

69421-9

69421-9

No. 69421-9

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

GAYLE TORGERSON,

Petitioner,

vs.

THE CITY OF SEATTLE; and AMELIA HARTMAN and JOHN DOE
HARTMAN, wife and husband, and their martial community;

Respondents.

APPEAL FROM THE SUPERIOR COURT
FOR KING COUNTY
THE HONORABLE CAROL SCHAPIRA

BRIEF OF PETITIONER

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I. INTRODUCTION

Gayle Torgerson was struck and gravely injured by a car while crossing a busy intersection in West Seattle, which the City of Seattle had designated as a school crossing based on its close proximity to four schools. The City failed to post a required sign alerting drivers to a reduced 20 MPH speed limit in the school zone. The driver – who was traveling just over 30 MPH – struck Ms. Torgerson at 7:43 a.m. on a school day because she lacked sufficient time to avoid Ms. Torgerson or come to a stop.

The trial court dismissed Ms. Torgerson's negligence claim against the City on summary judgment, holding as a matter of law that the City's failure to post the required reduced speed limit sign could not be the "legal cause" of the accident because only "speculation" would allow a jury to find that the driver would have avoided the accident if she had been traveling 20 MPH. The trial court confused settled causation principles and erroneously overlooked Ms. Torgerson's substantial lay and expert evidence establishing that the driver would have avoided the accident had the City posted the correct speed limit. This court should reverse.

II. ASSIGNMENT OF ERROR

1. The trial court erred in entering its summary judgment order dismissing Ms. Torgerson's negligence claim against the City. (CP 474-76) (App. A)

III. ISSUE

Did the trial court err in holding that the City's failure to post a speed limit of 20 MPH in a school zone as required by law was not a "legal cause" of plaintiff's injuries, which were sustained while plaintiff was walking in a marked crosswalk as a result of a collision with a driver who was traveling in excess of 20 MPH?

IV. STATEMENT OF THE CASE

Gayle Torgerson, age 53, was struck by a car while crossing California Avenue Southwest in a marked crosswalk at 7:43 a.m. on Wednesday, January 12, 2010. (CP 322-23) The driver, defendant Amelia Hartman, a retired Catholic nun, was on her way to mass. (CP 55, 333, 449) Ms. Torgerson was taken from the scene in an ambulance and was hospitalized with multiple broken bones and a head injury. (CP 323) The City had designated the intersection where Ms. Torgerson was struck a school zone. (CP 141, 174-76, 187-88, 206) However, the City failed to mark the zone with a 20 MPH speed limit sign as required by Seattle Municipal Code

11.52.100. (CP 141, 166-68, 678-79) At the time of the collision, a school day morning, Ms. Hartman was traveling slightly above the 30 MPH posted speed on California Avenue and could not brake in time to avoid the collision. (CP 57, 315, 324, 333)

A. The City Knew That The Intersection Where Ms. Torgerson Was Struck Presented A Substantial Danger To Pedestrians.

Ms. Hartman struck Ms. Torgerson on California Avenue where it intersects Southwest Dakota Street in the busy West Seattle Junction neighborhood. (CP 176-77, 206-07, 320, 669-75) California Avenue is a principal arterial under RCW 35.78.010 and SMC 11.18.010. (CP 76; *see also* CP 141) Arterials carry "relatively high traffic volume." RCW 35.78.010. Because Dakota intersects California in an offset manner, the crosswalk is angled across California, resulting in a long crossing distance for pedestrians and challenging sight lines for drivers. (CP 177-78, 207)

The City designated the intersection as a school zone because it is located immediately adjacent to the Tilden School and

is within a few blocks of four schools that serve approximately 1000 students. (CP 168-69, 174-76, 206, 297) These schools open between 7:30 a.m. and 9:00 a.m. (CP 410-11, 444-47) Before-school activities start as early as 7:00 a.m. (CP 410-11, 445) The City also designated the intersection a High Priority Area in the Seattle Pedestrian Master Plan, meaning that there are high pedestrian volumes and high demand for pedestrian facilities in the area. (CP 139, 177, 206, 670-71)

A study conducted by the City showed that vehicles frequently travel through the intersection above the 20 MPH speed limit. (CP 207, 298) The City had also acknowledged in responding to complaints near the intersection that reduced speed limit signs “result in improved driver awareness.” (CP 208-09)

B. The City Failed To Post A Required Reduced Speed Limit Sign At The Intersection That Would Have Prevented The Collision.

