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DIVISION II

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STATE OF WASHINGTON
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**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

THOMAS L. RAGLIN and CECELIA M. RAGLIN, husband and wife,

Appellants,

v.

STATE OF WASHINGTON,

Respondent.

BRIEF OF RESPONDENT

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I. INTRODUCTION

This case arises from plaintiffs Cecelia and Thomas Raglins' adoption of Cecelia Raglin's nephew, J. R. The Raglins took placement of J. R. in early 1993 after the Department of Social and Health Services (DSHS) took custody of him following allegations of abuse by his biological mother's boyfriend. J. R. was about one year old at the time of this placement. He was adopted by the Raglins in May 1997. In 2006, the Raglins filed a wrongful adoption complaint against the State for allegedly failing to disclose material information concerning J. R. and his biological mother and her family. However, in 2005, the Raglins signed a release of any and all claims arising out of the adoption to settle a dispute concerning adoption support payments.

The trial court dismissed the wrongful adoption claims on the State's motion for summary judgment based on the release signed by the Raglins. The Raglins moved for reconsideration which was denied by the trial court. The Raglins then appealed.

Although the Raglins, in their brief, attempt to assign error to the court's "denying" their summary judgment, the trial court never made a decision on their motion. In addition, even if the court had ruled on their motion, the Raglins did not move this court for discretionary review of a denial of a summary judgment.

II. RESTATEMENT OF THE ISSUES

1. Did the trial court correctly determine that the Raglins' lawsuit was barred by a signed, valid contract releasing all claims they might have against the state arising out of the adoption of J. R.?

2. Did the trial court abuse its discretion in denying the Raglins' motion to reconsider that offered no basis for reconsideration under CR 59 and was based on new legal arguments and evidence available but not provided to the court for consideration on summary judgment?

III. RESTATEMENT OF THE CASE

J. R. was born on May 3, 1992. CP at 231. In May 1993, at the Raglins' request, DSHS made a relative placement of dependant J. R. with the Raglins. CP at 69-70, 249-53. The Raglins adopted J. R. on May 16, 1997. CP at 73. At the time of the adoption, the department disclosed to the Raglins, among other things, that J. R. was a neglected child who had been subject to severe abuse, that he had a learning disability due to neurologic or organic brain dysfunction, that his father had used marijuana, cocaine, and amphetamines, and that his grandmother had epilepsy. CP at 100-05.

Prior to the adoption, the Raglins signed a waiver of any adoption support payments. CP at 359. By signing the waiver, they acknowledged

that they were giving up any right to apply for services after the adoption. CP at 359.

Seven years after the adoption, in 2004, the Raglins applied for adoption support, seeking reconsideration of their waiver. CP at 361. The Adoption Support Program Manager, Nancy Williams, denied their request, explaining that they were not legally eligible for the state reconsideration program and they did not qualify for the federally funded program. CP at 361-3.¹ Ms. Williams explained that the Raglins were entitled to appeal her determination. CP at 361-3.

The Raglins did file an administrative appeal of the decision challenging the denial of their request for reconsideration under the federal program. Prior to the administrative hearing, DSHS sent the Raglins an offer to settle the proceeding, offering to stipulate to an order that there were extenuating circumstances entitling the Raglins to adoption support in exchange for a release of all claims that the Raglins may have had regarding the placement and adoption of J. R. CP at 365-6. The Raglins signed this agreement on April 15, 2005. CP at 366. The department signed the agreement on April 19, 2005. CP at 366. An agreed order

¹ To qualify under the state program, J. R. had to be in a state funded placement immediately prior to the adoption. He was not. CP at 361-63. To qualify under the federal program required a finding of “extenuating circumstances” which Ms. Williams did not find existed for the Raglins. CP at 362.

establishing the Raglins' entitlement to adoption support was signed by the administrative law judge on April 22, 2005. CP at 107-08. The Raglins were sent and filled out an adoption support application. CP at 368. They were then sent a proposed adoption support agreement. CP at 372. Despite correspondence back and forth between DSHS and the Raglins and their counsel, the Raglins never signed the adoption support agreement. CP at 372-85. Instead, they filed this lawsuit. CP at 3.

