

FILED
COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

BY 
DEPUTY

No. 47387-9-II
(Appeal of Pierce County No. 12-2-15257-3)

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

ESTATE of HUNG NGUYEN,
Appellant,

v.

FRANCISCAN HEALTH SYSTEM; GILBERT JOHNSTON,
M.D., dba ST. JOSEPH CARDIOTHORACIC SURGEONS;
FRANCISCAN CARDIOTHORACIC SURGERY
ASSOCIATES AT ST. JOSEPH; FRANCISCAN MEDICAL
GROUP
Respondent.

REPLY BRIEF OF APPELLANT

Elena Luisa Garella
Law Office of Elena Luisa Garella
3201 First Avenue South, Suite 208
Seattle, Washington 98134
(206) 675-0675
law@garella.com

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I. INTRODUCTION

This appeal concerns CR 17(a) and a timely request to substitute the real party in interest. As explained in the Brief of Appellant, CR 17 only permits the dismissal of a case where the real party in interest fails to ratify or substitute within a reasonable time after objection.

On May 27, 2014, Respondents (“FHS”) moved to dismiss the Estate’s wrongful death case on grounds that Gabrielle Aluskar (Hung Nguyen’s daughter) was not the Estate’s personal representative, and therefore not the real party in interest. CP 20. Seventeen days later, Mr. Nguyen’s widow, Phuoc Nhu, obtained appointment as personal representative of the Estate. CP 84. Phuoc Nhu moved to be substituted on June 14, 2014. CP 75. Nonetheless, on July 18, 2014, the trial court granted FHS’ Motion for Dismissal “**on the Ground that Plaintiff is Not the Real Party in Interest.**” CP 228, *emph. added*.

In its Response, FHS seeks to turn this appeal on its head, contending that the trial court correctly dismissed the Estate’s case under CR 11 to punish Ms. Aluskar for “fraud on the court.” FHS’ revisionist history must be rejected. Even if CR 17(a) were not the issue, the dismissal of a party’s case for the alleged wrong-doing of a non-party is not appropriate under CR 11. The trial court found fraud only against Gabrielle Nguyen-Aluskar (Ms. Aluskar). There was no finding by the

trial court that Ms. Aluskar's offenses had any impact on the merits of the underlying case.

For all of the supposed misdeeds of Ms. Aluskar, FHS cannot point to any finding by the trial court that Phuoc Nhu committed fraud, or indeed, that Phuoc Nhu did anything wrong at all. FHS' attempt to tar Phuoc Nhu with the brush the trial court applied to Ms. Aluskar must be rejected, and the merits of the case should be addressed on remand.

II. REPLY TO FHS' COUNTER-STATEMENT

FHS' Counter-Statement of the Case is almost entirely comprised of a recitation of allegations against Gabrielle Aluskar, a non-party and a non-attorney. Resp. Br. At pp. 4-19. For the reasons set forth in the Brief of Appellant and this Reply, any transgressions by Ms. Aluskar are not pertinent. Furthermore, Phuoc Nhu objects to FHS' discussion of her daughter's 2006 conviction to the extent that it is introduced in order to prejudice this Court against Phuoc Nhu and the Estate. FHS' repeated mention of the Pierce County charges, which were later expunged, is particularly objectionable.

III. ARGUMENT

A. THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT DISMISSED THE ESTATE'S LAWSUIT WITH PREJUDICE.

The purpose of CR 17 is "to expedite litigation, not to afford a

technical shield whereby a trial on the merits can be avoided." Fitch v. Johns-Manville Corp., 46 Wn. App. 867, 869, 733 P.2d 562, (Div. II, 1987) (emph. added). Consistent with this policy, virtually every Washington opinion addressing a CR 17 motion has allowed substitution. Indeed, each case cited by FHS (Beal, Rinke, and Kommavongsa¹) permitted the substitution of the real party in interest. FHS strains to distinguish its cases by arguing that the substitutions turned on immaterial distinctions. Respondents' attempts fly in the face of this state's policy to address cases on their merits. In re Estate of Crane, 9 Wn. App. 853, 856, 515 P.2d 552 (Div. II, 1973) (citing In re Estate of Boyd, 5 Wn. App. 32, 35, 485 P.2d 469 (1971)).

The leading CR 17(a) case is Beal v. City of Seattle, 134 Wn.2d 769, 954 P.2d 237 (1998), discussed by FHS at Respondent's Brief, pp. 25-26. FHS conveniently glosses over the disingenuous behavior of the plaintiff's attorney in Beal, a Mr. Smith. Smith brought a wrongful death action in the name of Beal as PR for the Estate of the deceased when he knew that Beal had not been so designated. Smith did this to avoid the running of a statute of limitations that would bar Beal's suit. He compounded the trouble by first swearing in an affidavit that he only

¹ Beal v. City of Seattle, 134 Wn.2d 769, 954 P.2d 237 (1998); Rinke v. Johns-Manville Corp., 47 Wn. App. 222, 734 P.2d 533 (Div. I, 1987); Kommavongsa v. Haskell, 149 Wn.2d 288, 67 P.3d 1068 (2003).

realized after the suit had been filed that Beal should have been named PR in advance and then later admitting that he knew at the time the suit was filed that Beal had to be PR in order to bring the action.

