No. 93729-0

SUPREME COURT
OF THE STATE OF WASHINGTON

SHERRIE LENNOX, as Personal Representative of the ESTATE OF VIOLA WILLIAMS,

Plaintiff/Respondent,

v.

LOURDES HEALTH NETWORK, a Washington non-profit corporation,

Defendant/Petitioner.

Court of Appeals No. 33201-2-III

ANSWER OF RESPONDENT SHERRIE LENNOX

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A. Summary of Answer

Petitioner Lourdes Health Networks asks this Court to review the Court of Appeals' decision reversing the superior court's dismissal of Lourdes on summary judgment.[1] Petition, Attachment 1 (*Lennox v. Lourdes Health Network, et al.*, No. 33201-2, slip opinion, July 12, 2016).[2]

Lourdes claims four bases for review. First, it argues the Order granting Lourdes summary judgment should have been affirmed on what Lourdes assumes to be undisputed evidence. But Lourdes' recitation of the evidence demonstrates there are vigorously disputed issues of fact whether Lourdes was "grossly negligent" in failing to ask former co-defendant Benton-Franklin Counties' Crisis Response Unit ("CRU") to revoke Adam Williams' less restrictive alternative ("LRA") release order at any time before he murdered his grandmother, Viola Williams.

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[1] The Court of Appeals denied Lennox's motion to publish on Sept. 6, 2016.

[2] Denial of a motion for summary judgment is generally not appealable, RAP 2.2(a), and discretionary review of such orders is not ordinarily granted. *Sea-Pac Co., Inc. v. United Food and Commercial Workers Local Union 44,* 103 Wn.2d 800, 801-02, 699 P.2d 217 (1985). This general rule promotes appeal on the merits, based on the sufficiency of the evidence at trial. Summary judgment should not be used to cut litigants off from their right of trial by jury if they have evidence for trial, as Respondent/Plaintiff Sherrie Lennox does. *See also* Section B.

Lourdes contends the "experienced" trial court was in a superior position to evaluate the factual dispute.[3] However, the trial court mistakenly believed that the mere number of contacts between the Lourdes' PACT team[4] and Williams, as opposed to the substance of those contacts, demonstrated more than "slight care." The Court of Appeals, on the other hand, determined a reasonable juror could find the fact that Lourdes had numerous contacts without asking the CRU to revoke the LRA plan demonstrated greater than ordinary negligence, because there were so many occasions where the substance of the contact cried out for Lourdes to request revocation.

Next, Lourdes erroneously tries to limit evidence of gross negligence to a single interaction on January 25, 2012. But the evidence shows that Lourdes' PACT team violated the standard of care by failing to seek revocation on multiple occasions from March 2011 on, not just

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[3] Without citation to evidence or authority, Lourdes claims the trial court "obviously had much more experience dealing with mental health patients, voluntary commitment issues, and revocation of LRA issues than the Judges on Division III", and that the trial judge granted summary judgment dismissal "based upon his experience." Petition, at 2. Even if Lourdes could show this were true, it cites no authority for the proposition that a reviewing court should compare one judge's asserted experience in an area to another's and grant deference to the one with more experience. The standard of review on summary judgment is de novo, and does not depend on a judge's experience. The reviewing court engages "in the same inquiry as the trial court, and will affirm summary judgment if there is no genuine issue of any material fact and the moving party is entitled to judgment as a matter of law. CR 56(c)." *Wilson Court Ltd. P'ship v. Tony Maroni's, Inc.*, 134 Wn.2d 692, 698, 952 P.2d 590 (1998); *Keck v. Collins,* 184 Wn.2d 358, 370, 357 P.3d 1080 (2015) (review is de novo).

[4] PACT is the acronym for "program of assertive community treatment." Slip op., at 5; CP 227.

January 25, 2012. Lourdes' request to revoke the LRA could have changed this tragic outcome.[5]

Third, Lourdes maintains the foreseeability of gross negligence is a significant "issue of first impression" warranting Supreme Court review. However, in affirming the trial court, the Court of Appeals concluded that as a matter of law, the CRU was not grossly negligent; therefore, any claimed issue whether gross negligence can be an unforeseeable superseding cause is moot.

