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

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

v.

STATE OF WASHINGTON,  
Respondent.

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**RESPONDENT'S RESPONSE BRIEF**

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## I. INTRODUCTION

This case arises from plaintiffs Cecelia and Thomas Raglins' adoption of Cecelia Raglin's brother's son, J.R. The Raglins took placement of J. R. in early 1993. The Department of Social and Health Services (DSHS) had taken custody of J.R following allegations of abuse by his biological mother's boyfriend. J.R. was about one year old at the time the Raglins took him into their home. The Raglins intended to adopt him, but this did not occur immediately. J.R. lived with the Raglins and was raised by them. 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 had signed a release of any and all claims arising out of the adoption to settle a dispute concerning their request for adoption support payments.

The trial court originally dismissed the wrongful adoption claims on the State's motion for summary judgment based on the release signed by the Raglins. This court reversed the trial court and remanded the case holding that the agreement of the Raglins was insufficiently certain as to its consideration because the actual amount of the adoption support payments was left to be determined. This court held the release was not supported by sufficient consideration because the State and the Raglins did

not have an actual agreement, but instead only an “agreement to agree.” At the time of the first trial court decision, the Raglins had not agreed on the specific amount. Although not part of the record before the trial court at the time of the initial ruling, the Raglins, after the trial court’s order, entered into an agreement with specific terms and received a sizable lump sum payment for past support and a provision for substantial future payments as well as full medical coverage. This crucial fact was not part of the record before this court in the initial appeal.

On remand, the trial court, upon hearing the new evidence concluded that the release was now supported by adequate consideration, \$33,062.40 and additional monthly payments of \$1,377.60 beginning October 2008. The trial court granted summary judgment to the defendant on the release relying in principal part on this court’s decision and reasoning.

The Raglins have once again appealed this ruling.

## **II. RESTATEMENT OF THE ISSUES**

1. Did the trial court correctly determine that once the Raglins agreed to a specific amount for adoption support payment and had received those payments that there was an actual agreement, supported by consideration, and therefore the release of all claims the Raglins signed in

order to receive those payments became a valid, enforceable contract and release?

2. Can the Raglins present new arguments challenging the validity of their agreement for the first time on appeal, when the issues were not raised in opposition to summary judgment in the trial court?

### **III. RESTATEMENT OF THE CASE**

J.R. was born on May 30, 1992. CP at 156. From the medical birth records, his birth was normal and the baby was normal. CP at 156. Although the biological mother had had previous problems, there is no evidence in the birth records of any problems with the baby. CP at 156. Nothing in the records indicated any suggestion of fetal alcohol syndrome. CP at 156. The baby tested negative for drugs. CP at 156.

In May 1993, at the Raglins' request, DSHS placed J.R., the Raglins' nephew, Cecelia brother's son, with the Raglins. CP at 279. J.R. lived with the Raglins and was raised by the Raglins in this relative placement for four years or until he was about five years old. The Raglins were the only parents he knew.

The Raglins wanted to adopt J.R. and steps were made by DSHS to facilitate this. CP at 154. In 1994, the Raglins were sent an adoption application and information about adoption support. CP at 154. They did not follow through for over three years. CP at 4. The Raglins finally

formally adopted J.R. on May 16, 1997. CP at 4. Prior to 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. CP at 186. They disclosed that he had a learning disability due to neurologic or organic brain dysfunction. CP at 185. They disclosed that his father had used marijuana, cocaine, and amphetamines, and that his grandmother had epilepsy. CP at 183-84.

DSHS did not provide the Raglins with J.R.'s birth records, but had they done so the Raglins would have learned that the records showed a completely normal birth and baby with no complications. CP at 156.

Prior to the adoption, the Raglins signed a waiver of any adoption support payments. CP at 69. In the waiver, they specifically acknowledged that they were giving up any right to apply for services after the adoption. CP at 69.

Seven years after the adoption and eleven years after the Raglins started raising him, as J.R. was approaching his adolescent years, he began having problems in school. In 2004, the Raglins applied for adoption support, seeking reconsideration of their waiver. CP at 236. The Adoption Support Program Manager, Nancy Williams, denied their request, explaining that they had signed a waiver that they were not legally eligible for the state reconsideration program, and they did not qualify for

the federally funded program. CP at 236. To qualify under the state program, J.R. had to be in a state funded placement immediately prior to the adoption. He was not. He was in a relative placement. CP at 236. To qualify under the federal program, the program required a finding by an Administrative Law Judge (ALJ) of “extenuating circumstances” which Ms. Williams did not believe existed for the Raglins. CP at 236. Ms. Williams explained, in writing, that the Raglins were entitled to appeal her determination. CP at 236.

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 before the ALJ, the Raglins were sent an offer to settle the proceeding so that the parties would not have to prove their case to the ALJ. CP at 240. DSHS offered to stipulate to an order before the ALJ that there were extenuating circumstances which would guarantee the Raglins entitlement 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 240. The Raglins signed this agreement on April 15, 2005. CP at 241. The department signed the agreement on April 19, 2005. CP at 241. Pursuant to the State’s stipulation an agreed order establishing the Raglins’ entitlement to adoption support was signed by the ALJ on April 22, 2005. CP at 189.

