

FILED
DEC 22 2008

CLERK OF SUPREME COURT
STATE OF WASHINGTON

NO. 80888-1

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
2008 DEC 22 AM 8:12
BY RONALD R. CARPENTER

CLERK

**IN THE SUPREME COURT
OF THE STATE OF WASHINGTON**

KIMME PUTMAN,

Appellant,

vs.

**WENATCHEE VALLEY MEDICAL CENTER, P.S., a Washington professional
service corporation,**

Respondent,

and

**PATRICK J. WENDT, M.D.; DAVID B. LEVITSKY, M.D. SHAWN C. KELLEY,
M.D.; and JOHN DOE NO. 1; JOHN DOE NO. 2; JANE DOE NO. 1 and JANE
DOE NO. 2,**

Defendants.

**APPEAL FROM CHELAN COUNTY SUPERIOR COURT
Honorable John E. Bridges, Judge**

SUPPLEMENTAL BRIEF OF RESPONDENT

**REED McCLURE
By Pamela A. Okano
Attorneys for Respondent**

Address:

**Two Union Square
601 Union Street, Suite 1500
Seattle, WA 98101-1363
(206) 292-4900**

TABLE OF CONTENTS

| | Page |
|---|------|
| I. ARGUMENT..... | 1 |
| A. SECTION 28(10) APPLIES ONLY TO INDEBTEDNESS, LIABILITY, OR OTHER OBLIGATION OWED TO THE STATE OR A MUNICIPAL CORPORATION | 1 |
| B. RCW 7.70.150 DOES NOT RELEASE OR EXTINGUISH A LIABILITY WITHIN THE MEANING OF SECTION 28(10) | 4 |
| II. CONCLUSION | 5 |

TABLE OF AUTHORITIES

Washington Cases

| | Page |
|---|------|
| <i>Chlopeck Fish Co. v. City of Seattle</i> , 64 Wash. 315, 117 P. 232 (1911)..... | 3 |
| <i>Gruen v. State Tax Commission</i> , 35 Wn.2d 1, 211 P.2d 651 (1949), <i>overruled on other grounds, State ex rel. Washington State Finance Committee v. Martin</i> , 62 Wn.2d 645, 384 P.2d 833 (1963)..... | 2 |
| <i>Larson v. Seattle Popular Monorail Authority</i> , 156 Wn.2d 752, 131 P.3d 892 (2006)..... | 3 |
| <i>Malyon v. Pierce County</i> , 131 Wn.2d 779, 935 P.2d 1272 (1997)..... | 3 |
| <i>State ex rel. Collier v. Yelle</i> , 9 Wn.2d 317, 115 P.2d 373 (1941)..... | 1, 4 |
| <i>Washington Economic Development Finance Authority v. Grimm</i> , 119 Wn.2d 738, 837 P.2d 606 (1992)..... | 3 |
| <i>Washington State Highway Commission v. Pacific Northwest Bell Telephone Co.</i> , 59 Wn.2d 216, 367 P.2d 605 (1961) | 2 |

Other Jurisdictions

| | |
|---|---|
| <i>Flowers v. Lavaca County Appraisal District</i> , 766 S.W.2d 825 (1989)..... | 5 |
|---|---|

Constitutions

| | |
|--------------------------------------|---------------|
| WASH. CONST. art. II, § 28(10) | 1, 2, 3, 4, 5 |
|--------------------------------------|---------------|

Statutes

| | |
|--------------------|---------|
| RCW 7.70.150 | 1, 4, 5 |
|--------------------|---------|

063800.000039/202578

I. ARGUMENT

For the first time in her reply brief, plaintiff/appellant claims that RCW 7.70.150 violates WASH. CONST. art. II, § 28(10). That section provides:

The legislature is prohibited from enacting any private or special laws in the following cases:

...

10. Releasing or extinguishing in whole or in part, the indebtedness, liability or other obligation, of any person, or corporation *to this state, or to any municipal corporation therein*.

(Emphasis added). By its very terms, section 28(10) does not apply in this case because there is no indebtedness, liability, or other obligation owed to the state or any municipal corporation, let alone a release or extinguishing of the same.

A. SECTION 28(10) APPLIES ONLY TO INDEBTEDNESS, LIABILITY, OR OTHER OBLIGATION OWED TO THE STATE OR A MUNICIPAL CORPORATION.