Finally, Lourdes maintains that this case should be consolidated with *Volk v. Demeerleer,* 184 Wn. App. 389, 337 P.3d 372 (2014), *review granted,* 183 Wn.2d 1007 (2015). This proposition fails, as *Volk* was argued a year ago, in November 2015. And, contrary to Lourdes' assertion, the Court of Appeals addressed the issue of duty.

B. Statement of the Case

As the Court of Appeals noted, "Lourdes was obligated to report violations by Adam Williams, of his less restrictive alternative release order, to the Crisis Response Unit." Slip op., at 6; RCW 71.05.340 (2009). "From the first day of his release from Eastern State Hospital on

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[5] "The record includes facts to support the conclusion that, if Lourdes requested revocation, the Crisis Response Unit would have revoked the less restrictive alternative release. Lourdes never made that request. A reasonable jury could find that Lourdes' conduct was a proximate cause." Slip op., at 36; CP 349, 365. *See also* Lennox's Reply Br., at 5.

March 1, 2011," Williams violated conditions of the LRA order by missing meetings with Lourdes or untimely cancelling appointments. Slip op., at 7.

> Lourdes PACT team members did not report these violations of the court order to the Crisis Response Unit and did not insist that Williams attend meetings. Rather, Lourdes allowed Williams to set the terms of his meetings and allowed him to cancel meetings for no reason.

Slip op., at 8. "Despite the terms of Adam Williams' less restrictive alternative release order, Lourdes Health Network viewed Williams' participation in its outpatient treatment program as voluntary." Slip op., at 7.

Williams' parents took him to the Emergency Room at Kadlec Medical Center on July 31, 2011, after finding him homeless, relapsed with methamphetamines, and off his medications. Slip op., at 10. Lourdes PACT team member Suzanne Kieffer visited Williams at the hospital and wrote a report after observing him:

> [H]e [Williams] said "I was hiding from PACT because I do NOT want to go back to ESH [Eastern State Hospital] and I have not taken my meds for about 9 days or so and I do not give a flying fuck I have been using crystal meth just flying high, but I am done with that I dumped about 3 ounces down the drain" ... [T]hey [Kadlec Medical Center] could not medically release him so he was asked to stay. He agreed but when the charge nurse came in to give him an IV and give him something to make him sleep he told her "Fuck you bitch you are not going to stick no needles in me fuck all you guys I am out of here[.] ... I left the hospital,

> as there was nothing that I could do. Do [sic] to his violent behavior I would not even attempt to detain him, transport him, nor be in the same room alone with him.

Slip op., at 10-11 (quoting CP 315).

On November 23, 2011, at a medication management appointment, Lourdes' Nurse Michelle Aronow "chose to take Williams off of Clozaril, a powerful anti-psychotic," replacing it with another medication. Slip op., at 12. *See also* Slip op., at 22-23 (¶10.b—Dr. Layton's testimony). Later, after Williams killed Viola Williams (his grandmother), "[d]uring his psychological evaluation following the murder charge, the doctor wrote: 'The medications he was taking at the time of the murder represented a total failure in treatment.'" Slip op., at 30 (quoting CP 408).

On January 16, 2012, Lourdes' Nurse Teresa Chandler pleaded with the Lourdes PACT team to have Williams revoked from his community placement. Noting that Williams was "obviously not taking" his medications, she wrote:

> *How long are we going to let this go before* ***we revoke him?*** I thought early detection and intervention was our goal. He's getting so much worse. . . . *I don't want to be any where in a room alone with him. Help. . .* Teresa

Slip op., at 15 (quoting CP 450) (bold emphasis added).

On January 25, 2012, CRU's Kathleen Laws went to Lourdes' office to meet with another patient. On her way there, a Lourdes

employee asked Laws to remind Williams of his conditions for the LRA placement. Slip op., at 18. Though Laws' notes state that Lourdes' Nurse Aronow "requested an eval[]" of Williams, CP 97, Laws "testified that her entire meeting with Williams lasted only five minutes and the remaining 'client time' [15-25 minutes] referred to travel and note taking...." Slip op., at 18-19; CP 354. Thus, Laws testified she was not at Lourdes to evaluate Williams, and she did not perform an actual evaluation. Slip op., at 18-19, 22 (¶9).