The Raglins were sent, and filled out, an adoption support application. CP at 197. They were sent a proposed adoption support agreement. CP at 210-14. Despite correspondence back and forth between DSHS and the Raglins and their lawyer, the Raglins did not sign the adoption support agreement until October 2008. CP at 210-14, 117.

J.R. is now 19 years old and presumably out of the house.

The State originally moved for summary judgment contending that the Raglins had signed a release of all their claims and the lawsuit should therefore be dismissed. *See Raglin v. State*, noted at 152 Wn. App. 1047, 2009 WL 3360091 at \*2.<sup>1</sup>

The trial court granted the State's motion and dismissed the case. *Id.*

The Raglins appealed this dismissal to this court. *Id.* This court reversed and remanded the case holding that the contract signed by the Raglins was not enforceable because it was an "agreement to agree." *Id.*

On remand, after providing the new evidence to the trial court that the Raglins had in fact reached an agreement with specific terms and received substantial payments, the state again moved for summary judgment to dismiss the case based on the release. CP at 103. The trial court granted this motion. CP at 132. The Raglins have appealed this

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<sup>1</sup> Attached in Appendix to Respondent Brief.

decision claiming that even though the Raglins have received their money, there is still not any consideration for the release.

#### **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, *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 (1988), *review denied*, 111 Wn.2d 1017 (1988).

##### **B. Summary Of Argument**

In the trial court, the Raglins did not contest that their agreement to a specific amount resolved the issue as to whether their release was “an agreement to agree.” They therefore cannot now argue this issue before this court. The only issues that the Raglins raised in opposition to the State’s motion were that somehow the ALJ’s dismissal of their appeal, after giving them the relief they were seeking, voided the release and an argument that the trial court’s initial grant of summary judgment to the

State “coerced” the Raglins into signing the Adoption Support Agreement. Neither of these arguments has merit.

The Raglins’ assignments of error on appeal raise numerous other issues. These were not presented to the trial court. The Raglins have presented six assignments of error to this court that they did not present to the trial court. They claim for the first time on appeal that, there was a pre-existing duty, the contract did not relate back, the agreement was unconscionable, the contract was against public policy, the contract was the result of a unilateral mistake, and laches. These claims should not be considered by this court. However, even if considered, these arguments are without merit.

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. 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 uncertainty as to the consideration for that contract that existed in the record at the time of the first appeal has now been resolved by the express agreement of the parties and the payment of adoption support pursuant to that agreement.

**C. Argument**

**1. To the Extent That The Raglins' Release Was Initially An Agreement To Agree, The Raglins Have Now Agreed And Received Substantial Consideration That Creates A Valid Contract Releasing Their Claims In This Case**

**a. The Raglins Did Not Oppose The Argument That There Is Now Valid Consideration In the Trial Court**

In the first appeal of this case, this court held in an unpublished decision that the agreement between the Raglins and DSHS could not be enforced because it was an “agreement to agree”. *Raglin v. State*<sup>2</sup>, noted at 152 Wn. Ap. 1047, 2009 WL 3360091. This court stated, “[s]uch an agreement is one that requires a further meeting of the minds of the parties and without which it would not be complete.” (citing *Keystone Land & Dev. Co. v. Xerox Corp.*, 152 Wn.2d 171, 94 P.3d 945 (2004)). On remand, the trial court determined that the required further meeting of the minds took place and was set out in the signed Adoption Support Agreement. CP at 132.

On remand, the Raglins failed to contest that there was the necessary meeting of minds or in any way discuss this issue in opposition to summary judgment and therefore cannot seek review here. CP at 136-44. “On review of an order granting or denying a motion for summary

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<sup>2</sup> A copy of this Court’s Opinion is attached in the Appendix to this brief.

judgment the appellate court will consider only evidence and issues called to the attention of the trial court.” RAP 9.12

“The trial court is the proper forum for the initial assertion of all the contentions of the parties so that the parties may, in light of the contentions advanced, make their record and so that the trial court may have an opportunity to rule upon the contentions advanced.” *Stratton v. U.S. Bulk Carriers, Inc.*, 3 Wn. App. 790, 794, 478 P.2d 253 (1970); *see also Barker v. Mora*, 52 Wn. App. 825, 828, 764 P.2d 1014 (1988) (contention not raised in trial court cannot be raised on appeal.)

Even if this issue was properly before this court on appeal, both the law and this court’s prior ruling demonstrate that there is now a valid release.

**b. All Uncertainty As To The Existence Of Consideration For The Contract Has Been Cured**

Though the Raglins’ initial agreement may have been too uncertain as to consideration to have been enforceable by this court, this does not prevent their subsequent agreement from creating an enforceable contract. *Platts v. Arney*, 46 Wn.2d 122, 278 P.2d 657 (1955). “Even though the parties have expressed an agreement in terms so vague and indefinite as to be incapable of interpretation with a reasonable degree of certainty, they may cure this defect by later verbal clarification or their subsequent

conduct that indicates their own practical interpretation.”, Vol. 1, Joseph M. Perillo, *Corbin On Contracts*, § 4.7, p. 606 (Rev. ed. 1993); *Bohman v. Berg*, 54 Cal.2d 787, 794-95, 356 P.2d 185 (1960). Indefiniteness can be cured by performance. *Hays v. Underwood*, 196 Kan. 265, 269, 411 P.2d 717 (1966).