Fraud is not discussed in Beal, but the facts themselves establish that Smith's was no honest mistake, but rather a ploy to get the suit filed before the statute of limitations ran on the claim. The Beal opinion states as much, noting that "there was no honest or understandable mistake, in fact no mistake at all, because the determination of the real party in interest was not difficult and indeed plaintiff's counsel actually knew who the proper party was before the complaint was filed." Beal, 134 Wn.2d at 781.

Nonetheless, the Washington Supreme Court allowed the substitution of the PR as well as relation back to the initiation of the suit. Why? Because the purpose of CR 17 is to "protect the defendant against a subsequent action by the party actually entitled to recover." Beal, 134 Wn.2d at 777. Notwithstanding Smith's shenanigans, the City of Seattle always knew who the real party in interest was—the PR for the Estate of the deceased. Beal stands for the proposition that it is not mistake or excusable neglect that is the deciding factor. Rather, **the relevant inquiry is prejudice to the defendants.** Beal, 134 Wn.2d at 782, 784.

FHS quibbles that the change in representative capacity from

guardian to PR in Beal is somehow different than the change from Ms. Aluskar to Phuoc Nhu as the nominal plaintiff. Resp. Br., at p. 26. But the facts remain that it is the Estate that benefits in either case, and FHS has known from day one that the Estate is suing the physicians. Beal points out:

The same claim is involved, and the beneficiaries, if the action is successful, remain the same. The City of Seattle will not suffer any prejudice in preparing a defense if the change in capacity is allowed, nor is there any doubt that notice was had that suit would be brought against the City if the proper party sued.

Beal at 781. FHS' factual distinction fails to address Beal's strict focus on the effect on the defendant, even where there has been no "honest mistake."

FHS then turns to the discussion of prejudice. Resp. Br. at 26. In the trial court, it will be recalled, FHS claimed that it suffered prejudice because it had to defend an "invalid" lawsuit, and because it expended "enormous" efforts and expense to obtain Mr. Nguyen's medical records. CP 91-92. Appellant has established that FHS' record is devoid of any evidence supporting those claims. App. Br., at pp. 9, 26. In its Response, FHS effectively concedes the issue, for it provides no evidence of any

prejudice other than the trial court's unsupported finding of prejudice² on its behalf. Resp. Br. at 14-15.

Unable to point to any actual prejudice, FHS now argues that prejudice is not required to deny substitution, notwithstanding Beal's holding that where there is no prejudice, substitution is allowed. Beal, 134 Wn.2d at 773. FHS attempts to distinguish this case by pointing to the finding of fraud against Ms. Aluskar in the instant case. It cites Dixon v. Comm'r, 316 F.3d 1041, 1046 (9th Cir. 2003) for the proposition that dismissal as punishment for a fraud on the court does not require a showing of prejudice toward defendants.

In Dixon, two IRS attorneys failed to inform the tax court that two of the defendants had settled their claims, and actively covered up this fact during trial so that these defendants could appear and testify in the case under false pretenses. In overturning the judgment, the court stated:

Courts possess the inherent power to vacate or amend a judgment obtained by fraud on the court... but **that power is narrowly construed, applying only to fraud that defiles the court or is perpetrated by officers of the court.** When we conclude that the integrity of the judicial process has been harmed, however, **and the fraud rises to the level of "an unconscionable plan or scheme which is designed to improperly influence the court in its decisions,"** we not only can act, we should. [cites

² The trial court found prejudice because of the "fairly lengthy pendency of the trial in this case..." RP 12, ll. 23-24. Simply defending a lawsuit does not constitute prejudice. App. Br. at pp. 26-28.

omitted].

Here, the factual findings of the Tax Court support the conclusion that **a fraud, plainly designed to corrupt the legitimacy of the truth-seeking process**, was perpetrated on the trial court by [plaintiffs' counsel].

Dixon at 1046, *emph. added*. In other words, the fraud that Dixon addresses is different in nature than that claimed in this case, and the punishment imposed by the Dixon court applies only to a narrow definition of fraud on the court.

Dixon simply does not apply. First, Ms. Aluskar is not an officer of the court. She isn't even an attorney. Second, her attempts to bring the Estate's case before the court did not "corrupt the legitimacy of the truth-seeking process" with respect to the wrongful death suit. Ms. Aluskar's transgression did not, and will not, affect the trial court's decision on the merits. FHS fails to unearth a single case in which "fraud" is found to be a proper basis for dismissing a case rather than allowing the substitution of a real party in interest.

Instead, FHS largely relies on Rinke v. Johns-Manville Corp., 47 Wn. App. 222, 226, 734 P.2d 533 (1987), decided by the Court of Appeals a decade before the Supreme Court's Beal decision. Resp. Br. at pp. 23-25. In Rinke, a wife brought a wrongful death action as PR of her husband's estate under the mistaken belief that she was already PR. Upon objection by the defendants, the wife petitioned for Letters, obtained them,

and ratified her earlier actions with respect to the lawsuit. Rinke, 47 Wn.App. at 223-224.

Division I upheld the wife's substitution as the real party in interest under CR 17(a) because she had made an honest mistake, understandable under the circumstances. FHS claims that Rinke stands for the proposition that substitution and relation back to the initiation of the case under CR 17(a) is restricted to cases in which honest mistakes are made, and that therefore that a finding of fraud against Ms. Aluskar precludes substitution. See, Resp. Br. at 23.