On January 27, 2012, when Williams visited his grandmother Viola Williams' house, he "believed himself to be Lucifer Grand Am Dynasty and that God directed him to kill his grandmother." Slip op., at 20. He brutally murdered his grandmother, and was later found not guilty of first degree murder by reason of insanity. Slip op., at 20.

Reviewing the record de novo, the Court of Appeals concluded:

> Under the facts favorable to Sherrie Lennox, Lourdes Health Network saw Williams deteriorating. Lourdes knew Williams thought he conversed with God, was sexually preoccupied, believed his grandmother engaged in a conspiracy against him, and used methamphetamines. Lourdes understood that Williams had a history of violence. Lourdes knew that he groped one of its employees, and hit his father while under their supervision. Lourdes observed that Williams skipped appointments and rejected his medications. **In short, Lourdes Health Network knew that Adam Williams violated the conditions of his less restrictive alternative release and that he was dangerous, but never requested Crisis Response Unit to revoke the less restrictive**

> **alternative status.** Although Lourdes contends its employee's testimony only meant to state Williams' use of its services was voluntary, the trier of fact could conclude that Lourdes considered Williams' participation voluntary rather than compelled by court order that should be revoked if Williams violated conditions of the order.

Slip op., at 30 (emphasis added).

There is no obvious error – let alone a "significant" legal issue – and no matter of substantial public interest that justifies interlocutory review by the highest court in the State. RAP 13.4. There are only disputed issues of fact for trial.

C. None Of The Bases Asserted By Lourdes Warrants Acceptance Of Review

1. Discretionary Review From The Court's Denial Of Summary Judgment On Gross Negligence Is Not Justified By Any Grounds Under RAP 13.4

A court ordinarily will not accept review, as Lourdes requests, from a denial of summary judgment:

> An order denying summary judgment is essentially interlocutory. It does not end proceedings, but rather permits them to proceed. The denial of a summary judgment motion is not a final order that can be appealed. ... Only final judgments are appealable. *See* RAP 2.2(a).

In re Estate of Jones, 170 Wn. App. 594, 605, 287 P.3d 610 (2012); *Sea-Pac Co., Inc. v. United Food and Commercial Workers Local Union 44*, 103 Wn.2d 800, 801-02, 699 P.2d 217 (1985) ("Denial of a motion for summary judgment is generally not an appealable order, RAP 2.2(a), and

discretionary review of such orders is not ordinarily granted."); *DGHI, Enterprises v. Pac. Cities, Inc.*, 137 Wn.2d 933, 949, 977 P.2d 1231 (1999) ("'the claim still remains pending trial. The issue can be reviewed after trial in an appeal from final judgment'") (quoting *Rodin v. O'Beirn,* 3 Wn. App. 327, 332, 474 P.2d 903 (1970)). The only exception is where "the superior court has committed an obvious error which would render further proceedings useless." *Sea-Pac,* at 802 (quoting RAP 2.3(b)(1)).

This rule promotes an appeal on the merits, based on the sufficiency of the evidence at trial. *See Adcox v. Children's Orthopedic Hosp. & Med. Ctr.,* 123 Wn.2d 15, 35 n.9, 864 P.2d 921 (1993). "Summary judgment exists to examine the sufficiency of legal claims and narrow issues, not as an unfair substitute for trial." *Babcock v. State,* 116 Wn.2d 596, 599, 809 P.2d 143 (1991). The purpose of summary judgment "'is not to cut litigants off from their right of trial by jury if they really have evidence which they will offer on a trial, it is to carefully test this out, in advance of trial by inquiring and determining whether such evidence exist[s].'" *Keck v. Collins,* 184 Wn.2d 358, 369, 357 P.3d 1080 (2015) (emphasis removed) (quoting *Preston v. Duncan,* 55 Wn.2d 678, 683, 349 P.2d 605 (1960)). Lennox "really [has] evidence" for trial, and has passed the test to defeat summary judgment.

