

33848-3-II

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

DIANNA LYNN, Appellant,

v.

LABOR READY, INC., Appellee.

~~APPELLEE~~/CROSS-APPELLANT'S BRIEF

Respondent

CORR CRONIN MICHELSON
BAUMGARDNER & PREECE LLP

1001 Fourth Avenue, Suite 3900
Seattle, Washington 98154-1051
Tel (206) 625-8600
Fax (206) 625-0900

Kelly P. Corr, WSBA No. 00555
Kelsey Joyce, WSBA No. 29280

Attorneys for Appellee/Cross-
Appellant Labor Ready, Inc.

FILED
COURT APPEALS
06 MAY -3 PM 12:44
STATE OF WASHINGTON
BY mm
DEPUTY

ORIGINAL

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. ASSIGNMENTS OF ERROR	2
A. Response to Appellant’s Issues Pertaining to Assignments of Error	2
B. Assignments of Error	2
III. SUMMARY OF ARGUMENT	3
IV. STATEMENT OF CASE	6
A. Facts	6
1. Timeline of Key Events	6
2. Owens and Cordova Met and Developed A Relationship at the Jensonia Hotel, Where They Were Neighbors, In The Fall of 2003	6
3. Even Plaintiff Acknowledges That Owens and Cordova Had a Personal Relationship	11
4. Owens First Worked For the YWCA More Than Three Months After He Met Cordova, and Last Worked For the YWCA—and Labor Ready—Five Days Before Murdering Her	12
5. Cordova Did Not Participate in Any YWCA Program After 2001	13
B. Procedural History	14
1. The Trial Court Properly Granted Summary Judgment to Labor Ready.....	14

2.	The Trial Court Properly Awarded Labor Ready Sanctions for Plaintiff’s Discovery Violations, But Failed to Award an Amount Sufficient to Compensate Labor Ready for the Additional Work Plaintiff’s Discovery Violations Caused and to Award Sanctions for Plaintiff’s Numerous Misrepresentations.....	15
3.	Plaintiff’s Briefing to the Trial Court Was Rife With Falsehoods, as is Her Brief to This Court.....	20
V.	ARGUMENT	21
A.	The Trial Court Properly Granted Labor Ready Summary Judgment.....	21
1.	Standard of Review.....	21
2.	Summary Judgment Was Required Because Labor Ready Did Not Owe A Duty to Cordova	22
3.	The Trial Court Correctly Held That Labor Ready’s Alleged Breach Was Not a Legal Cause of Cordova’s Murder	27
4.	Moreover, Plaintiff Cannot Prove That “But For” Labor Ready’s Placement of Owens at the YWCA, Owens Would Not Have Murdered Cordova.....	31
a.	The Only Evidence to Support Plaintiff’s Key Allegation That Cordova and Owens Met at the YWCA Is Inadmissible Hearsay	32
b.	Plaintiff Has No Admissible Evidence to Show That “But For” Labor Ready Placing Owens at the YWCA, He Would Not Have Murdered Cordova.....	34
B.	The Trial Court Properly Sanctioned Plaintiff’s Counsel for Discovery Violations, But Should Have Imposed a More Significant Sanction and a Sanction for the Many Falsehoods Plaintiff’s Counsel Told the Court.....	36

1.	Plaintiff’s Withholding of Information and Documents Caused Labor Ready Substantial Work and Warranted a Significant Sanction	36
2.	The Trial Court Should Have Also Sanctioned Plaintiff’s Counsel For Making Repeated False Statements to The Court	40
VI.	CONCLUSION.....	44
	APPENDIX.....	A-1

TABLE OF AUTHORITIES

	<u>Page</u>
Cases	
<i>Allen v. State</i> 118 Wn.2d 753 (1992)	35
<i>Bates v. Doria</i> 502 N.E.2d 454 (Ill. App. 1986)	23
<i>Berger v. Sonneland</i> 144 Wn.2d 91 (2001)	21
<i>Betty Y. v. Al-Hellou</i> 98 Wn. App. 146 (1999)	3, 23, 24, 25
<i>Bullard v. Bailey</i> 91 Wn. App. 750 (1998)	28
<i>C.J.C. v. Corp. of the Catholic Bishop</i> 138 Wn.2d 699 (1999)	23
<i>Carlsen v. Wackenhut Corp.</i> 73 Wn. App. 247 (1994)	31
<i>Caulfield v. Kitsap County</i> 108 Wn. App. 242 (2001)	31
<i>Coppernoll v. Reed</i> 155 Wn.2d 290 (2005)	21
<i>Crisman v. Pierce County Fire Prot. Dist. No. 21</i> 115 Wn. App. 16 (2002)	4, 23, 28, 30
<i>Dieter v. Baker Serv. Tools</i> 739 S.W.2d 405 (Tex. App. 1987)	23
<i>Dunlap v. Wayne</i> 105 Wn.2d 529 (1986)	32

<i>Gammon v. Clark Equip. Co.</i> 38 Wn. App. 274 (1984)	36
<i>Gebhart v. College of Mt. St. Joseph</i> 665 N.E.2d 223 (Ohio App. 1995).....	25
<i>Gossett v. Farmers Ins. Co.</i> 133 Wn.2d 954 (1997)	22
<i>Hartley v. State</i> 103 Wn.2d 768 (1985)	27, 31
<i>Hertog v. City of Seattle</i> 138 Wn.2d 265 (1999)	28
<i>Herzog v. Castle Rock Entertainment</i> 193 F.3d 1241 (11th Cir. 1999)	33
<i>Hickman v. Taylor</i> 329 U.S. 495 (1947).....	36
<i>Kim v. Budget Rent A Car Sys.</i> 143 Wn.2d 190 (2001)	22, 27, 30
<i>La Lone v. Smith</i> 39 Wn.2d 167 (1951)	25
<i>LaMon v. Butler</i> 112 Wn.2d 193 (1989)	22
<i>Litho Color, Inc. v. Pac. Employers Ins. Co.</i> 98 Wn. App. 286 (1999)	43
<i>Mayer v. Sto Indus., Inc.</i> -- Wn.2d --, 2006 Wash. Lexis 270 (2006).....	37
<i>Melville v. State</i> 115 Wn.2d 34 (1990)	32
<i>Minahan v. W. Wash. Fair Ass'n</i> 117 Wn. App. 881 (2003)	28

<i>Napieralski v. Unity Church</i> 802 A.2d 391 (Me. 2002).....	29
<i>Niece v. Elmview Group Home</i> 131 Wn.2d 39 (1997)	23, 26, 27, 30
<i>Northwest Indep. Forest Mfrs. v. Dep't of Labor & Indus.</i> 78 Wn. App. 707 (1995)	27
<i>Perkins v. Gen. Motors Corp.</i> 129 F.R.D. 655 (W.D. Mo. 1990).....	41
<i>Robertson v. Church of God, Int'l</i> 978 S.W.2d 120 (Tex. App. 1997).....	35
<i>Sanchez v. Haddix</i> 95 Wn.2d 593 (1981)	27
<i>Schaaf v. Highfield</i> 127 Wn.2d 17 (1995)	22
<i>Schooley v. Pinch's Deli Mkt., Inc.</i> 134 Wn.2d 468 (1998)	28, 30
<i>Scott v. Blanchet High Sch.</i> 50 Wn. App. 37 (1987)	8, 9, 27, 29
<i>Seven Gables Corp. v. MGM/UA Entm't Co.</i> 106 Wn.2d 1 (1986)	22
<i>State ex rel. Quick-Ruben v. Verharen</i> 136 Wn.2d 888 (1998)	37
<i>State v. (1972) Dan J. Evans Campaign Comm.</i> 86 Wn.2d 503 (1976)	32
<i>State v. Edwards</i> 131 Wn. App. 611 (2006)	32
<i>State v. Williams</i> 131 Wn. App. 488 (2006)	32

<i>Taggart v. State</i> 118 Wn.2d 195 (1992)	30
<i>Thompson v. King Feed & Nutrition Service, Inc.</i> 153 Wn.2d 447 (2005)	39
<i>Tyner v. DSHS</i> 92 Wn. App. 504 (1998), <i>rev'd on other grounds</i> , 141 Wn.2d 68 (2000)	28
<i>Walters v. Hampton</i> 14 Wn. App. 548 (1975)	31
<i>Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp.</i> 122 Wn.2d 299 (1993)	36, 40

Other Authorities

WPI 15.01	31
-----------------	----

Rules

CR 11	37, 41
CR 26	37, 39
CR 37	39
CR 56	22, 32
ER 801	32, 33
ER 802	32, 33
ER 804	33
RAP 10	43

I. INTRODUCTION

Summary judgment in favor of Labor Ready was required for three reasons, any one of which alone defeats Plaintiff's claim. First, as a matter of law, Labor Ready owed no duty to Dori Cordova. Second, as a matter of law, Labor Ready's alleged negligence was not a legal cause of Cordova's death. Third, Plaintiff presented no admissible evidence to support a finding of cause-in-fact.

Lawrence Owens murdered his ex-girlfriend Dori Cordova at the Red Cross shelter where they were both staying after a fire at the Jensonia apartments where they lived. Plaintiff had no admissible evidence suggesting Owens first met Cordova at the YWCA where Plaintiff alleges Labor Ready negligently placed Owens, rather than at the Jensonia where they were neighbors. Even if she did, summary judgment was still required. As the trial court correctly held, Labor Ready's alleged negligence in placing Owens as a temporary janitor at the YWCA is too remote from Owens' intentional murder of Cordova two and one-half months later, five days after he last worked at the YWCA, and miles away at a non-YWCA facility, for liability to attach. Holding otherwise would require an unwarranted expansion of Washington law on both duty and causation, and subject employers to virtually unlimited liability for their employees' criminal acts, encompassing even those committed outside the

workplace, outside work hours, and unrelated to the employee's job.

Tragic facts do not justify the significant extension of Washington law
Plaintiff requests.

II. ASSIGNMENTS OF ERROR

A. Response to Appellant's Issues Pertaining to Assignments of Error.

Summary judgment was proper because, as a matter of law, 1) both duty and legal cause were lacking as Owens murdered Cordova miles away from, and days after Owens last worked at, the YWCA where Labor Ready placed him as a temporary janitor two-and-one-half months earlier; and 2) cause-in-fact is lacking because no admissible evidence showed that Owens and Cordova first met at the YWCA, and voluminous admissible evidence showed that they met at the Jensonia where they were neighbors for three months before Owens ever worked at the YWCA.

B. Assignments of Error

1. Although the trial court ultimately correctly granted Labor Ready's motion for summary judgment, did it err in considering inadmissible hearsay to create a question of fact regarding cause-in-fact?

