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NO. 58831-1

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

CASCADE ORTHOPAEDICS, a partnership,

Appellant,

vs.

JOSIE ARMANTROUT and WARREN ARMANTROUT, husband and
wife and the marital community composed thereof,

Respondents.

APPELLANT'S REPLY BRIEF

Steven F. Fitzer, WSBA #6792
Melanie T. Stella, WSBA #28736
Attorneys for Appellant

BURGESS FITZER, P.S.
1145 Broadway, Suite 400
Tacoma, WA 98402-3584
(253) 572-5324

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I. INTRODUCTION TO REPLY BRIEF

Respondents seek to shift this Court's inquiry from the legal issues presented by the appeal, to whether their circumstances warrant special sympathy. While Cascade Orthopaedics does not deny that this is a sympathetic case, sympathy is not a statutory factor, and cannot control this Court's decision. Arguments seeking a change in the statute are appropriately addressed to the Legislature. That body may then consider the policy issues associated with whether to include the provision of family services as a consideration in determining substantial financial dependency under the applicable statute. The Legislature could also eliminate the requirement all together. A proposed bill seeking to do exactly that is currently pending before the Legislature but has not yet been adopted. This leaves the law squarely in favor of Cascade Orthopaedics, and maintains the status quo. As further explained below, the decedent's parents could not legally meet the current requirement that they be substantially financially dependent upon their late daughter.¹

¹ Senate Bill 5816, discussed on page 30 of the Appellant's opening brief, is currently pending before the Legislature. Attached as Tab 1 to this brief is a printout from the Legislature's webpage showing the history of this bill.

The law as it exists at this point forces courts to focus on the sometimes cold, but certain, issue of substantial financial dependency. Here, the only evidence of financial “dependency” is Kristen’s contribution of Social Security benefits she received because of her mother’s disability. The undisputed evidence at trial was that the Social Security check was turned over as reimbursement for Kristen’s own expenses while living with her family. In contrast is the undisputed evidence that the Armantrouts claimed their daughter as a dependent for all legal purposes other than this suit, including a federal income tax deduction.

When a financially dependent, 18-year old daughter, who had yet to graduate high school and was still living at home, reimburses her parents to help with a temporary economic situation, she does not make the parents “substantially financially dependent” upon her within the meaning of the wrongful death statutes.

As a matter of law, the Armantrouts were not substantially financially dependent upon their adult child. The trial court erred in

allowing the jury to decide this issue. The judgment against Cascade Orthopaedics in favor of the Armantrouts must be dismissed.

II. REPLY BRIEF

A. The Interpretation of a Statute Is a Question of Law for the Trial Court.

Acknowledging that no case law supports their position, the Armantrouts nonetheless contend the jury was entitled to decide whether they were substantially financially dependent upon their daughter. They base their assertion simply on the idea that many cases interpreting the wrongful death statutes have been appealed on other facts. *Respondents' Brief at 12 and 13*. Their position confuses standards of appellate review with issues regarding the appropriate role of the trial judge and the trier of fact. The construction of a statute is a question of law. **RCW 4.44.080**. Questions of law must be decided by the trial court, not the jury. *Id.* Only a trial court can decide the purpose and meaning of statutes. *Brown v. City of Seattle*, 117 Wn. App. 781, 790-91, 72 P.3d 764 (2003). Adherence to these long-standing axioms is particularly important in the

case of a statute creating a cause of action not found in the common law, and having its own particular rule of construction.

There is good reason for this rule. The law is clear that wrongful death statutes are to be strictly construed for purposes of determining who qualifies as a beneficiary under the statute. *Whittlesey v. City of Seattle*, 94 Wash. 645, 647, 163 Pac. 193 (1917) (the wrongful death statutes “should receive a strict construction in determining the persons or classes of persons who are entitled to their benefit”). Juries are much more susceptible to empathy and equitable arguments. Judges are tasked with the tough choices of deciding whether the law does or does not apply, regardless of how sympathetic the case.

The Washington Supreme Court so held in *Mastings v. Dep’t of Labor and Indus.*, 24 Wn.2d 1, 163 P.2d 142 (1945). In that case, an employee petitioned for a reopening of his L&I claim on account of an alleged aggravation. The jury returned a verdict in favor of the employee and the employer appealed. One of the issues on appeal was a jury instruction providing that Washington’s workers compensation act was to be liberally applied in favor of its beneficiaries. *Id.* at 12. The Supreme

Court held the instruction was prejudicial error warranting reversal of the judgment:

[T]he province of the court – the trial judge – is to determine and decide questions of law presented at the trial and to state the law to the jury, while the province of the jury is to determine the facts of the case from the evidence adduced, in accordance with the instructions given by the court.