The Raglins filed a motion for summary judgment on liability. CP at 7. They argued that, as a matter of law, DSHS was liable for "wrongful adoption" because the department allegedly did not disclose all information it possessed regarding J. R. and his biological mother and her family. CP at 7. The State opposed this motion by arguing that the material information regarding J. R. had been disclosed, that the Raglins through family and contact with J. R.'s mother, already possessed much of the information, and that the Raglins could not establish causation as a matter of law. CP at 132. The State filed a cross-motion for summary judgment, contending that the Raglins had signed a release of all their claims and the lawsuit should therefore be dismissed. CP at 132.

The trial court granted the State's cross-motion and dismissed the case. CP at 330. The court did not rule on plaintiff's motion, as it was mooted by the ruling dismissing the case.

The Raglins filed a motion for reconsideration on July 17, 2008. CP at 290. The motion did not cite or discuss CR 59. CP at 292-300. After ordering briefing and hearing argument, on September 15, 2008, the trial court denied the motion to reconsider. CP at 427-28.

The Raglins filed a notice of appeal on October 2, 2008, appealing only the denial of plaintiffs' motion for reconsideration.²

IV. LAW AND ARGUMENT

A. Standard Of Review

An appellate court reviews a summary judgment *de novo*, engaging in the same inquiry as the trial court. *Chen v. State*, 86 Wn. App. 183, 187, 937 P.2d 612 (1997), *review denied*, 133 Wn.2d 1020, 948 P.2d 387 (1997). Questions of law are reviewed *de novo*. *City of Tacoma v. William Rogers Co.*, 148 Wn.2d 169, 181, 60 P.3d 79 (2002). A denial of a motion to reconsider is reviewed for manifest abuse of discretion. *Perry v. Hamilton*, 51 Wn. App. 936, 938, 756 P.2d 150, *review denied*, 111 Wn.2d 1017 (1988).

² The notice of appeal was not initially included in the designation of record, but is designated in respondent's supplemental designation of the record filed with the filing of respondent's brief. RAP 9.6. It is included with the appendix to this brief. RAP 10.3(8).

B. Summary Of Argument

The only issues properly before this court are whether the trial court erred in granting the State's cross-motion for summary judgment, holding that the Raglins had settled and released their claims against DSHS, and whether the court abused its discretion in denying their motion for reconsideration.

The trial court properly ruled, as a matter of law, that the Raglins entered into a valid contract releasing their claims. There was an offer, an acceptance, and consideration. In this contract, the Raglins agreed that any and all possible claims regarding the placement and adoption of J. R. were settled and released in consideration of DSHS' agreement to settle the Raglins administrative appeal.

The trial court correctly denied the Raglins motion for reconsideration. The Raglins argued new legal theories for the first time in their motion to reconsider. The court was within its discretion in denying reconsideration because these new arguments and new evidence were available but not presented to the court on summary judgment. In addition, the new theories were without merit and provided no valid basis to reconsider the court's initial decision.

The Raglins' attempt to argue their summary judgment motion before this court is inappropriate and should not be considered. The

Raglins' motion was independent of the issue of whether their lawsuit was barred by their release and was mooted by the trial court's granting of the State's cross-motion on the issue of the release. The trial court never ruled on the Raglins' motion. There is no decision for this court to review. Moreover, the Raglins never sought discretionary review of any "denial" of their summary judgment even if the court had in fact ruled on their motion. Finally, the "facts" that the Raglins offer in support of their arguments are not supported by citation to the record as required by RAP 10.3(5).³

C. Argument

1. The Raglins Signed A Valid Contract Releasing Their Claims In This Case

After filing their administrative appeal of the DSHS decision that they did not qualify for adoption support reconsideration, the Raglins entered into an agreement to settle the appeal. The department made the Raglins a written offer to settle the appeal. The proposed agreement set forth the terms of the settlement:

³ For example, the Raglins claim that "[t]he DCFS file indicates drug and alcohol use during the pregnancy with J. [R.]". Appellant's Br. at 4. There is no record cite given and this "fact" is not in the record. The brief is littered with similar assertions not supported by any citations to any facts of record.

The Department will disregard your signed waiver of adoption support.

The Department will prepare an Order Regarding Extenuating Circumstances and will present that Order to Judge Hale for her signature.

The Department has determined that, after the Order is signed and after an application for adoption support is submitted by you, J[R] would be eligible for federally subsidized adoption support benefits.