2. Although the trial court properly sanctioned Plaintiff's counsel for repeated discovery violations, were the sanctions insufficient where 1) they did not begin to cover the expenses the violations forced Labor Ready to incur, 2) they did not address Plaintiff's numerous

misrepresentations to the court, and 3) they did not deter Plaintiff's counsel from continuing to use improper litigation tactics, as demonstrated by the reckless misstatements contained in Plaintiff's briefing to this Court?

III. SUMMARY OF ARGUMENT

Plaintiff's case suffers from three fatal flaws: 1) a lack of duty; 2) a lack of legal cause; and 3) a lack of cause-in-fact. Any one of these three missing components is alone sufficient to defeat Plaintiff's claim and uphold the trial court's granting of summary judgment for Labor Ready. Each can be decided as a matter of law. Indeed, the Court cannot overturn summary judgment without rewriting Washington law on the scope of an employer's duty, proximate cause, and hearsay. No such revisions are warranted.

In a negligent hiring case, an "employer's duty is limited to foreseeable victims and then only to prevent the tasks, premises, or instrumentalities entrusted to an employee from endangering others." *Betty Y. v. Al-Hellou*, 98 Wn. App. 146, 149 (1999). Owens intentionally shot and killed Cordova two miles away from the YWCA facility where he had worked five days after he had last worked for the YWCA or Labor Ready. His task as a temporary janitor was to clean, e.g., to sweep and dust. The premises of his employment were the YWCA's Opportunity

Place. The instrumentalities of his employment were cleaning supplies, e.g., a broom and dust cloth. He used neither the tasks, premises, nor instrumentalities entrusted to him to murder Cordova. As a matter of law, Labor Ready owed no duty to Cordova.

Also as a matter of law, as the trial court correctly held, Labor Ready's alleged negligence was not the legal cause of Cordova's death. Plaintiff's legal cause argument rests almost exclusively on the erroneous assertion that a finding of duty requires a finding of legal cause. It does not. Plaintiff must prove both and, in a negligent hiring case, legal cause is lacking if, as here, there was not a close nexus between the injury and alleged negligence. *Crisman v. Pierce County Fire Prot. Dist. No. 21*, 115 Wn. App. 16, 21 (2002). Additionally, there can be no legal cause where, as here, the connection between the alleged negligence and injury was too remote in time or geography. Again, Owens intentionally shot and killed Cordova two miles away from the YWCA facility where he had worked five days after he had last worked for the YWCA or Labor Ready. The trial court's holding that legal cause was lacking was mandated by Washington law.

Plaintiff's lack of admissible evidence to support a finding of cause-in-fact provides a third, independent basis for upholding summary judgment. Plaintiff's entire case rests on one critical allegation: that

Owens and Cordova met at the YWCA in 2004 rather than at the Jensonia where they were neighbors for three months *before* Owens ever set foot in the YWCA. However, the only evidence Plaintiff produced to support this contention was inadmissible hearsay, specifically, purported statements from either Cordova or Owens regarding when or where they met. Absent these statements, Plaintiff has no evidence to support any connection between Labor Ready's alleged negligence and Cordova's death, i.e., no evidence to support a finding of cause-in-fact. This also—and alone—requires the upholding of summary judgment.

Just as tragic facts do not justify the rewriting of Washington law, which would be required to allow Plaintiff's case to go forward, they do not justify improper litigation tactics. Yet throughout the trial court proceedings, Plaintiff's counsel withheld crucial information and documents, signed false discovery responses, and made numerous misrepresentations in Plaintiff's briefing. The trial court correctly sanctioned Plaintiff's counsel for the discovery abuses, but failed to impose a sanction significant enough to deter such improper litigation tactics—as demonstrated by the numerous falsehoods contained in Plaintiff's opening brief to this Court. The Court should thus affirm summary judgment, but either remand with instructions to impose a meaningful sanction or impose such a sanction itself.

IV. STATEMENT OF CASE

A. Facts

1. *Timeline of Key Events.*

September 24, 2003: Owens moves into apartment 311A at the Jensonia. Cordova resides 20 feet away on the same hall in apartment 302A. They are often seen in each other's company and talking together in the fall of 2003. CP 53-57; CP 61-63; CP 64-68; CP 69-72; CP 73-78; CP 118; CP 142-45; CP 148-52; CP 154-66; CP 168-77; CP 179; CP 181-85; CP 1440-52.

January 2, 2004: Owens is placed at the YWCA's Opportunity Place as a temporary janitor for the first time. Over the next 2 ½ months he works there only 18 days. CP 58-60; CP 199.

March 10, 2004: The Jensonia burns. Owens and Cordova move to adjoining cots at a Red Cross shelter set up at the Miller Community Center. CP 53-57; CP 118-20; CP 128-29; CP 189-90.

March 12, 2004: Owens works his last day at Opportunity Place and his last day as a Labor Ready employee. CP 197-99; CP 1438-39.

March 17, 2004: Owens shoots Cordova at the Red Cross shelter for displaced Jensonia residents approximately 2 miles from the YWCA facility where Owens had worked. CP 53-57; CP 201-02.

2. *Owens and Cordova Met and Developed A Relationship at the Jensonia Hotel, Where They Were Neighbors, In The Fall of 2003.*

Dozens of documents from multiple sources, including some written by Cordova herself, show that Cordova and Owens lived in neighboring apartments of the Jensonia Hotel in downtown Seattle, most

of the time on the same floor, from September 24, 2003 through mid-March of 2004. Lawrence Owens moved into apartment 311A at the Jensonia on September 24, 2003 when he was released from prison. CP 105; CP 107-09; CP 111; CP 113-15; CP 64-68 (showing Owens checked into Room 311A on September 24, 2003 and checked out on March 10, 2004); CP 61-63. He quickly met and befriended his neighbor, Dori Cordova, who had lived in apartment 302A since July 2002. CP 64-68 (showing Cordova checked into Room 302A on July 29, 2002 and checked out on December 27, 2003, and checked into Room 204 on January 2, 2004 and checked out in March 2004); CP 61-63. Until January, when Cordova moved to the second floor, Cordova's and Owens' apartments shared a hallway and were within twenty feet of each other. CP 61-63; CP 64-68. Cordova and Owens both continued to live at the Jensonia until March 10, 2004, when they relocated to a Red Cross shelter set up at the Miller Community Center on Seattle's Capitol Hill after the Jensonia was badly damaged in a fire. CP 53-57; CP 64-68; CP 69-72; CP 118-20; CP 125-26; CP 128-29.

Evidence showing that Owens lived at the Jensonia from September 24, 2003 through mid-March 2004 includes:

- Jensonia rental records; CP 64-68;

- multiple Washington State Department of Corrections documents; CP 105; CP 107-09; CP 113-15;
- Owens' Labor Ready employment applications; CP 132-35; CP 137-40;
- Owens' DSHS consent forms dated October 29, 2003 and December 29, 2003; CP 142-43;
- Owens' Washington State driver's license; CP 145;
- the testimony of Jensonia employee Roman Antioquia; CP 61-63;
- the testimony of Jensonia employee Scott Tysseland; CP 64-68;
- the testimony of Owens' Community Corrections Officer, Eileen Fermanis; CP 117-20;
- the testimony of Labor Ready employee Shauna Rossio; CP 122-26;
- the testimony of Plaintiff's witness and former Jensonia resident Rebecca Rojas; CP 1245; and
- the testimony of Plaintiff's witness and Owens' former girlfriend Pamela Van Sittert; CP 1255.

Evidence showing that Cordova also lived at the Jensonia during that same time period, and twenty feet down the hall on the same floor for most of that time, includes:

- Jensonia rental records; CP 64-68;
- Bank of America records of Cordova's account; CP 147-66;
- Washington State Employment Security Department documents; CP 168-77;

- Seattle Housing Authority application completed by Cordova; CP 179;
- Cordova’s resumes (showing employment through November 2003); CP 180-85;
- Cordova’s Washington State identification card, issued February 24, 2004; CP 187;
- the Plaintiff’s own testimony; CP 1460-61;
- the testimony of Jensonia employee Roman Antioquia; CP 61-63;
- the testimony of Jensonia employee Scott Tysseland; CP 64-68;
- the testimony of Cordova’s aunt, Phyllis Yoshida; CP 73-75;
- the testimony of Cordova’s uncle, Ron Yoshida; CP 69-70;
- the testimony of Plaintiff’s witness and Cordova’s former social worker Othello Howell; CP 1213-16; and
- the testimony of Plaintiff’s witness and Cordova’s friend Rebecca Rojas; CP 1245.

Two non-party witnesses—Cordova’s good friend and aunt—testified that Cordova and Owens became romantically involved shortly after meeting at the Jensonia in September 2003. Roman Antioquia, who worked at the Jensonia’s front desk and considered Cordova a good friend, testified that after Owens moved in, Owens and Cordova “quickly became good friends,” and “began a romantic dating relationship” in October 2003 which “continued for several months.” CP 62. Antioquia testified that he

“frequently saw Dori Cordova and Lawrence Owens together in the fall of 2003.” CP 63.

Consistent with the testimony of Cordova’s good friend, Antioquia, Cordova’s aunt, Phyllis Yoshida, testified that “it was obvious” that Cordova and Owens “were romantically involved,” and “were involved in a romantic relationship well before Christmas 2003.” CP 75-76. She also testified that when Cordova called her during the fall of 2003, which she did frequently, her caller identification box identified the number from which Cordova was calling as belonging to Owens. CP 75. Phyllis Yoshida further testified that Cordova “did not meet Lawrence Owens at or through the YWCA or Labor Ready. Rather, they met at the Jensonia, where they both lived, in the fall of 2003.” CP 76. Cordova’s uncle, Ron Yoshida, confirmed his wife’s testimony, testifying that Cordova frequently called their home from Owens’ phone number during the fall of 2003. CP 69-72.