“The defense of uncertainty in the terms of a contract is not applicable in an action based upon the contract when performance has made it certain in every respect in which it might have been regarded as uncertain. *Platts*, 46 Wn.2d at 126; *Wetherbee v. Gary*, 62 Wn.2d 123, 127, 381 P.2d 237 (1963). This rule applies so long as the parties have, “executed and delivered all documents contemplated by the original agreement” in contrast to terms being left open for future determination or are subject to change. *Olson v. Bach*, 63 Wn.2d 938, 943-44, 389 P.2d 900 (1964). “Courts do not lightly declare a contract void for lack of certainty, but will endeavor to discover the true meaning and intent of the parties. *Platts*, 46 Wn.2d at 126, *Olson*, 63 Wn.2d at 942; *Wetherbee*, 62 Wn.2d at 127. Intent can be construed from a party’s performance. *Platts*, 46 Wn.2d at 122; *Hackin v. Pioneer Plumbing Supply Co*, 10 Ariz. App. 150, 457 P.2d 312 (1969).

Furthermore, if a contract has been fully executed and a party has accepted benefits of the contract and used the money received, uncertainty

is defeated and the performances have rendered the contract certain and definite. *McDougall v. McDonald*, 86 Wash. 334, 337, 150 P. 628 (1915).

As the record before this court now shows, 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 which released all other claims against DSHS. The adoption support agreement they signed<sup>3</sup> provided the terms deemed missing by this court and resulted in a substantial payment to the Raglins.

“[T]he law favors the private settlement of disputes and is inclined to view them with finality.” *Stottlemyre v. Reed*, 35 Wn. App. 169, 173, 665 P.2d 1383, *review denied*, 100 Wn.2d 1015 (1983).

There is no longer any uncertainty regarding the consideration of the contract and this court should affirm the trial court’s decision.

**2. The Raglins’ Remaining Assignments Of Error Were Never Argued To The Trial Court In Opposition To The Summary Judgment At Issue In This Appeal Which Should Preclude Review By This Court**

The Raglins made only two arguments to the trial court on summary judgment. One contained no citation to any authority. The other cited one case but offered no argument to support it.

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<sup>3</sup> CP at 117.

The first argument to the trial court was that the ALJ's dismissal,<sup>4</sup> after granting the Raglins the relief they sought, somehow voided the agreement between the Raglins and DSHS. No authority was cited to the trial court. Perhaps more importantly, the Raglins have not raised that issue in this appeal. *See* Brief of Appellant at 1.

The only other argument to the trial court that the Raglins raised in opposition to the State's summary judgment motion is that they were "coerced" by the trial court's first order and that somehow rendered the agreement void. The Raglins cited *In re Smith*, 42 Wn.2d 188, 194, 254 P.2d 464 (1953) to the trial court for the general proposition that a contract may be void if the result of coercion. However, they did not cite to any case or other authority that a court ruling can constitute coercion. The trial court is not a party to this contract and could not void the contract through coercion even if a court ruling could somehow constitute coercion.

This was the full extent of the Raglins' opposition to the State's summary judgment motion.

On the other hand, the Raglins have presented six assignments of error to this court that they did not present to the trial court. These are, pre-existing duty, the contract did not relate back, the agreement was unconscionable, the contract was against public policy, the contract was

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<sup>4</sup> The ALJ sent the Raglins notice that they could contest the dismissal if they had a reason to do so. CP at 195.

the result of a unilateral mistake, and laches. As noted above this is specifically prohibited by RAP 9.12. “On review of an order granting or denying a motion for summary judgment the appellate court will consider only evidence and issues called to the attention of the trial court.”

“The trial court is the proper forum for the initial assertion of all the contentions of the parties so that the parties may, in light of the contentions advanced, make their record and so that the trial court may have an opportunity to rule upon the contentions advanced.” *Stratton*, 3 Wn. App. at 794: “[R]espondents correctly point out that appellant failed to raise the CR 17 argument before the trial court. Accordingly, this issue can not be raised for the first time on appeal.” *Barker*, 52 Wn. App. at 828.

“If an issue is not considered by the trial court upon remand, it is not ‘properly before the appellate court’ and therefore does not satisfy the rule’s stated prerequisite for review.” *State v. Suave*, 33 Wn. App. 181, 183 n.2, 652 P.2d 967 (1982) (addressing law of the case under RAP 2.5).

To the extent that this court determines that it will consider the issues not raised below, these issues have no merit and will be discussed below.

**3. The Raglins New Arguments About The Validity Of The Agreement Are Meritless**

**a. There Was No Pre-existing Duty**

It would seem axiomatic that for there to be a pre-existing duty, that duty must exist prior to the agreement at issue. There was no such duty that existed before the Raglins signed the release.

The Raglins signed a waiver of adoption support before they adopted J.R. CP at 69. 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 69. They were offered adoption support, but waived it. CP at 69. This eliminated any duty to provide adoption support.

Until an order was signed by an ALJ granting the Raglins entitlement to adoption support, not only did the department have no duty, they had no authority to provide it. They were prohibited by law from providing it.

**b. The State And Federal Programs Did Not Allow DSHS To Unilaterally Provide Adoption Support Payments**

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).<sup>5</sup>

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).

While there is a limited state-funded program, called the "Reconsideration Program," which can provide support for eligible persons who apply for services after the adoption has been finalized, the Raglins and J.R. did not qualify for this program. 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.