You will complete the adoption support application and submit it to Nancy Williams, Adoption Support Program Manager.

You agree that your administrative hearing challenging the denial of adoption support will be continued until an adoption support agreement is negotiated and signed, and that you will then withdraw your request for hearing.

You agree that this settlement constitutes a settlement of all claims or damages arising out of the Department's placement of J[R] with you and his subsequent adoption by you.

CP at 366-67.

The Raglins' administrative appeal contested the department's decision that there were no extenuating circumstances as a result of any lack of disclosure. The settlement agreement resolved the administrative appeal in favor of the Raglins regarding whether the claimed lack of disclosure constituted extenuating circumstances, entitling them to adoption support, and the Raglins released the department from any future claims. The Raglins signed this agreement on April 15, 2005.⁴ CP at 366.

⁴ "We, Thomas and Cecelia Raglin, agree to and accept the terms of the settlement offer set forth in the foregoing letter." CP at 366.

A compromise or settlement agreement is a contract, and its construction is governed by the legal principles applicable to contracts generally. It is subject to judicial interpretation in the light of the language used and the circumstances surrounding its making. *Riley Pleas, Inc. v. State*, 88 Wn.2d 933, 937-38, 568 P.2d 780 (1977) (citing 15A Am. Jur. 2d, *Compromise and Settlement* § 23 (1976)).

A contract requires an offer, acceptance, and consideration. *Christiano v. Spokane County Health Dist.*, 93 Wn. App. 90, 95, 969 P.2d 1078 (1998), *review denied*, 163 Wn.2d 1032, 189 P.3d 167 (1999). Acceptance is an expression—communicated by word, sign, or writing to the person making the offer—of the intention to be bound by the offer's terms. *Plouse v. Bud Clary of Yakima, Inc.*, 128 Wn. App. 644, 648, 116 P.3d 1039 (2005), *review denied*, 157 Wn.2d 1015, 139 P.3d 350 (2006).

In exchange for the Raglins' agreement, the department agreed to disregard the Raglins' signed waiver of adoption support and agreed to entry of an order that established the necessary extenuating circumstances for the ALJ to find the Raglins eligible for adoption support.⁵ There was an offer (DSHS will disregard the waiver and stipulate to an agreed order), acceptance (Raglins signed agreement), and consideration (stipulation to

⁵ CP at 107-08.

entry of agreed order). That is a valid contract. *See Christiano*, 93 Wn. App. at 95.

“[T]he law favors the private settlement of disputes and is inclined to view them with finality.” *Stottlemire v. Reed*, 35 Wn. App. 169, 173, 665 P.2d 1383, *review denied*, 100 Wn.2d 1015 (1983). Since there is no valid defense to the contract, the Raglins have released their claims and the trial court’s dismissal of the case should be affirmed.

2. Actual Payment Of Adoption Support Was Not A Condition Precedent To The Contract

The only argument the Raglins made to the trial court on summary judgment regarding the contract was that actual payment of adoption support was a condition precedent to enforcement of the contract. While they mention this issue in their brief to this court, the Raglins do not argue or provide any authority for this contention. They have therefore, waived this issue. *See Howell v. Spokane & Inland Empire Blood Bank*, 117 Wn.2d 619, 624, 818 P.2d 1056 (1991) (“If a party fails to support assignments of error with legal arguments, they will not be considered on appeal.”).

Even if not waived, the contention is contrary to contract law and to the terms of the settlement agreement. When it is doubtful whether words in a contract create either a promise or a condition, they are

interpreted as creating a promise, not a condition. *Ross v. Harding*, 64 Wn.2d 231, 237, 391 P.2d 526 (1964) (citing *Restatement, Contracts* § 261, p. 375; 5 Williston, *Contracts* (3d ed.) § 665, p. 133.) Any words which express, when properly interpreted, the idea that the performance of a promise is dependent on some other event will create a condition. *Ross*, 64 Wn.2d at 237. In *Tacoma Northpark, LLC v. NW, LLC*, 123 Wn. App. 73, 80, 96 P.3d 454 (2004), the court said, “words such as ‘provided that,’ ‘on condition,’ ‘when,’ ‘so that,’ ‘while,’ ‘as soon as,’ and ‘after’ suggest a conditional intent, not a promise. But, “[w]here it is doubtful whether words create a promise (contractual obligation) or an express condition, we will interpret them as creating a promise.” There is no such conditional language in the contract between the Raglins and the department.

