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Washington State
Court of Appeals
Division Two

July 30, 2019

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

JERRY PETERSON, as parent and guardian for T.P., a minor, Appellant, v. THE STATE OF WASHINGTON, by and through its various state agencies and subdivisions, including DEPARTMENT OF SOCIAL AND HEALTH SERVICES, and DIVISION OF CHILDREN AND FAMILY SERVICES, and CHILDREN'S PROTECTIVE SERVICES, and CHILDREN'S WELFARE DIVISION, Respondents.	No. 48828-1-II UNPUBLISHED OPINION

SUTTON, J. — Jerry Peterson, as guardian for TP, appeals the superior court's summary judgment orders dismissing his claims against the Department of Social and Health Services (Department).[1]

Peterson argues that the superior court erred in dismissing his common law negligence claims. While this appeal was pending, our Supreme Court decided *HBH v. State* and held that "[u]nder well-established common law tort principles, [the Department] owes a duty of reasonable care to protect foster children from abuse at the hands of their foster parents." 192 Wn.2d 154,

[1] As of July 1, 2018, the Department's duties related to child welfare services have been renamed the Department of Children, Youth, and Families. RCW 43.216.906.

159, 429 P.3d 484 (2018). Based on the State's concession that *HBH* applies to the common law negligence claims, we hold that the superior court erred in dismissing the common law negligence claims. We reverse and remand those claims for further proceedings consistent with this opinion.

Peterson also argues that the superior court erred in dismissing his negligent investigation claims under RCW 26.44.050.[2] We hold that the Department has statutory immunity for its emergent placement investigation under RCW 4.24.595,[3] and there are no genuine issues of material fact that the Department acted with gross negligence or withheld material information from the court in the shelter care or dependency hearings. Thus, we affirm the superior court's dismissal of those claims.

We affirm in part, reverse in part and remand for further proceedings.

FACTS

I. BACKGROUND FACTS

A. SEXUAL ALLEGATIONS, EMERGENCY REMOVAL, AND PLACEMENT OF TP

Peterson, guardian of TP, and Tina O'Keefe are the parents of TP, who was born in 1998. On July 11, 2003, O'Keefe contacted the Department's Child Protective Services (CPS) to report that Peterson was sexually abusing TP. O'Keefe reported that Peterson's then-girlfriend Angela Calapp called her and told O'Keefe that Peterson had been rubbing lotion on TP's vaginal area. O'Keefe also stated that Peterson's girlfriend reported that TP regularly complained that her

[2] The legislature amended RCW 26.44.050 in 2017. LAWS OF 2017, 3rd Spec. Sess., ch. 6 § 324. Because these amendments are not relevant here, we cite to the current version of this statute.

[3] The legislature amended RCW 4.24.595 in 2017. LAWS OF 2017, 3rd Spec. Sess., ch. 6 § 301. Because these amendments are not relevant here, we cite to the current version of this statute.

vaginal area was sore. O'Keefe disclosed that she had been in jail for driving while under the influence, but that she was now clean and sober. O'Keefe also disclosed that although TP had been living with Peterson, O'Keefe intended to seek custody of TP. The CPS report also noted that the family had a number of prior CPS referrals. The CPS report classified the response time for the referral as "[non-emergent" with a "[h]igh [s]tandard" investigation standard and moderate risk. Clerk's Papers (CP) at 62. Evelyn Larsen was the CPS investigator assigned to the referral.

CPS received a second referral on July 28 from the social worker supervising the visits between TP and O'Keefe. The social worker alleged that TP was hysterical when told she had to be returned to Peterson and that O'Keefe had told the social worker that Peterson had sexually abused TP and was a "very violent man." CP at 503.

The next day on July 29, CPS received a third referral from Angela Calapp, Peterson's then-girlfriend. Calapp informed CPS investigator Larsen that she was currently pregnant with Peterson's child but was trying to break off the relationship. Calapp characterized Peterson as a "violent and vindictive person" and claimed she was only trying to protect TP. CP at 65. Calapp reported that TP told her that Peterson rubbed lotion on her vaginal area and made TP rub lotion on his private area. Calapp also stated that TP told her that Peterson would lay on top of her, stick his private in her, hurts her, and makes her sad. And TP stated that she has seen "white stuff" coming from Peterson and going all over the bed. CP at 65. Calapp also reported that she had seen Peterson hit TP because TP was playing with Calapp's daughters. Calapp informed Larsen that she was not friends with O'Keefe and had only met her for the first time the day before. Larsen referred the report to law enforcement.