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<sup>5</sup> Attached in Appendix; CP at 229-36.

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

In those 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.<sup>6</sup> 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).<sup>7</sup> "Extenuating circumstances' means a finding by an administrative law judge or review judge that one or more

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<sup>6</sup> "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.

<sup>7</sup> See Appendix; CP at 229-36.

certain qualifying conditions or events prevented an otherwise eligible child from being placed on the adoption support program prior to adoption.” WAC 388-27-0130.

This is the precise question that the hearing before the ALJ was to answer. The reason that the hearing was never held and the ALJ did not have to make a decision was that prior to the hearing and decision the department and the Raglins reached their agreement.

The Raglins appear to attempt to confuse the issue by assuming the result of the hearing that never occurred. Placing the cart before the horse, they appear to argue that because the agreement stipulated to extenuating circumstance and the ALJ subsequently adopted the stipulation, that some finding of extenuating circumstances existed *before* the agreement was reached. Again, it is axiomatic that for there to be a pre-existing duty, that duty must exist prior to the agreement at issue. No such duty existed before the stipulated agreement and the ALJ order that came *after* and as a direct result of that agreement. Any argument by the Raglins is contrary to the established facts.

**c. The Settlement Agreement Was Not Unconscionable**

The Raglins argument here was not presented to the trial court concerning the order that is the subject of this appeal.

Even if the Raglins attempt to argue that the release was unconscionable is allowed, it is without merit. 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) (citations omitted). The Raglins received over \$50,000 plus complete medical and counseling coverage from the agreement. CP at 114, 117-18.

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. That case 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.<sup>8</sup> CP at 240-41. Both times

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<sup>8</sup> The Raglins make an unusual argument that compares the amount of adoption support versus a speculative “large cost” of a plaintiff’s verdict. Leaving aside the probability of a defense verdict on causation in a case where the plaintiff adopted her brother’s child, any possible verdict is speculation at best. It is not speculation, rather it is undisputed, that the Raglins have received over \$50,000 as a result of their agreement.

the language is in the same print size as the rest of the document. CP at 240-41. The document is only two pages long. CP at 240-41.

**d. The Settlement Does Not Violate Public Policy**

The Raglins devote seven pages to a discussion of a case concerning an exculpatory clause. 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 School Dist.*, 110 Wn.2d 845, 758 P.2d 968 (1988); *Blide v. Rainier Mountaineering, Inc.*, 30 Wn. App. 571, 636 P.2d 492 (1981). None of this argument has anything to do with this case.

**e. Unilateral Mistake Is Not Applicable**

At the risk of being over repetitive, this issue was not presented to the trial court on this motion. It is, in any event, meritless. Plaintiff can show no unilateral mistake, much less the state's knowledge of any. While the Raglins attempt to confuse the issue by discussing the original waiver, the question before this court is the release. The entire reason that there was discussion of a settlement agreement in the first place is that the Raglin's were claiming they weren't given proper disclosure entitling them to try to overturn the waiver they signed. They were aware of all this at the time of the release. A mistake must be one of fact, not law. *Simonson v. Fendell*, 101 Wn.2d 88, 91, 675 P.2d 1218 (1984). The

Raglins appear to be relying on a mistake of law in their argument. The doctrine of unilateral mistake is not applicable.

**f. Laches Does Not Apply**

Laches is an equitable remedy which requires clean hands on the party asserting it. *Retail Clerks Health & Welfare Trust Funds v. Shopland Supermarket, Inc.*, 96 Wn.2d 939, 949, 640 P.2d 1051 (1982). The Raglins claim that the State is somehow at fault for not bringing the Adoption Support signing to the attention to this court during the first appeal.<sup>9</sup> However, they offer no reason why they did not take that very step. While the rules of this court preclude any evidence of when counsel for the respondents in this case became aware that the Raglins had signed the Adoption Support Agreement, it is at best implausible that the Raglins did not consult their attorney before signing especially when they had an attorney advising them and negotiating for them during the initial discussions regarding the Adoption Support Agreement. CP at 203-08. The same rules of this court would preclude any evidence of when the Raglins' counsel was aware.

---

<sup>9</sup> This argument ignores the fact that the State had no reason to raise this issue. The agreement was not part of the record and the State had prevailed below. It was not until this court ruled that the contract and release was an "agreement to agree" and remanded the case that the signed adoption support agreement became relevant. The State then put this evidence before the trial court after remand and it is now part of the record.

None of this was presented to the trial court so that these evidentiary issues could have been determined. For this reason alone, this court should reject this claim.

However, regardless of this, laches is inapplicable. “Laches consists of two elements: (1) inexcusable delay and (2) prejudice to the other party from such delay. In determining whether the delay was inexcusable, a court may look to a variety of factors including similar statutory and rule limitation periods. But the main component of the doctrine is not so much the period of delay in bringing the action, but the resulting prejudice and damage to others.” *Clark County Pub. Utility Dist. No. 1 v. Wilkinson*, 139 Wn.2d 840, 848, 991 P.2d 1161 (2000)(citations omitted). The Raglins are the ones that received money and medical coverage. The department never received the benefit of their bargain. While the Raglins are arguing delay, this is the result of their actions. In March of 2006, the Raglins were offered an Adoption Support Agreement that was essentially identical to the one that they signed in late 2008. CP at 256-60.<sup>10</sup> The Raglins chose not to sign the agreement. If they had signed at the time, they would have received at least \$30,000.00 additional payments over what they received after they delayed signing for over two

---

<sup>10</sup> There was a difference in the maximum monthly payment amount which was raised from \$1300 a month to \$1377.60 for everyone by 2008. In addition, the retroactive payments only went back to the time the Raglins applied in 2004, about a year and one half instead of the two years in the 2008 agreement.

years.<sup>11</sup> Most importantly, they do not show prejudice. Even if their hands were clean, laches would not apply.