Even if the contract contained conditional language that indisputably made the contract dependant on a condition precedent, a condition is excused if the other party prevents its occurrence. *See Refrigeration Engineering Co. v. McKay*, 4 Wn. App. 963, 969, 486 P.2d 304 (1971); 5 DeWolfe, *Washington Practice: Evidence* § 8.3; *Restatement (Second) Contracts* § 225. The Raglins prevented the fulfillment of any agreement regarding the adoption support payments. Immediately after the ALJ order, the Raglins were sent a proposed

adoption support agreement. CP at 233, 372. Even after written discussion between the Raglins and their attorney and DSHS concerning adoption support, the Raglins never did sign a support agreement. Because actual payment of adoption support was not a condition precedent to the agreement, the trial court's dismissal should be affirmed.

3. The Trial Court Correctly Denied The Motion To Reconsider

a. The Raglins Offered No CR 59 Basis For Reconsideration

The Raglins moved the trial court for reconsideration, but did not cite to CR 59 nor discuss any basis under the rule allowing the court to reconsider its granting of the State's cross-motion for summary judgment. For this reason alone, the court did not abuse its discretion in denying the motion for reconsideration. Raglins' motion to reconsider consisted solely of arguments that could have been made to the court on summary judgment. Additional evidence was submitted without any showing that the evidence was newly discovered. "CR 59 does not permit a plaintiff to propose new theories of the case that could have been raised before entry of an adverse decision." *Wilcox v. Lexington Eye Institute*, 130 Wn. App. 234, 122 P.3d 729 (2005), *review denied*, 157 Wn.2d 1022, 142 P.3d 609 (2006) (citing *JDFJ Corp. v. Int'l Raceway, Inc.*, 97 Wn. App. 1, 7, 970 P.2d 343 (1999)).

However, even if the arguments made on reconsideration required consideration, they were without merit, as argued below.

b. The Theories Of Fraud Or Unilateral Mistake Provide No Defense To The Release

The Raglins signed a settlement and a release the terms of which are clear on its face. Settlements and releases of claims are favored as a desirable method of avoiding unnecessary and expensive litigation. *Metropolitan Life Ins. Co. v. Ritz*, 70 Wn.2d 317, 321, 422 P.2d 780 (1967). “[W]hen such an agreement contains plain and unambiguous language, parol evidence will not be admitted to vary its terms, nor will such an agreement be overturned short of fraud, false representation, overreaching or a mutual mistake of which the evidence is clear and convincing.” *Id.*

There was no evidence of misrepresentation or mistake presented to the trial court. The Raglins rely on *Basin Paving Inc. v. Port of Moses Lake*, 48 Wn. App. 180, 737 P.2d 1312 (1987), to argue that the agreement is unenforceable because DSHS either misrepresented a lack of disclosure to the Raglins or the Raglins were unilaterally mistaken about a lack of disclosure. However, *Basin Paving* is a very different case than this one. In *Basin Paving*, the company obtained a release from the Port in spite of knowing the Port had overpaid them by \$70,000 and knowing the Port was

not aware of the overpayment. *Id.* The court held the paving company had a duty to inform the Port of this if the \$70,000 was to be included in the release. *Id.*

In this case, the very dispute that was settled involved the Raglins claim that the State had not made sufficient disclosure. Rather than being unaware of any lack of disclosure, the Raglins were claiming there was a lack of disclosure. This was the underlying basis of their administrative appeal. In addition, the Raglins were aware of all the information that they claimed had not been previously disclosed before they signed the release.⁶

The Raglins instead rely on a “mistake of law” in their argument concerning unilateral mistake. The Raglins claim that they were unaware of the disclosure statute or the “existence of a tort for wrongful adoption.” Even if this is true, it is of no avail. A party is presumed to know what the statutes provide. *Barson v. Dep’t of Soc. & Health Servs.* 58 Wn. App. 616, 618 n.1, 794 P.2d 538 (1990). Whether they knew a “tort” existed is not relevant to the inquiry. A plaintiff is on notice that he or she has a cause of action when they have knowledge of the elements of their claim. *See Richardson v. Denend*, 59 Wn. App. 92, 95, 795 P.2d 1192, (1990),