The same day, due to the nature of the sexual allegations against Peterson, the Snohomish County Sheriff's Office decided to take TP into protective custody and notified Peterson. After taking TP into protective custody, the sheriff's office transferred custody of TP to CPS. CPS placed TP in emergency foster care with the Halls.

B. SHELTER CARE AND DEPENDENCY HEARINGS

Twenty days after the initial CPS referral and within two days of TP being taken into protective custody, on July 31, the Department filed a dependency petition on behalf of TP. The petition alleged that TP had no parent capable of adequately caring for her and was "in circumstances which constitute a danger of substantial damage to the child's psychological or physical development." CP at 69; 533. The petition included all information then known to the Department.

The petition quoted the three recent CPS referrals that the Department had received related to TP, the multiple allegations of verbal, physical, and sexual abuse of TP by Peterson, and claims that Peterson had been violent toward O'Keefe and others. The petition also detailed contact Larsen had with Peterson in which he denied the allegations of sexual abuse and claimed O'Keefe had made the referral maliciously. Peterson also informed Larsen that he had a restraining order against O'Keefe, O'Keefe had left him threatening voicemails, and O'Keefe has threatened to report him to CPS. The petition included an additional contact with O'Keefe in which O'Keefe admitted that she was in a custody battle with Peterson.

The petition also included details related to eleven prior CPS referrals regarding Peterson and O'Keefe that had occurred between 1991 and 2002, services previously offered to the family, O'Keefe's history of drug use and alleged threats to report Peterson to CPS, and an ongoing custody battle between Peterson and O'Keefe related to TP. The petition noted that CPS had requested criminal history checks for Peterson and O'Keefe on July 30, 2003.

On August 1, 2003, after a hearing on the petition, the superior court entered a shelter care order after finding that the Department had made reasonable efforts to prevent or eliminate the need for removal of TP from her home. The court concluded that returning TP to her home would seriously endanger her health, safety, and welfare. RCW 13.34.065. The court ordered that TP was to remain in foster care pending further order.

On August 4, the superior court held a contested shelter care hearing. At the conclusion of the hearing, the court ordered TP to remain in out-of-home care. RCW 13.34.065.

Subsequent dependency proceedings took place related to TP's placement and the allegations against Peterson. In February 2004, after being advised by the Department that the allegations against Peterson appeared to be false, the superior court found that Peterson did not sexually abuse TP. The Department moved to dismiss the dependency and in April 2006, the superior court dismissed the dependency and TP returned home.

During the dependency proceedings, TP was placed in foster care with the Halls from July 29, 2003 until December 15, 2003. In December 2003, the Department received a referral alleging that the Halls' minor son might have inappropriately touched TP; the Department accepted the referral and assigned a 72 hour response time and immediately removed TP from the Halls' home.

As a result of the disclosures that TP was abused while placed in the Halls' foster home, Peterson, as TP's guardian, sued the Department.

II. PROCEDURAL HISTORY

This appeal arises from Peterson's allegation that TP was physically abused while in the foster home of Doreen and Daniel Hall, including being bitten by the family dog and kicked down the stairs by Daniel Hall. In March 2014, Peterson filed a complaint for damages against the Department. The complaint alleged common law negligence based on a duty to protect TP from abuse by the Halls, negligent investigation resulting in TP's removal from her father's home and emergent placement into foster care, and negligent infliction of emotional distress.

In 2015, the Department filed a motion for summary judgment to dismiss the claims of negligence related to its investigation into TP's removal and placement. The Department argued that its investigation was not negligent, it was entitled to statutory immunity under RCW 4.24.595, and the superior court's subsequent orders placing TP in foster care were a superseding intervening cause defeating causation. The superior court granted the Department's motion as to the negligent investigation claim related to TP's removal, denied the claim related to TP's placement with the Halls, and declined to rule on the common law negligence claims. The Department filed a motion for partial reconsideration which the court denied.

Later in 2015, the Department filed another motion for summary judgment to dismiss the common law negligence claims related to TP's placement with the Halls, including the claim of negligent infliction of emotional distress and any claim based on a theory of respondeat superior. The superior court granted the motion, dismissed all remaining common law negligence claims,

but allowed Peterson to seek reconsideration. Peterson filed a motion to reconsider which the court denied. Peterson appealed.