Plaintiff ignores this testimony and tries mightily to convince the Court that despite living just feet from one another throughout the fall of 2003, Cordova and Owens did not meet until a chance encounter at the YWCA in January 2004. Unfortunately (or perhaps conveniently) for Plaintiff, the only evidence she has to support her version of the facts is testimony that one of the deceased, either Cordova or Owens, *told*

someone when or where they met, i.e., classic hearsay. CP 441; CP 451; CP 1216; CP 1237; CP 1238; CP 1242; CP 1245; CP 1250; CP 1257; CP 1259; CP 1262; CP 1265; CP 1268; CP 1272.¹

3. *Even Plaintiff Acknowledges That Owens and Cordova Had a Personal Relationship.*

The testimony of Antioquia and Mr. and Mrs. Yoshida shows that Owens and Cordova began a romantic relationship in 2003. Although Plaintiff disputes that, based solely on hearsay, she does not dispute that by early 2004, Owens and Cordova had developed a personal relationship. Plaintiff's witness Rebecca Rojas testified that Owens and Cordova were "dating off and on for about a month." CP 1246. Plaintiff's witness Gerald Ketchum testified that Owens and Cordova were in a "casual," but "not a heavy romantic relationship." CP 1237. Plaintiff's witness Pamela Van Sittert confirmed a "friendship" between Owens and Cordova. CP 1256-57. Plaintiff's witness Othello Howell reported seeing Cordova using Owens' computer in his room at the Jensonia. CP 1216-17. Plaintiff's sister Michelle Phillips referred to Owens as Cordova's "new friend." CP 1265. On February 25, 2004, Cordova served process for Owens in a suit he brought against one of the companies for which he worked. CP 194-95.

¹ See Appendix at A-8—A-9 for a summary of this hearsay testimony.

Even Plaintiff herself acknowledged that Owens' and Cordova's relationship became personal, testifying that Owens either took Cordova out or made dinner for her birthday in early February. CP 440. Similarly, Michael Phillips, Plaintiff's brother and the father of Cordova's son Troy Phillips,² testified that he ran into Owens and Cordova leaving the Jensonia to go to lunch together in January 2004. CP 1471.

Given their close personal relationship, it is not surprising that Cordova, Owens, and Troy Phillips occupied neighboring cots—numbers 16, 17, and 18—at the Red Cross shelter where they all lived after the Jensonia fire. CP 189-90. At that shelter, on March 17, 2004, Owens, upset that Cordova would not move to another location with him, shot and killed Cordova.³ CP 475-83; CP 498; CP 500-06.

4. *Owens First Worked For the YWCA More Than Three Months After He Met Cordova, and Last Worked For the YWCA—and Labor Ready—Five Days Before Murdering Her.*

Owens did not apply for employment with Labor Ready until December 10, 2003, two and one-half months *after* he moved into the Jensonia and befriended Cordova. CP 132-35. Labor Ready did not place

² Michael Phillips is not the named Plaintiff only because he has an extensive criminal record. CP 1473.

³ Owens was subsequently killed by police at the shelter after he refused to drop his weapon, re-loaded his shotgun, and aimed his weapon at police. CP 498; CP 500-06; CP 666-73.

Owens at the YWCA until January 2, 2004, more than three months *after* he met Cordova. CP 197-99.

Owens was hired to do manual, janitorial-type labor at the YWCA's Opportunity Place, which is located approximately two miles from the Red Cross Shelter at the Miller Community Center. CP 58-60; CP 201-03. The tasks of his janitorial position did not involve counseling or housing placement. CP 58-60; CP 123-24. There is no allegation that any of his janitorial supplies—a mop, a broom, or a bucket—was used in the murder. CP 23-29. Nor is there any allegation that the shotgun Owens used to kill Cordova was an instrumentality he used in his employment or supplied to him by the YWCA or Labor Ready. *Id.* Owens was not working for the YWCA or Labor Ready at the time of Cordova's murder. In fact, Owens last worked at the YWCA, and last worked for Labor Ready, five days earlier. CP 197-99; CP 1438-39. In short, Owens did not use the tasks, instrumentalities, or premises of his temporary, intermittent janitor position at the YWCA to murder Cordova.

5. *Cordova Did Not Participate in Any YWCA Program After 2001.*

According to YWCA records, the last time Cordova used *any* YWCA services was 2001, when Owens was still in prison, years before he ever worked for Labor Ready. CP 204; CP 1436-37. Cordova's aunt,

Phyllis Yoshida, confirmed that Cordova did not live at any YWCA facility or participate in any YWCA program in 2003 or 2004. CP 76.

Cordova's alleged efforts to obtain emergency housing through the YWCA after the March 10th Jensonia fire were not related to her relationship with Owens, let alone to his former job as a temporary janitor at Opportunity Place. In fact, according to Plaintiff's own evidence, Cordova had already told Owens that she no longer wanted to see him by the time she began looking for housing after the Jensonia fire. CP 1237-38, 1247.

B. Procedural History

1. The Trial Court Properly Granted Summary Judgment to Labor Ready.

The trial court granted summary judgment to Labor Ready on September 9, 2005, finding that there was no proximate cause between Labor Ready's alleged negligence in placing Owens at the YWCA and his murder of Cordova more than two months later and two miles away. CP 1405-08; 9/9/05 RP 26.

At the same hearing, the court partially granted, and partially denied, Labor Ready's motion to strike the hearsay testimony regarding what Cordova and Owens purportedly said about when and where they met—the only evidence suggesting they met anywhere other than at the

Jensonia. CP 1409; 9/9/05 RP 3. The trial court did not identify which testimony was stricken and which was not, explaining only that “Labor Ready’s motion to strike is GRANTED as to the testimony which is inadmissible hearsay and DENIED as to the testimony which is admissible as set forth in plaintiff’s briefing.” CP 1409. Plaintiff’s brief argued, of course, that all of the challenged testimony was admissible, but Labor Ready’s briefing showed that none of it was. CP 44-45; CP 357; CP 1301-02. Based on the unidentified testimony the trial court deemed admissible, it found that “there remain material issues of disputed fact” regarding when and where Owens and Cordova met. CP 1409. The trial court thus heard, and granted, Labor Ready’s motion for summary judgment “using plaintiff’s version of the facts to be proven at trial, e.g., that the parties did not meet until January 2004 at the YWCA facility.” *Id.* Even assuming Plaintiff’s unsupported story to be true, the court granted Labor Ready summary judgment and dismissed the case. CP 1405-08.

2. *The Trial Court Properly Awarded Labor Ready Sanctions for Plaintiff’s Discovery Violations, But Failed to Award an Amount Sufficient to Compensate Labor Ready for the Additional Work Plaintiff’s Discovery Violations Caused and to Award Sanctions for Plaintiff’s Numerous Misrepresentations.*

The trial court granted \$1000 in sanctions to Labor Ready for Plaintiff’s counsel’s withholding of crucial information throughout

discovery. CP 2124-25. Plaintiff's summary judgment response was based almost entirely on sixteen lay witness and two expert declarations. CP 297-358. Plaintiff never produced any of these declarations to Labor Ready and instead withheld them until she filed them with her summary judgment response, hoping to use the element of surprise to save her case. Only half of the sixteen lay witnesses were ever identified in any of Plaintiff's written discovery responses. CP 214-23; CP 225-35; CP 1684-95; CP 1697-1705. As the timeline shows, Labor Ready requested all of this evidence months earlier:

March 17, 2005: Labor Ready served written discovery requests on Plaintiff. Among other things, these requests asked Plaintiff to identify the five individuals who were closest to Cordova and to produce every document Plaintiff believed supported her claims. CP 1630-52.

May 20, 2005: Plaintiff and her counsel certified as true discovery responses *listing only Plaintiff and Michael Phillips as close to Cordova* and promised to supplement when additional information and documents became available. She did not object to the interrogatory asking her to identify individuals close to Cordova or to the request that she produce all documents supporting her claim.⁴ CP 214-23.

⁴ The interrogatory and response were:

INTERROGATORY 8: State the name and last known address and telephone number for each of the five adult individuals that you believe had the closest personal association with Dori Cordova during the period from January 1, 2003 until March 17, 2004.

ANSWER:

Dianna Lynn, c/o Thaddeus P. Martin.

May 24, 2005: Plaintiff served her first witness disclosures, listing over 80 witnesses. *Only four of the sixteen lay witnesses upon whose declarations Plaintiff relied in responding to Labor Ready's motion for summary judgment were disclosed.* CP 1660-70.

June 14, 2005: Plaintiff served her first amended witness disclosures, again listing over eighty witnesses. *Only five of the sixteen lay witnesses upon whose declarations Plaintiff relied in responding to Labor Ready's motion for summary judgment were disclosed.* CP 1672-82.

July 1, 2005: Plaintiff served her second amended witness disclosures, listing over eighty witnesses. *Again, just five of the sixteen lay witnesses upon whose declarations Plaintiff relied in responding to Labor Ready's motion for summary judgment were disclosed.* CP 1684-95.

July 7, 2005: Plaintiff served her third amended witness disclosures, listing over forty witnesses. *Just seven of the sixteen lay witnesses upon whose declarations Plaintiff relied in responding to Labor Ready's motion for summary judgment were disclosed.* CP 1697-1705.

July 12, 2005: Plaintiff served supplemental responses to Labor Ready's written discovery requests. *Again, she listed only herself and Michael Phillips as close to Cordova.* Again, her attorney certified her responses as true. CP 225-35.

August 5, 2005: Labor Ready requested Plaintiff's counsel to dismiss her case, warning them that it would seek fees if forced to move for summary judgment. CP 1948-50.

August 12, 2005: Labor Ready moved for summary judgment. CP 31-50. By this time, Plaintiff's counsel had obtained declarations from eleven of the sixteen lay

Michael Phillips, c/o Thaddeus P. Martin

Unknown at this time, discovery is still continuing. Plaintiffs [sic] will supplement this information once it is discovered.

CP 214-23. Both Plaintiff and her attorney certified this response as true. CP 223.

witnesses upon whose declarations Plaintiff relied in responding to Labor Ready's motion for summary judgment. CP 1267-68; CP 1249-54; CP 1269-70; CP 1210-12; CP 1213-17; CP 1273-74; CP 1275-76; CP 1264-66; CP 1241-43; CP 1261-63; CP 1271-72.

August 29, 2005: Plaintiff filed her summary judgment response, *including eighteen declarations never produced to Labor Ready*,⁵ *many of which were from witnesses Plaintiff never disclosed in any written discovery response*. CP 297-358; CP 1213-35; CP 1236-40; CP 1241-43; CP 1255-57; CP 1261-63; CP 1264-66; CP 1267-68; CP 1269-70; CP 1271-72; CP 1273-74; CP 1275-76.

Plaintiff knew of these witnesses and what they would say long before filing her summary judgment response, and likely before she filed suit, but kept that information to herself. Ten of Plaintiff's sixteen lay witnesses signed declarations for Plaintiff before Labor Ready even moved for summary judgment. CP 1267-68; CP 1249-54; CP 1269-70; CP 1210-12; CP 1213-17; CP 1273-74; CP 1275-76; CP 1264-66; CP 1241-43; CP 1261-63; CP 1271-72. These witnesses include Plaintiff's sister, CP 1264-66, Cordova's "best friend," CP 1244-48, Cordova's and Phillips' pastor, CP 1241-43, a friend with whom Troy Phillips lived immediately after Cordova's murder, CP 1269-70, and three witnesses who testified that they had been friends with Cordova for years and Michael Phillips for decades. CP 1267-68; CP 1261-63; CP 1271-72.