⁶ Cecelia Raglin testified in her declaration filed below that any additional unknown information was provided to the Raglins on April 5, 2005, before the Raglins signed the release. CP at 320.

review denied, 116 Wn.2d 1005, 803 P.2d 1309 (1991) (“The discovery rule merely tolls the running of the statute of limitations until the plaintiff has knowledge of the ‘facts’ which give rise to the cause of action; it does not require knowledge of the existence of a legal cause of action itself.”); *Gevaart v. Metco Constr., Inc.*, 111 Wn.2d 499, 502, 760 P.2d 348 (1988) (“[T]he discovery rule does not require knowledge of the existence of a legal cause of action. To so require would effectively do away with the limitation of actions until an injured person saw his/her attorney. This is not the law.”) A mistake must be one of fact, not law. *Simonson v. Fendell*, 101 Wn.2d 88, 91, 675 P.2d 1218 (1984). The doctrine of unilateral mistake is therefore not applicable here.

c. The Settlement Agreement Is Not An Exculpatory Clause

The Raglins provide an extended discussion on the law involving exculpatory clauses. Br. of Appellant at 26. Although they attempt to label it so, the release at issue here is not an exculpatory clause. An exculpatory clause is a pre-release of liability for negligence. *See, e.g., Wagenblast v. Odessa Sch. Dist. 105-157-166J*, 110 Wn.2d 845, 758 P.2d 968 (1988); *Blide v. Rainier Mountaineering, Inc.*, 30 Wn. App. 571, 636 P.2d 492 (1981), *review denied*, 96 Wn.2d 1027 (1982). It is an agreement signed before any activity or injury, that provides for a pre-

release of liability. *Id.* The settlement in this case involved allegations of past conduct and injury. Cases regarding exculpatory clauses have nothing to do with this case. The entire discussion of exculpatory clauses, is therefore not pertinent to this case.

d. The Settlement Agreement Was Not Unconscionable

The Raglins also argue that the release was unconscionable. Br. of Appellant at 30. However, proving a contract unconscionable is not an easy task and has not been accomplished here. The proponent has a high burden. “An unconscionable contract is one which ‘no man in his senses, not under delusion, would make . . . and which no fair and honest man would accept’” *Montgomery Ward & Co. v. Annuity Bd. of Southern Baptist Convention*, 16 Wn. App. 439, 444, 556 P.2d 552 (1976) (citation omitted). The Raglins appear to argue that the release language is somehow hidden in the agreement. They cite the case of *Nelson v. McGoldrick*, 127 Wn.2d 124, 896 P.2d 1258 (1995), but do not indicate how that case applies to this case. *Nelson* concerned a 50 percent fee charged by an heir hunting service. It does not address any question of hidden print. In any event, the release language here is not in “fine print.” The release language is contained twice in the agreement, both in the preliminary discussion and set out in its summary of terms. CP at 365-66.

Both times the language is in the same print size as the rest of the document. CP at 365-66. The document is only two pages long. CP at 365-66.

e. DSHS Had No Pre-existing Duty Because The Raglins Signed A Waiver Of Adoption Support

The Raglins further argue that DSHS had a pre-existing duty to pay adoption support and therefore there was no consideration for the release. However, the Raglins signed a waiver of adoption support when they adopted J. R. CP at 359. The waiver specifically recites that the Raglins were informed about the adoption support program. They acknowledge in the waiver that they had been provided with the informational pamphlet about the program and that they understood that the waiver precluded any application for adoption support in the future. CP at 359. They were offered adoption support, but waived it. CP at 359.

Without making a request for reconsideration and an order by an ALJ granting that request, the Raglins were not entitled to adoption support and the department could not provide it.