The Manual on Uniform Traffic Control Devices (“MUTCD”) contains the standards for signs, signals, and pavement markings that regulate, warn, and guide road users. Washington has adopted the MUTCD as the controlling standard for road design

and maintenance. WAC 468-95-010; RCW 47.36.020; *see also* CP 27, 109-10, 140-42.¹

The MUTCD requires that reduced speed limit signs be “used to indicate the speed limit where a reduced speed zone for a school area has been established.” (CP 140, 156, 201 (displaying proper signage)) Under SMC 11.52.100 reduced speed zones extend 300 feet in either direction from marked school crosswalks. (See *also* CP 186) Although money to install reduced speed limit signs became available in 2007, at the time of the collision in January 2010, the City had not installed a reduced speed limit sign facing drivers on California Avenue at the intersection where Ms. Torgerson suffered her injuries. (CP 141, 166-68, 170, 188-89, 678-82)²

Reduced speed limit signs are an affordable safety precaution compared to other safety measures such as curb bulbs,

¹ At the time of the collision, the 2003 version of the MUTCD was in effect. (CP 77, 140; Wash. St. Reg. 05-23-003)

² There was a 20 MPH speed limit sign on Dakota Street, but that sign did not face drivers on California Avenue. (CP 174, 218) At the time of the collision there were also pentagonal-shaped yellow signs indicating a school crosswalk in advance of the crosswalk and immediately adjacent to the crosswalk. (CP 138, 201, 216, 218, 237-38) These signs, however, did not indicate a reduced speed limit. (CP 138-40, 216, 218, 237-38) The intersection had pedestrian flags available as part of a pilot project for the City, but the flags failed to improve driver compliance at the intersection. (CP 139, 652-61)

additional lighting, raised crosswalks, flashing beacons, or a signal. (CP 181-83, 290, 651) Installation of a sign would have taken less than a day. (CP 190-91) At lower speeds it is easier for pedestrians to clear an intersection without being at risk of collision, drivers are more vigilant, have increased perception/reaction time and better brake stopping distances. (CP 122-23, 241, 439, 452-54)

Had Ms. Hartman been traveling 20 MPH instead of over 30 MPH Ms. Torgerson would have cleared the intersection before being hit. (CP 122, 315-16, 439) Additionally, because of her reduced speed, Ms. Hartman likely would have seen Ms. Torgerson in time to avoid the collision. (CP 122-23, 439, 452-54) Ms. Hartman acknowledged that she would have reduced her speed to 20 MPH if there had been a reduced speed limit sign posted. (CP 449)

Ms. Torgerson suffered a head injury and numerous bone fractures as a result of the collision. (CP 323) On March 19, 2010, two months after the collision, the City installed a sign indicating a 20 MPH reduced speed limit at the intersection. (CP 141, 173, 238-39, 678-79)

C. The Trial Court Dismissed Ms. Torgerson's Claim Against The City, Holding That The City's Failure To Post A Reduced Speed Limit Sign Was Not A "Legal Cause" Of Ms. Torgerson's Injuries.