FHS' reliance on Rinke is misplaced. First, as addressed above, the later Beal case clarified that even where an "honest mistake" is not involved, substitution is allowed unless the defendant can show prejudice. Second, like Beal, Rinke focuses on protecting defendants from defending where the lawsuit originally was filed without a real party in interest at all:

... the doctrine of relation back under CR 17(a) is restricted to "honest mistakes" or "understandable mistakes" in order to prevent plaintiffs from using the rule to join or substitute persons whose interests were not contemplated from the beginning of the suit. **The illustrations in the advisory committee note indicate that relation back is improper when plaintiff has filed a "fictitious name" suit or when a new party, not contemplated at the inception of the suit, is substituted as the real party in interest.** See O'Donnell v. Kusper, 602 F. Supp. 619, 624 (N.D. Ill. 1985) (Fed. R. Civ. P. 17(a) is "not intended to permit an attorney to locate and substitute a new plaintiff, suing upon a new claim, simply to sustain a pending action.").

Rinke at 230, emph. added. Rinke merely points out that CR 17(a) should not be used to blindside defendants with later-discovered plaintiffs.

In the instant case, however, **the Estate of Hung Nguyen has been the party whose interests were contemplated from the beginning of the suit.** The case has always been prosecuted for the Estate. Therefore, FHS has not been blindsided. “[I]t was always clear to all parties that this instant suit was intended to be brought by the PR of the [Estate of Hung Nguyen]... the purpose of the suit was clear from its inception. To allow substitution of [Phuoc Nhu] as PR and the proper party in interest is simply to correct the record to reflect the reality of how all the parties view the case.” Rinke at 231-2 (paraphrased).

FHS tries to distinguish Rinke by reiterating a list of Ms. Aluskar’s misdeeds and attempts to pin fault on Phuoc Nhu. It argues, for example, that Phuoc Nhu was aware that Ms. Aluskar could never be appointed PR, and that she knew about Ms. Aluskar’s misrepresentations. Resp. Br. at 24-25. But there is nothing in the record that indicates that this elderly woman, who speaks little English, was aware of anything of the sort. Interestingly, the Estate’s trial counsel, Mr. Lopez, stated that he, too, believed Ms. Aluskar to be the PR of the Estate. If an attorney credited Ms. Aluskar, then her mother, an unsophisticated elderly woman, surely

could make the same mistake. There is no evidence in the record Phuoc Nhu knowingly participated in any misrepresentation. Certainly she is no more culpable than Mr. Lopez, whom the trial court specifically exculpated.³

FHS argues that Ms. Aluskar stated that Phuoc Nhu could not act as PR because of Phuoc Nhu's language issues. Resp. Br. at 24. This point is irrelevant and misleading. Phuoc Nhu received Letters designating her as PR when represented by English-speaking counsel.⁴

FHS also maintains that the six months between the Ms. Aluskar's realization that she would not be permitted to serve as PR and the designation of Phuoc Nhu as PR justifies denial of substitution. Resp. Br. at 25. However, the trial court did not refuse substitution on those grounds, and Rinke does not support dismissal on those grounds. "As long as no prejudice is shown, **the real party in interest may be added**

³ See RP at p. 13, ll. 21-24: "Now, I have been referring to what I believe is fraudulent conduct on the court by Ms. Nguyen-Aluskar. I re-emphasize that I'm not making any such finding with respect to Plaintiff's counsel."

⁴ Footnote 4 of Respondent's Brief asserts that "plaintiffs" are judicially estopped from asserting that Ms. Nhu is the Personal Representative. Judicial estoppel is an equitable doctrine precluding a party from asserting one position in a court proceeding and later seeking advantage by taking an inconsistent position. It is not applicable here because Phuoc Nhu never took the position that she could not serve as PR. Furthermore, there are no plaintiffs. There is a single plaintiff, the Estate of Hung Nguen. FHS' use of the plural deceptively casts Ms. Aluskar as a party to buttress its assertion that the Estate's case should remain dismissed.

at any time, even after trial.” Rinke, at 227, *emph. added*. The opinion provides:

We conclude that the relevant provision of CR 17(a) is intended to protect the defendant from prejudice by insuring that a claim is prosecuted by the proper party. **Dismissal under the rule is appropriate only when the trial court has allowed the plaintiff a reasonable time to bring the real party in interest into the suit** and joinder, substitution, or ratification cannot be effected. In the present case, the purpose of the rule was fulfilled when Rinke became personal representative and ratified her previous actions. At that time, the defendants were protected to the same extent as if Rinke had been personal representative from the inception of the suit.

Rinke, at 227-8. In the instant case, Phuoc Nhu was designated the PR for the estate and she requested substitution before the Motion to Dismiss on the Ground that Plaintiff Is Not the Real Party in Interest was heard. Phuoc Nhu’s substitution will leave the case in exactly the same posture as if she had been PR for the Estate from the case’s inception. Under Rinke, there has been no unreasonable delay and no prejudice to FHS.

FHS’ third and last case is Kommavongsa v. Haskell, 149 Wn.2d 288, 67 P.3d 1068 (2003). In Kommavongsa, a claimant to a legal malpractice suit sought to transfer his interest in the case to others, to whom he owed a judgment which he could not otherwise pay. The plaintiffs accepted the interest, and then sought to pursue the malpractice case. When the court decided transfer of such an interest was against

public policy, the plaintiffs sought to substitute the real party in interest. The substitution with relation back was allowed. Kommavongsa, 149 Wn. 2d at 291-295, 317-318.