Stated another way, in the highly unlikely event that this Court were to accept review, it could reverse only if it could conclude there is no genuine issue of material fact. *Waggoner v. Ace Hardware Corp.*, 134 Wn.2d 748, 751, 953 P.2d 99 (1998); *City of Seattle v. State, Dep't of Labor & Indus.*, 136 Wn.2d 693, 696-97, 965 P.2d 619 (1998). The record shows that conclusion is not possible. As the Court of Appeals noted, "[w]here different competing inferences may be drawn from the evidence, the issue must be resolved by the trier of fact." Slip op., at 30 (citing *Johnson v. Spokane to Sandpoint, LLC,* 176 Wn. App. 453, 457-58, 309 P.3d 528 (2013)).[6]

Lourdes presents no obvious error which would render a trial useless. Rather, there are numerous questions of fact as to whether Lourdes' gross negligence proximately caused the death of Viola Williams:

- Lourdes was obligated to report Williams' violations of his LRA release order to the CRU, but failed to inform them of Williams' repeated violations. Slip op., at 6-8.

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[6] In their motions for summary judgment, Lourdes and Benton-Franklin Counties claimed they were not at fault but each blamed the other for failing to revoke Williams' LRA release order. The Court of Appeals reversed the grant of summary judgment dismissal to Lourdes, while affirming the grant of summary judgment to Benton-Franklin Counties. Where, as here, two summary judgment motions take such opposite positions, it may be appropriate to reverse an order granting summary judgment to one of them. *Ki Sin Kim v. Allstate Ins. Co.,* 153 Wn. App. 339, 353, 223 P.3d 1180 (2010) (citing, *e.g., Weden v. San Juan County,* 135 Wn.2d 678, 710, 958 P.2d 273 (1998)).

- Lourdes' Nurse Aronow took Williams off a powerful anti-psychotic, resulting in "'a total failure in treatment.'" Slip op., at 12, 22-23, 30.
- Lourdes' Nurse Chandler urgently reminded the Lourdes PACT team that Williams was "getting so much worse", asking "How long are we going to let this go before we revoke him?" Slip op., at 15; CP 450.
- CRU's Kathleen Laws testified that despite a request to evaluate Williams, she did not do so on January 25, 2012, but rather was at Lourdes' office to meet with another patient, and saw Williams for only five minutes. Slip op., at 17-18, 22.
- By the time Williams murdered Viola Williams, he believed he was "Lucifer Grand Am Dynasty and that God directed him to kill his grandmother", leading to the finding that he was not guilty by reason of insanity. Slip op., at 20.
- "Under the facts favorable to Sherrie Lennox, ... Lourdes Health Network knew that Adam Williams violated the conditions of his less restrictive alternative release and that he was dangerous,[7] but

[7] Lourdes' position that Williams' sexual harassment and attempted sexual assault of Lourdes' PACT team members did not constitute dangerous conduct is startling and baseless.

never requested the CRU to revoke the less restrictive alternative status." Slip op., at 30.

Rather than explain how grounds for review exist (because they do not), Lourdes disputes the merits of the Court of Appeals' conclusion that there are questions of fact as to whether Lourdes was grossly negligent.[8] But Lourdes did not meet its burden to demonstrate there is no genuine issue of material fact for trial. Slip op., at 28-29. That is why the Court of Appeals answered yes to the question "whether questions of fact exist as to any gross negligence by Lourdes," and reversed and remanded Lennox's claims for the jury to resolve. Slip op., at 25. Lourdes will have the opportunity to present its defense to the jury at trial.[9]

2. Liability Is Not Limited To January 25, 2012

Lourdes rehashes its argument that its liability should be limited to its conduct on one date, January 25, 2012. But the Court of Appeals rejected Lourdes' argument that the only relevant care occurred after

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[8] For example, Lourdes attempts to distinguish the disputed facts of this case from those in *Bader v. State*, 43 Wn. App. 223, 716 P.2d 925 (1986) and *Petersen v. State*, 100 Wn.2d 421, 671 P.2d 230 (1983), arguing, *e.g.*, "there was no reason for Lourdes to suspect that [Adam Williams] may be violent, or that any violence would be directed to his grandmother", Petition, at 13; and "[t]he record shows that Lourdes provided consistent good care." Petition, at 14. As the Court of Appeals concluded, reasonable persons could disagree.

