

RECEIVED
NOV 10 2016
Washington State
Supreme Court

No. 73926-3-I

COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION ONE

ANNE CUTONE,

Appellant/Plaintiff

v.

WAI K. LAW and JANE DOE LAW,
and their marital community,

Respondents/Defendants

RESPONDENTS' ANSWER TO PETITION FOR REVIEW

BENDELE & MENDEL, PLLC

By: James Mendel, WSBA No. 29223
Colin Hutchinson-Flaming, WSBA No. 45294
BENDELE & MENDEL, PLLC
200 West Mercer Street, Ste 411
Seattle, WA 98119
Attorneys for Respondents

2016 NOV -4 PM 12:00
COURT OF APPEALS DIVISION ONE
STATE OF WASHINGTON

ORIGINAL

TABLE OF CONTENTS

I. IDENTITY OF RESPONDING PARTY.....1

II. COURT OF APPEALS DECISION.....1

III. COUNTERSTATEMENT OF ISSUES PRESENTED FOR REVIEW.....2

 1. Whether discretionary review should be denied because the Court of Appeals’ unpublished decision is harmonious and consistent with its other decisions, which apply the well-established standard that when there is evidence of symptoms or a preexisting condition subject to a natural progression, evidence of the preexisting condition is relevant at trial.....2

 2. Whether discretionary review should be denied because the petition does not involve any issue of substantial public interest...2

IV. COUNTERSTATEMENT OF THE CASE.....2

 A. Undisputed Background of Claim.....2

 B. Pretrial Motions.....3

 C. Trial Testimony.....4

 D. Jury Instructions.....8

V. ARGUMENT WHY REVIEW SHOULD BE DENIED.....9

 A. **Appellant Does Not Establish that the Court of Appeals’ Decision Conflicts with a Decision of This Court or the Court of Appeals**10

 B. **Appellant Does Not Establish that the Court of Appeals’ Decision Involves an Issue of Substantial Public Interest that Should be Determined by the Supreme Court**17

VI. CONCLUSION.....18

TABLE OF AUTHORITIES

Table of Cases

<i>Colley v. Peacehealth</i> 177 Wn. App. 717, 312 P.3d 989 (2013).....	11
<i>Harris v. Drake</i> 116 Wn. App. 261, 5 P.3d 350 (2003).....	13, 14, 15
<i>Harris v. Drake</i> 152 Wn.2d 480, 99 P.3d 782 (2004).....	13
<i>Hayes v. Wieber Enters., Inc.</i> 105 Wn. App. 611, 20 P.3d 496 (2001).....	11
<i>Hoskins v. Reich</i> 142 Wn. App. 557, 174 P.3d 1250 (2008).....	15, 16
<i>Mayer v. City of Seattle</i> 102 Wn. App. 66, 10 P.3d 408 (2000).....	10
<i>Portch v. Sommerville</i> 113 Wash. App. 807, 55 P.3d 661 (2002), <i>review denied</i> , 149 Wash.2d 1018, 72 P.3d 761 (2003).....	10
<i>Stevens v. Gordon</i> 118 Wn. App. 43, 74 P.3d 653 (2003).....	10
<i>Torno v. Hayek</i> 133 Wn. App. 244, 135 P.3d 536 (2006).....	10, 11, 12, 13

Regulations and Rules

ER 401.....	11
RAP 13.4.....	9, 16

I. IDENTITY OF RESPONDING PARTY

Respondent Wai Law (Respondent) respectfully requests that the Court deny Appellant Anne Cutone's (Appellant) petition for discretionary review.

II. COURT OF APPEALS DECISION

The Court of Appeals, in its September 6, 2016 unpublished decision, affirmed the trial court's pretrial evidentiary ruling that allowed limited evidence of Appellant's prior injury to be admissible at trial in her personal injury action arising out of a car accident. In so holding, the Court of Appeals held that the trial court did not abuse its discretion.

Regarding the prior injury, the Court of Appeals noted that Respondent's medical expert, Dr. Richard M. Kremer, performed a CR 35 Examination of Appellant and opined that Appellant's prior injury caused a permanent structural change in Appellant's collarbone that was the probable cause of her subjective symptoms. *Slip Op.* at 4-5. The Court of Appeals also noted that Dr. Kremer specifically opined that the subject car accident did not light up or make active a dormant and asymptomatic preexisting condition. *Slip Op.* at 5. Ultimately, the Court of Appeals held that Dr. Kremer's medical testimony was sufficient to show, at the time of the pretrial evidentiary ruling, that Appellant's preexisting condition was

neither dormant nor asymptomatic, and therefore, her prior injury was relevant to the question of proximate cause. *Slip Op.* at 6.

III. COUNTERSTATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Whether discretionary review should be denied because the Court of Appeals' unpublished decision is harmonious and consistent with its other decisions, which apply the well-established standard that when there is evidence of symptoms or a preexisting condition subject to a natural progression, evidence of the preexisting condition is relevant at trial.
2. Whether discretionary review should be denied because the petition does not involve any issue of substantial public interest.

IV. COUNTERSTATEMENT OF THE CASE

The Court of Appeals' unpublished decision adequately states the facts as pertaining to the pretrial evidentiary ruling of the trial court. Other salient facts are as follows:

A. Undisputed Background of Claim

This matter arises from a motor vehicle accident that occurred on November 22, 2010 at a Chevron gas station in Bellevue, King County, Washington. Appellant alleged personal injuries as a result of the subject accident. Appellant filed suit in King County Superior Court on November 8, 2013. Trial commenced on July 13, 2015. Appellant relied on three treating providers at trial: Daniel Riegel, MD, a general practice physician; Andrew Lynch, MD, a physiatrist; and Mark Ombrellaro, MD, a vascular

surgeon. All three opined that Appellant was injured in the accident and supported a diagnosis of thoracic outlet syndrome (“TOS”) related to the accident. Respondents relied upon Richard Kremer, MD, a vascular surgeon, who opined that Appellant’s prior injury caused a permanent structural change in Appellant’s collarbone that was the probable cause of her subjective symptoms. *Slip Op.* at 4-5. Dr. Kremer specifically opined that the subject car accident did not light up or make active a dormant and asymptomatic preexisting condition. *Slip Op.* at 5. Ultimately, as the Court of Appeals held, Dr. Kremer’s medical testimony was sufficient to show, at the time of the pretrial evidentiary ruling, that Appellant’s preexisting condition was neither dormant nor asymptomatic, and therefore, her prior injury was relevant to the question of proximate cause. *Slip Op.* at 6.

B. Pretrial Motions

Appellant filed a motion in limine to exclude testimony and evidence related to prior injuries and accidents, and the trial court heard argument from both parties on the issue. (RP 6-25). The trial court heard argument from Respondents that Appellant’s current complaints were not lit up or made active as a result of the subject car accident. (RP 15-19). The trial court ruled that Respondents could question witnesses if Appellant’s fractured collarbone could cause her current complaints. (RP 23). The trial court ruled that mention of prior car accidents would be

excluded as well as prior medical records discussing possible TOS from 2008. (RP 23).

C. Trial Testimony

Dr. Reigel

On direct examination, Dr. Riegel testified that he first saw Appellant on December 1, 2010, and at that time, he believed she sustained sprain injuries but no “significant physical trauma that would need immediate attention” and would “get a lot better over the next couple of weeks.” (RP 67-70). Dr. Reigel then testified that he next saw Appellant about six months later, at which point he noted new complaints of paresthesia. (RP 74). Dr. Reigel confirmed the paresthesia was a new symptom and referred Appellant to Dr. Lynch for evaluation. (RP 77-78). Dr. Reigel opined that all of Appellant’s medical treatment billing was reasonable, necessary, and causally related to the subject accident. (RP 107).

On cross examination, Dr. Reigel acknowledged that a billing for a November 12, 2011 treatment was in fact not related to the subject accident, contrary to his previous testimony. (RP 110). Dr. Reigel confirmed this treatment was in relation to Appellant’s memory issues and a diagnosis of cognitive dysfunction. (RP 111). Also, Dr. Reigel acknowledged that a billing for a March 10, 2012 treatment was in fact not

related to the subject accident, contrary to his previous testimony. (RP 113). Dr. Reigel confirmed this treatment was in relation to Appellant's weight gain and fatigue. (RP 114). Dr. Reigel confirmed that he did not make a diagnosis of TOS during his December 1, 2010 or January 15, 2011 treatments. (RP 117). Dr. Reigel also testified that he did not note any paresthesia until June 15, 2011. (RP 117-18). He also confirmed that on December 1, 2010, he had instructed Appellant to return in two or three weeks "unless you are feeling significantly better" and that she did not return until June 15, 2011. (RP 118). Dr. Reigel confirmed that his evaluation of Appellant's extremities on June 15, 2011 was normal. (RP 120). He also confirmed that Appellant's extremities were normal on December 1, 2010 and neurologically intact. (RP 123). Additionally, Dr. Reigel confirmed on cross examination that Appellant's mid back pain and low back pain had resolved by June 15, 2011. (RP 122-23).