In attempting to distinguish Kommavongsa, FHS latches onto another red herring. It argues that substitution was allowed because the plaintiffs in Kommavongsa were honest and in good faith about their reasons for filing as parties in the case, and notes to the court's familiar recitation that CR 17(a) might be abused if applied in every circumstance. FHS argues that under Kommavongsa, Ms. Aluskar's alleged bad faith and dishonesty would support denial of substitution and relation back.

Had FHS reviewed the remainder of the Kommavongsa discussion, it would have discovered that the decision is solidly based on Beal. While recognizing the dissembling and contradictory affidavits that plagued Beal (Kommavongsa 149 Wn. 2d at 316), Kommavongsa nonetheless adopts Beal's holdings:

In sum, after Beal the test for relation back under CR 17(a) and CR 15(c) is not whether the wrong party filed the lawsuit out of mistake or inadvertence, or even based upon a calculated risk as to this court's ultimate decision in a case of first impression regarding public policy, but rather **whether the defendant had notice of the lawsuit and accordingly was not prejudiced, and whether the real party plaintiff in interest ratified the lawsuit or sought to be substituted as plaintiff within a reasonable time after objection by the adversary.**

Kommavongsa at 317, *emph. added*. In this case, FHS had notice of the lawsuit, there will be no change of parties or claims upon substitution to the prejudice of the defendants, and substitution of the real party was sought within a reasonable time after objection by FHS.

Contrary to assertions of Respondents, Ms. Aluskar's actions do not represent the "very abuse" the Washington State Supreme Court cautions against with respect to CR 17(a). Resp. Br. at 28. Rather, the concern is that CR 17(a) might be used to initiate "John Doe" suits to allow attorneys go shopping for plaintiffs following the expiration of the statute of limitations. Rinke at 230 fn 3, App. Br. at 17-18. Here, however, the proper party in interest has always been known: the Estate of Hung Nguyen. The identity of the PR for the estate is a legal technicality that substitution corrects.

B. THIS CASE SHOULD NOT HAVE BEEN DISMISSED UNDER CR 11.

Innocently (as in Rinke) or not so innocently (as in Beal), cases are sometimes brought by the wrong party. But FHS' remedy with respect to the Estate lies in CR 17(a), not in CR 11. CR 11 provides only for the imposition of sanctions only against attorneys or a party. As FHS itself admits, Ms. Aluskar "is not an attorney and not a party to the case." Resp. Br., p. 33.

FHS alleges that CR 11 sanctions are appropriate here because Ms. Aluskar acted without basis and in bad faith. Resp. Br. at 30. It is of course true that a baseless complaint may be dismissed under CR 11, but the Estate's Complaint is not without basis. It was merely prosecuted by the incorrect nominal plaintiff. The substance of the Complaint is serious and supported by law. FHS is aware of that because it made attempts twice to have the Complaint dismissed on summary judgment before it stumbled upon the CR 17(a) issue. See Docket (Exh. A to this Reply) at 6/17/13, 9/27/13.

FHS fails to cite even one case that dismisses a real party in interest's lawsuit because of the misconduct of a non-party. Rather, its citations reference misconduct directed to the merits of the underlying case, e.g., a tort claim no longer allowed under Washington law or falsified documents entered in evidence to support a claim. Resp. Br. at 30-31. And while Jimenez v. Madison Area Tech. College, 321 F.3d 652, 656 (7th Cir. 2003) glancingly references the use of CR 11 to deter misconduct of third parties, the CR 11 violation in Jimenez was both committed by a party and was an egregious violation that struck at the merits of the case. In Jimenez, the plaintiff herself submitted false documentary evidence to support her claims. The Jimenez court said:

Jimenez's equal protection and retaliation claims are inseparable from the fraudulent allegations of discrimination underlying those claims. Indeed, **Jimenez's entire cause of action rests on her claim that the College allegedly discriminated against her based on her race and origin--the very allegation she sought to bolster with a bevy of falsified documents. ...**

We recognize that dismissal is a harsh sanction. **Thus, we understand why we have uncovered no prior instance in which this Court has reviewed such an obvious and serious Rule 11 sanction for an abuse of discretion.** Nonetheless, it is proper for the trial court to impose a severe sanction where the sanction is sufficient to deter repetition of the misconduct or to deter similar conduct by third parties.

Jimenez, at 657. The misconduct addressed by the Jimenez opinion is the submission of fraudulent documents in evidence addressed to the merits of the case. Nothing that Ms. Aluskar did relates to the merits of the Estate's claims against FHS for wrongful death.

The majority of FHS' Response is devoted to setting out a litany of Ms. Aluskar's supposed misdeeds. It includes lengthy excerpts of hearings to buttress its case that Ms. Aluskar did improper things. Yes, Ms. Aluskar, a non-party, aggravated the trial court. But FHS cannot point to any misdeed perpetrated by Phuoc Nhu, other than to imply that because Phuoc Nhu (who speaks little English) signed pleadings drafted by her daughter (a non-attorney), Phuoc Nhu intended to undermine the American judicial system. Ironically, the trial court found that the Estate's attorney, who drafted the pleadings and stated that he believed Ms.