⁵ Labor Ready did have the declaration of Eileen Fermanis, but obtained it from Ms. Fermanis herself.

Even Plaintiff's own sister (Michael Phillips' twin) Michelle Phillips, who claimed to have been very close to Cordova, was never mentioned in any of Plaintiff's four sets of witness disclosures. CP 1660-70; CP 1672-82; CP 1684-95; CP 1697-705.

Instead of providing the requested information and documents, Plaintiff forced Labor Ready to attempt to determine who was close to Cordova on its own by attempting to contact the dozens of people Plaintiff listed in her witness disclosures and searching the hundreds of documents produced by non-parties for names of potential witnesses.⁶

Plaintiff also created more work for Labor Ready by denying a request that she admit Cordova was not a resident of the YWCA Opportunity Place, despite knowing that Cordova lived at the Jensonia or Red Cross shelter the entire time Opportunity Place was open. 10/7/05 RP 11; CP 1656-57. There was no dispute that Cordova lived at the Jensonia throughout 2003 and 2004 until the Jensonia fire; in fact, both Plaintiff and her brother both testified to this effect. CP 1460-61; CP 1467-70. There was also no dispute that Opportunity Place did not open to residents until approximately January 2004. CP 378-82; CP 430-31; CP 572-73 (listing YWCA housing shelters as of March 2003, not including

⁶ Labor Ready even sent a private investigator to Ellensburg in an attempt to locate one witness whose whereabouts Plaintiff knew and withheld. 10/7/05 RP 25.

Opportunity Place). Plaintiff stood by her false denial throughout discovery, even after Labor Ready continued to obtain and produce documents to prove what Plaintiff knew all along—that Cordova never lived at Opportunity Place.

3. *Plaintiff's Briefing to the Trial Court Was Rife With Falsehoods, as is Her Brief to This Court.*

Labor Ready also requested sanctions based on the numerous falsehoods that riddled Plaintiff's briefing, largely to deter Plaintiff's counsel from engaging in such tactics in the future. CP 1786-1804. The trial court declined to grant sanctions on this basis, and Plaintiff has now included a number of misstatements in her briefing to this Court.⁷ Appellant's Brief at 3, 6, 9 n.4, 10-11 n.5, 13, 16, 29, 30, 32. The misstatements Plaintiff made to the trial court included lengthy purported quotes from witness Ketchum's declaration that are nowhere to be found in the declaration; an attempt to impugn witness Antioquia by suggesting he had a sexual relationship with Owens, whom Plaintiff called a "bisexual" based on the report of an incident between an obviously different Lawrence Owens and his boyfriend; and a further attempt to discredit Antioquia by repeatedly stating he sold the murder weapon to

⁷ See Appendix at A-4—A-7 for a summary of some of the more egregious misstatements made by Plaintiff in her appellate brief.

Owens based on a police report in which Antioquia reported a gun *stolen*.⁸
CP 303; CP 1236-38; CP 339-40; CP 739-43; CP 934; CP 1193-96; CP
666-73.

At oral argument, Plaintiff's counsel admitted the fictitious quotes attributed to Ketchum were "wrong" and a "mistake" attributable to "sloppy legal work." 10/7/05 RP 21. Plaintiff offered virtually no explanation for her other falsehoods. *Incredibly, in her opening brief to this Court, Plaintiff once again attributed language to Ketchum that appears nowhere in his declaration and misrepresented numerous other "facts."*

V. ARGUMENT

A. The Trial Court Properly Granted Labor Ready Summary Judgment.

1. *Standard of Review.*

In reviewing the trial court's order of summary judgment, this Court reviews questions of law de novo and considers facts and reasonable inferences in the light most favorable to the nonmoving party. *Coppernoll v. Reed*, 155 Wn.2d 290, 296 (2005); *Berger v. Sonneland*, 144 Wn.2d 91, 102-03 (2001). *The Court may affirm the order on any basis established by the pleadings and supported by the proof, even if the trial court did not*

⁸ See Appendix at A-1—A-3 for a complete summary of the misstatements Labor Ready pointed out to the trial court.

consider it. Coppernoll, 155 Wn.2d at 296; *LaMon v. Butler*, 112 Wn.2d 193, 200-01 (1989). Summary judgment is appropriate where there is no genuine issue of material fact or where reasonable minds could reach only one conclusion on that issue based upon the evidence presented. CR 56; *Gossett v. Farmers Ins. Co.*, 133 Wn.2d 954, 963 (1997). When a party moving for summary judgment has demonstrated the absence of any genuine issue of material fact and an entitlement to judgment as a matter of law, the burden shifts to the nonmoving party to set forth specific facts that would raise a genuine issue of material fact for trial. *Schaaf v. Highfield*, 127 Wn.2d 17, 21 (1995). A plaintiff cannot survive summary judgment by relying on speculation or conclusory, argumentative assertions that unresolved factual issues might remain. *Seven Gables Corp. v. MGM/UA Entm't Co.*, 106 Wn.2d 1, 13 (1986). He or she must rather “set forth specific facts that sufficiently rebut the moving party’s contentions and disclose that a genuine issue as to a material fact exists.” *Id.*

2. *Summary Judgment Was Required Because Labor Ready Did Not Owe A Duty to Cordova.*

The existence of duty, which is a requirement in any negligence-based claim, is a question of law. *Kim v. Budget Rent A Car Sys.*, 143 Wn.2d 190, 204 (2001). In a negligent hiring case, an “employer’s duty is

limited to foreseeable victims and then only to prevent the tasks, premises, or instrumentalities entrusted to an employee from endangering others.”

Betty Y. v. Al-Hellou, 98 Wn. App. 146, 149 (1999) (quoting *Niece v. Elmview Group Home*, 131 Wn.2d 39, 48 (1997)). See also *Crisman v. Pierce County Fire Prot. Dist. No. 21*, 115 Wn. App. 16, 20 (2002).

Further, an employer owes a duty only if “the association between the victim and the employee was occasioned by the employee’s job.” *C.J.C. v. Corp. of the Catholic Bishop*, 138 Wn.2d 699, 723 (1999).⁹

In *Betty Y.*, the employer knowingly employed a convicted child molester to perform manual labor in renovating apartments. *Betty Y.*, 98 Wn. App. at 148. While working at the apartment building, the laborer met and befriended a young boy who lived nearby. *Id.* at 147. At the laborer’s invitation, the boy helped sweep an apartment on five occasions over ten days. On the last occasion, the laborer took the boy off-site and raped him. *Id.* at 148. The Court of Appeals concluded that the employer did not owe a duty to the victim because: (1) although “incidental contact with tenants” should have been expected, the laborer was not hired to

⁹ The cases in other jurisdictions enunciating the same limits are legion. See, e.g., *Bates v. Doria*, 502 N.E.2d 454, 459 (Ill. App. 1986) (liability attaches “only where there was demonstrated some connection between the plaintiff’s injuries and the fact of employment.”); *Dieter v. Baker Serv. Tools*, 739 S.W.2d 405, 408 (Tex. App. 1987) (“in order to impose liability upon an employer under the doctrine of negligent hiring, there must be evidence that the plaintiff’s injuries were brought about by reason of the employment of the incompetent servant and be, in some manner, job-related”).

work with potential victims; (2) the assault did not occur on the work premises; and (3) “most importantly,” the job duties did not facilitate or enable the defendant to commit the assault. *Id.* at 150, 152. “Thus, the tasks, premises, and instrumentalities entrusted to [the laborer] were not what endangered the victim.” *Id.* at 150. In so holding, the court rejected the plaintiff’s argument that the employer could be liable because the employee used his job to build trust and rapport with the victim. *Id.*

Just as in *Betty Y.*, Labor Ready did not owe a duty to Cordova because (1) Owens was hired to perform manual, janitorial labor in an apartment building, not to work with potential victims; (2) the shooting did not occur on the work premises; and (3) the job duties did not facilitate or enable Owens to commit the murder. *Id.* Just as in *Betty Y.*, “the tasks, premises, and instrumentalities entrusted to [Owens] were not what endangered the victim.” *Id.* Owens did not use the *tasks* (cleaning), *premises* (Opportunity Place), or *instrumentalities* (cleaning supplies) of his position to kill Cordova. Just as in *Betty Y.*, Plaintiff’s argument that Owens used his temporary, intermittent, janitorial position to build trust and rapport with the victim cannot save her claim. Further, the geographic and temporal connections here are even more attenuated than in *Betty Y.*, where the employee took the victim directly from the job site to the location where he assaulted him. Here, even under Plaintiff’s unsupported

version of the facts, Owens and Cordova did not have any contact at the YWCA immediately preceding the shooting, which occurred miles away from the YWCA at a Red Cross shelter. In fact, Owens last worked at the YWCA *five days* before the murder. *Betty Y.* requires the dismissal of Plaintiff's case.¹⁰

Neither of the two cases on which Plaintiff relies in support of her duty argument helps her case. Plaintiff mischaracterizes *La Lone v. Smith*, 39 Wn.2d 167 (1951), as holding an employer liable for "failing to investigate the...background" of an employee before hiring him. Appellant's Brief at 38. *La Lone* held nothing of the sort. Rather, in *La Lone*, an intoxicated employee assaulted a tenant at the apartment building where he worked while on duty. *La Lone*, 39 Wn.2d at 169. The building owner learned of the assault but took no action. *Id.* Later, the same employee, again drunk, again assaulted a tenant on the building premises while on duty. *Id.* at 169-70. The Court found that the building owner's knowledge of the prior, nearly identical assault committed by the same

¹⁰ Plaintiff's claim is even weaker than the dismissed claim in *Betty Y.* because Cordova and Owens did not meet on the job site, as the perpetrator and victim in *Betty Y.* did. This reason alone requires dismissal. In *Gebhart v. College of Mt. St. Joseph*, 665 N.E.2d 223, 225-26 (Ohio App. 1995), the court upheld the dismissal of a negligent supervision claim brought on behalf of a child sexually abused by a priest. The court held that the priest's employers, a hospital and college, owed no duty to the victim because the relationship between the priest and victim arose through their contacts at the boy's former parish and was "completely unrelated to [the priest's] role as either hospital chaplain or campus minister." *Id.* Likewise, the relationship between Owens and Cordova arose through their contacts at the Jensonia and was "completely unrelated to [Owens'] role as" a temporary janitor at the YWCA. *Id.*

employee while on duty and on-site gave rise to a duty to the employee's second victim. *Id.* at 170. Here, in contrast, Owens did not commit any prior violent act at the YWCA's Opportunity Place or any other worksite while working for Labor Ready that would give rise to a duty to protect others from a repeat offense. Additionally, unlike the victim in *La Lone*—a tenant assaulted on the employer's property—Cordova was never a tenant of, and was not harmed at, Opportunity Place. Nor was she harmed while Owens was on duty for either the YWCA or Labor Ready. Rather, Owens shot her miles away from the YWCA where Owens had last worked five days earlier.