Ms. Torgerson sued the City of Seattle and Ms. Hartman in King County Superior Court alleging their combined negligence proximately caused her injuries. (CP 1-21) The City moved for summary judgment, arguing that even if its failure to post a reduced speed limit sign made the crossing not reasonably safe for ordinary travel, "plaintiff cannot, as a matter of law, establish that any act or omission on the part of the City was a *legal* cause of her injuries." (CP 23) (emphasis in original) The Honorable Carol Schapira ("the trial court") granted Ms. Torgerson a continuance to conduct additional discovery on the issue of whether the City's failure to install a reduced speed limit sign caused the collision. (6/29 RP 37)

On September 14, 2012, after considering supplemental briefing and holding a second hearing, the trial court entered an Order Granting Defendant City's Motion for Summary Judgment "as to causation only." (CP 474-76) The trial court acknowledged that a reasonable jury could find that the City's failure to post signs reducing the speed limit to 20 MPH in the school zone was a breach of its duty of care. (9/14 RP 26) The trial court also

rejected the City's argument that Ms. Torgerson failed to establish legal causation because the reduced speed limit sign would have only applied "when children are present" and Ms. Torgerson did not demonstrate that children were present. (9/14 RP 29-30 ("I'm probably making a slightly different ruling than either of you expected. I'm not ruling that there were no children present. . . . If that sign is up, you don't have to see a child to be liable for it."))

Instead, the trial court concluded, "It is not legal causation to say if she had been going slower, maybe she would have seen something. The scientists do not say that we're more attentive or that we see better when we're driving at 20 than we do at 30." (9/14 RP 29) The trial court reasoned that only "speculation" supported the inference that Ms. Hartman would have avoided Ms. Torgerson if she had been traveling 20 MPH, because it believed there was no evidence that Ms. Hartman braked before approaching the intersection. (9/14 RP 26, (it "is not permissible to say if she had only gone 22 miles an hour or 29 miles an hour . . . this horrible collision would not have happened"), 28 ("if she had braked perhaps that would raise a genuine issue"), 29 ("the court cannot make facts out of speculation")) The trial court also

reasoned that the City's negligence in failing to post a reduced speed limit sign could not have affected Ms. Hartman's speed because Ms. Hartman was familiar with the intersection. (9/14 RP 28-29 ("[Ms. Hartman] knows where she is. She knows there's a crosswalk there. . . . She simply failed [to stop]."))

The trial court certified its partial summary judgment order pursuant to RAP 2.3(b)(4). On February 11, 2013, this court granted Ms. Torgerson's motion for discretionary review.

V. ARGUMENT

A. This Court Reviews The Trial Court's Summary Judgment Ruling De Novo, Viewing The Facts In The Light Most Favorable To Ms. Torgerson.

This court reviews the trial court's summary judgment order de novo and "examine[s] the pleadings, affidavits, and depositions before the trial court and take[s] the position of the trial court and assume[s] facts and reasonable inferences most favorable to the nonmoving party." *Owen v. Burlington N. & Santa Fe R.R. Co.*, 153 Wn.2d 780, 787, ¶ 10, 108 P.3d 1220 (2005) (internal quotation and alterations omitted). Summary judgment is proper only "if the record before the trial court establishes "that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 153 Wn.2d at 787, ¶ 10

(quoting CR 56(c)). “[I]ssues of negligence and proximate cause generally are not susceptible to summary judgment.” 153 Wn.2d at 787, ¶ 13 (quotation omitted). Legal causation is a question of law, reviewed de novo. **Michaels v. CH2M Hill, Inc.**, 171 Wn.2d 587, 597, ¶ 12, 257 P.3d 532 (2011).

Because Ms. Torgerson was the non-moving party, this court views the facts and all reasonable inferences in the light most favorable to her in determining whether a reasonable juror could find that the City’s breach of its duty to maintain a safe intersection was the proximate cause of Ms. Torgerson’s injuries.

B. The Trial Court Confused Cause-In-Fact And Legal Cause By Concluding It Was “Speculation” Whether Ms. Hartman Would Have Avoided Ms. Torgerson Had She Been Traveling At 20 MPH.