Appellant

On direct examination, Appellant testified to her diagnosis of TOS and that she had not previously heard of the condition before this accident. (RP 160); however, on cross examination, Appellant was impeached regarding discussions she had with a former physician regarding possible TOS in 2008. (RP 200). Further cross examination revealed that Appellant stopped treatment for allegedly accident related injuries from April 2013

until early 2015. (RP 207). Appellant confirmed that she did not mention any accident related injuries during the treatment visit in December 2013 for a fall that occurred in her garage. (RP 204-06). Appellant also confirmed that after a November 8, 2012 treatment that she had initially reported to her provider that her numbness and tingling was gone but then later called in to amend her subjective complaints to include numbness while applying mascara and handling luggage. (RP 218-19). Appellant also testified that she experienced unintentional weight gain after her daughter was diagnosed with cancer and began chemotherapy in 2011. (RP 221-22). Finally, Appellant confirmed that the only physician to locate the callous formation on her clavicle was Dr. Kremer and that she did not inform any of her treating physicians about the previously broken clavicle. (RP 230-31).

Dr. Ombrellaro

On direct examination, Dr. Ombrellaro testified that TOS usually develops “weeks to a couple months or so after the inciting event.” (RP 268). On cross examination, Dr. Ombrellaro admitted that a technician from his office saw Appellant in June 2012 but that he had not examined Appellant until February 2015. (RP 279). Dr. Ombrellaro also testified that Appellant reported to him that her paresthesia began two to three days following the subject accident. (RP 284).

Dr. Lynch

On direct examination, Dr. Lynch testified that he saw and examined Appellant in August 2011. (RP 323-33). Dr. Lynch testified that a diagnostic test performed by Dr. Ombrellaro's office in June 2012 did not confirm TOS but confirmed thoracic outlet compression. (RP 326). Dr. Lynch testified that there were "several months between the accident and the development of [Appellant's paresthesia] symptoms." (RP 340). He further testified that a period of several months was longer than would be expected for onset of TOS. (RP 342-43).

On cross examination, Dr. Lynch testified that his records indicate that Appellant complained of new symptoms of paresthesia involving her arms that started in May 2011. (RP 354). Dr. Lynch confirmed that a fractured clavicle that had healed could cause TOS. (RP 361-62). He admitted that he was unaware if Appellant had ever fractured her clavicle. (RP 362).

Dr. Kremer

On direct examination, Dr. Kremer, a board certified vascular surgeon, testified that Appellant did not sustain TOS as a result of the subject accident. (RP 403). Dr. Kremer testified that he conducted an examination of Appellant and took a medical history. (RP 404). Dr. Kremer testified that none of the physical testing he performed on

Appellant revealed TOS. (RP 405). Dr. Kremer testified that the testing performed by Dr. Ombrellaro's office actually "would be against [a] diagnosis of thoracic outlet syndrome" and that the technician who performed the testing did not conduct it correctly. (RP 409-10). Dr. Kremer testified that during his examination of Appellant, he noted a callous formation on Appellant's clavicle. (RP 410). At which point, Dr. Kremer inquired if Appellant had ever fractured her clavicle, which she confirmed. (RP 410-11). Dr. Kremer testified that he did not believe that Appellant sustained TOS as a result of the accident but that her subjective complaints were a result of an intermittent partial obstruction to the right subclavian artery due to Appellant's unrelated weight gain and postural problems. (RP 411-14).

D. Jury Instructions

After close of evidence, the trial court heard argument on the inclusion of various jury instructions, including WPI 30.18. (RP 444). Specifically, Respondents argued that the last portion of bracketed text in the model instruction should be given: "There may be no recovery, however, for any injuries or disabilities that would have resulted from natural progression of the pre-existing condition even without this occurrence." (RP 449-50). Appellant opposed this instruction. (447-48). The trial court noted that there had been expert testimony that Appellant's

callous formation could cause Appellant's subjective complaints and determined that including the bracketed language from WPI 30.18 was appropriate.

Additionally, instructions regarding Appellant's burden of proof as well as proximate cause were heard and submitted to the jury. (RP 433 – 458).

V. ARGUMENT WHY REVIEW SHOULD BE DENIED

RAP 13.4(b) sets forth the criteria upon which the Supreme Court will consider accepting discretionary review.