State ex rel. Collier v. Yelle, 9 Wn.2d 317, 115 P.2d 373 (1941), is illustrative. There the cost of improvements to Aurora Avenue in Seattle was assessed against property owners in a local improvement district. Thereafter, the Legislature enacted a statute that sought to use proceeds from the gas tax to pay unpaid assessments and to reimburse property

owners who had already paid their assessments. Invalidating the statute as violating art. II, section 28(10), the Washington Supreme Court explained:

It was obviously the intent of this subsection to prohibit the legislature from, by special laws, favoring any debtor or group of debtors *obligated to the state or any municipal subdivision thereof*. . . .

. . . Payment of the unpaid assessments out of the motor vehicle fund certainly extinguishes such assessments and the lien thereof, within the constitutional prohibition above referred to.

9 Wn.2d at 330 (emphasis added).

Gruen v. State Tax Commission, 35 Wn.2d 1, 211 P.2d 651 (1949), *overruled on other grounds*, *State ex rel. Washington State Finance Committee v. Martin*, 62 Wn.2d 645, 384 P.2d 833 (1963), confirmed *Yelle's* reading of the constitutional provision at issue. *Gruen* explained that section 28(10) “prohibits the releasing or extinguishing of the indebtedness, liability, or other obligation of any person or corporation *owing to the state.*” *Id.* at 28 (emphasis added). *See also Washington State Highway Commission v. Pacific Northwest Bell Telephone Co.*, 59 Wn.2d 216, 233, 367 P.2d 605 (1961) (statute did not violate section 28(10) because “there was no accrued debt or obligation owing to the state”).

What indebtedness, liability, or obligation “to the state or any municipal subdivision thereof” is involved here? None. Plaintiff claims

that the hospital, a private corporation, is liable to her, a private individual. By claiming that section 28(10) applies in this case, plaintiff is reading the phrase "to this state, or to any municipal corporation therein" right out of the constitution.

Nearly a hundred years ago, when another litigant asked that a portion of the Constitution be ignored, this Court declined:

It is a fundamental principle, applicable in the construing of all written laws, and especially in construing a document of the gravity of the constitution, that if possible an effect must be given and a meaning accorded to all of the words used therein. We have no more authority to eliminate the words "across the area reserved" than we have to cancel the words "over intervening tide lands." We can do neither.

Chlopeck Fish Co. v. City of Seattle, 64 Wash. 315, 322-23, 117 P. 232 (1911).

The same is true today: Appropriate constitutional analysis starts with the text and generally ends with the text. *See Malyon v. Pierce County*, 131 Wn.2d 779, 799, 935 P.2d 1272 (1997). Courts will look to the plain language of the text and accord it its reasonable interpretation. *See Larson v. Seattle Popular Monorail Authority*, 156 Wn.2d 752, 757, 131 P.3d 892 (2006). "[C]onstitutional provisions should be construed so that no clause, sentence or word shall be superfluous, void, or insignificant." *Washington Economic Development Finance Authority v. Grimm*, 119 Wn.2d 738, 746, 837 P.2d 606 (1992). This Court would

have to disregard all of these rules to reach the interpretation plaintiff espouses.

Section 28(10) applies only to indebtedness, liability, or other obligation “*to this state, or to any municipal corporation therein.*” Even if respondent had some indebtedness, liability, or other obligation to plaintiff (which it does not), section 28(10) says nothing about indebtedness, liability, or other obligation to private parties.

B. RCW 7.70.150 DOES NOT RELEASE OR EXTINGUISH A LIABILITY WITHIN THE MEANING OF SECTION 28(10).

Furthermore, section 28(10) applies only to statutes that *release or extinguish* an indebtedness, liability or other obligation owed the state or municipal corporation. For example, the unconstitutional statute in *Yelle* allocated state money to pay for an obligation owed by property owners to a municipal corporation. And if a given property owner had already paid his or her share, the statute required that state funds be used to reimburse that owner. Thus, the property owners’ obligation to the municipal corporation was released or extinguished.

The statute here does not release or extinguish any liability that respondent might have. Instead, it merely requires that a plaintiff file a certificate of merit. Thus, for purposes of section 28(10), it is no different than a limitations period. Limitations periods do not violate constitutional

provisions similar to section 28(10). See *Flowers v. Lavaca County Appraisal District*, 766 S.W.2d 825, 827 (1989).

II. CONCLUSION

Quite simply, section 28(10) has nothing to do with the issues in this case. It applies only where there is a private or special law that releases or extinguishes an indebtedness, liability, or other obligation owed to the state or a municipal corporation. That is not the case here. The certificate of merit statute, RCW 7.70.150, does not violate WASH. CONST. art. II, § 28(10).

DATED this 14th day of December, 2008.

REED McCLURE

By 
Pamela A. Okano WSBA #7718
Attorneys for Respondent

063800.000039/202089