The trial court confused cause-in-fact and legal causation in absolving the City of its negligence under the erroneous belief that a reduced speed limit sign would not have enabled Ms. Hartman to avoid the collision with Ms. Torgerson. “Cause in fact’ refers to the actual, ‘but for,’ cause of the injury, i.e., ‘but for’ the defendant’s actions the plaintiff would not be injured.” **Michaels**, 171 Wn.2d at 610, ¶ 33 (quotation omitted). Legal cause, on the other hand, involves the scope of a defendant’s duty, and turns on “whether, as

a matter of policy, the connection between the ultimate result and the act of the defendant is too remote or insubstantial to impose liability.” 171 Wn.2d at 611, ¶ 36 (quotation omitted). “The plaintiff need not establish causation by direct and positive evidence, but only by a chain of circumstances from which the ultimate fact required is reasonably and naturally inferable.” **Attwood v. Albertson’s Food Centers, Inc.**, 92 Wn. App. 326, 331, 966 P.2d 351 (1998); see also **Xiao Ping Chen v. City of Seattle**, 153 Wn. App. 890, 910, ¶ 33, 223 P.3d 1230 (2009) (“[A]n expert opinion on an ‘ultimate issue of fact’ is sufficient to defeat a motion for summary judgment.”) (emphasis in original), *rev. denied*, 169 Wn.2d 1003 (2010).

Evidence demonstrating that a municipality’s negligence in maintaining its roadway or in failing to post proper signage caused the plaintiff’s accident creates an issue of fact that must be resolved

by a factfinder.³ See, e.g., **Tanguma v. Yakima County**, 18 Wn. App. 555, 559, 569 P.2d 1225 (1977) (reversing summary judgment in favor of county because “proper warnings to the oncoming driver may well have been adequate to cause him to remain on his side of the road”) *rev. denied*, 90 Wn.2d 1001 (1978); **Boeing Co. v. State**, 89 Wn.2d 443, 449, 572 P.2d 8 (1978) (whether city’s failure to adequately warn of low overpass proximately caused injury was question of fact); **Wojcik v. Chrysler Corp.**, 50 Wn. App. 849, 857, 751 P.2d 854 (1988) (reversing summary judgment because whether county’s improper striping of road caused accident was issue of fact); **Schneider v. Yakima County**, 65 Wn.2d 352, 359, 397 P.2d 411 (1964) (testimony of vehicle occupants that signs conveyed inadequate warning of dangerous curve rose “above speculation and conjecture” and supported jury determination of proximate cause); **Lucas v. Phillips**, 34 Wn.2d 591, 597, 209 P.2d

³ A municipality “owes a duty to all travelers, whether negligent or fault-free, to maintain its roadways in a condition safe for ordinary travel.” **Owen**, 153 Wn.2d at 786-87, ¶ 9. “[T]his obligation includes the responsibility to post adequate and appropriate warning signs when such are required by law.” **Provins v. Bevis**, 70 Wn.2d 131, 138, 422 P.2d 505 (1967). “The MUTCD provides at least some evidence of the appropriate duty.” **Owen**, 153 Wn.2d at 787, ¶ 11 (citing RCW 47.36.030; WAC 468-95-010). The City did not contest the scope of its duty of care for purposes of its summary judgment motion on the issue of causation. (CP 22-23)

279 (1949) (evidence supported jury's finding that county's failure to post adequate warning signs proximately caused accident).

Here competent lay and expert testimony, not "speculation," would allow a jury to find that the accident would have been avoided if the City had properly instructed Ms. Hartman that the speed limit was 20 MPH as opposed to 30 MPH. Ms. Hartman stated she would have obeyed the reduced speed limit. (CP 449) A reduced speed limit sign would probably slow drivers such as Ms. Hartman. (CP 439, 452-54) Ms. Torgerson's experts demonstrated through mathematical calculation that the extra crossing time a reduced speed would have afforded Ms. Torgerson would have been the difference between being struck and clearing the intersection. (CP 122, 315-16, 439)

Moreover, the trial court's conclusion that a genuine issue of material fact could not exist absent evidence of braking (9/14 RP 28) ignores that Ms. Hartman *did* attempt to brake, but that she was unable to do so in time to avoid the accident. (CP 57, 333) Likewise, Ms. Torgerson's experts directly refuted the trial court's statement that "scientists do not say that we're more attentive or that we see better when we're driving at 20 than we do at 30." (9/14

