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DIVISION II

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COURT OF APPEALS  
THE STATE OF WASHINGTON  
DIVISION II

TANYA AND TOMMY RIDER, APPELLANTS

v.

KING COUNTY, RESPONDENT

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REPLY BRIEF OF APPELLANTS

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## I. REPLY

### A. Introduction.

Respondent/King County (hereinafter “County”) raises three primary arguments in its response brief challenging the exceptions relied upon by the Appellants/Riders (hereinafter “Riders”) that the Public Duty Doctrine does not preclude their claims in this action. The first two arguments are directed at the special relationship exception to the public duty doctrine. First, the County contends that no express assurances were given by the County to Tom Rider. Second, the County contends that even if such assurances were given, there was no reliance by Tom Rider on the assurances made.

The third argument lodged by the County relates to the rescues exception. The County argues in its response that the rescue exception doesn’t apply because looking for people is part of the County’s core police function.

Any analysis of the special relationship exception to the public duty doctrine must start with a review of the purpose of the exception itself:

The Special relationship exception is a ‘focusing tool’ used to determine whether a local government is under

a general duty to the nebulous public or whether that duty has focused on the claimant. Munich v. Skagit Emergency Communications Center, 161 Wn.App. 116, 250 P.3d 491 (2011) citing Taylor v. Stevens County, 111 Wash.2d 159, 166, 759 P.2d 447(1988) – quoting J&B Development Co. v. King County, 100 Wash.2d 299,304, 669 P.2d 468 (1983)

A duty to all is a duty to no one. Taylor at, 163. The County contends in its response brief that no assurances of any action were given to Mr. Rider and further there was no specificity of what the County's future performance would be, therefore no special relationship could have existed. (See Respondent's brief at pgs. 16,18)

**B. Respondent King County representatives expressly assured Tom Rider that its people would look for and find Tanya Rider.**

As King County had to concede for the purpose of the underlying motion [and in this appeal], its lead investigator, Janet Rhode's, told Mr. Rider that "if something did go wrong with Tanya, we [King County] are going to locate her. CP 58-59; CP 299,301. This statement was echoed by the detective that interviewed Mr. Rider as well. CP 113. It would be difficult to conceive of a more definitive statement for the purposes of an express assurance – the County told

Mr. Rider they would look for and find his wife. Moreover, the statement must be put in context. Tom Rider had spoken on seven separate occasions with 911 operators over a two day period.(See CP 177-237) Thereafter, Mr. Rider met with a County Detective and talked with the County's lead missing person investigator. (CP 298-299) In short the express assurances that were given were very clear – King County personnel would search for and find Mrs. Rider.

In response to these clear edicts, the County argues that the assurances were not adequate because County representatives did not tell Mr. Rider specifically how they would search for Mrs. Rider. The County argues that for the County to have assumed a special duty its representatives would be required to tell Mr. Rider exactly what the County intended to do to locate his wife and when it would do it.

The County's cites Babcock v. Mason County, 144 Wn.2d 774, 30 P.3d 1261 (2001) in support of this specificity argument. Babcock was discussed in Appellants' opening brief. The express assurance in Babcock is discussed at p. 788-789. The Babcock Court found that a single statement by a single unidentified

firefighter with respect to rescuing no particular item of personal property was not sufficient to constitute an express assurance.

Babcock, at p. 789.

The County also cites Johnson v. State of Washington, 164 Wn.App. 740, 265 P.3d 199(2011); review denied 173 Wash.2d 1027, 273 P.3d 982(2012) in support of its position that no express assurance was given. However, in Johnson, the Plaintiff conceded in his opening brief that the special relationship exception to the public duty doctrine did not apply. Consequently, the Johnson Court refused to look at the issue. Johnson, at p. 753.

The two cases cited by the County simply don't support the County in the present action. In the case at bar, the express assurance provided was that King County would look for and find Mrs. Rider – and as a result a duty was assumed of future performance on the part of the County. The Respondent County argues that the statement at issue is too vague because no methodology nor timeline for performance was provided (See Respondent's brief at p. 20) and further references the fact that the County did indeed locate Mrs. Rider. (See Respondent's Brief at p.