Aluskar's assertions that she was the PR, acted without fault even though a two minute search of online court records would have informed him that she was not PR. Resp. Br. at p. 13, ll. 21-24. How then can the dismissal of the widow's case be justified?

The Brief of Appellant points out that when deciding upon a CR 11 sanction, "the trial court should impose the least severe sanction necessary to carry out the purpose of the rule" and that the record in this case is barren of evidence that the trial court considered lesser sanctions. Biggs v. Vail, 124 Wn.2d 193, 197, 876 P.2d 448 (1994), App. Br. at 29. FHS has no answer to this. That is because the dismissal of the case as a CR 11 sanction to punish or deter a non-party was an abuse of discretion. Phuoc Nhu must be substituted, and the Estate's case restored.

C. ATTORNEY FEES AND EXPENSES.

Respondents provide no basis for their request for fees and expenses. Their request must be denied.

IV. CONCLUSION

The Estate brought a wrongful death case arising out of alleged malpractice that caused the untimely death of Hung Nguyen, a 68-year old man. Phuoc Nhu, his widow, is entitled to half of the proceeds of the lawsuit and each of his five children will be entitled to one tenth. The

physicians, desperate to avoid the claim, urge this Court to affirm a ruling by the trial court that the family not be able to prosecute the claim because a non-party, and a non-attorney, allowed the Estate's attorney to caption the case "Estate of Hung Nguyen, by and through, Gabrielle Nguyen-Aluskar."

Neither CR 17(a), CR 11, nor the case law support such an unjust result. The defendant doctors have suffered no prejudice. The punishment dealt to innocent parties is inappropriate and grossly disproportionate. The matter must be remanded to the trial court with an order to permit the substitution of Personal Representative Phuoc Nhu and to allow the case to proceed as if the action had been commenced in the name of the real party in interest

RESPECTFULLY SUBMITTED this 4th day of June, 2015.

By: *Elena Garella*
Elena Luisa Garella, WSBA No. 23577

LAW OFFICE OF ELENA LUISA GARELLA
3201 First Avenue South, Suite 208
Seattle, Washington 98134, (206) 675-0675
law@garella.com

Attorney for Appellant Estate of Hung Nguyen

Certificate of Service

I, the undersigned, certify that on the 4th day of June, 2015, I caused a true and correct copy of this pleading to be served, by the method(s) indicated below, to the following person(s):

By email and U.S. First Class mail, pre-paid, to:

Scott M. O'Halloran, Michelle M. Garzon
Williams, Kastner & Gibbs PLLC
1301 A Street, Suite 900
Tacoma, WA 98402-4200

and

Timothy L. Ashcraft
Fain Anderson VanDerhoef Rosendahl O'Halloran Spillane, PLLC
1301 A Street, Suite 900
Tacoma, WA 98402-4299
Attorneys for Respondents/Defendants:
Franciscan Health System
Franciscan Cardiothoracic Surgery Associates at St. Joseph
Franciscan Medical Group

Steven F. Fitzer
Fitzer, Leighton & Fitzer, P.S.
1102 Broadway Ste 401
Tacoma, WA 98402-3526
Attorney for Gilbert Johnston, MD



Elena Luisa Garella, WSBA No. 23577

Pierce County Superior Court Civil Case 12-2-15257-3

Case Title: ESTATE OF HUNG NGUYEN VS. FRANCISCAN HEALTH SYSTEM
 Case Type: Medical Malpractice
 Access: Public
 Track Assignment: Complex
 Jury Size: 12
 Estimated Trial Length:
 Dept Judge: **07 JERRY COSTELLO**
 Resolution: 07/18/2014 Dismissal Without Trial
 Completion: 07/18/2014 Judgment/Order/Decree Filed

Litigants			
Name	Type	Status	Bar Number
NGUYEN, HUNG		Plaintiff	
Attorney for NGUYEN, HUNG			
<u>Elena Luisa Garella</u>	Atty for Plaintiff/Petitioner		23577
NGUYEN-ALUSKAR, GABRIELLE		Plaintiff	
FRANCISCAN HEALTH SYSTEM		Defendant	
Attorneys for FRANCISCAN HEALTH SYSTEM			
<u>Scott Matthew O'Halloran</u>	Atty for Defendant		25236
<u>Timothy Lee Ashcraft</u>	Atty for Defendant		26196
<u>Michelle M Garzon</u>	Atty for Defendant		31558
JOHNSTON, GILBERT MD		Defendant	
Attorney for JOHNSTON, GILBERT MD			
<u>STEVEN FREDERICK FITZER</u>	Atty for Defendant		6792
FRANCISCAN CARDIOTHORACIC SURGERY ASSOCIATES AT ST JOSEPH		Defendant	
Attorneys for FRANCISCAN CARDIOTHORACIC SURGERY ASSOCIATES AT ST JOSEPH			
<u>Scott Matthew O'Halloran</u>	Atty for Defendant		25236
<u>Timothy Lee Ashcraft</u>	Atty for Defendant		26196
<u>Michelle M Garzon</u>	Atty for Defendant		31558
FRANCISCAN NORTHWEST PHYSICANS HEALTH NETWORK		Defendant	DISMISSED
FRANCISCAN MEDICAL GROUP		Defendant	
Attorneys for FRANCISCAN MEDICAL GROUP			
<u>Scott Matthew O'Halloran</u>	Atty for Defendant		25236
<u>Timothy Lee Ashcraft</u>	Atty for Defendant		26196
<u>Michelle M Garzon</u>	Atty for Defendant		31558