RP 29) To the contrary, had Ms. Hartman been traveling at 20 MPH – instead of the posted 30 MPH – she likely would have seen Ms. Torgerson in time to avoid the accident. (CP 122-23, 241, 439, 452-54)

The trial court also erred to the extent that it accepted the City's argument that Ms. Torgerson could not establish proximate cause because the City's failure to post a reduced speed limit did nothing more than bring parties to the same place at the same time. (9/14 RP 26; CP 300 *citing Channel v. Mills*, 77 Wn. App. 268, 890 P.2d 535 (1995)) **Channel** held that excessive speed of "favored" drivers, i.e., those with the right of way, cannot be the proximate cause of an accident where "the favored driver would have been unable to avoid the collision even if driving at a lawful speed." 77 Wn. App. at 277. Here, Ms. Hartman was the *disfavored* driver because Ms. Torgerson crossed the street in a marked crosswalk. See RCW 46.61.235 ("The operator of an approaching vehicle shall stop and remain stopped to allow a pedestrian or bicycle to cross the roadway within an unmarked or marked crosswalk"); SMC 11.40.040 (same). Thus, **Channel** does not prevent Ms. Hartman's

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excessive speed – the speed posted by the City – from being a proximate cause of the accident.

Even if Ms. Hartman had been the favored driver, **Channel** would not apply because a favored driver's excessive speed is still "causal where it prevents or retards the operator from slowing down, stopping, or otherwise controlling the vehicle so as to avoid the collision." **Channel**, 77 Wn. App. at 276; see also **Holmes v. Wallace**, 84 Wn. App. 156, 162, 926 P.2d 339 (1996) (affirming jury's finding that speeding defendant's excessive speed was a proximate cause of collision with pedestrian because pedestrian presented evidence "that a slower speed would have avoided the accident"). On summary judgment, Ms. Torgerson established that a sign would not only have allowed Ms. Hartman to travel slower, but would have also likely prompted her to be more vigilant and therefore see Ms. Torgerson in time to avoid the collision. (CP 122-23, 241, 439, 452-54)

The trial court erroneously treated Ms. Torgerson's contention that the accident would not have occurred if Ms. Hartman been traveling 20 MPH as one involving a question of law rather than a question of cause-in-fact that should not have been

resolved on summary judgment. (9/14 RP 29 (“It is not legal causation to say if she had been going slower, maybe she would have seen something.”)) This court should reverse the trial court’s erroneous determination under the rubric of “legal causation” that a legally mandated reduced speed limit sign would not have had any effect on Ms. Hartman.

C. Whether Ms. Hartman’s Negligence Excused The City’s Negligence As A Superseding Cause Is A Question Of Fact Inappropriate For Summary Judgment.

The trial court further confused causation principles by treating Ms. Hartman’s negligence in “simply failing” to stop before hitting Ms. Torgerson as a superseding cause that excused the City’s negligence as a matter of law. “There may be more than one proximate cause of an injury.” *Travis v. Bohannon*, 128 Wn. App. 231, 242, ¶ 31, 115 P.3d 342 (2005); *Seibly v. City of Sunnyside*, 178 Wash. 632, 635-36, 35 P.2d 56 (1934). Whether Ms. Hartman’s negligence combined with the City’s failure to post a reduced speed limit sign in causing Ms. Torgerson’s injuries is a question of fact that should not have been resolved on summary judgment.

“Washington courts have consistently held that it is for the jury to determine whether the act of a third party is a superseding cause or simply a concurring one.” *Travis*, 128 Wn. App. at 242, ¶ 30. “If the defendant’s original negligence continues and contributes to the injury, the intervening negligence of another is an additional cause. It is not a superseding cause and does not relieve the defendant of liability.” 128 Wn. App. at 242, ¶ 31. “Whether an act may be considered a superseding cause sufficient to relieve a defendant of liability depends on whether the intervening act can reasonably be foreseen by the defendant; only intervening acts which are *not* reasonably foreseeable are deemed superseding causes.” *Anderson v. Dreis & Krump Mfg. Corp.*, 48 Wn. App. 432, 442, 739 P.2d 1177 (emphasis in original), *rev. denied*, 109 Wn.2d 1006 (1987).