[9] Lourdes accuses the Court of Appeals of "disregard[ing]" the cases it cited. The Court of Appeals did consider Lourdes' cases. *E.g.*, Slip op., at 27-28.

January 6, 2012. Slip op., at 31-32, 33. Lennox's claim against Lourdes "draws from all of Lourdes' interactions with Williams." Slip op., at 33.

Considering Lourdes' history of interactions with Williams over the history of its care, the Court concluded:

> Under the facts favorable to Sherrie Lennox, Lourdes Health Network saw Williams deteriorating. Lourdes knew Williams thought he conversed with God, was sexually preoccupied, believed his grandmother engaged in a conspiracy against him, and used methamphetamines. Lourdes understood that Williams had a history of violence. Lourdes knew that he groped one of its employees, and hit his father while under their supervision. Lourdes observed that Williams skipped appointments and rejected his medications. In short, Lourdes Health Network knew that Adam Williams violated the conditions of his less restrictive alternative release and that he was dangerous, but never requested Crisis Response Unit to revoke the less restrictive alternative status. Although Lourdes contends its employee's testimony only meant to state Williams' use of its services was voluntary, the trier of fact could conclude that Lourdes considered Williams' participation voluntary rather than compelled by court order that should be revoked if Williams violated conditions of the order.

Slip op., at 30.

There is no error and no basis for discretionary review.

3. The Foreseeability Of Gross Negligence Is Not A Question Of Law Meriting Review, When The Court of Appeals Affirmed, As A Matter Of Law, That The CRU Was Not Grossly Negligent

Lourdes contends this Court should accept review to hold that gross negligence is unforeseeable as a matter of law,[10] and that *Campbell v. ITE Imperial Corp.*, 107 Wn.2d 807, 733 P.2d 969 (1987) does not answer this question. The argument actually concerns superseding cause; it is based on Lourdes' claim that the CRU's alleged gross negligence was a superseding cause of Viola Williams' death. Slip op., 34. However, with the CRU's affirmed dismissal, it is immaterial whether or not Lourdes could have foreseen the CRU's conduct as a matter of law.

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[10] Lourdes cites the same cases as below, including a **dissenting** opinion in *Love v. City of Detroit*, 270 Mich. App. 563, 573, 716 N.W.2d 604 (2006) on the issue of superseding cause: "In order to be a superseding cause, thereby relieving a [prior] negligent defendant from liability, an intervening force must not have been reasonably foreseeable." *Id.* (Cooper, J. dissenting). *Love* affirmed summary judgment for the defendant firefighters because there was no evidence the firefighters could have reached the victims or could have rescued them, and therefore no causation. *Id.* at 566. There is such evidence here: Lourdes could and should have strongly requested that Williams be revoked for violations of his LRA release order.

Contrary to Lourdes' assertion, Lennox has found no authority stating the majority rule to be that gross negligence is unforeseeable as a matter of law, and no cases involving civil gross negligence. The other cases cited by Lourdes are criminal cases involving gross negligence. *People v. Saavedra-Rodriguez*, 971 P.2d 223, 226 (Colo. 1999) states the question in terms of intervening cause: "Where medical treatment is so deficient as to constitute gross negligence or intentional malpractice, such medical treatment is abnormal and not reasonably foreseeable." *Id.* (citing *People v. Gulliford*, 86 Ill. App. 3d 237, 241, 407 N.E.2d 1094 (1980) (record "contains no evidence to establish gross negligence or intentional maltreatment on the part of the treating physicians")). In *People v. Schaefer*, 473 Mich. 418, 437–38, 703 N.W.2d 774, 786 (2005), *holding modified by People v. Derror*, 475 Mich. 316, 715 N.W.2d 822 (2006), the court explained, "The linchpin in the superseding cause analysis ... is whether the intervening cause was foreseeable." The court listed gross negligence as an example that would sever the causal link in a Michigan criminal case. This is hardly a majority rule, nor does it apply to civil cases in Washington.