In September 2017, we sua sponte issued a stay of the appeal pending the Supreme Court's decision in *HBH*. In November 2018, the Supreme Court issued its decision in *HBH*. In January 2019, we lifted the stay and indicated that the parties could file supplemental briefing addressing the effect of *HBH* on the appeal. Both parties filed supplemental briefing agreeing that *HBH* applies to the common law negligence claims and that those claims should be remanded for further proceedings. After we issued our initial opinion, Peterson filed a motion to reconsider and clarify. We granted the motion to reconsideration and withdrew our previously filed opinion dated April 16, 2019.

ANALYSIS

I. STANDARD OF REVIEW – SUMMARY JUDGMENT

We review a superior court's order granting summary judgment de novo. *M.W. v. Dep't of Soc. & Health Servs.*, 149 Wn.2d 589, 595, 70 P.3d 954 (2003). "We view the evidence in the light most favorable to the nonmoving party and draw all reasonable inferences in that party's favor." *McCarthy v. Clark County*, 193 Wn. App. 314, 328, 376 P.3d 1127 (2016). Summary judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. CR 56(c). "'A material fact is one that affects the outcome of the litigation.'" *Elcon Constr., Inc. v. E. Wash. Univ.*, 174 Wn.2d 157, 164-65, 273 P.3d 965 (2012) (quoting *Owen v. Burlington N. Santa Fe R.R.*, 153 Wn.2d 780, 789, 108 P.3d 1220 (2005)). "If reasonable minds can reach only one conclusion on an issue of fact, that issue may be determined on summary judgment." *McCarthy*, 193 Wn. App. at 328.

II. COMMON LAW NEGLIGENCE CLAIMS

Our Supreme Court in *HBH* recognized a common law duty based on a special relationship between foster children and the Department. 192 Wn.2d at 159. The Supreme Court held that

> [i]n addition to its initial duty to investigate foster homes for licensing purposes, [the Department] has a continuing duty to investigate allegations of abuse and to monitor the dependent child in the foster home. *See* RCW 74.13.031(3) ("[t]he department shall investigate complaints of any recent act or failure to act on the part of a parent or caretaker"), (6) ("The department shall monitor placements of children in out-of-home care and in-home dependencies to assure the safety, well-being, and quality of care being provided is within the scope of the intent of the legislature as defined in RCW 74.13.010 and 74.15.010.").

H.B.H., 192 Wn.2d at 166-67 (alternations in original).

The Department argued below that Washington does not recognize a common law cause of action for either negligent foster home licensing or for negligent foster home placement. As discussed above, the Department now concedes that under *HBH*, this common law duty applies here.[4] Accordingly, because under *HBH*, the Department owes a common law duty to protect TP from abuse by her foster parents, we hold that the superior court erred in dismissing the common law negligence claims. Thus, we reverse the superior court's dismissal of the common law negligence claims.

III. EMERGENT PLACEMENT INVESTIGATION

RCW 26.44.050 provides that CPS and law enforcement must investigate reports of abuse or neglect of a child:

[4] The Department does not concede that *HBH* recognizes a cause of action for either negligent foster home licensing or negligent foster home placement.

> [U]pon the receipt of a report concerning the possible occurrence of abuse or neglect, the law enforcement agency or the department must investigate and provide the protective services section with a report . . . and where necessary to refer such report to the court.
>
> A law enforcement officer may take, or cause to be taken, a child into custody without a court order if there is probable cause to believe that the child is abused or neglected and that the child would be injured or could not be taken into custody if it were necessary to first obtain a court order pursuant to RCW 13.34.050.

Based on CPS's statutory duty to investigate allegations of child abuse or neglect, parents have an implied cause of action against CPS and law enforcement for negligent investigation resulting in a harmful placement decision. *M.W.*, 149 Wn.2d at 595. However, a negligent investigation cause of action is a "narrow exception" to the rule that there is no general tort claim for negligent investigation. *M.W.*, 149 Wn.2d at 601. A negligent investigation claim is available only when CPS or law enforcement conducts an incomplete or biased investigation that "resulted in a harmful placement decision." *M.W.*, 149 Wn.2d at 601. A harmful placement decision includes "wrongfully removing a child from a nonabusive home, placing a child into an abusive home, or allowing a child to remain in an abusive home." *M.W.*, 149 Wn.2d at 597-98.