Washington courts routinely refuse to hold that a third-party driver’s negligent conduct is a superseding cause that excuses a municipality’s negligence. *Tanguma v. Yakima County*, 18 Wn. App. 555, 569 P.2d 1225 (1977); *Boeing Co. v. State*, 89 Wn.2d 443, 448, 572 P.2d 8 (1978) (driver’s negligence was not “sole proximate cause” of accident where city failed to adequately warn

of low overpass); **Lucas v. Phillips**, 34 Wn.2d 591, 598, 209 P.2d 279 (1949) (“The jury could well have found that this was precisely the type of accident which the county could, and should, have foreseen would be likely to happen as the result of its failure to place proper warning signs.”); **Xiao Ping Chen v. City of Seattle**, 153 Wn. App. 890, 908, 223 P.3d 1230 (2009) (“The negligence of a third party does not absolve the city of its duty to maintain its roadways, including crosswalks, in a reasonably safe manner.”).

In **Tanguma**, the plaintiff sued Yakima County alleging that it negligently failed to warn drivers of a narrow bridge after being run off the bridge by an oncoming driver. The court rejected the county’s argument that the oncoming driver’s conduct was a superseding cause. “It cannot be gainsaid that one who has a duty to warn another of a peril can be excused on the theory that the other may be oblivious to the good advice.” 18 Wn. App. at 562. The court reasoned that excusing such a failure to warn would be akin to excusing “the failure of an airline to provide seat belts for its

passengers . . . on the theory the passengers might not use them anyway.” 18 Wn. App. at 562.⁴

The trial court misapplied these settled causation principles in reasoning that Ms. Hartman's familiarity with the intersection excused the City's negligence as a matter of law. **Tanguma**, 18 Wn. App. at 560 (“The familiarity of the plaintiff or the other driver with the situation may be relevant to this issue, but it does not as a matter of law insulate the county from liability.”); **Simmons v. Cowlitz County**, 12 Wn.2d 84, 91, 120 P.2d 479 (1941) (“The mere fact that appellants frequently traveled over Kalama river road is not per se conclusive that appellants were aware of the . . . unsafe condition”). Although Ms. Hartman was familiar generally with the intersection and knew that several schools were located

⁴ By contrast, highway design cases in which a driver's behavior is a superseding cause as a matter of law typically involve illegal behavior or gross negligence because the scope of a municipality's duty to make roadways safe for ordinary travel is not so broad as to require it to guard against such unforeseeable conduct. See, e.g., **Klein v. City of Seattle**, 41 Wn. App. 636, 639, 705 P.2d 806 (1985) (“The City was under no duty to protect [the plaintiff] from the extreme carelessness” of a speeding driver who crossed the center line and collided with plaintiff's vehicle), *rev. denied*, 104 Wn.2d 1025; **Braegelmann v. County of Snohomish**, 53 Wn. App. 381, 386, 766 P.2d 1137 (1989) (the County had no duty to foresee the “extreme conduct” of a speeding and “highly intoxicated” driver who crossed the center line and struck another car), *rev. denied*, 112 Wn.2d 1020; **Medrano v. Schwendeman**, 66 Wn. App. 607, 613, 836 P.2d 833 (1992) (“The County . . . should not be required to protect against the consequences of criminally reckless drivers.”).

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nearby, she did not know that the applicable speed limit was 20 MPH and not 30 MPH. (CP 55 (“The zone is 30 miles an hour”), 448). See **Wojcik v. Chrysler Corp.**, 50 Wn. App. 849, 856, 751 P.2d 854 (1988) (“While it is true that a person cannot complain of a lack of warning of a danger of which they have knowledge that knowledge must be specific and not general.”) (citing **Tanguma**, 18 Wn. App. at 559).

