

79506-1

NO. 79506-1

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

FILED
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STATE OF WASHINGTON
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SUSAN E. RIVAS,
Petitioner,

vs.

OVERLAKE HOSPITAL MEDICAL CENTER; OVERLAKE INTERNAL
MEDICINE ASSOCIATES,
Defendants,

and

EASTSIDE RADIOLOGY ASSOCIATES; OVERLAKE IMAGING;
WASHINGTON IMAGING SERVICES,
Respondents,

and

ROBERT L. DAVIDSON, M.D., and JANE DOE DAVIDSON, his wife, and the
marital community thereto,
Defendants,

and

ALLAN MURAKI, M.D. and JANE DOE MURAKI, his wife, and the marital
community thereof,
Respondents.

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APPEAL FROM KING COUNTY SUPERIOR COURT
Honorable Steven Scott, Judge

ANSWER TO WSTLAF AMICUS MEMORANDUM

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TABLE OF CONTENTS

	Page
I. ARGUMENT.....	1
II. CONCLUSION	7

TABLE OF AUTHORITIES

Washington Cases

	Page
<i>Castro v. Starwood School District No. 401</i> , 151 Wn.2d 221, 86 P.3d 1166 (2004).....	4
<i>Golden Eagle Mining Co. v. Emperor-Quilp Co.</i> , 93 Wash. 692, 161 P. 848 (1916).....	5
<i>In re Detention of Williams</i> , 147 Wn.2d 476, 55 P.3d 597 (2002)	6
<i>O’Neil v. Estate of Murtha</i> , 89 Wn. App. 67, 947 P.2d 1252 (1997), <i>rev. denied</i> , 135 Wn.2d 1003 (1998).....	4
<i>Rabon v. City of Seattle</i> , 135 Wn.2d 278, 957 P.2d 621 (1998)	3
<i>Rivas v. Eastside Radiology Associates</i> , 134 Wn. App. 921, 143 P.3d 330 (2006).....	2, 3, 4
<i>Rushlight v. McLain</i> , 28 Wn.2d 189, 182 P.2d 62 (1947)	4
<i>State v. Hansen</i> , 122 Wn.2d 712, 862 P.2d 117 (1993).....	6
<i>State v. Zuanich</i> , 92 Wn.2d 61, 593 P.2d 1314 (1979).....	6
<i>Svendsen v. Stock</i> , 143 Wn.2d 546, 23 P.3d 455 (2001).....	6
<i>Thomas v. Richter</i> , 88 Wash. 451, 153 P. 333 (1915)	5
<i>Tyson v. Tyson</i> , 107 Wn.2d 72, 727 P.2d 226 (1986)	4
<i>Weyerhaeuser Co. v. Tri</i> , 117 Wn.2d 128, 814 P.2d 629 (1991).....	6
<i>Young v. Key Pharmaceuticals</i> , 112 Wn. 2d 216, 770 P.2d 182 (1989).....	5, 6

Statutes

RCW 4.16.1901, 2, 6
RCW ch. 11.88.....1, 2, 3, 5, 6
RCW 11.88.010(1)(c)2, 3, 6
RCW 11.88.010(1)(f).....2

Rules and Regulations

RAP 13.4(b)(4)1

069237.097021/149889

I. ARGUMENT

Amicus Washington State Trial Lawyers Association Foundation claims the panel's interpretation of a tolling statute, RCW 4.16.190, presents an issue of substantial public importance requiring this Court's review. RAP 13.4(b)(4). What amicus fails to mention is that the panel was merely applying well-established rules of statutory construction. And not only has amicus misread the court's opinion, it attempts to raise an issue not even presented by the petition for review. There is no reason for this Court to review.

A Quick Overview of the Statutory Scheme

Insofar as is pertinent to this matter, RCW 4.16.190, the tolling statute, says:

[I]f a person entitled to bring an action . . . be at the time the cause of action accrued . . . incompetent or disabled to such a degree that he or she cannot understand the nature of the proceedings, *such incompetency or disability as determined according to chapter 11.88 RCW* . . . the time of such disability shall not be a part of the time limited for the commencement of action.

(Emphasis added.)

To reaffirm that when it referred to "such incompetency or disability as determined according to chapter 11.88 RCW", it meant what it said, the Legislature also specifically provided:

For purposes of the terms "incompetent," "disabled," or "not legally competent," as those terms are used in the

Revised Code of Washington to apply to persons incapacitated under this chapter, those terms shall be interpreted to mean "incapacitated" persons for purposes of this chapter.

RCW 11.88.010(1)(f).

RCW ch. 11.88 provides, among other things—

A determination of incapacity is a legal not a medical decision, based upon a demonstration of management insufficiencies *over time* in the area of person or estate. . . .

RCW 11.88.010(1)(c) (emphasis added).

Amicus' Arguments Are Meritless

Amicus appears to take issue with the panel's statement that "the tolling statute refers to the process set forth in chapter 11.88 RCW."¹ *Rivas v. Eastside Radiology Associates*, 134 Wn. App. 921, 928, 143 P.3d 330 (2006). But petitioner—whom amicus purports to support—has taken a 180° different position—that "RCW 4.16.190 directs the use of the process set out in Chapter 11.88 to make this decision ('determination')" [*i.e.*, whether plaintiff cannot understand the proceedings]. (Petition for Review 8)

¹ In addition, amicus fails to mention that the panel made this observation as part of its ruling that the tolling statute did not require that a guardian have actually been appointed for the plaintiff. No one is claiming that this ruling was incorrect.