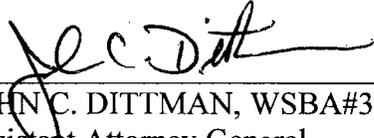
This court should hold that laches is inapplicable.

## V. CONCLUSION

The Respondent, State of Washington respectfully requests this court to affirm the trial court's order dismissing this case.

RESPECTFULLY SUBMITTED this 27<sup>th</sup> day of May, 2011.

ROBERT M. McKENNA  
Attorney General

  
\_\_\_\_\_  
JOHN C. DITTMAN, WSBA#32094  
Assistant Attorney General

---

<sup>11</sup> They would have received the lump sum of \$26,000.00 and the payments over the years starting in March of 2006.

**PROOF OF SERVICE**

I certify that I caused service of a copy of this document on all parties or their counsel of record on the date below as follows:

David Ponzoha  
Court of Appeals Clerk  
950 Broadway, Ste. 300  
Tacoma, WA 98402

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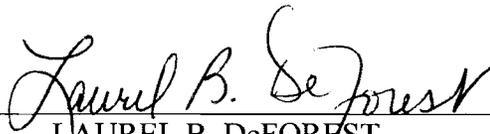
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I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 27<sup>th</sup> day of May, 2011, at Tumwater, WA.

  
\_\_\_\_\_  
LAUREL B. DeFOREST

# APPENDIX

Not Reported in P.3d, 152 Wash.App. 1047, 2009 WL 3360091 (Wash.App. Div. 2)  
 (Cite as: 2009 WL 3360091 (Wash.App. Div. 2))

**H**

NOTE: UNPUBLISHED OPINION, SEE RCWA  
 2.06.040

Court of Appeals of Washington,  
 Division 2.

Thomas L. RAGLIN and Cecelia M. Raglin, husband  
 and wife, Appellants,

v.

STATE of Washington, Respondent.

No. 38459-1-II.

Oct. 20, 2009.

As Amended on Denial of Reconsideration Dec. 29,  
 2009.

West KeySummaryCompromise and Settlement 89  
 89k6(1)

89 Compromise and Settlement

89I In General

89k1 Nature and Requisites

89k6 Consideration

89k6(1) k. Necessity and sufficiency in  
 general. Most Cited Cases

An unsigned settlement agreement was unenforceable for lack of consideration, and thus did not preclude adoptive parents from bringing suit against the State Department of Social and Health Services for failure to provide their child's health history. Disregarding the waiver of post-adoption support signed by the adoptive parents was insufficient consideration to support a contract between the State and the parents, because the State was already legally obligated to reconsider adoption support under its reconsideration program. RCW 74.13.150; RCW 26.33.380.

Appeal from Cowlitz Superior Court; Honorable  
James E. Warne, J.

Duane Charles Crandall, Crandall O'Neill McReary &  
Imboden PS, Longview, WA, for Appellants.

John Coulter Dittman, Office of the Attorney General,  
Olympia, WA, for Respondent.

UNPUBLISHED OPINION  
HOUGHTON, J.

\*1 Cecilia and Thomas Raglin appeal a summary judgment order dismissing their claims against the State of Washington (State) for wrongful adoption. Because the trial court based its decision on an unenforceable agreement between the Raglins and the State, we reverse and remand for further proceedings.

#### FACTS <sup>FN1</sup>

FN1. The State disputes the Raglins' level of knowledge about Josiah's and his birth mother's conditions before Josiah's adoption. Because the trial court decided this case on summary judgment, we take the evidence in the light most favorable to the Raglins. Schaaf v. Highfield, 127 Wash.2d 17, 21, 896 P.2d 665 (1995).

The Raglins took Josiah into their home in 1993 and adopted him in 1997. The State, through its Department of Social and Health Services (DSHS), facilitated the adoption. When the Raglins signed adoption documents, they waived their right to apply for post-adoption financial support.

Before the Raglins adopted him, Josiah suffered abuse, including a fractured skull, a broken arm, cuts, and bruises. Josiah's birth mother also consumed alcohol during the pregnancy.

When the Raglins adopted Josiah, the State designated his health history and his birth mother's health history as "unavailable." "Clerk's Papers (CP) at 114. The State did not provide this information to the Raglins despite their pre-adoption requests. At one point, Cecelia Raglin wrote a letter to the social worker assigned to Josiah's case saying that she had received no more than two letters from DSHS between May 1993 and December 1996 and was again requesting health information. Nonetheless, the State had collected health history information on Josiah and his birth parents. In 2005, the Raglins first learned about Josiah's birth mother's health history and health reports regarding her pregnancy.