Here, the City not only could, but in fact did specifically foresee that a driver traveling in excess of 20 MPH would be less aware of her surroundings, including pedestrians, than would a driver traveling at the 20 MPH limit. (CP 179, 241, 206-07, 298) As Ms. Torgerson’s expert stated, had Ms. Hartman properly been informed of the applicable speed limit she would have likely acted as most drivers would – she would have slowed her speed and seen Ms. Torgerson in time to avoid the collision. (CP 122-23, 439, 452-54) Because both the City’s and Ms. Hartman’s negligence contributed to the accident, the trial court improperly held that Ms. Hartman’s negligence was a superseding cause that entirely excused the City’s negligence *as a matter of law*.

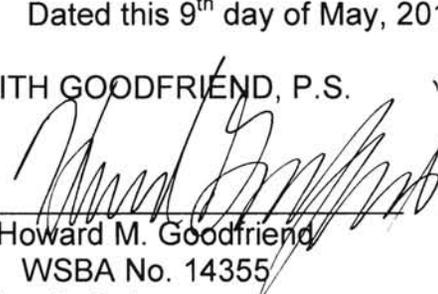
Ms. Hartman, who was on her way to morning mass, was not driving while intoxicated nor exhibiting other "extremely careless" behavior that would justify excusing the City's negligence as a matter of law. Rather, the City could, and did, foresee that a driver such as Ms. Hartman might travel at a speed near the posted speed limit and fail to see a pedestrian crossing a busy intersection in time to avoid a collision. The trial court erroneously determined that Ms. Hartman's negligence excused the City's negligence as a matter of law.

VI. CONCLUSION

This court should reverse the trial court's summary judgment dismissal of Ms. Torgerson's negligence claim against the City, and remand for a trial at which the jury assesses the parties' comparative fault.

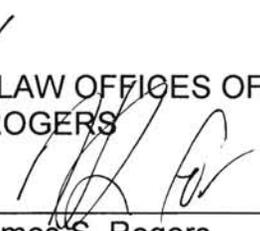
Dated this 9th day of May, 2013.

SMITH GOODFRIEND, P.S.

By: 

Howard M. Goodfriend
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THE LAW OFFICES OF JAMES
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By: 

James S. Rogers
WSBA No. 5335
Dana A. Henderson
WSBA No. 32507

Attorneys for Petitioner

DECLARATION OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on May 9, 2013, I arranged for service of the foregoing Brief of Petitioner, to the court and to the parties to this action as follows:

Office of Clerk Court of Appeals - Division I One Union Square 600 University Street Seattle, WA 98101	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> E-Mail
James S. Rogers Dana A. Henderson Law Offices of James S. Rogers 1500 Fourth Avenue, Suite 500 Seattle, WA 98101	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail
Peter S. Holmes Rebecca Boatright Seattle City Attorney 600 Fourth Avenue, 4 th FL P.O. Box 94769 Seattle, WA 98124-4769	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail
James N. Mendel Bendele & Mendel, PLLC 200 W Mercer St., Ste 411 Seattle, WA 98119-3958	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail

DATED at Seattle, Washington this 9th day of May, 2013.


Tara D. Friesen

FILED

KING COUNTY, WASHINGTON

SEP 14 2012

The Honorable Carol Schapira

SUPERIOR COURT CLERK
BY JUAN C. BUENAFE
DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

GAYLE TORGERSON,

Plaintiff,

vs.

THE CITY OF SEATTLE; and AMELIA
HARTMAN and JOHN DOE HARTMAN, wife
and husband, and their marital community,

Defendants.