Niece v. Elmview Group Home, 131 Wn.2d 39, 41 (1997), likewise involved an assault committed by an employee while *on duty* and *on work premises*, but in *Niece*, the victim was a developmentally disabled group home resident who completely depended on the employer for her care. The court held the group home liable because of its special relationship of trust with the disabled resident, finding that the home had responsibility “for every aspect of [her] well-being” due to her “total inability to take care of herself.” *Id.* at 50. Labor Ready had no such relationship—or any relationship at all—with Cordova. Moreover, in *Niece*, the employee's job duties allowed him unsupervised contact with the helpless, disabled

resident and directly facilitated his repeated sexual assaults at the home.¹¹ *Id.* at 42. There was no similar connection between Owens’ janitorial duties at Opportunity Place and Cordova’s death. Indeed, Owens’ attack against Cordova occurred off-site, five days after he last worked at Opportunity Place.

3. *The Trial Court Correctly Held That Labor Ready’s Alleged Breach Was Not a Legal Cause of Cordova’s Murder.*

Plaintiff cannot succeed unless she can prove that Labor Ready’s alleged misconduct caused Cordova’s death. *Kim*, 143 Wn.2d at 205 (dismissing negligence claim for lack of proximate cause).¹² Proximate cause consists of two elements: cause-in-fact and legal causation. *Hartley v. State*, 103 Wn.2d 768, 777 (1985). Like the existence of duty, legal causation is a question of law. *Kim*, 143 Wn.2d at 204. The court must decide “whether, as a matter of policy, the connection between the

¹¹ *Niece* is one of few cases applying a heightened duty of care—beyond that created by an ordinary employer/employee relationship—based on the employer’s special protective relationship with the victim. *Id.* at 46, 49. Other examples include the hospital-patient relationship and the relationship between a school and its students. These cases do not apply here, where there was no relationship whatsoever between Labor Ready and Cordova.

¹² In Plaintiff’s trial court and appellate briefing, she has only argued in support of her negligence claim. Plaintiff pled, however, four claims: negligence, negligent hiring, wrongful death, or breach of contract. CP 26-38. She cannot win on any of these claims without establishing causation. *Kim*, 143 Wn.2d at 205 (dismissing general negligence claim for lack of proximate cause), *Scott v. Blanchet High Sch.*, 50 Wn. App. 37, 43 (1987) (noting proximate cause requirement in upholding dismissal of negligent hiring claim); *Sanchez v. Haddix*, 95 Wn.2d 593, 599 (1981) (dismissing wrongful death claim for lack of proximate cause); *Northwest Indep. Forest Mfrs. v. Dep’t of Labor & Indus.*, 78 Wn. App. 707, 712, 717 (1995) (upholding dismissal of breach of contract claim for lack of causation).

ultimate result and the act of the defendant is too remote or insubstantial to impose liability.” *Minahan v. W. Wash. Fair Ass’n*, 117 Wn. App. 881, 890 (2003).

Although Plaintiff correctly notes that legal causation and duty are related, she incorrectly asserts that a finding of duty requires a finding of legal cause. It does not. Causation is an independent element of negligence, separate and distinct from duty. *See Bullard v. Bailey*, 91 Wn. App. 750, 755 n.2 (1998). “While the same policy considerations may be relevant to both elements, existence of a duty does not automatically satisfy the requirement of legal causation...” *Hertog v. City of Seattle*, 138 Wn.2d 265, 284 (1999). *See also Tyner v. DSHS*, 92 Wn. App. 504, 515 (1998) (quoting *Schooley v. Pinch’s Deli Mkt., Inc.*, 134 Wn.2d 468, 480 (1998)), *rev’d on other grounds*, 141 Wn.2d 68 (2000) (“Although the existence of legal causation is intertwined with the existence of a duty, ‘legal causation should not be assumed to exist every time a duty of care has been established’”). Plaintiff must establish both legal cause and duty to overturn summary judgment. *Minahan*, 117 Wn. App. at 890.

In a negligent hiring or supervision case, an employer cannot be held liable unless a close nexus exists between the employee’s job and his or her contacts with the victim. *Crisman*, 115 Wn. App. at 21 (upholding dismissal of unsuccessful candidate’s negligent hiring claim where

employee coerced subordinates into campaigning against candidate because employment only “fortuitously provided [him] the opportunity” to do so). Where, as here, the relationship between an employee and a victim is at most fortuitously connected to the employee’s job, legal cause cannot be established. *Id.* See also, e.g., *Scott*, 50 Wn. App. at 45 (holding summary judgment appropriate where connection between school’s alleged negligence and teacher’s inappropriate contact with student was “so remote” that “inference connecting the allegations and [the school] [was] unreasonable”); *Napierski v. Unity Church*, 802 A.2d 391, 393 (Me. 2002) (upholding dismissal of church member’s negligent supervision claim against church whose reverend sexually assaulted her, even though member and reverend met at church and assault occurred at church-owned residence because meeting was “between adults for the purpose of addressing a private, personal matter unrelated to the business or function of the [defendant church]”).

Any connection between Owens’ employment with Labor Ready and Cordova’s murder is too remote to establish legal cause. Even assuming Owens and Cordova met at the YWCA, legal cause is lacking because, as even Plaintiff’s testimony establishes, Owens and Cordova developed a personal relationship and the contact between Owens and Cordova on the day of the murder—at a Red Cross facility five days after

Owens' last day at the YWCA—was unrelated to the YWCA. Such a fortuitous connection is far too “remote” and “insubstantial” to show legal cause.

Further, the time and distance between Labor Ready's alleged negligence and Cordova's murder also defeat legal causation. In *Kim*, where the defendant allegedly negligently allowed a criminal to steal its unsecured vehicle *just one day* before the thief caused the accident in which the plaintiff was injured, the court held that the “remoteness in time” was “dispositive of legal cause.” *Kim*, 143 Wn.2d at 205. Even more so, the same is true here. Owens murdered Cordova miles away from the YWCA *more than two and one-half months after Labor Ready placed him at the YWCA and five days after he last worked for the YWCA*. Even if Cordova's murder were in some way connected to Labor Ready's alleged negligence, that connection is too remote to establish legal cause. The trial court's granting of summary judgment on this basis was not only proper, but required.¹³

¹³ None of the cases Plaintiff cites in her legal causation analysis supports a finding of legal cause here. See *Schooley v. Pinch's Deli Mkt., Inc.*, 134 Wn.2d 468, 483 (1998) (holding illegal sale of alcohol to minor was legal cause of injury suffered by another minor after consuming that alcohol based on policy behind applicable statute); *Niece*, 131 Wn.2d 39 (no discussion of legal causation); *Taggart v. State*, 118 Wn.2d 195, 217, 225-28 (1992) (declining to dismiss crime victims' negligent supervision claims against parole officers who had specific duty to protect against foreseeable dangers posed by parolees' dangerous propensities and concrete warnings about strong likelihood of reoffending); *Crisman*, 115 Wn. App. at 20-21 (dismissing negligent hiring claim for lack of proximate cause because employee's wrongful conduct was outside scope of job

4. *Moreover, Plaintiff Cannot Prove That “But For” Labor Ready’s Placement of Owens at the YWCA, Owens Would Not Have Murdered Cordova.*

Even if Plaintiff could establish legal cause, she cannot establish cause-in-fact. Cause-in-fact, the second prong of the proximate cause requirement, refers to the “but for” consequences of an act. *Hartley*, 103 Wn.2d at 778. A cause-in-fact is “a cause which in a direct sequence, unbroken by any new independent cause, produces the [injury] complained of and without which such [injury] would not have happened.” WPI 15.01. Summary judgment is appropriate where finding factual causation would require “inferences from the facts [that] are remote or unreasonable.” *Walters v. Hampton*, 14 Wn. App. 548, 556 (1975). *See also Hartley*, 103 Wn.2d at 778 (1985) (holding summary judgment on cause-in-fact is appropriate if “but one reasonable conclusion is possible”). Thus, Plaintiff’s claims could not survive summary judgment unless Plaintiff put forth *admissible* evidence that, but for Labor Ready’s placement of Owens at the YWCA, Owens would not have killed Cordova. She did not.

duties); *Caulfield v. Kitsap County*, 108 Wn. App. 242, 248-49 (2001) (no discussion of legal causation); *Carlsen v. Wackenhut Corp.*, 73 Wn. App. 247, 254-57 (1994) (declining to dismiss minor victim’s claim against employer where employee assaulted her on work premises while on duty and held an “authority figure” position).

a. *The Only Evidence to Support Plaintiff's Key Allegation That Cordova and Owens Met at the YWCA Is Inadmissible Hearsay.*

A party cannot rely upon inadmissible hearsay in response to a summary judgment motion. *See, e.g., Melville v. State*, 115 Wn.2d 34, 36 (1990) (“hearsay affidavit does not meet the requirement of CR 56(e). The explicit, but plain standards of CR 56(e) must be complied with in summary judgment proceedings”); *Dunlap v. Wayne*, 105 Wn.2d 529, 535-36 (1986) (holding hearsay could not be considered because “court cannot consider inadmissible evidence when ruling on a motion for summary judgment”). An allegation based on hearsay cannot create an issue of fact to defeat a summary judgment motion. *See, e.g., State v. (1972) Dan J. Evans Campaign Comm.*, 86 Wn.2d 503, 506-07 (1976) (holding affidavit based on hearsay was not proper support to defeat summary judgment motion).

Hearsay is “an out-of-court statement offered to prove the matter asserted.” *Dunlap*, 105 Wn.2d at 535-36; ER 801. Unless the statement fits within an exception, hearsay is inadmissible. ER 802. Whether a statement constitutes hearsay is a question of law subject to de novo review. *See, e.g., State v. Edwards*, 131 Wn. App. 611, 614 (2006); *State v. Williams*, 131 Wn. App. 488, 494 (2006).