As he grew older, Josiah exhibited dangerous and disturbing behavior, prompting the Raglins to seek

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(Cite as: 2009 WL 3360091 (Wash.App. Div. 2))

post-adoption benefits or assistance from the State. Because the Raglins had not requested assistance at the time of the adoption, they had to undertake administrative proceedings challenging the State's denial of adoption support for Josiah.

Before concluding the administrative proceedings, the Raglins and the State reached an agreement that would allow an administrative law judge to enter an agreed order regarding the existence of extenuating circumstances. An Assistant Attorney General wrote a letter on March 28, 2005, memorializing the agreement that the Raglins signed and an adoption support program manager signed on behalf of DSHS.

In pertinent part, the letter states:

You will need to fill out an application for adoption support and then negotiate an agreement with the Department. The agreement will be effective July 2004, the month that you requested adoption support.

The Department also asks that you agree that this settlement resolves all claims that may exist with respect to Josiah's placement with you and his adoption by you.

....

To summarize:

- 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 [the administrative law judge] for her signature.
- The Department has determined that, after the Order is signed and after an application for adoption support is submitted by you, Josiah would be eligible for federally subsidized adoption support benefits.
- \*2 • You will complete the adoption support application and submit it to [an] 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 for damages arising out of the Department's placement of Josiah with you and his subsequent adoption by you.

CP at 170-71.

About a year later, on March 3, 2006, after the Raglins retained counsel, the State proposed adoption support of \$1,300 a month until Josiah's 21st birthday. This offer resulted from negotiations between the State and the Raglins' counsel. In June 2006, without agreeing to any support offer, the Raglins sued the State for wrongful adoption.<sup>FN2</sup> They claimed that while they were prospective parents, the State failed to make reasonable disclosures of Josiah's family background and other information as RCW 26.33.380 requires. The Raglins moved for summary judgment on their claims.

FN2. The State may be liable in a civil action for wrongful adoption for failing to "make a reasonable investigation of their records, and to make reasonable efforts to reveal fully and accurately all non-identifying information in their possession to the [prospective] adopting parents." McKinney v. State, 134 Wash.2d 388, 400, 950 P.2d 461 (1998). In determining the State's liability, the jury may find that if not for its failure to disclose, the prospective parents would not have adopted the child. McKinney, 134 Wash.2d at 406, 950 P.2d 461.

The State cross-moved for summary judgment. It argued it had a binding agreement with the Raglins that precluded them from suing it for wrongful adoption.

The trial court granted the State's motion.<sup>FN3</sup> The Raglins moved for reconsideration arguing that the agreement was (1) void on public policy grounds, (2) unconscionable, (3) the product of unilateral mistake, (4) invalid under the pre-existing duty rule, and (5) not supported by sufficient consideration. The trial court

Not Reported in P.3d, 152 Wash.App. 1047, 2009 WL 3360091 (Wash.App. Div. 2)  
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heard argument on the matter, considered the additional materials submitted, and denied the motion for reconsideration. The Raglins appeal.

FN3. On a later date, the trial court denied the Raglins' motion for summary judgment. The Raglins did not move for discretionary review of this order and it is not before us on appeal.

#### ANALYSIS Summary Judgment

The trial court based its summary judgment decision in favor of the State on the fully executed March 28, 2005 letter. Thus, we must decide whether the settlement agreement letter is a valid enforceable contract.<sup>FN4</sup>

FN4. Here, we review arguments raised below initially and on reconsideration. See August v. U.S. Bancorp, 146 Wash.App. 328, 190 P.3d 86 (2008) (appellate court considered issues presented at trial and new issues raised on a motion for reconsideration of summary judgment), *review denied*, 165 Wash.2d 1034, 203 P.3d 380 (2009).

We review decisions on summary judgment de novo. In doing so, we engage in the same inquiry as the trial court and view the facts, as well as reasonable inferences from those facts, in the light most favorable to the nonmoving party. Berrocal v. Fernandez, 155 Wash.2d 585, 590, 121 P.3d 82 (2005). We review questions of law, such as whether an enforceable contract exists, de novo. Our Lady of Lourdes Hosp. v. Franklin County, 120 Wash.2d 439, 443, 842 P.2d 956 (1993).

An enforceable contract requires offer, acceptance, and consideration. Yakima County Fire Protection Dist. No. 12 (West Valley) v. City of Yakima, 122 Wash.2d 371, 388-89, 858 P.2d 245 (1993). Offer and acceptance are not issues before us. As for consideration, a promise suffices as consideration under Washington contract law. 25 David K. DeWolf, Keller W. Allen, & Darlene Barrier Caruso, Washington Practice: Contract Law and Practice § 2:26, at 70 (1970) (citing King v. Riveland, 125 Wash.2d 500, 886 P.2d 160 (1994)). But a promise is considered illusory and insufficient for consideration if it is so indefinite that it cannot be enforced or if its perfor-

mance is optional or discretionary. Wash. Practice § 2:26, at 70-71 (citing Metro. Park Dist. v. Griffith, 106 Wash.2d 425, 723 P.2d 1093 (1986)). Additionally, under the pre-existing duty rule, an agreement to do that which one is already legally obligated to do is not valid consideration. 25 Wash. Practice § 2:24, at 68.