Filings				
Filing Date	Filing	Access	Pages	Microfilm
12/03/2012	FILING FEE RECEIVED \$240.00	Public	0	
12/03/2012	CASE INFORMATION COVER SHEET	Public	1	
12/03/2012	ORDER SETTING ORIGINAL CASE SCHEDULE	Public	1	
12/03/2012	SUMMONS	Public	2	
12/03/2012	COMPLAINT	Public	3	
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01/25/2013	CONFIRMATION OF SERVICE PARTIES TO BE SERVED	Public	1	
02/04/2013	REASSIGNMENT LETTER	Public	1	
02/27/2013	SUMMONS	Public	2	
02/27/2013	COMPLAINT	Public	3	
02/28/2013	AFFIDAVIT/DECLARATION OF SERVICE	Public	1	
02/28/2013	AFFIDAVIT/DECLARATION OF SERVICE	Public	1	
03/04/2013	AFFIDAVIT/DECLARATION OF SERVICE	Public	1	
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Reply - Exhibit A

06/03/2013	JURY DEMAND - 12	Public	1
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07/22/2013	DECLARATION OF MICHELLE GARZON	Public	11
07/24/2013	DECLARATION OF JOHN R. CONNELLY, JR.	Public	6
07/24/2013	SUPPLEMENTAL DECLARATION OF ALYSSA GRISHAM	Public	3
07/26/2013	ORDER SETTING ORIGINAL CASE SCHEDULE	Public	2
07/26/2013	CLERK'S MINUTE ENTRY	Public	2
08/05/2013	REPLY TO LATE-FILED DECLARATIONS	Public	11
08/09/2013	ORDER DENYING MOTION	Public	3
08/26/2013	DISCLOSURE OF WITNESSES	Public	4
09/11/2013	NOTE FOR JUDGES MOTION CALENDAR	Public	1
09/20/2013	DISCLOSURE OF WITNESSES	Public	8
09/27/2013	MOTION FOR SUMMARY JUDGMENT	Public	15
09/27/2013	DECLARATION OF CURTIS VEAL MD	Public	7
09/27/2013	DECLARATION OF MICHELLE GARZON	Public	8
10/14/2013	NOTE FOR JUDGES MOTION CALENDAR	Public	1
10/14/2013	MOTION TO CONTINUE	Public	1
10/14/2013	DECLARATION OF CARL A TAYLOR	Public	10
10/14/2013	CERTIFICATE OF SERVICE	Public	2
10/21/2013	REPLY IN SUPPORT	Public	3
10/21/2013	OBJECTIONS/OPPOSITION	Public	12
10/21/2013	DECLARATION OF MICHELLE GARZON	Public	4
10/23/2013	DECLARATION OF CARL A TAYLOR LOPEZ	Public	10
10/23/2013	CERTIFICATE OF SERVICE	Public	2
10/25/2013	CLERK'S MINUTE ENTRY	Public	2
10/25/2013	DECLARATION OF MICHELLE GARZON IN OPPOSITION	Public	28
10/31/2013	NOTE FOR JUDGES MOTION CALENDAR	Public	1
10/31/2013	NOTICE OF APPEARANCE	Public	3
12/09/2013	FHS'S REPLY ON MOTION FOR SUMMARY JUDGMENT	Public	4
12/09/2013	DECLARATION OF MICHELLE GARZON	Public	8
12/10/2013	NOTE FOR JUDGES MOTION CALENDAR	Public	2
12/10/2013	MOTION TO PERMIT LATE FILING	Public	3
12/10/2013	MEMORANDUM IN SUPPORT	Public	2
12/10/2013	DECLARATION OF CARL A TAYLOR	Public	2
12/10/2013	DECLARATION OF CARL WARREN ADAMS	Public	14
12/10/2013	CERTIFICATE OF SERVICE	Public	2
12/12/2013	NOTE FOR JUDGES MOTION CALENDAR	Public	2
12/12/2013	MOTION TO STRIKE DECLARATION OF CARL WARREN ADAM	Public	8
12/12/2013	DECLARATION OF GARZON RE MOTION TO STRIKE	Public	11
12/13/2013	FHS REPLY RE LACK OF SUPPORT	Public	8
12/18/2013	RESPONSE	Public	2
12/18/2013	DECLARATION OF CARL TAYLOR LOPEZ	Public	8
12/18/2013	CERTIFICATE OF SERVICE	Public	2
12/19/2013	DECLARATION - CARL WARREN ADAMS	Public	2