However, the legislature has limited the scope of this cause of action by granting the Department immunity for emergent placement decisions and compliance with shelter care and dependency court orders. RCW 4.24.595 states:

> (1) Governmental entities, and their officers, agents, employees, and volunteers, are not liable in tort for any of their acts or omissions in emergent placement investigations of child abuse or neglect under chapter 26.44 RCW including, but not limited to, any determination to leave a child with a parent, custodian, or guardian, or to return a child to a parent, custodian, or guardian, unless the act or omission constitutes gross negligence. Emergent placement investigations are those conducted prior to a shelter care hearing under RCW 13.34.065.

> (2) The department . . . and its employees shall comply with the orders of the court, including shelter care and other dependency orders, and are not liable for acts performed to comply with such court orders. In providing reports and recommendations to the court, employees of the department . . . are entitled to the same witness immunity as would be provided to any other witness.

A. IMMUNITY FROM LIABILITY

Peterson argues that the Department did not conduct an emergent placement investigation within the meaning of RCW 4.24.595, that the Department was grossly negligent in its investigation, and that the Department is not entitled to immunity. We disagree. We hold that the Department is entitled to statutory immunity given the closeness in time of its investigation preceding the shelter care hearing and its continuing investigation after the shelter care hearing, given the nature of the sexual allegations made against Peterson involving his child, and because the Department was not grossly negligent in its actions.

"Statutory interpretation is a matter of law that we review de novo." *SEIU Healthcare 775NW v. Dep't of Soc. & Health Servs.*, 193 Wn. App. 377, 398, 377 P.3d 214 (2016). "The primary goal of statutory interpretation is to determine and give effect to the legislature's intent." *SEIU Healthcare 775NW*, 193 Wn. App. at 398. "To determine legislative intent, we first look to the plain language of the statute." *SEIU Healthcare 775NW*, 193 Wn. App. at 398. "We consider the language of the provision in question, the context of the statute in which the provision is found, and related statutes." *SEIU Healthcare 775NW*, 193 Wn. App. at 398. "If the plain meaning of a statute is unambiguous, we must apply that plain meaning as an expression of legislative intent without considering extrinsic sources." *SEIU Healthcare 775NW*, 193 Wn. App. at 399.

Peterson argues that emergent placement investigations must necessarily refer only to investigations that take place in the 72 hours between emergent removal and a shelter care hearing

because the use of the word placement implies that a placement must have occurred to trigger the investigation. Peterson argues that the legislature could not have intended to immunize the Department from liability for all investigations that take place prior to shelter care hearings because it would incentivize the Department to leave children in their homes until an entire investigation is completed. We acknowledge that the language in RCW 4.24.595 creates some ambiguity and that, at either extreme, there could be absurd results. However, the most reasonable interpretation of the statute to give effect to the legislature's intent would grant the Department immunity for investigations that result in an emergent removal and shelter care hearing regardless of the exact timing of any of the particular events.

Peterson also argues that the legislature could not have intended to grant the Department immunity for all investigations that preceded the shelter care hearing because it would eviscerate much of the existing law regarding negligent investigation. The cases he cites all precede the legislature's decision to codify RCW 4.24.595 in 2012. LAWS OF 2012, ch. 259 § 13. It is within the legislature's power to restrict or eliminate causes of action derived from statute. *Sofie v. Fibreboard Corp.*, 112 Wn.2d 636, 651, 771 P.2d 711 (1989). Because negligent investigation is a cause of action specifically derived from RCW 26.44.050, the legislature is within its power to essentially overturn the court's creation of the negligent investigation cause of action by granting the Department immunity for investigations unless it acts with gross negligence.

Peterson also cites to the Department's internal classification of the referral as non-emergent to claim that the Department did not conduct an emergent placement investigation. However, RCW 4.24.595 does not grant the Department immunity only for investigations that the Department internally classifies as emergent. RCW 4.24.595(1) defines "emergent placement

investigations" as "those conducted prior to a shelter care hearing under RCW 13.34.065." Therefore, the statute, not the Department's internal classification, controls whether the Department is entitled to immunity.