The department administers two adoption support programs. One is governed by state law and regulations. RCW 74.13.100-159. The other is authorized by federal law, 42 U.S.C. § 673, *et seq.*, and is governed by both state regulations and federal policy guidelines. *See* WAC 388-27-

0120 to -0390; U.S. Department of Health and Human Services (DHHS) Child Welfare Policy Manual, Section 8.2, 8.4G (Question 2).⁷

Both the state and federal programs require that a prospective adoptive parent apply for participation in the program, be approved for the program, and have an adoption support agreement signed and in place at the time the adoption is finalized. RCW 26.33.320, RCW 74.13.109; WAC 388-27-0305; 42 U.S.C. § 673(c); 45 C.F.R. § 1356.40(b)(1). However, recognizing that there are cases in which adoptive parents may have erroneously been denied an opportunity to participate in the adoption support program before adopting a special needs child, the law provides a post-adoption avenue for requesting adoption support. A limited state-funded program, called the "Reconsideration Program," provides support for eligible persons who apply for services after the adoption has been finalized. In order to qualify for the Reconsideration Program, a child must meet all of the criteria set forth in RCW 74.13.150(2) and WAC 388-27-0335.

One of the criteria is that the child must "have resided, immediately prior to adoption finalization, in a department funded pre-adoptive placement or in department funded foster care." RCW 74.13.150(2)(a). This excluded J. R. who was living with his aunt

⁷ CP at 354-57.

and uncle. He was not in a department funded pre-adoptive placement or foster care. The Raglins thus did not qualify under the state statute for reconsideration.

In cases where a child may be eligible under the federally-subsidized program *and* where "extenuating circumstances" justify a post-adoption determination of eligibility, the department has authority to consider an adoption support application even after the adoption is final. WAC 388-27-0310.⁸ Federal policy guidelines and department regulations require the "extenuating circumstances" finding to be made by an administrative law judge. WAC 388-27-0310; Child Welfare Policy Manual 8.4G (Question 2).⁹ "Extenuating circumstances" means a finding by an administrative law judge or review judge that one or more certain qualifying conditions or events prevented an otherwise eligible

⁸ "If a child met federal Title IV-E eligibility for adoption assistance before the adoption, but was not placed on the adoptive support program, what may the adoptive parent do after adoption finalization to obtain adoption support services for the adopted child?"

For a child who met the Title IV-E eligibility criteria for adoption assistance prior to adoption, federal rules allow for a possible finding of extenuating circumstances through an administrative hearing process. In these situations the adoptive parent must request a review by an administrative law judge or a review judge to obtain an order authorizing the department to enter into a post-adoption agreement to provide adoption support services to a special needs child." WAC 388-27-0310.

⁹ CP at 354-57.

child from being placed on the adoption support program prior to adoption.” WAC 388-27-0130.

Since the Raglins signed the waiver of adoption support, there was no pre-existing duty to provide adoption support. In fact the law precluded this. Only after the ALJ order did DSHS have any ability or duty to negotiate an adoption support agreement.

f. There Was No Failure Of Consideration

The Raglins’ argument regarding failure of consideration does not rely on any citation to relevant authority regarding this issue.¹⁰ In any event, the Raglins received the very consideration for which they bargained in the settlement agreement. The department did, as contemplated by the agreement, sign and present an agreed order to the ALJ. The ALJ signed the order and DSHS attempted to negotiate adoption support with the Raglins.¹¹ The ALJ’s independent subsequent dismissal of the appeal¹² after entering the order did not affect this consideration. As required by law, DSHS tried to reach an agreement with

¹⁰ The only authority cited are two inapposite cases dealing with illegal contracts. Without legal or factual support the Raglins argue that the contract was illegal because it is coercive. The court should not consider claim of error not supported by legal argument. *Howell v. Spokane & Inland Empire Blood Bank*, 117 Wn.2d 619, 624, 818 P.2d 1056 (1991).

¹¹ CP at 107, 368-85

¹² CP at 229. The order was sent to the Raglins informing them that they may reinstate the appeal. CP at 229.

the Raglins for adoption support, but were frustrated by the Raglins refusal to enter in an agreement.¹³ There was no failure of consideration. The Raglins remained entitled to negotiate and enter an adoption support agreement within the limits imposed by law.