Testimony that Cordova *said* she met Owens in 2004 or at the YWCA, or that Owens *said* he met Cordova in 2004 or at the YWCA, is classic hearsay, inadmissible under any exception. Plaintiff offered these alleged out-of-court statements to prove the truth of the matter asserted: that Cordova in fact met Owens in 2004 and/or at the YWCA.

To the trial court, Plaintiff cited ER 804(a)(4)—and only ER 804(a)(4)—in defense of this hearsay. CP 357. (To this Court, she has provided no defense at all.) That rule merely defines a deceased person as an unavailable witness and does not by itself render any statement of a deceased person admissible. *See also, e.g., Herzog v. Castle Rock Entertainment*, 193 F.3d 1241, 1254-55 (11th Cir. 1999) (decedent's testimony is not admissible simply because he is deceased). While Cordova and Owens are indeed unavailable under ER 804(a)(4), their alleged statements are nonetheless inadmissible because they do not fit within any of the four exceptions under ER 804(b): prior testimony, ER 804(b)(1); statements under belief of impending death, the so-called “dying declaration,” ER 804(b)(2); statements against interest, ER 804(b)(3); and statements of personal or family history, ER 804(b)(4).

The testimony regarding what Owens and Cordova said about when and where they met is thus inadmissible and the trial court should not have considered it. ER 801, ER 802. Absent this testimony, Plaintiff

is left with *no* evidence supporting her critical allegation that Cordova met Owens at the YWCA.

b. Plaintiff Has No Admissible Evidence to Show That “But For” Labor Ready Placing Owens at the YWCA, He Would Not Have Murdered Cordova.

After the inadmissible hearsay is excluded, all that remains is abundant evidence showing Cordova and Owens knew each other in 2003, more than three months *before* Owens’ first placement at the YWCA in 2004. Three witnesses, all of whom have no bias in favor of Labor Ready and, in fact, were close to Cordova and Troy Phillips, have testified to this effect. In fact, the non-hearsay testimony further establishes that Owens and Cordova were romantically involved in 2003. Dozens of documents from a variety of sources, including the State Department of Corrections, Employment Security Department, Jensonia, Bank of America, and Cordova herself, show that Cordova and Owens lived in neighboring apartments for more than three months during 2003. Their apartments were on the same floor, shared a hallway, and were within feet of each other. Moreover, YWCA officials have testified that Cordova did not participate in any YWCA program or live at any YWCA facility after 2001—when Owens was still in prison, two years before he ever worked for Labor Ready. Owens did not work at the YWCA until 2004. This overwhelming evidence leads to just one inescapable conclusion:

Cordova and Owens met at the Jensonia in 2003. No reasonable juror could conclude otherwise. *See Allen v. State*, 118 Wn.2d 753, 760 (1992) (“[F]actual questions may be decided as a matter of summary judgment if reasonable minds can reach but one conclusion on them”).

Few plaintiffs have been bold enough to bring negligent hiring claims when the victims did not meet their assaulters by virtue of the assaulters’ employment. Those who have failed. For example, in *Robertson v. Church of God, Int’l*, 978 S.W.2d 120 (Tex. App. 1997), the court dismissed a massage therapist’s negligent hiring claim against a church whose minister sexually assaulted her during an appointment. The court rejected the plaintiff’s argument that she continued to treat the minister only because she was impressed by his position. *Id.* at 126 (“it is not plausible to conclude that merely discussing one’s occupation and employer while on personal business furnishes a connection between the employer’s negligent hiring and the assaultive conduct of the employee”). As in *Robertson*, Cordova’s relationship with Owens arose separately from, and months prior to, Owens’ employment at the YWCA. Whether she was impressed with his position as a temporary janitor and believed he had “connections” is irrelevant. *Id.* Plaintiff cannot prove that “but for” Labor Ready’s placement of Owens at the YWCA he would not have murdered Cordova two months later, two miles away, at a non-YWCA

facility, five days after he last worked for the YWCA. Plaintiff's inability to prove cause-in-fact provides yet another reason why summary judgment was appropriate.

B. The Trial Court Properly Sanctioned Plaintiff's Counsel for Discovery Violations, But Should Have Imposed a More Significant Sanction and a Sanction for the Many Falsehoods Plaintiff's Counsel Told the Court.

1. *Plaintiff's Withholding of Information and Documents Caused Labor Ready Substantial Work and Warranted a Significant Sanction.*

As the United States Supreme Court stated six decades ago, "Mutual knowledge of all the relevant facts gathered by both parties is essential to proper litigation." *Hickman v. Taylor*, 329 U.S. 495 (1947). The Washington Supreme Court has emphasized that "a spirit of cooperation and forthrightness during the discovery process is necessary for the proper functioning of modern trials." *Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp.*, 122 Wn.2d 299, 342 (1993). The discovery rules were intended to "make a trial less a game of blind-man's bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent." *Id.* (quoting *Gammon v. Clark Equip. Co.*, 38 Wn. App. 274, 280 (1984)).

Discovery responses "must be consistent with the letter, spirit and purpose of the rules." *Id.* at 344. The attorney signing discovery responses must "certify that the attorney has read the response and that

after a reasonable inquiry believes it is (1) consistent with the discovery rules and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law; (2) not interposed for any improper purpose... and (3) not unreasonable....” *Id.* at 343. If this rule is violated, “sanctions are mandated.” *Id.* at 346. Neither intent nor a motion to compel is a prerequisite to sanctions. *Id.* at 345. An appellate court reviews a trial court’s decision regarding sanctions for an abuse of discretion. *Mayer v. Sto Indus., Inc.*, -- Wn.2d --, 2006 Wash. Lexis 270, *8 (2006) (reviewing sanctions under CR 26(g)); *State ex rel. Quick-Ruben v. Verharen*, 136 Wn.2d 888, 903 (1998) (reviewing sanctions under CR 11).

Plaintiff’s counsel repeatedly violated the discovery rules. In response to an interrogatory asking Plaintiff to identify five individuals close to Cordova, Plaintiff and her counsel managed only to identify Plaintiff and her brother. They did not object to this interrogatory and promised to supplement the response. They never did. Yet in response to summary judgment, Plaintiff produced declarations from a dozen people who claimed to be very close to Cordova—people who had been friends with her for years, her pastor, her counselors, the woman who took in Troy Phillips immediately after the murder, and a woman who called herself Cordova’s “best friend.” These are not people whom Plaintiff discovered

just in time to file her summary judgment response. Rather, they are people who were close to the Plaintiff and Michael Phillips: Plaintiff's sister (Phillips' twin), Phillips' pastor, and Phillips' lifelong friends. Plaintiff's failure to identify these individuals in her interrogatory response, or even to serve a supplemental response when it became clear she would be relying on their testimony, was an egregious violation of the letter, intent, and spirit of the discovery rules.

Instead of giving Labor Ready the names of the individuals closest to Cordova as requested and required, Plaintiff's counsel forced Labor Ready to waste time and money attempting to determine who was close to Cordova—and thus, likely to have information about her relationship with Owens—on its own. Even worse, Plaintiff complicated this process by serving not one, but four, sets of useless and misleading witness disclosures listing well over 100 individuals, leaving Labor Ready to attempt to determine which of these witnesses truly had significant information. As it turns out, nine of the sixteen witnesses whom Plaintiff's counsel determined had the most crucial information, as evidenced by the declarations they filed, were never listed in any of these disclosures. Plaintiff's counsel used the witness disclosures not to disclose witnesses, but to send Labor Ready on a wild goose chase.

Plaintiff's failure to produce these witnesses' declarations, most of which she obtained well before filing her summary judgment response, was also improper. The declarations were responsive to a proper request for production to which Plaintiff did not object and instead, simply promised to supplement her response. CP 214-23; CP 225-35. Likewise, CR 26 required Plaintiff to "seasonably" supplement,¹⁴ and defense counsel requested Plaintiff to supplement her discovery responses as she obtained information. CP 1713-15. Withholding declarations, some of which were over a month old, until filing a summary judgment response is not "seasonably" supplementing. Rather, this was a calculated attempt to defeat summary judgment by surprising defense counsel and forcing Labor Ready to rebut new facts, new testimony, and new witnesses in the very short amount of time allowed for a reply brief. This is hardly the "spirit of cooperation and forthrightness" our courts require.

Additionally, Plaintiff's knowingly false denial of a request that she admit Cordova was not a resident of Opportunity Place required sanctions under Civil Rule 37. Plaintiff and her counsel knew before ever filing suit, and were in possession of dozens of documents confirming, that Cordova lived at the Jensonia or the Red Cross shelter for displaced

¹⁴ See also *Thompson v. King Feed & Nutrition Service, Inc.*, 153 Wn.2d 447, 462 (2005) (affirming sanctions award where party failed to supplement discovery responses).

Jensonia residents during the entire time Opportunity Place was open. There was no reasonable basis for Plaintiff's denial of this request for admission, nor any justification for Plaintiff's failure to correct her response as dozens more documents confirming what Plaintiff already knew surfaced. Plaintiff's failure to respond to this request accurately required Labor Ready to subpoena documents from numerous sources to prove where Cordova actually lived and to obtain documents and declarations from the YWCA confirming that Opportunity Place was not her residence.

The trial court properly found that Plaintiff's counsel's discovery violations mandated sanctions. However, the \$1,000 fine the trial court imposed was hardly significant enough to impress upon Plaintiff's counsel the significance of the violations or to compensate Labor Ready for the countless hours it spent attempting to track down friends and acquaintances of Cordova. This Court should thus affirm the trial court's granting of sanctions, but reverse in part with instructions to impose a more meaningful fine.

2. *The Trial Court Should Have Also Sanctioned Plaintiff's Counsel For Making Repeated False Statements to The Court.*

“Vigorous advocacy is not contingent on lawyers being free to pursue litigation tactics that they cannot justify as legitimate.” *Fisons*, 122

Wn.2d at 354 (internal quotation omitted). While zealous advocacy is to be expected, blatant misrepresentation is not. As noted above, CR 11 requires an attorney to certify that each brief he or she signs is “well-grounded in fact.”

Plaintiff’s counsel’s reckless disregard for the truth was as egregious as Plaintiff’s discovery violations and provided an independent basis for sanctions. *See, e.g., Perkins v. Gen. Motors Corp.*, 129 F.R.D. 655, 662-63 (W.D. Mo. 1990) (issuing sanctions for “factual misrepresentations” in briefing). Labor Ready cited a number of misstatements contained in Plaintiff’s summary judgment response as examples of the many misrepresentations Plaintiff’s counsel made throughout the trial court proceedings, including:¹⁵

Plaintiff’s Statement	Citation	Truth
“I do know that Dori....was using the YWCA facility which is located on 3 rd and Lenore [sic] where she applied for her housing and used other resources at that location.” CP 303 (purporting to quote DSHS caseworker Gerald Ketchum).	CP 1236-40.	This testimony is nowhere to be found in Ketchum’s declaration. <i>This precise falsehood is repeated in Plaintiff’s appellate brief at p. 6.</i>

¹⁵ See Appendix at A-1 for a complete list of the misrepresentations Labor Ready illustrated to the trial court.