Peterson next argues that the Department is not entitled to immunity because the investigation occurred before TP's removal rather than between removal of TP and the shelter care hearing. Peterson reads language into the statute which simply is not there. The statute defines emergent placement investigations as investigations conducted prior to a shelter care hearing. RCW 4.24.595(1). The plain language of the statute does not require the child to have been removed in order to trigger an emergent placement investigation.

Moreover, Peterson's argument lacks logical cohesion. Under Peterson's reasoning, the Department could remove a child based on an allegation with no investigation and conduct a negligent investigation during the 72 hours preceding a shelter care hearing, but the Department would have immunity. However, if the Department receives a referral of abuse or neglect, does some investigation and determines that removing the child is warranted and then files for a shelter care hearing, the Department would not be immune from liability for the same investigation. This would encourage the Department and law enforcement to make decisions regarding removing a child without conducting any investigation. In construing statutory language, we avoid absurd results which could not have been intended by the legislature. *Five Corners Family Farmers v. State*, 173 Wn.2d 296, 311, 268 P.3d 892 (2011).

Because the Department's investigation into the allegations of sexual abuse was conducted prior to, and resulted in, a shelter care hearing and a dependency hearing, we hold that under these facts, the Department's investigation is an emergent placement investigation as defined under

RCW 4.24.595.[5] Therefore, absent gross negligence, the Department is immune from liability for its actions related to the emergent placement investigation of TP.

B. GROSS NEGLIGENCE

Peterson also argues that, even if the Department's investigation is considered an emergent placement investigation, it is not entitled to immunity under RCW 4.24.595 because its actions were grossly negligent. Peterson claims that the Department was grossly negligent because (1) it "made no effort to look into" a restraining order between the parents or O'Keefe's alleged threats, (2) it failed to investigate O'Keefe's animosity toward Peterson or review the Department's prior entries in the case file, (3) it failed to and should have "uncovered an obviously concocted story" between O'Keefe and Calapp, and (4) it failed "to consider the obvious." Opening Br. of Appellant at 20. He argues that the Department's investigation was grossly negligent because Larsen, the CPS investigator, ignored the obvious fabrications in the sexual abuse allegations during the investigation and failed to conclude, prior to the shelter care hearing and without any direct evidence, that O'Keefe and Calapp were making false allegations of abuse.

"Gross negligence" is negligence substantially and appreciably greater than ordinary negligence. *Nist v. Tudor,* 67 Wn.2d 322, 331, 407 P.2d 798 (1965). "Gross negligence" also means the failure to exercise slight care. *Nist,* 67 Wn.2d at 331. "Gross negligence" does not mean the total absence of care, but care substantially or appreciably less than the quantum of care inhering in ordinary negligence. *Nist,* 67 Wn.2d at 331; *Johnson v. Spokane to Sandpoint, LLC,* 176 Wn. App. 453, 460, 309 P.3d 528 (2013).

[5] We do not need to define the parameters of what constitutes an emergent placement investigation beyond the facts of this case.

As our Supreme Court recently explained in *Harper v. State*,

> To survive summary judgment in a gross negligence case, a plaintiff must provide substantial evidence of serious negligence. In determining whether the plaintiff has provided substantial evidence, the court must look at all the evidence before it, evidence that includes both what the defendant failed to do *and* what the defendant did. If a review of all the evidence suggests that reasonable minds could differ on whether the defendant may have failed to exercise slight care, then the court must deny the motion for summary judgment. But if a review of all the evidence reveals that the defendant exercised slight care, and reasonable minds could not differ on this point, then the court must grant the motion.

192 Wn.2d 328, 345-46, 429 P.3d 1071 (2018).

First, the shelter care petition included information related to the restraining order and O'Keefe's alleged threats. *See* CP at 532-38. Thus, Peterson's claim, that the Department made no effort to look into these matters, is not supported by the record.

Second, the Department interviewed O'Keefe, Calapp, Peterson, and the social worker who made the third referral and reviewed O'Keefe's and Peterson's prior CPS history and known criminal history all of which referred to the animosity between O'Keefe and Peterson. CP 532-38. The Department was aware of the contested custody dispute over TP which allegations it was investigating. CP at 532-38. Thus, Peterson's claim that the Department failed to investigate the issue related to animosity and failed to review the CPS history related to this issue is not supported by the record.