Even if the issue remained in this case, Lourdes' substantive argument lacks merit. Only intervening acts which are not reasonably foreseeable can be superseding causes. *N.L. v. Bethel Sch. Dist.*, -- Wn.2d --, 378 P.3d 162, 169 (Sept. 1, 2016) (if an intervening act or force is reasonably foreseeable, the defendant is not exonerated from negligence); *Albertson v. State*, 191 Wn. App. 284, 297, 361 P.3d 808 (2015) ("only intervening acts which are *not* reasonably foreseeable are deemed superseding causes"; citing, *e.g., Campbell,* at 813, and *Anderson v. Dreis & Krump Mfg. Corp.,* 48 Wn. App. 432, 442, 739 P.2d 1177 (1987)). The test is whether "the likelihood that a third person may act in a particular manner is ... one of the hazards which makes the [defendant] negligent." *Albertson* at 297-98 (quoting *Campbell,* at 813, and *Restatement (Second) of Torts* § 449 (1965)). *See also Rikstad v. Holmberg*, 76 Wn.2d 265, 269, 456 P.2d 355 (1969) (the test of foreseeability is whether the result of the act is within the general field of danger which should have been anticipated).

For example, in *Albertson,* the third party's continued child abuse after an allegedly negligent investigation and placement by DSHS "was precisely the kind of harm" which DSHS's duty to investigate allegations of child abuse was designed to prevent. *Id.* (citing *Campbell,* at 812–13). The abuse could have been foreseeable; the court could not say that it was

not. *Id.* Similarly, here, Lourdes' statutory duty to supervise Adam Williams' compliance with the LRA release order and its statutory duty to recommend revocation were designed to prevent precisely the kind of harm that occurred.

"[F]oreseeability is a flexible concept, and a defendant will not be relieved of responsibility simply because the exact manner in which the injury occurred could not be anticipated." *Lee v. Willis Enterprises, Inc.*, 194 Wn. App. 394, 402, 377 P.3d 244 (2016) (quoting *Anderson*, 48 Wn. App. at 443).[11] As the Court of Appeals held, a reasonable juror could conclude that Lourdes should have readily foreseen, and could easily have prevented, the risk Williams presented if the CRU did not revoke him.

Thus, *Campbell* does answer the question whether another party's gross negligence can be an intervening cause that was foreseeable: it can. As the Court of Appeals reasoned, since the *Restatement* relied upon in *Campbell* provides that a third party's intervening criminal conduct can be

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[11] Moreover, modern cases have rejected the rule that a third person committing a crime or tort is a superseding cause, and have approached such cases by inquiring whether the crime or tort was among the foreseeable risks. *Fazzolari v. Portland Sch. Dist. No. 1J*, 303 Or. 1, 734 P.2d 1326, 1337-38 (1987) (citing *McLeod v. Grant County School Dist. No. 128*, 42 Wn.2d 316, 255 P.2d 360 (1953)):

> Another person's crime was once thought to lie beyond a defendant's responsibility on grounds of "proximate cause," ... but more recent decisions have dealt with the **behavior of others, lawful or otherwise, as part of the general analysis of foreseeable risks.** ... The Supreme Court of Washington followed the foregoing analysis, based on a school's public-law duty to minor students to anticipate reasonably foreseeable risks of harm, including crimes such as rape, in *McLeod*....

(Emphasis added.)

foreseeable, "[i]t would be illogical to conclude gross negligence of a third party to be less foreseeable than criminal acts of a third party." Slip op., at 35-36.