Here, Appellant contends that the unpublished decision of the Court of Appeals satisfies RAP 13.4(b)(1) & (2) (conflicting with past decisions of the Supreme Court and Court of Appeals) as well as RAP 13.4(b)(4) (involves an issue of substantial public interest that should be determined by the Supreme Court); however, Appellant has failed to demonstrate how the Court of Appeals' unpublished decision conflicts with any past decision of the Supreme Court or Court of Appeals, and has additionally failed to demonstrate that this petition involves an issue of substantial public interest sufficient to warrant determination by the Supreme Court. Accordingly, Appellant has failed to satisfy the requirements of RAP 13.4(b), and this petition for discretionary review should be denied.

A. Appellant Does Not Establish that the Court of Appeals' Decision Conflicts with a Decision of This Court or the Court of Appeals

Appellant fails to identify any Washington published decision that conflicts with the Court of Appeals' decision. This is no mere oversight, for the Court of Appeals correctly applied the applicable law and standard of review in allowing limited evidence of Appellant's prior injury at trial.

Standard of Review

An appeal of a trial court's evidentiary rulings is reviewed for an abuse of discretion. *Torno v. Hayek*, 133 Wn. App. 244, 135 P.3d 536 (2006). Discretion is abused if "no reasonable person would take the position adopted by the trial court." *Stevens v. Gordon*, 118 Wn. App. 43, 51, 74 P.3d 653 (2003) (citing *Mayer v. City of Seattle*, 102 Wn. App. 66, 79, 10 P.3d 408 (2000)).

If the trial court abuses its discretion, the error will not be reversible unless the appellant demonstrates prejudice. *Portch v. Sommerville*, 113 Wash.App. 807, 810, 55 P.3d 661 (2002). *review denied*, 149 Wash.2d 1018, 72 P.3d 761 (2003).

The Trial Court Acted Within its Discretion in Allowing Evidence of Collarbone Fracture when the Fracture was Relevant to Respondents' Theory of Causation and Supported by Competent Medical Testimony

'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." ER 401. "Evidence tending to establish a party's theory, or to qualify or disprove the testimony of an adversary, is relevant evidence." *Hayes v. Wieber Enters., Inc.*, 105 Wn. App. 611, 617, 20 P.3d 496 (2001). However, relevant evidence may be excluded if its probative value is substantially outweighed by unfair prejudice. ER 403. Defense medical experts are permitted to offer alternative explanations for a plaintiff's condition, and such opinions are relevant so long as they "tend to deprive plaintiff's proof of the persuasive power necessary to cross the 50 percent threshold." *Colley v. Peacehealth*, 177 Wn. App. 717, 731, 312 P.3d 989 (2013).

Prior accident(s) and preexisting condition(s) can be highly relevant to a defendant's theory of causation of a plaintiff's purported injuries allegedly caused by a precedent event. *Torno*, 133 Wn. App. at 251. In such a situation, a trial court does not abuse its discretion in allowing introduction of such evidence at trial. *Id.*

In *Torno*, defendants Hayak and Boyle admitted liability for two separate 2000¹ rear-end motor vehicle accidents involving plaintiff Torno. *Id.* at 247; however, both defendants disputed plaintiff's alleged damages. *Id.* At trial, over plaintiff's objection, defendants introduced evidence of a 1993 motor vehicle accident and injuries that resulted therefrom. *Id.* at 251. Defendants presented expert testimony that plaintiff sustained a cervical strain that required three weeks to three months of treatment before recovering. *Id.* at 248. The experts testified that plaintiff's ongoing complaints were not related to two recent accidents but were an effect of preexisting fibromyalgia. *Id.*

On appeal, the Court of Appeals noted that plaintiff's preexisting conditions were "highly relevant to defendants' theory on causation." *Id.* at 251. Accordingly, the Court held that the trial "court did not abuse its discretion in finding this evidence relevant and sufficiently probative to overcome any unfair prejudice." *Id.*

Here, like in *Torno*, Appellant's clavicle fracture is highly relevant to Respondents' theory regarding causation. Like the experts in *Torno*, Dr. Kremer testified at trial and in declaration form submitted in response to Appellant's motion in limine, that Appellant's subjective complaints were not caused by the subject accident. In this case, rather than as a result of

¹ May 22, 2000 and June 4, 2000.

the accident, Dr. Kremer opined that Appellant's clavicle fracture healed to form a permanent callous formation and that callous formation along with the Appellant's weight gain and postural issues caused Appellant's subjective complaints. The parallel between this case and the *Torno* case could not be more evident. In both cases a prior condition or event was determined by competent expert testimony to be the cause of subjective complaints. In both cases, the prior condition or event was a part of the defending parties' theory regarding causation. Relevance of the fracture could not be more clear or established with more certainty.