12/19/2013	CERTIFICATE OF SERVICE - OHALLORAN & FITZER	Public	2
12/19/2013	REASSIGNMENT LETTER	Public	1
12/20/2013	CLERK'S MINUTE ENTRY	Public	2
12/20/2013	ORDER DENYING MOTION	Public	3
01/06/2014	DISCLOSURE OF WITNESSES	Public	4
01/15/2014	NOTE FOR JUDGES MOTION CALENDAR	Public	2
01/15/2014	MOTION TO CHANGE TRIAL DATE	Public	7
01/15/2014	DECLARATION IN SUPPORT - MICHELLE M GARZON	Public	3
01/15/2014	REASSIGNMENT LETTER	Public	1
01/22/2014	DECLARATION OF CARL LOPEZ RE TRIAL CONTINUANCE	Public	3
01/23/2014	REPLY IN SUPPORT OF MOTION TO CHANGE TRIAL DATE	Public	3
01/23/2014	DECLARATION OF GARZON IN SUPPORT OF REPLY	Public	3
01/24/2014	ORDER SETTING ORIGINAL CASE SCHEDULE	Public	2
01/24/2014	CLERK'S MINUTE ENTRY	Public	2
01/24/2014	ORDER FOR CONTINUANCE OF TRIAL DATE	Public	2
01/28/2014	NOTICE OF ATTORNEY CHANGE OF ADDRESS	Public	3
03/25/2014	DISCLOSURE OF WITNESSES	Public	3
04/18/2014	REASSIGNMENT LETTER	Public	1
04/23/2014	ORDER SETTING ORIGINAL CASE SCHEDULE	Public	2
04/23/2014	LETTER FROM DEPARTMENT 7	Public	1
04/23/2014	REASSIGNED TO DEPT 7	Public	1
05/09/2014	ORDER FOR CONTINUANCE OF TRIAL DATE	Public	3
05/09/2014	ORDER AMENDING CASE SCHEDULE	Public	2
05/27/2014	NOTE FOR JUDGES MOTION CALENDAR	Public	1
05/27/2014	MOTION TO DISMISS	Public	12
05/27/2014	DECLARATION OF GARZON RE MOTION TO DISMISS	Public	40
05/29/2014	JOINDER IN MOTION	Public	3
06/16/2014	NOTE FOR JUDGES MOTION CALENDAR	Public	2
06/16/2014	CROSS MOTION TO SUBSTITUTE PERSONAL REPRESENTATIVE	Public	3
06/16/2014	DECLARATION OF CARL TAYLOR LOPEZ	Public	8
06/16/2014	MEMORANDUM IN OPPOSITION	Public	1
06/16/2014	CERTIFICATE OF SERVICE	Public	2
06/23/2014	COMBINED REPLY AND RESPONSE TO CROSS MOTION	Public	13
06/23/2014	DECLARATION OF GARZON RE COMBINED REPLY & RESPONSE	Public	22
06/27/2014	CLERK'S MINUTE ENTRY	Public	2
06/27/2014	NOTE FOR JUDGES MOTION CALENDAR	Public	1
07/09/2014	NOTE FOR JUDGES MOTION CALENDAR	Public	2
07/09/2014	CERTIFICATE OF SERVICE	Public	2
07/11/2014	BRIEF IN SUPPORT	Public	5
07/11/2014	DECLARATION IN SUP OF BRIEF RE MOTION TO DISMISS	Public	59
07/11/2014	MEMORANDUM IN OPPOSITION	Public	4
07/11/2014	DECLARATION OF GABRIELLE NGUYEN-ALUSKAR	Public	2
07/11/2014	CERTIFICATE OF SERVICE	Public	2
07/16/2014	RESPONSE	Public	10
07/16/2014	DECLARATION OF MICHELLE M GARZON	Public	26
07/18/2014	CLERK'S MINUTE ENTRY	Public	2
07/18/2014	ORDER OF DISMISSAL WITH PREJUDICE	Public	2
07/28/2014	NOTE FOR JUDGES MOTION CALENDAR	Public	2
07/28/2014	APPEARANCE PRO SE	Public	1
07/28/2014	AFFIDAVIT/DECLARATION OF SERVICE	Public	2
07/28/2014	MOTION FOR RECONSIDERATION	Public	68

07/28/2014	NOTICE OF INTENT TO WITHDRAW	Public	5
08/05/2014	AFFIDAVIT/DECLARATION IN SUPPORT	Public	4
08/05/2014	AFFIDAVIT/DECLARATION OF SERVICE	Public	2
08/08/2014	OBJECTIONS/OPPOSITION	Public	10
08/08/2014	DECLARATION OF MICHELLE M GARZON	Public	18
08/11/2014	ORDER DENYING MOTION FOR RECONSIDERATION	Public	1
08/13/2014	COPIES OF EMAILS	Public	3
08/15/2014	NOTICE OF APPEAL WITH FEE	Public	5
08/19/2014	TRANSMITTAL LETTER COPY FILED	Public	1
09/17/2014	NOTICE OF ASSOCIATION OF COUNSEL	Public	3
09/24/2014	NOTICE OF APPEARANCE	Public	2
10/01/2014	AMENDED ORDER OF DISMISSAL	Public	3
10/07/2014	PERFECTION NOTICE FROM COURT OF APPEALS	Public	2
10/13/2014	NOTICE OF APPEAL TO COURT OF APPEALS AMENDED	Public	6
10/14/2014	TRANSMITTAL LETTER COPY FILED	Public	1
10/28/2014	DESIGNATION OF CLERK'S PAPERS	Public	5
11/03/2014	CLERK'S PAPERS PREPARED	Public	5
11/26/2014	CLERK'S PAPERS SENT	Public	1