19 footnote #3) However, these additional requirements identified by the County are not supported with any authority. To the contrary, exactly how the County was to perform and on what timing does not factor into whether or not it had assumed a duty and formed a special relationship.

Two cases hi-light the duty assumed by the County for such future performance [in this case locating Mrs. Rider] Beal v. City of Seattle, 134 Wash.2d 769, 954 P.2d 237 (1998); and Munich v. Skagit Emergency Communications Center, 161 Wn.App. 116, 250 P.3d 491 (2011); review accepted 172 Wash.2d 1026, 268 P.3d 225 (2011).

In Beal, a woman was shot and killed after calling 911. The 911 operator told her that she [the operator] would send the police out. Unfortunately, the police still had not arrived 20 minutes later and the woman was shot. The defendant in Beal asserted that in order for the assurance made to be actionable it must be inaccurate at the time it was given, and argued that a prediction of future acts with no time requirements is not inaccurate information. Beal at p.495-496. The Beal court rejected this analysis and found that a duty had

been created when the assurance was given about a course of performance in the future[ie. the dispatch of the police] without any specific timeframe provided. Beal at p.786 .

Similarly in Munich v. Skagit Emergency Communciations Center, 161 Wn.App. 116, 250 P.3d 491 (2011) a man was shot and killed by his neighbor while speaking with an 911 operator. The operator had advised the man that police had been dispatched, but the operator had coded the situation in erroneously. Sheriff deputies had been dispatched but arrived too late. The Defense in Munich argued that the express assurance must be false or inaccurate to be actionable. Munich at p.121. The Munich Court found in accord with Beal that when the express assurance involves a promise of future action, there is no requirement that the assurance be false or inaccurate [or provide for the timing or specifics of the performance] to establish the special relationship. Munich at p. 121.

As in Beal and Munich, County investigators and operators in the case at issue made express assurances that the County would look for and find Mrs. Rider. These assurances are promises of future performance – and created the duty under the special

relationship exception. Thereafter, Respondent had an obligation to use reasonable care in its investigation . Cummins v. Lewis County, 156 Wn.2d 844,853, 133 P.3d 459 (2006) Whether or not the County breached its duty remains to be determined following a trial.

**C. Tom Rider reasonably relied upon Respondent King County investigators to locate Tanya Rider.**

The County also argues in its response brief that Mr. Rider did not rely upon the County's assurances and therefore no special relationship was formed.(See Response brief at p.22) First, it is well settled that whether a person justifiably relies upon a statement made by another is a question of fact generally not amenable to summary judgment. Babcock v. Mason County Fire District, 144 Wn.2d 774,792, 30 P.3d 1261 (2001) citing Beal v. City of Seattle, 134 Wn.2d 769, 786, 954 P.2d 237 (1998). Simply put whether or not Mr. Rider relied upon Ms. Rhodes' statement is a question of fact. Here the trial Court determined as a matter of law he did not rely. The trial court was wrong.

County argues that Mr. Rider did not rely because he cannot show that, absent the County's involvement, he would have done

anything differently or that anything he would have done could have made a difference.(See Respondent's brief at p.22) However, Mr. Riders reliance is amply supported by the facts in this case. After discovering his wife was missing, Mr. Rider literally spent 27 straight hours running around looking for Mrs. Rider, checking area hospitals, jails and looking at account information and made seven separate telephone calls to 911. CP 297-298. After Respondent representatives accepted the responsibility of looking for Mrs. Rider, Appellant Tom Rider stopped looking and returned to work. CP 298-299. Thereafter, Mr. Rider spoke to the County's investigator Rhodes daily – to check on how things were going. CP 299.

Notably, none of the above facts are contested by the County. The only reasonable inference that can be drawn from Mr. Rider's actions and conduct was that he was relying upon County's investigators to investigate and locate his wife as Ms. Rhodes specifically [and the detective] told Mr. Rider the County would. Whether Mr. Rider's reliance was in fact reasonable is a question of fact for the jury. Babcock v. Mason County Fire District, 144 Wn.2d 774,792, 30 P.3d 1261 (2001).