4. The Raglins May Not Challenge A Denial Of Their Motion For Summary Judgment When The Trial Court Did Not Rule On Their Motion; Even If It Had Denied Their Motion The Raglins Failed to Seek Discretionary Review From This Court

The Raglins spend a majority of their brief arguing that the trial court erred in denying their motion for summary judgment. However, the trial court never ruled on their motion. The ruling on the contract issue mooted the Raglins' motion. The only orders entered by the trial court are the order granting the State's cross-motion for summary judgment¹⁴ and the order denying the Raglins' motion to reconsider that ruling.¹⁵

¹³ "The amount of adoption support monthly cash payment is determined through the discussion and negotiation process between the adoptive parents and representatives of the department based upon the needs of the child and the circumstances of the family." WAC 388-27-0230(1). "Under no circumstances may the amount of the adoption support monthly cash payment the department pays for the child exceed the amount of foster care maintenance payment that would be paid if the child were in a foster family home." WAC 388-27-0230(4).

¹⁴ CP at 330.

¹⁵ CP at 427.

The Raglins' notice of appeal seeks review of only the order denying their motion for reconsideration.¹⁶ They did not seek review, either direct or discretionary, of a denial of their summary judgment. This precludes review. *See* RAP 2.2, RAP 2.3. Even if the trial court had ruled on their summary judgment motion, denial of a motion for summary judgment is not an appealable order, and discretionary review of such orders is not ordinarily granted. *Sea-Pac Co. v. United Food & Commercial Workers Local 44*, 103 Wn.2d 800, 802, 699 P.2d 217 (1985) (*citing* RAP 2.2(a)).

V. CONCLUSION

Although they had previously released all claims against the State, the Raglins nonetheless filed this wrongful adoption case against the State. The trial court granted summary judgment in favor of the State, determining correctly that the settlement agreement signed by the Raglins was valid and enforceable and precluded the Raglins' lawsuit. Although the Raglins filed a motion to reconsider, raising a multitude of new theories regarding the contract, the trial court was well within his discretion in denying the reconsideration motion. The State of Washington therefore respectfully requests this court affirm the decision

¹⁶ *See* Appendix.

of the trial court dismissing the Raglins' lawsuit as barred by the release they voluntarily and knowingly signed.

RESPECTFULLY SUBMITTED this 28th day of January, 2009.

ROBERT M. MCKENNA
Attorney General



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PROOF OF SERVICE

I certify that I served a copy of *Brief of Respondent* on all parties or their counsel of record on the date below via US Mail, proper postage affixed, as follows:

Office of the Clerk
Washington State Court of Appeals
Division Two
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Tacoma, WA 98402-4454

Duane Crandall
Crandall O'Neill & McReary, PS
1447 – 3rd Avenue, Suite A
PO Box 336
Longview, WA 98632

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

DATED this 28th day of January, 2009, at Tumwater, Washington.



HILARY CALLIGAN

Appendix

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TORTS DIVISION OLYMPIA

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SUPERIOR COURT

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COWLITZ COUNTY
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SUPERIOR COURT OF WASHINGTON FOR COWLITZ COUNTY

THOMAS L. RAGLIN and CECELIA)
M. RAGLIN, husband and wife,)

Plaintiffs,)

v.)

STATE OF WASHINGTON,)

Defendant.)

NO. 06 2 01215 2

NOTICE OF APPEAL

TO: STATE OF WASHINGTON, Defendant;

TO: JOHN C. DITTMAN, Attorney for Defendant.

YOU, AND EACH OF YOU, PLEASE TAKE NOTICE that the Plaintiffs THOMAS L. and CECELIA M. RAGLIN seek review by the Court of Appeals, Division II, of the Order Denying Plaintiffs' Motion for Reconsideration entered on September 15, 2008.

A copy of said Order is attached hereto.

DATED this 2 day of October, 2008.

CRANDALL, O'NEILL & MCREARY & IMBODEN, P.S.

By: *Duane C. Crandall*
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DECLARATION OF MAILING TORTS DIVISION OLYMPIA

On October 2, 2008, I deposited in the mail of the U.S., a properly stamped and addressed envelope directed to:

JOHN C. DITTMAN
Assistant Attorney General
Torts Division
7141 Cleanwater Dr. SW
PO Box 40126
Olympia, WA 98504-0126

containing a copy of the document to which this declaration is affixed.

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

Sylvia Archibald
SYLVIA ARCHIBALD

Dated at Longview, Washington this 2nd day of October, 2008.

FILED
COURT OF APPEALS
DIVISION II
09 JAN 29 AM 11: 01
STATE OF WASHINGTON
BY _____
DEPUTY