Proceedings			Outcome
Date	Calendar		
03/21/2013	DEPT 06 - JUDGE NEVIN (Rm. 2-C) Confirmed 3:30 Exparte Action		Ex-Parte w/ Order Held
07/15/2013	DEPT 06 - JUDGE NEVIN (Rm. 2-C) Unconfirmed 12:00 Status Conference		Cancelled/Stricken
07/26/2013	DEPT 06 - JUDGE NEVIN (Rm. 2-C) Confirmed 9:00 Motion - Summary Judgment Scheduled By: Deidre Turnbull		Continued
08/09/2013	DEPT 06 - JUDGE NEVIN (Rm. 2-C) Confirmed 9:00 Motion - Summary Judgment		Summary Judgment Held
10/25/2013	DEPT 06 - JUDGE NEVIN (Rm. 2-C) Confirmed 9:00 Motion - Summary Judgment Scheduled By: Karen Becker		Cancelled/Stricken
10/25/2013	DEPT 06 - JUDGE NEVIN (Rm. 2-C) Unconfirmed 9:00 Motion(Other: CONTINUANCE OF DEF SUMMARY JUDGMENT HEARING) Scheduled By: CARL LOPEZ		Motion Held
12/13/2013	DEPT 06 - JUDGE NEVIN (Rm. 2-C) Unconfirmed 9:00 Motion - Summary Judgment		Cancel via Web-Rescheduled
12/20/2013	DEPT 06 - JUDGE NEVIN (Rm. 2-C) Confirmed 9:00 Motion - Summary Judgment Scheduled By: Deidre Turnbull		Summary Judgment Held
12/20/2013	DEPT 06 - JUDGE NEVIN (Rm. 2-C) Unconfirmed 9:00 Motion(Other: PERMIT LATE FILING OF SUMMARY JUDGMENT OPPOSITION) Scheduled By: CARL LOPEZ		Motion Held
12/20/2013	DEPT 06 - JUDGE NEVIN (Rm. 2-C) Confirmed 9:00 Motion(Other: STRIKE WARREN DEC AND IN OPP TO MOTION TO PERMIT LATE FILING) Scheduled By: Deidre Turnbull		Motion Held

01/24/2014 JUDGE MCCARTHY (Rm. 323) Confirmed 9:00 Motion(Adjust Trial Date) Scheduled By: Deidre Turnbull	Motion Held
05/09/2014 DEPT 07 - JUDGE COSTELLO (Rm. 822) Unconfirmed 2:00 Exparte Action	Ex-Parte w/ Order Held
05/12/2014 JUDGE MCCARTHY (Rm. 323) Unconfirmed 12:00 Pretrial Conference	Cancelled/Stricken
06/02/2014 JUDGE MCCARTHY (Rm. 323) Confirmed 9:00 Trial	Cancelled/Stricken
06/27/2014 DEPT 07 - JUDGE COSTELLO (Rm. 822) Confirmed 9:00 Motion(Discard) Scheduled By: Deidre Turnbull	Continued
06/27/2014 DEPT 07 - JUDGE COSTELLO (Rm. 822) Unconfirmed 9:00 Motion(Other: SUBSTITUTE PERSONAL REPRESENTATIVE) Scheduled By: CARL LOPEZ	Cancelled - Not Confirmed
07/18/2014 DEPT 07 - JUDGE COSTELLO (Rm. 217A) Confirmed 9:00 Motion(Other: SUBSTITUTE PERSONAL REPRESENTATIVE) Scheduled By: CARL LOPEZ	Motion Held
07/18/2014 DEPT 07 - JUDGE COSTELLO (Rm. 217A) Confirmed 9:00 Motion(Discard) Scheduled By: Deidre Turnbull	Motion Held
08/15/2014 DEPT 07 - JUDGE COSTELLO (Rm. 533) Unconfirmed 9:00 Motion	Cancelled/Stricken
08/20/2014 DEPT 07 - JUDGE COSTELLO (Rm. 533) Confirmed 9:00 Trial	Continued
10/01/2014 DEPT 07 - JUDGE COSTELLO (Rm. 533) Unconfirmed 8:00 Exparte Action	Ex-Parte w/ Order Held
10/01/2014 DEPT 07 - JUDGE COSTELLO (Rm. 533) Confirmed 9:00 Trial	Cancelled/Amend Case Sched
02/23/2015 DEPT 07 - JUDGE COSTELLO (Rm. 260) Confirmed 9:00 Trial	Cancelled/Stricken

Pending Case Schedule Items

Event	Schedule Date
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Judgments

Cause #	Status	Signed	Effective	Filed
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This calendar lists Confirmed and Unconfirmed Proceedings. Attorneys may **obtain access rights** to confirm/strike selected proceedings. Currently, any proceedings for the Commissioners' calendars can be stricken, but only Show Cause proceedings for the Commissioners' calendars can be confirmed.

Unconfirmed Proceedings will not be heard unless confirmed as required by **the Local Rules of the Superior Court for Pierce County**.

- Hearing and location information displayed in this calendar is subject to change without notice. Any changes to this information after the creation date and time may not display in current version.
- Confidential cases and Juvenile Offender proceeding information is not displayed on this calendar. Confidential case types are: Adoption, Paternity, Involuntary Commitment, Dependency, and Truancy.
- The names provided in this calendar cannot be associated with any particular individuals without individual case research.
- Neither the court nor clerk makes any representation as to the accuracy and completeness of the data except for court purposes.