Appellant's Arguments and Case Law are Consistent with the Court of Appeals' Decision

Appellant goes to great length to analogize this case with *Harris v. Drake*² and its progeny; however, this is not an appropriate analogy.

In *Harris v. Drake*, plaintiff sued defendant for personal injuries arising out of a motor vehicle collision. 116 Wn. App. at 265-66. Plaintiff's primary claim consisted of a left shoulder impingement syndrome that resulted arthroscopic surgery. *Id.* at 266. For issues not germane to this appeal, defendant's medical expert was excluded and would have testified that plaintiff's shoulder injury was unrelated to the accident. *Id.* at 265-66. Defendant proceeded to trial without a medical expert and attempted to present evidence that plaintiff had complained of

² 116 Wn. App. 261, 5 P.3d 350 (2003); 152 Wn.2d 480, 99 P.3d 782 (2004).

pain to a chiropractor some 14 months prior to the accident; however, the trial court did not permit introduction of the prior complaints to the chiropractor. *Id.* at 268. The trial court granted directed verdict for plaintiff on the issues of causation and the amount of special damages. *Id.*

On appeal, the Court of Appeals analyzed defendant's offer of proof as to why plaintiff's complaints 14 months prior to the collision were relevant to the current action. *Id.* at 288. The Court noted that (1) defendant did not call the chiropractor; (2) Harris testified that his prior complaints resolved prior to the accident; and (3) the experts testified that Harris had no pain complaints in the six months prior the accident and that his shoulder injury was directly related to the accident. *Id.* The Court of Appeals agreed with the trial court sustaining plaintiff's relevance objection. *Id.* "**The offer of proof had no tendency to prove a fact of consequence to the action, and the trial court correctly ruled that it was irrelevant.**"³ *Id.* at 289 (emphasis added). The Court went on to hold that when an accident lights up and makes active a preexisting condition that was dormant and asymptomatic immediately prior to the accident, the preexisting condition is not a proximate cause of the resulting damages. *Id.* at 288-89.

³ Appellant notably omits this portion from her block quote on page 14 of her brief.

Here, unlike in *Harris*, Respondents have supplied competent medical testimony that Appellant's fracture does have a tendency to prove a fact of consequence: the cause of Appellant's subject complaints. Therefore, Appellant's fracture is relevant to this action. Also unlike *Harris*, where the only competent testimony was that plaintiff's injuries resulted from the accident, here, competent testimony was offered that Appellant did not suffer any vascular type injuries in the accident and did not sustain TOS. Here, Respondents do not contend that the subject accident "lit up" or "made active" a dormant condition. To the contrary, Dr. Kremer's testimony was the complete opposite.

Instead, Respondents contend that Appellant's subjective complaints are entirely unrelated to the subject accident and are related to the progression of her fractured clavicle and weight gain. The trial court did not err in determining that Appellant's fracture was relevant and admitted evidence of the same at trial and after Appellant had made the same arguments in her motion in limine, pursuant to *Harris v. Drake*, that she attempts to re-argue now.

In *Hoskins v. Reich*, the trial court admitted evidence of late 2000 chiropractic treatment and physical complaints in a personal injury trial stemming from a May 10, 2001 motor vehicle accident. 142 Wn. App. 557, 174 P.3d 1250 (2008). The Court of Appeal performed an analysis in

accord with *Harris v. Drake* and determined that the trial court erred in admitting evidence of the prior treatment and complaints. *Hoskins*, 142 Wn. App. 566. The Court noted that defendant's desire to have the jury hear that plaintiff "was not a perfect clean slate" at the time of the accident was insufficient to meet basic relevance requirements. *Id.* at 568. "Without evidence of symptoms or a preexisting condition subject to a natural progression, [plaintiff's] prior treatment was not relevant to the issues of proximate cause and damages." *Id.* at 568-69. The Court also specifically noted that defendant 'failed to explain what [plaintiff's] "condition" was or why it was relevant to the post-accident injuries.' *Id.* at 569.