No. 11-2-09575-4SEA

~~PROPOSED~~ ORDER GRANTING
DEFENDANT CITY'S MOTION FOR
SUMMARY JUDGMENT

[CLERK'S ACTION REQUIRED]

THIS MATTER having come on duly and regularly for hearing on Defendant City's Motion for Summary Judgment, and the Court, having heard argument of counsel, read and considered the records and files herein, including:

1. City of Seattle's Motion for Summary Judgment;
2. Declaration of Karen Belshay and Exhibits thereto;
3. Declaration of Rebecca Boatright and Exhibits thereto;
4. Declaration of Ahmed Darrat;
5. Declaration of Michael Morris-Lent and Exhibits thereto;

~~PROPOSED~~ ORDER GRANTING DEFENDANT CITY'S MOTION
FOR SUMMARY JUDGMENT - 1

PETER S. HOLMES
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P.O. Box 94769
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CP 474

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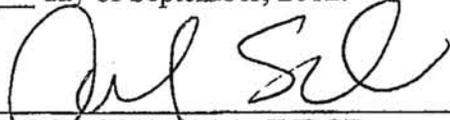
- 6. Declaration of Kristen Simpson;
- 7. Declaration of Charles Zegeer;
- 8. Plaintiff's Response to City of Seattle's Motion for Summary Judgment;
- 9. Declaration of Richard Thomas Gill, Ph.D.; *and Exhibits thereto*
- 10. Declaration of Dana A. Henderson; *and Exhibits thereto*
- 11. Declaration of Edward M. Stevens, P.E.; *and Exhibits thereto*
- 12. City of Seattle's Reply to Plaintiff's Response;
- 13. Declaration of Brian Dougherty;
- 14. Plaintiff's Surreply;
- 15. Second Declaration of Richard Thomas Gill, Ph.D.; *and Exhibits thereto*
- 16. Plaintiff's Supplemental Opposition to City's Motion for Summary Judgment;
- 17. Declaration of B.J. Bennett;
- 18. Declaration of Kathy George; *and Exhibits thereto*
- 19. Third Declaration of Richard Thomas Gill, Ph.D.;
- 20. Declaration of Amelia Hartman;
- 21. Declaration of Dana A. Henderson; *and Exhibits thereto*
- 22. City's Reply to Plaintiff's Supplemental Opposition to City's Motion for Summary Judgment;
- 23. Declaration of Rebecca Boatright in Support of Reply to Plaintiff's Supplemental Opposition to City's Motion for Summary Judgment;
- 24.
- 25.
- 26.

1 and being fully advised in the premises, hereby

2 ORDERS that the City of Seattle's Motion for Summary Judgment is GRANTED

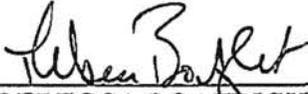
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3 DONE this 14th day of September, 2012.

4
5 
6 CAROL SCHAPIRA, JUDGE

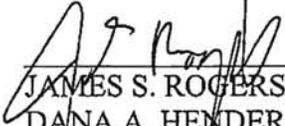
7 PRESENTED BY:

8 PETER S. HOLMES
9 Seattle City Attorney

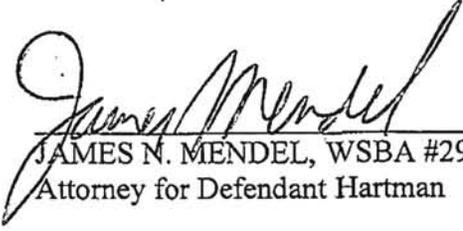
10 By: 
11 REBECCA BOATRIGHT, WSBA #32767
12 Assistant City Attorney
13 Attorneys for Defendant City of Seattle

14 COPY RECEIVED:

15 LAW OFFICES OF JAMES S. ROGERS

16 By: 
17 JAMES S. ROGERS, WSBA #5335
18 DANA A. HENDERSON, WSBA #32507
19 Attorneys for Plaintiff

20 BENDELE & MENDEL PLLC

21 By: 
22 JAMES N. MENDEL, WSBA #29223
23 Attorney for Defendant Hartman

[PROPOSED] ORDER GRANTING DEFENDANT CITY'S MOTION
FOR SUMMARY JUDGMENT - 3

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