Indeed, the petition for review does not dispute that if the tolling statute's reference to RCW ch. 11.88 includes the requirement that plaintiff demonstrate management insufficiencies over time, as required by RCW 11.88.010(1)(c), the panel's decision was correct. What the petition claims is that the panel "wrongly forces a litigant to have to satisfy the definitions of incompetency or disability in Chapter 11.88 RCW, including 'management insufficiencies over time.'" (Petition 7)

Amicus claims exactly the opposite. According to amicus, "only the substantive definitions [of RCW ch. 11.88] relating to incompetency or disability are incorporated [in the tolling statute]." (Amicus Memorandum 6)

Thus, amicus appears to be attempting to raise an issue that simply does not exist between the parties. This is not permissible. *See Rabon v. City of Seattle*, 135 Wn.2d 278, 291 n.4, 957 P.2d 621 (1998) (court will not decide issues raised only by amicus).

Moreover, contrary to what amicus states, the panel did *not* hold there must be management insufficiencies over time for at least 24 days to toll the limitations period. The panel's holding was a very narrow one. It simply said:

While we do not set out a bright line rule for the minimum duration of incapacity to qualify for a guardian to be

appointed, it is clear that under the guardianship statutes, a four-day incapacity would be insufficient

134 Wn. App. at 930. This case does not present the issue of whether a 24-day inability to function would be sufficient.

Citing *Castro v. Stanwood School District No. 401*, 151 Wn.2d 221, 226, 86 P.3d 1166 (2004), amicus claims “tolling provisions exist to assure all persons subject to a particular statute of limitations enjoy the full benefit of the limitation period.” (Amicus Memorandum 4) *Castro* says no such thing or anything remotely similar.

Indeed, amicus’s position ignores the long-established policy reasons behind statutes of limitations. As this Court has explained, “[s]tatutes of limitation assist the courts in their pursuit of truth by barring stale claims.” *Tyson v. Tyson*, 107 Wn.2d 72, 75, 727 P.2d 226 (1986). What tolling provisions do is to provide persons additional time to institute a lawsuit *under certain specified circumstances*. Washington courts have recognized that as an exception to the statute of limitations, tolling provisions are strictly construed and cannot be enlarged from considerations of apparent hardship or inconvenience. *Rushlight v. McLain*, 28 Wn.2d 189, 199, 182 P.2d 62 (1947); *O’Neil v. Estate of Murtha*, 89 Wn. App. 67, 73, 947 P.2d 1252 (1997), *rev. denied*, 135 Wn.2d 1003 (1998). As this Court has long acknowledged—

It is easy to argue relative to any statute of limitations as applied to a particular case that it works injustice. But it must be remembered . . . “It is believed that it is better for the public that some rights be lost than that stale litigation be permitted.”

Golden Eagle Mining Co. v. Emperor-Quilp Co., 93 Wash. 692, 696, 161 P. 848 (1916) (quoting *Thomas v. Richter*, 88 Wash. 451, 153 P. 333 (1915)).

Amicus claims there is “seeming tension between the Court of Appeals opinion and this Court’s decision in *Young v. Key Pharmaceuticals*, 112 Wn. 2d 216, 770 P.2d 182 (1989).” (Amicus Memorandum 5) Wrong.

To the extent that *Young* mentioned RCW ch. 11.88, *Young* supports the panel’s decision because *Young*, as did the panel, ruled that the actual appointment of a guardian, if any, had no impact on tolling. Nonetheless, *Young* aptly recognized that the tolling statute’s reference to RCW ch. 11.88 was not mere surplusage:

The tolling statute makes no mention of the effect of a guardian's appointment, which we believe means that the statute was intended to operate regardless of the guardian's presence. We cannot assume the Legislature made this omission through oversight; it was aware of the practice of appointing guardians for legally incompetent persons for the purpose of bringing lawsuits. ***The reference to RCW 11.88 bears this out: this source for the tolling statute's definitions concerns the appointment, qualification, and removal of guardians.***

112 Wn.2d at 221-22 (emphasis added).

Young is thus consistent with what the panel recognized—that RCW 4.16.190’s phrase—“such incompetency or disability as determined according to chapter 11.88 RCW”—must mean something. “Statutes must not be construed in a manner that renders any portion thereof meaningless or superfluous.” *Svendsen v. Stock*, 143 Wn.2d 546, 555, 23 P.3d 455 (2001).

Amicus also forgets another fundamental rule of statutory construction: “To fulfill the Legislature’s intent, statutes must be construed as a whole.” *State v. Hansen*, 122 Wn.2d 712, 717, 862 P.2d 117 (1993). Contrary to this rule, amicus would have “over time” in RCW 11.88.010(1)(c) interpreted without regard to what the rest of RCW ch. 11.88 says. (Amicus Memorandum 5-6)

But RCW 11.88.010(1)(c) cannot be read in a vacuum. *State v. Zuanich*, 92 Wn.2d 61, 67, 593 P.2d 1314 (1979). In looking to the other provisions of RCW ch. 11.88 to determine what “over time” in RCW 11.88.010(1)(c) means, the panel was doing nothing more than reading that statute “in relation to the other provisions [of RCW ch. 11.88],” as the rules of statutory construction require. *See In re Detention of Williams*, 147 Wn.2d 476, 490, 55 P.3d 597 (2002) (quoting *Weyerhaeuser Co. v. Tri*, 117 Wn.2d 128, 133, 814 P.2d 629 (1991)).

II. CONCLUSION

By seeking to raise issues that do not exist, and ignoring well-established rules of statutory construction, amicus' memorandum illustrates why review is not necessary. There is no issue of substantial public importance requiring this Court's review. The petition should be denied.

DATED this 21st day of February 2007.

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