\*3 Washington courts will also not enforce "agreements to agree." See Keystone Land & Dev. Co. v. Xerox Corp., 152 Wash.2d 171, 94 P.3d 945 (2004). Such an agreement is one that requires a further meeting of the minds of the parties and without which it would not be complete. Keystone, 152 Wash.2d at 175-76, 94 P.3d 945.

The March 28, 2005 letter does not contain a clear statement of the State's consideration. Disregarding the waiver of post-adoption support signed by the Raglins is insufficient because the State is already legally obligated to consider an adoption support request after an administrative law judge finds that "extenuating circumstances" led the adoptive parents not to seek adoption support before the adoption was finalized. See WAC 388-027-0305 to -0320. The State did not guarantee that post-adoption support would be provided if the Raglins signed the agreement and it does not discuss dollar figures. It only provides that after the Raglins submit an application, Josiah would be eligible for federally-subsidized support. The actual provision of support remains optional or discretionary under the terms. This contrasts with the Raglins' consideration, which was to settle all claims for damages arising out of the State's placement of Josiah with them for no money aside from the potential of post-adoption support.

At oral argument, the State contended that the consideration was a stipulation to agree to a specific amount at a later date. This is alluded to in the summary section of the letter, which states in part, "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 a hearing." CP at 171.

But in so stating, the State really suggests that the letter was essentially an agreement to agree. As a further meeting of the parties' minds was clearly required here, the settlement agreement was unenforceable as a contract.

Not Reported in P.3d, 152 Wash.App. 1047, 2009 WL 3360091 (Wash.App. Div. 2)  
(Cite as: 2009 WL 3360091 (Wash.App. Div. 2))

In sum, the settlement agreement lacks sufficient consideration rendering it an invalid and unenforceable contract. For that reason, we reverse summary judgment and remand for further proceedings.

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

We concur: BRIDGEWATER, J., and VAN DEREN, C.J.

Wash.App. Div. 2, 2009.

Raglin v. State

Not Reported in P.3d, 152 Wash.App. 1047, 2009 WL 3360091 (Wash.App. Div. 2)

END OF DOCUMENT

Wash. Admin. Code 388-27-0335

Washington Administrative Code Currentness

Title 388. Social and Health Services, Department of

Chapter 388-27. Child Welfare Services-Adoption Services and Adoption Support

Adoption Support Program

▣ Part G: Post-Finalization Requests for Assistance (Refs & Annos)

→ **388-27-0335. How does a child qualify for the adoption support reconsideration program?**

To be eligible for the adoption support reconsideration program, a child must:

- (1) Have resided, immediately prior to adoption finalization, in a department funded pre-adoptive placement or in department funded foster care;
- (2) Have a physical or mental handicap or emotional disturbance that existed and was documented before adoption or was at high risk for future physical or mental handicap or emotional disturbance due to conditions to which the child was exposed before adoption;
- (3) Reside in Washington state with an adoptive parent who lacks the financial resources to care for the child's special needs; and
- (4) Be covered by a primary basic health insurance program.

Statutory Authority: RCW 74.13.031. 01-08-045, S 388-27-0335, filed 3/30/01, effective 4/30/01.

WAC 388-27-0335, WA ADC 388-27-0335

Current with amendments adopted through the 11-08 Washington State Register dated April 20, 2011

END OF DOCUMENT

45 C.F.R. § 1356.40

**C**Effective: [See Text Amendments]Code of Federal Regulations Currentness

Title 45. Public Welfare

Subtitle B. Regulations Relating to Public Welfare

Chapter XIII. Office of Human Development Services, Department of Health and Human Services

▣ Subchapter G. The Administration on Children, Youth and Families, Foster Care Maintenance Payments, Adoption Assistance, and Child and Family Services (Refs & Annos)▣ Part 1356. Requirements Applicable to Title IV-E (Refs & Annos)**→ § 1356.40 Adoption assistance program: Administrative requirements to implement section 473 of the Act.**

(a) To implement the adoption assistance program provisions of the title IV-E State plan and to be eligible for Federal financial participation in adoption assistance payments under this Part, the State must meet the requirements of this section and sections 471(a), 473 and 475(3) of the Act.

(b) The adoption assistance agreement for payments pursuant to section 473(a)(2) must meet the requirements of section 475(3) of the Act and must:

(1) Be signed and in effect at the time of or prior to the final decree of adoption. A copy of the signed agreement must be given to each party; and

(2) Specify its duration; and

(3) Specify the nature and amount of any payment, services and assistance to be provided under such agreement and, for purposes of eligibility under title XIX of the Act, specify that the child is eligible for Medicaid services; and

(4) Specify, with respect to agreements entered into on or after October 1, 1983, that the agreement shall remain in effect regardless of the State of which the adoptive parents are residents at any given time.

(c) There must be no income eligibility requirement (means test) for the prospective adoptive parent(s) in determining eligibility for adoption assistance payments.

(d) In the event an adoptive family moves from one State to another State, the family may apply for social services on behalf of the adoptive child in the new State of residence. However, for agreements entered into on or after October 1, 1983, if a needed service(s) specified in the adoption assistance agreement is not available in the new State of residence, the State making the original adoption assistance payment remains financially responsible for providing the specified service(s).

(e) A State may make an adoption assistance agreement with adopting parent(s) who reside in another State. If so, all provisions of this section apply.

(f) The State agency must actively seek ways to promote the adoption assistance program.