Finally, because the Court of Appeals routinely decides matters of "first impression," that does not justify review by this Court. *E.g., Granville Condo. Homeowners Ass'n v. Kuehner,* 177 Wn. App. 543, 558, 312 P.3d 702, 711 (2013).[12]

4. The Court of Appeals Addressed Duty, And The Request To Consolidate With *Volk* Is Untimely

Lourdes contends the Court of Appeals failed to address whether Lourdes had a duty, and that to resolve this issue, the Court should consolidate this case with *Volk v. Demeerleer,* 184 Wn. App. 389, 337 P.3d 372 (2014), *review granted,* 183 Wn.2d 1007 (2015), *oral argument* November 17, 2015.

But the Court of Appeals did address duty, holding that RCW 71.05.340 (2009) outlined the duties which Lourdes undertook "[a]s a result of assuming Adam Williams' outpatient care." Slip op., 26 (listing duties under RCW 71.05.340). RCW 71.05.120 limits Lourdes' liability for breach of those duties to grossly negligent conduct. Slip op., at 25 (citing *Volk,* at 424). "Deviations from **the duties under**

[12] Contrary to Lourdes' assertion in footnote 8 of its petition, Lennox's motion to publish did not argue or concede that whether gross negligence is unforeseeable is a significant issue or area of the law.

RCW 71.05.340 must be judged against the gross negligence standard." Slip op., at 26-27 (emphasis added).

Below, Lourdes admitted this case involves a court-imposed duty under RCW Chapter 71.05 and that it was obligated to comply with the LRA release order, but argued it did comply with its duties and blamed the CRU for violating them. The Court of Appeals held:

> Lourdes Health Network argues that it met any duty by asking the Crisis Response Unit to evaluate Adam Williams. This argument fails to note the extensive knowledge Lourdes possessed concerning the danger posed by Williams and his repeated violations of the less restrictive alternative court order. The argument also fails to note Lourdes staff members, including mental health counselors, could have strongly recommended to the Crisis Response Unit to revoke the release, which recommendation likely would lead to notification of the court under RCW 71.05.340(3)(d).

Slip op., at 32.

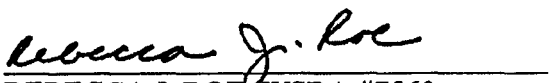
Moreover, unlike this case, *Volk* involved a private psychiatrist who treated the patient outpatient, intermittently, and not under the statutory duties of RCW Chapter 71.05. And even if *Volk* had any bearing on this case, at this time, almost one year after oral argument, it is too late to consolidate.

D. Conclusion

The Court of Appeals properly concluded that genuine issues of material fact exist for trial as to Lourdes' gross negligence in violating its statutory and court-ordered duties under RCW Chapter 71.05 and the LRA release order. Lourdes' request for interlocutory review of denial of summary judgment should be denied.

DATED November 7, 2016.

SCHROETER GOLDMARK & BENDER



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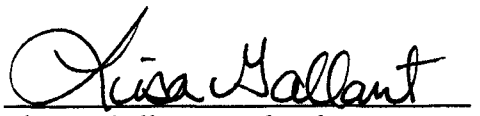
CERTIFICATE OF SERVICE

On the 7th day of November, 2016, I caused to be served upon the following, at the address stated below, via the method of service indicated, a true and correct copy of the foregoing document.

Jerome R. Aiken, WSBA #14647 Erin E. Moore, WSBA #44779 Meyer Fluegge & Tenney 230 S. Second St. P.O. Box 22680 Yakima, WA 98907 *Attorney for Petitioner Lourdes Health Network*	☐ Via Hand Delivery – ABC Legal ☒ Via U.S. Mail, 1st Class, Postage Prepaid ☐ Via CM/ECF System ☐ Via Overnight Delivery ☐ Via Facsimile ☒ Via Email
West H. Campbell, WSBA #9049 Thorner Kenedy & Gano 101 S. 12th Ave. P.O. Box 1410 Yakima, WA 98907 *Attorney for Former Defendant Benton & Franklin Counties*	☐ Via Hand Delivery – ABC Legal ☒ Via U.S. Mail, 1st Class, Postage Prepaid ☐ Via CM/ECF System ☐ Via Overnight Delivery ☐ Via Facsimile ☒ Via Email

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

DATED at Seattle, Washington, this 7th day of November, 2016.



Lisa A. Gallant, Paralegal