The County also argues in its response under its reliance argument that the Riders have failed to show that the police should have responded faster or differently or that they prevented Mr. Rider from acting. (Respondent's Brief at p. 24) With respect to the County's actions in the investigation, and whether or not they should have been faster or different, these are issues that relate to whether or not the County breached the duty it assumed, not whether or not a duty existed. (See Munich v. Skagit Emergency Communications Center, 161 Wn.App. 740, 250 P.3d 491 (2011))

With respect to the County's argument that Mr. Rider himself could have done more to find his wife, given the reasonable reliance of Mr. Rider on the County's search, and Mr. Rider continued to work and spend his time searching for his wife, we can be assured the County would have argued that to be an indication that Mr. Rider did not rely on the County.

Simply put, Respondent's representatives expressly assured Tom Rider that they would not only look for but would find his wife Tanya Rider. As a result Mr. Rider returned to work and contacted the County's investigator daily to ascertain how the County's

investigation was proceeding. It would be difficult to conceive of a more clear set of facts demonstrating reliance on his part. At the very least, an issue of fact exists with respect to reliance that requires the matter to be submitted to the jury. Babcock v. Mason County Fire District, 144 Wn.2d 774,792, 30 P.3d 1261 (2001).

**D. Respondent King County gratuitously assumed the duty of locating Tanya Rider under the rescue exception to the public duty doctrine.**

The County in its response also argues that the rescue Exception to the public duty doctrine does not apply because if it did – potentially every police response would subject the police to the rescue doctrine.(See Respondent’s Brief at p. 27) The County argues –

Here, the Riders were unable to show that King County made a gratuitous offer to aid them apart from the public in general. King County’s missing person investigation was no different than the Mason County Fire District’s response to fight a house fire or the Washington State Patrol dispatching troopers in response to a report of an erratic driver. (Response Brief at p.26)

The fallacy of the logic applied by the County is inescapable. To analogize Mrs. Rider status as a missing person to a house fire is absurd.

In Babcock, the Court did not apply the rescue exception to the public duty doctrine because it found that the Defendant County Fire Department had a “duty to protect the property of all citizens” and therefore the aid offered in that case was not gratuitous. Babcock, at p.686. In this case, the County has not argued and/or provided any authority which suggests that it has an independent duty to search for a person, even if that person is claimed to be missing. The County also cites the Johnson case in support of its position that no offer to aid was provided.

In Johnson, the defendant State argued that no offer to render aid had been made to the good Samaritan driver. Johnson at p. 751. Rather, the third party driver was told that the State Patrol had been called and thereafter stopped following the missing person. The Johnson Court found that this action was not a gratuitous offer to aid a particular person. Johnson, at p. 751.

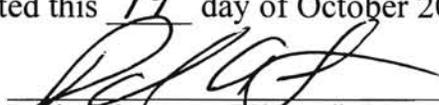
Johnson is also clearly distinguishable from the case at bar. Tom Rider had seven different phone conversations with 911 operators wherein he was asked to obtain information before the County would look for Mrs. Rider. Thereafter, he met with a

detective and then spoke at length with the County's investigator. Thereafter, Mr. Rider communicated daily with Respondent's investigator over a 4 day period. Moreover, as stated above, the County's representatives advised Mr. Rider that they would look for and find his wife. Unlike Johnson, the County specifically stated they would take affirmative action to search for and find Mrs. Rider in this case.

## II. CONCLUSION

For the reasons stated in the Riders' opening brief and those stated herein, the trial Court's dismissal of this action should be reversed, and Respondent King County should be found as a matter of law to have a special relationship with the Riders or in the alternative to have assumed a duty to act under the rescue doctrine, and a corresponding duty to act in a reasonable prudent manner when searching for Mrs. Rider. The issue of whether or not King County breached that duty should remain for trial along with the proof the damages that were caused by said breach.

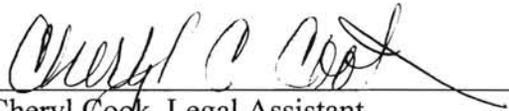
Respectfully submitted this 19<sup>th</sup> day of October 2012.

  
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A handwritten signature in black ink, appearing to read "Cheryl C. Cook", written over a horizontal line.

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