45 C.F.R. § 1356.40

[48 FR 23116, May 23, 1983; 53 FR 50220, Dec. 14, 1988]

SOURCE: 47 FR 30925, July 15, 1982; 58 FR 67938, Dec. 22, 1993; 61 FR 58653, Nov. 18, 1996, unless otherwise noted.

AUTHORITY: 42 U.S.C. 620 et seq., 42 U.S.C. 670 et seq.; 42 U.S.C. 1302.

45 C. F. R. § 1356.40, 45 CFR § 1356.40

Current through August 21, 2008; 73 FR 49358

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END OF DOCUMENT

Wash. Admin. Code 388-27-0330

**WASHINGTON ADMINISTRATIVE CODE  
TITLE 388. SOCIAL AND HEALTH SERVICES, DEPARTMENT OF  
CHAPTER 388-27. CHILD WELFARE SERVICES--ADOPTION SERVICES AND ADOPTION  
SUPPORT  
ADOPTION SUPPORT PROGRAM  
PART G: POST-FINALIZATION REQUESTS FOR ASSISTANCE**

Current with amendments adopted through July 2, 2008.

388-27-0330. What is the adoption support reconsideration program?

(1) The adoption support reconsideration program allows the department to register an eligible adopted child for limited state-funded support (see RCW 74.13.150).

(2) The reconsideration program provides for payment of medical and counseling services to address the physical, mental, developmental, cognitive, or emotional disability of the child that resulted in the child's eligibility for the program.

(3) There is a twenty thousand dollar per child lifetime cap on this program.

(4) The program requires the adoptive parent and the department to sign an adoption support reconsideration agreement specifying the terms, conditions, and length of time the child will receive limited support.

Statutory Authority: RCW 74.13.031, 01-08-045, S 388-27-0330, filed 3/30/01, effective 4/30/01.

<General Materials (GM) - References, Annotations, or Tables>

WAC 388-27-0330, WA ADC 388-27-0330

WA ADC 388-27-0330  
END OF DOCUMENT

Wash. Admin. Code 388-27-0310

**WASHINGTON ADMINISTRATIVE CODE  
TITLE 388. SOCIAL AND HEALTH SERVICES, DEPARTMENT OF  
CHAPTER 388-27. CHILD WELFARE SERVICES--ADOPTION SERVICES AND ADOPTION  
SUPPORT  
ADOPTION SUPPORT PROGRAM  
PART G: POST-FINALIZATION REQUESTS FOR ASSISTANCE**

Current with amendments adopted through July 2, 2008.

388-27-0310. 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.

Statutory Authority: RCW 74.13.031. 01-08-045, S 388-27-0310, filed 3/30/01, effective 4/30/01.

<General Materials (GM) - References, Annotations, or Tables>

WAC 388-27-0310, WA ADC 388-27-0310

WA ADC 388-27-0310  
END OF DOCUMENT

WASHINGTON 1997 LEGISLATIVE SERVICE  
55th Legislature, 1997 Regular Session

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Additions are indicated by <<+ Text +>>;  
deletions by <<- Text ->>  
Changes in tables are made but not highlighted. Vetoed provisions  
within tabular material are not displayed.

CHAPTER 131  
S.H.B. No. 1432  
CHILD WELFARE SERVICES--ADOPTION SUPPORT RECONSIDERATION PROGRAM

AN ACT Relating to modification of the adoption support reconsideration program; and  
amending RCW 74.13.150.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

Sec. 1. RCW 74.13.150 and 1990 c 285 s 5 are each amended to read as follows:

<< WA ST 74.13.150 >>

(1) The department of social and health services shall establish, within funds appropriated for the purpose, a reconsideration program to provide medical and counseling services through the adoption support program for children of families who apply for services after the adoption is final. Families requesting services through the program shall provide any information requested by the department for the purpose of processing the family's application for services.

(2) A child meeting the eligibility criteria for registration with the program is one who:

(a) Was residing <<+in a preadoptive placement funded by the department or+>> in foster care funded by the department immediately prior to the adoptive placement;

(b) Had a physical or mental handicap or emotional disturbance that existed and was documented prior to the adoption <<+or was at high risk of future physical or mental handicap or emotional disturbance as a result of conditions exposed to prior to the adoption+>>; and

(c) Resides in the state of Washington with an adoptive parent who lacks the necessary financial means to care for the child's special need.

(3) If a family is accepted for registration and meets the criteria in subsection (2)

of this section, the department may enter into an agreement for services. Prior to entering into an agreement for services through the program, the medical needs of the child must be reviewed and approved by the department<<-'s office of personal health services->>.

(4) Any services provided pursuant to an agreement between a family and the department shall be met from the department's medical program. Such services shall be limited to:

(a) Services provided after finalization of an agreement between a family and the department pursuant to this section;

(b) Services not covered by the family's insurance or other available assistance; and

(c) Services related to the eligible child's identified physical or mental handicap or emotional disturbance that existed prior to the adoption.

(5) Any payment by the department for services provided pursuant to an agreement shall be made directly to the physician or provider of services according to the department's established procedures.

(6) The total costs payable by the department for services provided pursuant to an agreement shall not exceed twenty thousand dollars per child.

Approved April 22, 1997.

Effective 90 days after date of adjournment.

WA LEGIS 131 (1997)

END OF DOCUMENT