Third, Peterson's claim, that the Department failed to determine that the allegations were fabricated, fails. Between July 11 and 29, the CPS investigator was confronted with three referrals by different persons on different days alleging possible sexual abuse of TP, the fact that Calapp and O'Keefe were not friends, and Peterson's denial of the allegations. Even considering information that gave both O'Keefe and Calapp a motive to fabricate the allegations, the CPS

investigator had no way to definitively determine the accuracy of the allegations at the time law enforcement took TP into protective custody.

Viewing the facts in the light most favorable to Peterson, the CPS investigator's failure to conclude that O'Keefe and Calapp had fabricated the allegations of sexual abuse at the time TP was taken into protective custody and prior to the shelter care hearing does not constitute gross negligence. The Department provided all known information to the superior court at the shelter care hearing. The court, based on the evidence, ordered TP placed into foster care based on its finding that TP was "in circumstances which constitute a danger of substantial damage to the child's psychological or physical development," and TP had no parent capable of adequately caring for her. CP at 533. Thus, the Department is entitled to statutory immunity from liability under RCW 4.24.595. Accordingly, the superior court did not err by dismissing the negligent investigation claims on this basis.

C. WITHHOLDING INFORMATION

Peterson also argues that the Department "does not enjoy immunity for omitting material information in dependency proceedings." Opening Br. of Appellant at 20. We disagree and hold that there is no genuine issue of material fact that the Department withheld material information from the court during the shelter care or dependency hearings, and thus, the Department is entitled to immunity, and this claim fails.

Peterson argues that the CPS investigator admitted that the Department filed the dependency petition solely on the basis that it had received an allegation of sexual abuse by Peterson. However, the investigator testified that the Department filed a shelter care petition because there was sufficient concern given the allegations that law enforcement took TP into protective custody, requiring the Department to file the petition and the superior court to determine whether there was a substantial risk to TP if she were returned home. The day after the Department filed the dependency petition, the court held a shelter care hearing. Based on the evidence, the court found that the Department had made "reasonable efforts . . . to prevent or eliminate the need for removal of [TP] from [her] home. CP at 78. The superior court ruled that returning TP to her home "would seriously endanger [her] health, safety, and welfare." CP at 78; RCW 13.34.065. The court ordered that TP was to remain in foster care pending further order and subsequently ordered another 30 day placement.

Peterson next argues that the Department withheld the following material information from the court in the shelter care and dependency proceedings: O'Keefe's criminal record, CPS's prior history with O'Keefe, the custody dispute, and the restraining order obtained by Peterson against O'Keefe. The record does not support Peterson's assertion.

The dependency petition referenced all information known to the Department at the time. The petition stated that the parties' current criminal history request was pending, provided O'Keeffe's and Peterson's prior CPS history and known criminal history, and referenced the animosity between O'Keefe and Peterson. The petition also referred to the custody dispute and the restraining order.

It was clear from the dependency petition and shelter care proceeding that the sexual abuse allegations were contested, that Peterson denied the allegations, and that Peterson claimed that O'Keefe maliciously fabricated these allegations. The Department did not hide these facts or the dispute from the court or give the court the impression that the allegations had been verified. And the superior court was aware that further investigation by the Department was pending.

Subsequently, after Peterson and O'Keefe stipulated to a dependency for TP, Peterson filed a motion to vacate the dependency order which the court denied. The court found "that [] Peterson knowingly and voluntarily entered an agreed order of dependency," that there was a factually sufficient basis for the dependency, and that there was no evidence that the dependency order was entered into by fraud. CP at 165. Accordingly, the superior court did not err by dismissing the negligent investigation claims on this basis.

D. SUMMARY

The placement of TP with the Halls was an emergency placement decision under RCW 4.24.595. Viewing the facts in the light most favorable to Peterson, the record does not support his claim that the Department acted with gross negligence or his claim that the Department withheld material information from the court in the shelter care or dependency proceedings. Thus, we hold that the Department is entitled to immunity under RCW 4.24.595 and the superior court did not err in dismissing these claims.

CONCLUSION

We affirm the superior court's dismissal of Peterson's negligent investigation claims, reverse the superior court's dismissal of Peterson's common law negligence claims, and remand for further proceedings consistent with this opinion.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Sutton, J.

SUTTON, J.

We concur:

Maxa, C.J.

MAXA, C.J.

Worswick J

WORSWICK, J.