCandless waited until after the trial court made its ruling on DSHS's motion for judgment on the pleadings before requesting to amend their complaint. CP at 3. Furthermore, McCandless provided no indication to the trial court as to the substance of their proposed amendment.

The trial court did not deny nor foreclose McCandless's ability to amend the complaint; the Court simply declined to rule upon the motion because McCandless did not properly bring the motion before the Court. CP at 3. Subsequently, McCandless failed to note or renew their motion to amend before filing this appeal.

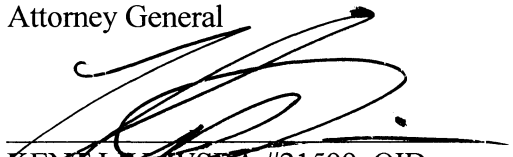
The trial court did not abuse its discretion in declining to rule on McCandless's procedurally deficient motion to amend. A court may decline to hear a motion if the moving party fails to comply with court rules for filing the motion. *Moore v. Wentz*, 11 Wn. App. 796, 525 P.2d 290 (1974). Moreover, because McCandless never subsequently noted the motion or renew it, there is no ruling and no error to review on appeal.

V. CONCLUSION

For the foregoing reasons, DSHS respectfully asks the Court to affirm the trial court's order granting DSHS's CR 12(c) motion dismissing all of McCandless's claims with prejudice.

RESPECTFULLY SUBMITTED this 30th day of March, 2015.

ROBERT W. FERGUSON
Attorney General



KENT LIU, WSBA #21599, OID 91019
Assistant Attorney General
Attorney for Defendant State of WA

CERTIFICATE OF SERVICE

I certify under penalty of perjury in accordance with the laws of the state of Washington that on the undersigned date the original of the preceding Respondent's Brief was caused to be filed in the Washington State Court of Appeals, Division I, by Hand Delivery, at the following address:

COURT OF APPEALS OF WASHINGTON, DIVISION I
600 UNIVERSITY STREET
ONE UNION SQUARE
SEATTLE, WA 98101-1176

And, I further certify that a copy of the same was caused to be served on the Appellant at the following address, by Hand Delivery:

MICHAEL D. GUSTAFSON
JONATHAN R. NOLLEY
600 UNIVERSITY STREET, SUITE 1928
SEATTLE, WA 98101

DATED this 30th day of March, 2015, at Seattle, Washington.

Nicole Symes

NICOLE SYMES
Legal Assistant