The matter of liberal or narrow construction does not apply to matters of fact, but is limited to questions of law. The court, in its instructions to the jury, is required to give a liberal interpretation of the workmen's compensation act, but the jury is confined to a determination of the facts of the case from the evidence presented, in accordance with the court's instructions as to the law.

Id. at 13 (emphasis added). The court further held that allowing a jury to apply a statute “invests the jury with a power that only the court should exercise.” *Id.*

Similarly, the trial court in this case was required to give a strict interpretation to the wrongful death statutes in deciding whether the Armantrouts qualified as beneficiaries. The trial court did not do so, instead deferring the question of whether the Armantrouts were

substantially financially dependent upon Kristen – *i.e.*, whether they qualified as beneficiaries under the wrongful death statutes – to the jury. *CP 102 (Question 5)*. This, as in *Mastings*, was prejudicial error.

Indeed, the Armantrouts themselves appear to recognize a court's function in interpreting a statute.² At page 17 of their brief, the Armantrouts ask this Court to “construe the term ‘dependent for support’ in accordance with the humane purposes of the act” and find that they qualify as beneficiaries under the wrongful death statutes. This is, of course, the proper method for determining whether a particular individual is a wrongful death beneficiary: court construction of the language of the statute.³ Whether the Armantrouts qualified as beneficiaries is a question of law. *See, e.g., Schumacher v. Williams*, 107 Wn. App. 793, 804-05, 28 P.3d 792 (2001), *rev. denied*, 145 Wn.2d 1025 (2002) (holding “trial court

² In a subsequent section of their brief, the Armantrouts appear to suggest that *Cook v. Rafferty*, 200 Wash. 234, 93 Pac. 376 (1939), stands for the proposition that dependency is a question of fact for the jury. *Respondents' brief at 17*. This is a misstatement of the holding in *Cook*. The *Cook* court decided only whether, following a bench trial, the trial court's determination of dependency was supported by the evidence. *Id.* at 239-40.

³ It should be noted that Cascade Orthopaedics does not agree that the wrongful death statutes are to be construed “humanely” or in a fashion that broadens the class of beneficiaries beyond the plain language of the statutes. This Court must construe the statutes narrowly; liberal or “humane” construction is appropriate only after the proper beneficiaries have been determined. *Masunaga v. Gapsin*, 57 Wn. App. 624, 631, 790 P.2d 171 (1990).

properly determined that Schumacher was not a statutory beneficiary under Washington's wrongful death and survival statutes").

B. As a Matter of Law, the Armantrouts Are Not Statutory Beneficiaries Under RCW 4.20.020.

In order for the Armantrouts to qualify as statutory beneficiaries, they must be substantially financially dependent upon their daughter. The condition of dependence is established by "a substantial need on one side and a substantial financial recognition of that need on the other side[.]" *Bortle v. Northern Pac. R. Co.*, 60 Wash. 552, 556, 111 Pac. 788 (1910). Neither the arguments advanced by the Armantrouts nor the evidence before this Court satisfy this standard.

1. The Armantrouts were not substantially financially dependent upon Kristen's SSA funds.

The Armantrouts first contend that Kristen recognized her family's financial need by turning over her SSA check to her parents. *Respondents' Brief at 19*. Kristen did turn over her check, but it was not to cover household expenses as the Armantrouts now claim. *Id.* Josie testified at trial that Kristen turned over her check to account for *Kristen's*

expenses for the “privilege” of living at home after the age of 18. *RP 7/20 at 14-15, 18-19.*

. . . I broke down her [Kristen’s] portion of the living essentials: Rent, food, gas, electricity, cable, phone; her needs for school; the gasoline she would be using with driving; and I made her a total. **And I told her, this is what you cost every month.** If you think your check or your part-time job will be enough for you to survive somewhere else, th[e]n you need to know what you are up against. So **this is why we need your check.**

RP 7/20 at 18 (emphasis added). Furthermore, Josie testified that, in any event, Kristen would only have received two or three additional checks from SSA. *RP 7/20 at 15.*

The Armantrouts also claim they had relied upon Kristen’s SSA money for a number of years before she turned 18. *Respondents’ Brief at 19.* But the Armantrouts testified that, by law, they were only “custodians” of Kristen’s money and that the funds could be used only for Kristen’s expenses. *RP 7/17 at 18.* Thus, they could have only relied upon that money for *Kristen’s* support and not their own personal support. This was money *Josie* received from SSA, not something the parents were

entitled to recoup for their own needs. The fact that Kristen had received money from SSA as a dependent child of a disabled person does not make her parents substantially financially dependent upon that money.