Plaintiff's Statement	Citation	Truth
<p>“Dori....was using the YWCA facility called Opportunity Place which is located on 3rd and Lenore [sic] where she applied for her housing and used other resources at that location.” CP 333.</p>	<p>CP 1236-40.</p>	<p>This testimony is nowhere to be found in Ketchum’s declaration. Ketchum testified only that Cordova “was contacting multiple agencies including the YWCA facility called Opportunity Place, which is located on 3rd and Lenora.”</p> <p><i>This precise falsehood is repeated in Plaintiff’s appellate brief at p. 30.</i></p>
<p><u>“Roman Antioquia Sold the Murder Weapon to Owens.</u> Defendants’ [sic] star witness, Roman Antioquia, is the man who sold the gun to Owens.” CP 339 (emphasis in original).</p>	<p>CP 666-73.</p>	<p>CP 666-73 is a police incident report documenting Antioquia’s report to police (which Antioquia initiated) that Owens <i>stole</i> the shotgun from Antioquia’s roommate’s car. Antioquia denied selling the gun to Owens and there is no contrary evidence.</p>

Plaintiff's Statement	Citation	Truth
<p>“As testified by expert Stough, Owens’ last sexually violent crime before murdering Dori was a knife attack on his boyfriend Christopher Aguirre, who [sic] Owens threatened ‘I’m either going to be with him or kill him, he can’t hide forever’; Owens was apparently bisexual. All of these facts related to Antioquia makes one wonder what Antioquia had going on with Owens.” CP 339 (citations omitted).</p>	<p>CP 930-1209; CP 1193-96.</p>	<p>Ex. 24 to the Stough Declaration describes an assault committed by <i>Lawrence E. Owens (d.o.b. 7/13/63)</i> in Seattle in 2000, when <i>Lawrence J. Owens (d.o.b. 8/29/60)</i>—the man who murdered Cordova—was <i>still in prison</i>. See CP 1210-11 (showing that Owens was sentenced to 75 months on November 21, 1997 and was not released until September 24, 2003). There is no evidence that Lawrence J. Owens was a bisexual.</p>

Labor Ready requested the trial court to sanction Plaintiff’s counsel for this misconduct largely to deter such conduct in the future. The trial court declined and Plaintiff’s counsel was undeterred, as the numerous misstatements contained in Plaintiff’s appeal brief demonstrate.¹⁶ Given the numerous multi-million dollar recoveries of which Plaintiff’s counsel boasts, substantial sanctions were (and are) warranted to deter Plaintiff’s counsel from such tactics in the future. CP

¹⁶ Of course, the Court can also award sanctions in its own discretion for the misstatements contained in Plaintiff’s appellate briefing. See, e.g., *Litho Color, Inc. v. Pac. Employers Ins. Co.*, 98 Wn. App. 286, 305-06 (1999) (“Sanctions under RAP 10.7 may well be appropriate for counsel who neglect to meet the requirements of RAP 10.3. The purpose of these rules is to enable the court and opposing counsel efficiently and expeditiously to review the accuracy of the factual statements made in the briefs and efficiently and expeditiously to review the relevant legal authority.”) (internal citations omitted).

1784-85 (bragging of numerous victories including a \$7.5 million discrimination case, a \$2.25 million wrongful death case, a \$1.5 million wrongful death case, several \$1 million cases, and “the largest slip and fall verdicts in Washington State”).

The insufficiency of the trial court’s sanction for Plaintiff’s improper litigation tactics is shown by the sanction’s failure to deter Plaintiff’s counsel from making numerous false statements to this Court. In fact, some of the misrepresentations in Plaintiff’s appellate brief are the very same misrepresentations Plaintiff’s counsel previously admitted were untrue and brushed off as “sloppy legal work.” Such “sloppy legal work” was inexcusable at the trial court and is even more so now. In addition to repeating some of the falsehoods Plaintiff’s counsel told the trial court, Plaintiff’s opening brief contains a number of new ones. These misrepresentations are too numerous to address, but a chart showing some of the more egregious examples is contained in the appendix. Because Plaintiff’s counsel learned nothing from the trial court’s sanction, this Court should reverse in part with instructions to impose a sanction Plaintiff’s counsel will not soon forget and impose such a sanction itself.

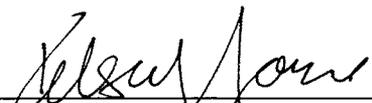
VI. CONCLUSION

As the trial court correctly held, Plaintiff’s case is legally deficient. As a matter of law, she cannot establish duty, legal cause, or cause-in-fact.

Summary judgment was not only proper, but required, and should be affirmed. The trial court did err, however, in failing to award a sufficient sanction for Plaintiff's discovery abuses and misrepresentations to the court. This Court should correct that error now and remand with instructions to impose a significant sanction, and also sanction Plaintiff's counsel for the misrepresentations made on appeal.

Respectfully submitted this 2nd day of May, 2006.

CORR CRONIN MICHELSON
BAUMGARDNER & PREECE LLP



Kelly P. Corr, WSBA #00555
Kelsey Joyce, WSBA #29280
Attorneys for Appellee/Cross-
Appellant Labor Ready, Inc.

33848-3-II

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

DIANNA LYNN, Appellant,
v.
LABOR READY, INC., Appellee

APPENDIX TO APPELLEE/CROSS-APPELLANT'S BRIEF

Lynn v. Labor Ready
Case No. 33848-3-II

Examples of Plaintiff's Misrepresentations to the Trial Court

Plaintiff's Statement	Citation	Truth
<p>“I do know that Dori...was using the YWCA facility which is located on 3rd and Lenore [sic] where she applied for her housing and used other resources at that location.” CP 303 (purporting to quote DSHS caseworker Gerald Ketchum).</p>	<p>CP 1238</p>	<p>This testimony is nowhere to be found in Ketchum's declaration.</p> <p><i>This precise falsehood is repeated in Plaintiff's appellate brief at p. 6.</i></p>
<p>“Attached as Exhibit No. 1 to this declaration is a true and correct copy of an official record that I made during the course of counseling Dori Cordova, showing that the first time that Dori mentioned Lawrence Owens to me was on February 27, 2004” CP 310 (quoting Margaret Balderama)</p>	<p>CP 1250; CP 1253-54</p>	<p>Ex. 1 to Balderama's declaration makes no reference to Owens or any other acquaintance of Cordova.</p>
<p>“Dori...was using the YWCA facility called Opportunity Place which is located on 3rd and Lenore [sic] where she applied for her housing and used other resources at that location.” CP 333.</p>	<p>CP 1238</p>	<p>This testimony is nowhere to be found in Ketchum's declaration. Ketchum testified only that Cordova “was contacting multiple agencies including the YWCA facility called Opportunity Place, which is located on 3rd and Lenora.”</p> <p><i>This precise falsehood is repeated in Plaintiff's appellate brief at p. 30.</i></p>
<p>“Plaintiffs [sic] have proof this declaration [of Cordova's aunt and uncle] is false....as confirmed by DSHS records and DSHS witnesses.” CP 337.</p>	<p>CP 1219-23</p>	<p>The exhibit cited is Howell's progress notes which indicate only that as of December 18, 2003, “Ms. Cordova and her aunt are not getting along well.” (Cordova's aunt and uncle, Ron and Phyllis Yoshida, testified that Cordova called them from Owens' phone multiple times in the fall of 2003.) The only mention of DSHS is a notation that Cordova received food stamps from DSHS.</p>

Plaintiff's Statement	Citation	Truth
<p>“Based on the Declaration of Gerald Ketchum, Dori’s case worker at DSHS, it is clear that the Yoshida’s [sic] were not in Dori’s life in 2003: ‘On January 15, 2004, I also learned that Dori had just recently reconnected with an aunt and was going to ask this aunt for assistance. It was my understanding that Dori had not talked to this Aunt [sic] for several months before then.’” CP 338 (purporting to quote Ketchum).</p>	<p>CP 1237</p>	<p>This testimony is nowhere to be found in Ketchum’s declaration. As noted above, Mr. Howell’s progress notes show that Cordova and Mrs. Yoshida were in contact in December 2003, as do the declarations of Mr. and Mrs. Yoshida.</p>
<p>“The truth is that Dori did not talk to the Yoshidas at all in 2003, the Yoshida’s [sic] did not have Dori’s phone number in 2003, Dori did not have the Yoshida’s [sic] phone number in 2003 and Dori reconnected with the Yoshidas in late-January of 2004 near Troy’s birthday, as documented in the Family Progress Notes by Othello Howell.” CP 338.</p>	<p>CP 1225-31</p>	<p>The exhibit cited is Howell’s progress notes which indicate only that Cordova asked Howell for the Yoshidas’ number on January 21, 2004 “because she had lost it,” and that the Yoshidas had been attempting to call Cordova but were unable to reach her because her “telephone was disconnected again.” As noted above, Howell’s December 18, 2003 progress notes show that Cordova was in contact with Ms. Yoshida in December 2003, as do the declarations of Mr. and Mrs. Yoshida.</p>