Here, the Court of Appeals' unpublished opinion is consistent with past decisions of this Court and the Court of Appeals regarding the admission of preexisting conditions and prior injuries at trial. The cases cited and relied upon in Appellant's do not conflict with the Court of Appeals' decision, but, in fact, they re-affirm the fundamental principles upon which the Court of Appeals relied: competent medical evidence of symptoms or a preexisting condition subject to a natural progression renders the preexisting condition relevant. Because the cited by both parties is harmonious and consistent with past decisions of this Court and the Court of Appeals, Appellant fails to satisfy the requirements of RAP 13.4(b)(1) & (2). Appellant's petition should be denied.

Appellant's Argument Regarding Speculation was Not Properly Raised and Briefed and Should Not be Considered

Appellant, for the first time, has provided briefing and argument regarding allegations of “speculation” on the part of Dr. Kremer. This notion was mentioned at trial and during oral argument before the Court of Appeals; however, no prior briefing has been provided and Appellant’s arguments lack any factual basis in the record. What can be gleaned from the record is that Dr. Kremer provided a declaration and a report of his opinions after conducting a CR 35 Examination and review of Appellant’s medical records. The Court of Appeals and trial court both determined that Dr. Kremer had the foundation for his opinions and that any objections would go to weight. Nothing contained in Appellant’s late and conclusory argument demonstrates any inconsistency with any prior decisions of any court.

B. Appellant Does Not Establish that the Court of Appeals’ Decision Involves an Issue of Substantial Public Interest that Should be Determined by the Supreme Court

Appellant contends that this petition for discretionary review should be accepted because it involves “an issue of substantial and increasing public importance, which is litigated on a daily basis in Washington court rooms (sic) throughout the state.” Appellant fails to articulate this assertion beyond the quoted material above. Appellant fails

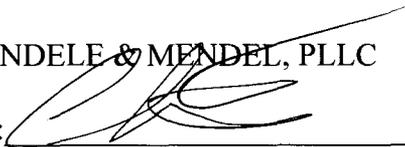
to articulate how an unpublished opinion, lacking any precedential authority, involves any issues of public importance or warrants the attention of this Court. As cited by both parties, the issues of preexisting conditions and past injury have been litigated many times and the law is clear; so much so that the Court of Appeals came to an entirely unsurprising conclusion based on decades of jurisprudence. In sum, the issue involved in this appeal does not raise any issue of substantial public interest, and the Court should decline review.

VI. CONCLUSION

Appellant's petition for discretionary review should be denied because it neither conflicts with other decisions of this Court or the Court of Appeals nor involves an issue of substantial public interest. The Court of Appeals' unpublished decision is fair and consistent with well-established jurisprudence. Discretionary review should be denied.

DATED: November 4, 2016.

BENDELE & MENDEL, PLLC

By: 

James Mendel, WSBA 29223

Colin Hutchinson-Flaming, WSBA 45294

200 W. Mercer Street, Suite 411

Seattle, WA 98119

T: (206) 420-4267

F: (206) 420-4375

E: james@benmenlaw.com

Attorneys for Defendants/Respondents

No. 73926-3-I

COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION ONE

ANNE CUTONE,

Appellant/Plaintiff

v.

WAI K. LAW and JANE DOE LAW,
and their marital community,

Respondents/Defendants

CERTIFICATE OF SERVICE

2016 NOV -4 PM 12:00
COURT OF APPEALS
STATE OF WASHINGTON

The undersigned declares as follows:

I am over the age of 18 years, not a party to this action, and
competent to be a witness herein.

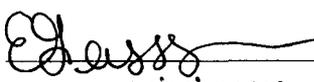
I certify under penalty of perjury of the laws of Washington that I
caused to be delivered the following document to all parties or their
attorneys of record on November 4, 2016, as follows:

DOCUMENTS: RESPONDENTS' ANSWER TO PETITION FOR
REVIEW

ORIGINAL

Original and one copy to: Clerk of Court Washington State Court of Appeals Division One One Union Square 600 University Street Seattle, WA. 98101	<input type="checkbox"/> U.S. Postal Service (First Class) <input type="checkbox"/> Facsimile to <input type="checkbox"/> _____ Express Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Via Legal Messenger <input type="checkbox"/> E-Service <input type="checkbox"/> E-Filed
Counsel for Appellant: Raymond Dearie Dearie Law Group, PS 2025 First Avenue, Suite 1200 Seattle, WA. 98121	<input type="checkbox"/> U.S. Postal Service (First Class) <input type="checkbox"/> Facsimile to <input type="checkbox"/> _____ Express Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Via Legal Messenger <input type="checkbox"/> E-Service <input type="checkbox"/> E-Filed

DATED: 11/4/2016

By: 

Name: Libbey Geissinger

Title: Legal Assistant