The argument is also counterintuitive and circular. Kristen received this money as a result of her mother's pre-disability work experience and because the mother, Josie, was disabled at the time of events in question. Despite the fact that the money originated from the mother's past work experience and was intended to support her family and dependents, including Kristen, the Armantrouts want to translate this SSA income into "substantial financial dependence" running from Kristen to the parents. This argument misconstrues the nature and purpose of SSA payments. Without Josie's work activities, the monies would not be available for Kristen to hand over to her parents. The benefits came only because Kristen was a dependent, not the other way around. The Armantrouts cannot create financial dependence through this circular and illogical argument.

Moreover, for the Armantrouts to now claim that Kristen turned over that money to assist her parents with *their* day-to-day living expenses

(thus making them “financially dependent” upon Kristen) is inconsistent with the purpose of SSA payments for dependent children. Kristen’s SSA check should not be considered by this Court in determining whether the Armantrouts qualify as beneficiaries under the wrongful death statutes.

2. *An Adult Child’s Gratuitous Provision of Services to Her Parents Does Not Make Her Parents Substantially Financially Dependent Upon Her Within the Meaning of Washington’s Wrongful Death Statutes.*

The Armantrouts next suggest they were substantially financially dependent upon Kristen because, according to their economist, the services she provided had substantial economic value. *Respondents’ Brief at 19*. This argument ignores the fact that economic value is not the same as substantial financial dependence. The Armantrouts do not cite to any case holding otherwise nor is the position logically sound because it negates the distinction between “substantial financial dependence” and the more common give and take of services and sharing of chores associated with a familial relationship.

Philippides v. Bernard, 151 Wn.2d 376, 88 P.3d 939 (2004), one of the more recent cases dealing with the issue of financial dependence, rejected the notion that because consortium also had an economic value, it

could therefore support a claim of financial dependency. Economic value is not the standard by which second-tier beneficiaries are determined. Only substantial financial dependency qualifies under the statute.

One starts with the premise that the Legislature has been consistently conservative in deciding which individuals are entitled to recover for the wrongful death of another. *Schumacher, supra*, 107 Wn. App. at 801-02. Courts interpreting the wrongful death statutes must adhere to that conservatism and not extend the statutes to individuals other than “clearly contemplated” beneficiaries. *Masunaga*, 57 Wn. App. at 631. *Johnson v. Seattle Elec. Co.*, 39 Wash. 211, 213, 81 Pac. 705 (1905) (rejecting argument regarding the “spirit and intent” of the wrongful death statutes).

Washington’s wrongful death statutes have always required substantial financial dependence. The term “financial” can only be reasonably interpreted to include the provision of funds necessary for the parents’ support, and not merely the provision of services capable of being valued monetarily. Because Kristen did not provide any financial assistance that met a true necessity of her parents, they cannot maintain a

wrongful death claim. See *Kanton v. Kelly*, 65 Wash. 614, 618, 118 Pac. 890 (1911).

To the extent the Armantrouts' claim identifies a "flaw" in the statutory scheme for wrongful death and survival actions, any correction thereof must come from the legislature. As Justice Ellington observed in her concurring opinion in the *Schumacher* case,

I nonetheless concur in the majority opinion, because **courts must not, despite strong policy considerations, bend the rules of statutory construction to work an unstated change in the law.** The majority correctly refuses to do so. This is a matter the legislature must address, as I hope it does.

Schumacher, 107 Wn. App. at 805 (Ellington, J., concurring) (emphasis added).

The Respondents seek to extend and change the law. Washington courts have, however, cautioned against creating, rather than construing, a statute. *Whittlesey, supra*, 94 Wash. at 654. The Armantrouts, in effect, ask this Court to create a cause of action for parents allegedly dependent upon services provided by an adult child, rather than strictly construing the wrongful death statutes to require (as courts have long held) substantial

financial dependence. That Kristen admirably assisted Josie with some of her day-to-day activities does not establish that the Armantrouts were substantially *financially* dependent upon her. The Armantrouts' wrongful death claims fail as a matter of law and should be dismissed.