Plaintiff's Statement	Citation	Truth
<p><u>“Roman Antioquia Sold the Murder Weapon to Owens.</u> Defendants’ [sic] star witness, Roman Antioquia, is the man who sold the gun to Owens.” CP 339 (emphasis in original).</p>	<p>CP 666-73</p>	<p>The exhibit cited is a police incident report documenting Antioquia’s report to police (which Antioquia initiated) that Owens <i>stole</i> the shotgun from Antioquia’s roommate’s car. Antioquia denied selling the gun to Owens and there is no contrary evidence.</p>
<p>“Antioquia, the front desk worker at the Jensonia, was mysteriously close to Owens (a bisexual)...In Owens’ pants pocket on the day of the murder were two separate pieces of paper that had the phone <u>numbers</u> of <u>Antioquia</u> and his <u>gay lover</u> David <u>Storm....</u>” CP 339 (emphasis in original) (citations omitted).</p>	<p>CP 739-43</p>	<p>The exhibit cited shows only that Owens had a single phone number for “Roman” and “Dave” in his pocket on the day of the shooting (along with contact information for numerous other individuals and organizations). There is no indication that Owens was a bisexual.</p>
<p>“As testified by expert Stough, Owens’ last sexually violent crime before murdering Dori was a knife attack on his boyfriend Christopher Aguirre, who [sic] Owens threatened ‘I’m either going to be with him or kill him, he can’t hide forever’; Owens was apparently bisexual. All of these facts related to Antioquia makes one wonder what Antioquia had going on with Owens.” CP 339 (citations omitted).</p>	<p>CP 934; CP 1193-96</p>	<p>The exhibit to the Stough Declaration describes an assault committed by <i>Lawrence E. Owens (d.o.b. 7/13/63)</i> in Seattle in 2000, when <i>Lawrence J. Owens (d.o.b. 8/29/60)</i>—the man who murdered Cordova— was <i>still in prison</i>. See Fermanis Dec. at ¶¶ 3-4 (showing that Owens was sentenced to 75 months on November 21, 1997 and was not released until September 24, 2003). There is no evidence that Lawrence J. Owens was a bisexual.</p>
<p>“Plaintiffs’ [sic], alternatively, have produced <u>documented</u> proof that Dori did not know Owens in 2003, but rather met him in 2004.” CP 340 (emphasis in original).</p>	<p>None</p>	<p>Plaintiff did not produce or cite a single document showing either that Owens and Cordova met in 2004 or that they did not meet in 2003.</p>

Lynn v. Labor Ready

Case No. 33848-3-II

Examples of Plaintiff's Misrepresentations to This Court

Plaintiff's Statement	Citation	Truth
<p>“On March 17, 2004, YWCA client Dori Cordova, a homeless and desperate young mother, was assaulted and then shot and murdered at close range with a 12 gauge shot gun by Lawrence Owens, a Level 3 sex offender and Labor Ready employee placed at the YWCA shelter where he met Dori when she was looking for transitional housing.” Page 3</p>	<p>CP 459-68, 474-98, 616-19</p>	<p>There is absolutely no support for the assertion that Owens met Cordova at the YWCA when she was looking for transitional housing.</p>
<p>Quoting Gerry Ketchum's declaration as saying:</p> <p>“Dori was....using the YWCA facility called Opportunity Place which is located on 3rd and Lenore [sic] where she applied for her housing and used other resources at that location.” Page 6</p>	<p>CP 1238</p>	<p>The quoted language is nowhere to be found.</p>
<p>“Michael Phillips visited Dori at the Red Cross Shelter on March 12, 2004 and also arrived at Miller Community Center to see her on the day she was murdered 30 minutes after she was gunned down.” Page 9 n.4</p>	<p>CP 520</p>	<p>There is absolutely no indication that Phillips went to the Miller Community Center on the day Cordova was killed, or any other day.</p>
<p>“Also, the records reflect that....Dori was not seen at the shelter with Owens and moved to another cot to get away from Owens at the shelter.” Page 9 n.4</p>	<p>CP 515-27</p>	<p>The documents contain no mention of Cordova moving her cot; nor do they address who may or may not have seen Cordova and Owens together at the shelter.</p>

Plaintiff's Statement	Citation	Truth
<p>“The fact that Dori lived on a different floor than Owens at the Jensonia is confirmed by many records...” Page 10-11 n.5</p>	<p>CP 510-13, 529-36, 630-34, 675-76</p>	<p>It is well documented that Cordova moved to the second floor of the Jensonia in January 2004. CP 64-68; CP 187. Prior to that, she lived on the third floor, as did Owens, which is also well documented. CP 61-68; CP 142-45; CP 147-52; CP 154-66; CP 168-77; CP 179; CP 181-85. Owens and Cordova lived on the third floor, within feet of each other, from September through December of 2003. CP 61-68; CP 142-45; CP 148-52; CP 154-66; CP 168-77; CP 179; CP 181-85.</p>
<p>Owens “used his instrumentalities and connections at the YWCA to help Dori apply for housing.” Page 16</p>	<p>CP 1216, 1225-31</p>	<p>The pages cited indicate that Owens helped Cordova use his computer at the Jensonia to aid in her job search. There is no mention of the YWCA or of housing.</p>
<p>“With Owens’ help and counseling, Dori applied for YWCA housing at the YWCA owned Lexington-Concord Apartments, a fact documented in Mr. Howell’s counseling records of January 21, 2004...” Page 16</p>	<p>CP 1227</p>	<p>The document makes no mention of Owens whatsoever.</p>

Plaintiff's Statement	Citation	Truth
<p>Quotes from Rossio's deposition to support the assertion that Labor Ready admitted that it breached the standard of care:</p> <p>"Q. Do you believe a reasonable person in your position would have informed the YWCA that Owens was a registered sex offender?</p> <p>A. Yes, definitely." Page 29</p>	CP 398	<p>Labor Ready did not admit, and in fact denies, that it breached the standard of care. The quote in appellant's brief omits the subsequent sentence, which states:</p> <p>"Yes, definitely. <i>If I had the knowledge and knew that about him, I would have definitely informed the YWCA.</i>"</p>
<p>States that Labor Ready admitted that it breached the standard of care. Page 29</p>	CP 624	<p>Labor Ready's response to the cited request for admission provides:</p> <p>"defendant admits that, <i>if</i> Labor Ready had information that Lawrence Owens was a registered sex offender and convicted rapist, and <i>if</i> Labor Ready understood that the assignment for which YWCA requested the placement was one for which such a background would make him unqualified, it would not have placed him at the YWCA Opportunity Place."</p>
<p>"Dori....was using the YWCA facility called Opportunity Place which is located on 3rd and Lenore [sic] where she applied for her housing and used other resources at that location." Page 30</p>	CP 1238	<p>This testimony is not contained in the cited Ketchum declaration. Ketchum testified only that Cordova "was contacting multiple agencies including the YWCA facility called Opportunity Place, which is located on 3rd and Lenora."</p>

Plaintiff's Statement	Citation	Truth
<p>“Manager Rossio had a close relationship with employee Owens and saw him 20 times in person and often talked to him on the telephone.” Page 32</p>	<p>CP 370</p>	<p>There is no support for the assertion that Rossio and Owens had a close relationship. Rossio testified that she had maybe seen Owens 15 to 20 times, and had maybe 2 or 3 phone conversations with him. In fact, on CP 372, Rossio testified that she did not have a friendship or personal relationship with Owens.</p>
<p>“Rene Bonds, a YWCA employee....” Page 13</p>	<p>CP 1269</p>	<p>There is no support in Bonds’ declaration or elsewhere for the assertion that she is a YWCA employee.</p>

Lynn v. Labor Ready
Case No. 33848-3-II
Hearsay Representations

**The Only Support for Plaintiff's Version of the Facts—That Owens and Cordova
Met at the YWCA in 2004—Is Hearsay**

- Rebecca Rojas: “*Dori told me* that she had met Lawrence Owens while looking for housing at the YWCA apartments....” CP 1245.
- Margaret Balderama: “*I recall Dori telling me*...she had only known Mr. Owens for a few weeks.... *I also recall Dori telling me* that Lawrence Owens was attempting to help her out with her situation as far as finding employment and a permanent place to live.” CP 1250.
- Pamela Van Sittert: “*Based on my conversations with Lawrence, my conversations with his mother*, and the dynamics of our relationship...Lawrence met and started a friendship with Dori Cordova sometime in January of 2004.” CP 1257.
- Nicole Wagner: “*Dori stated* that she had not known [Owens] very long.” CP 1259.
- Vernon Torrey: “*I specifically recall Dori telling me* that she had just met a man within the last two weeks named Larry at the YWCA....” CP 1262.
- Michelle Phillips: “*[Cordova] told me* that she was having dinner with a friend named Larry that she had recently met at the YWCA. *She informed me* that Larry worked at the YWCA and that she met him there....” CP 1265.
- Roland Akers: “*[Cordova] informed* me that had [sic] just recently met a guy who worked at the YWCA that was helping her find a place at one of the YWCA shelters.” CP 1268.
- Donald White: “*Dori told me* that she had met a janitor by the name of Lawrence at the YWCA Opportunity Place Apartments....” CP 1272.
- Richard Thompson: “*Based on my conversations with Dori*, I learned that some time after January 2004, a man who worked at the Seattle YWCA. [sic] ... *According to Dori*, this man was making plans for getting her and Troy into the YWCA....” CP 1241-42.
- Othello Howell: “*Dori also informed me* that she had identified a transitional house that she had recently learned about called the Lexington House that was owned and run by the YWCA.” CP 1216.

- Gerald Ketchum: “[**B**]ased on the conversations that I had with [**Cordova**]” Cordova’s and Owens’ relationship “lasted approximately a month and...ended by March 12, 2004.” CP 1237. “**I do not have any personal knowledge as to how Dori Cordova met Lawrence Owens....**” CP 1238.
- Plaintiff Diana Lynn: “[**Cordova**] told me that she was going out to have lunch with a friend that she had met down at the Y Hospitality Place.” CP 451.
- Michael Phillips: “**I just remember [Cordova] saying** that [Owens] worked with the Y, **I remember her saying** he had connections—whatever that was—at the Y and he could help her.” CP 441.¹

¹ See also, e.g., CP 436, 437, 440.

FILED
COURT OF APPEALS

33848-3-II

06 MAY -3 PM 12:44

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON
CM
CITY

DIANNA LYNN, Appellant,

v.

LABOR READY, INC., Appellee.

CERTIFICATE OF SERVICE OF

~~APPELLEE~~/CROSS-APPELLANT'S BRIEF

Respondent

CORR CRONIN MICHELSON
BAUMGARDNER & PREECE LLP

1001 Fourth Avenue, Suite 3900
Seattle, Washington 98154-1051
Tel (206) 625-8600
Fax (206) 625-0900

Kelly P. Corr, WSBA No. 00555
Kelsey Joyce, WSBA No. 29280

Attorneys for Appellee/Cross-
Appellant Labor Ready, Inc.

ORIGINAL

The undersigned declares as follows:

1. I am employed at Corr Cronin Michelson Baumgardner & Preece LLP, attorneys for Appellee/Cross-Appellant Labor Ready, Inc. herein.

2. On May 3, 2006, I caused true and correct copies of the following:

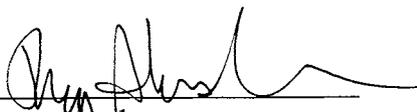
- (a) Appellee/Cross-Appellant's Brief; and
- (b) Certificate of Service;

on the following attorneys via same day legal messenger:

Thaddeus P. Martin
Attorney at Law
4002 Tacoma Mall Blvd., Suite 102
Tacoma, WA 98409

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

DATED this 3rd day of May, 2006, at Seattle, Washington.



Joyce Abraham