C. **The Armantrouts' Reliance on Out-of-State Cases Is Misplaced and Not Helpful to Resolution of the Issue of Application of Washington Law to the Facts of this Case.**

The Armantrouts cite several out-of-state cases in support of the proposition that the provision of services may be considered when determining whether a parent is substantially financially dependent upon his or her adult child. *Brief of Respondents at 23-26*. These cases neither control nor are they helpful to the issues in this appeal. They should therefore be disregarded by this Court.

The Armantrouts rely principally on *Hogan v. Williams*, 193 F.2d 220 (5th Cir. 1952), *cert. denied*, 343 U.S. 942 (1952). In that case, two mothers brought wrongful death actions to recover for the deaths of their adult daughters in the same accident. The question presented was whether the mothers were dependent upon their daughters for support under Georgia state law. Upon application of the facts of the case to Georgia

law, the Fifth Circuit held there was no error in the trial court refusing to grant the defendants' motion for a directed verdict. *Id.* at 223.

There are numerous factors unique to Georgia law that make the Fifth Circuit's opinion useless for this Court's purposes. According to the opinion, Georgia law allows the contributions of the decedent to be either money or services. *Id.* at 224 ("partial dependence accompanied by substantial contribution is sufficient, and such contributions may be either in money or services, and may be only slight."). There also does not appear to be any requirement under Georgia law that the surviving parent be substantially *financially* dependent on the deceased adult child. Georgia law also appears to allow juries to decide whether a plaintiff qualifies as a beneficiary under the wrongful death statutes. *Id.* at 225.

The same is true for the case of *Chavez v. Carpenter*, 91 Cal. App. 4th 1433 (Cal. 2001). *Chavez* concerned an appeal from a grant of summary judgment in favor of the defendant. The *Chavez* court did not make any finding on financial dependence other than to find questions of fact existed for trial. *Cf. Respondents' Brief at 25.* And, contrary to Washington, California law holds that financial dependence under its

wrongful death statutes presents a question of fact. *Id.* at 1445-46. Furthermore, there is no indication that the *Chavez* court held that services constitutes financial dependence. The *Chavez* court actually held that parents must receive “financial support from their child which aids them in obtaining the things, such as shelter, clothing, food and medical treatment, which one cannot and should not do without[.]” *Id.* at 1446. Here, Kristen’s services were part and parcel of a financial decision to split the household in order to achieve financial goals and, ironically, to allow her an opportunity to graduate from high school, something that she could not accomplish during the normal school year apparently because of her grades. There is also no evidence in this case that the Armantrouts would have gone without shelter, clothing, food, or medical treatment but for Kristen staying with Josie after Todd moved to Minnesota. Financial preferences cannot be bootstrapped into substantial financial dependence.

This Court is presented with the interpretation of *Washington’s* wrongful death statutes, through which the legislature created a unique cause of action not found in the common law. *See Whittlesey, supra*, 94 Wash. at 646-47. Many, if not all, of the other states have adopted similar

but not identical, statutes. It is likely that none of those statutes contain the same language of Washington's and it is a certainty that none has been interpreted in the same way Washington's has by Washington courts. For this reason, extra-jurisdictional cases interpreting other states' unique wrongful death statutes cannot offer this Court any guidance in interpreting Washington's statute.

D. The Armantrouts Are Estopped from Claiming They Were Substantially Financially Dependent Upon Their Daughter.

The Armantrouts claim that the doctrine of judicial estoppel cannot be used against them because Cascade Orthopaedics has not met all of the "essential elements" of the doctrine. *Respondents' Brief at 31*. This claim reflects a misunderstanding of the law regarding judicial estoppel.

"Judicial estoppel precludes a party from gaining an advantage by taking one position and then seeking a second advantage by taking an incompatible position in a subsequent action." *Johnson v. Si-Cor, Inc.*, 107 Wn. App. 902, 906, 28 P.3d 832 (2001). The six factors a court should consider in applying the doctrine are non-exclusive, so as to promote court discretion. *DeAtley v. Barnett*, 127 Wn. App. 478, 483,

112 P.3d 540 (2005), *rev. denied*, 156 Wn.2d 1021, *cert. denied*, 127 S. Ct. 123, 166 L. Ed. 2d 35 (2006).

The court's focus, though, should be on the inconsistent position. *Id.* at 483. Judicial estoppel applies only if a litigant's prior inconsistent position benefited him or her. *Johnson*, 107 Wn. App. at 909. The doctrine may be applied even if the two proceedings involved different parties, if there is no reliance and no resulting damage, and if no final judgment is entered in the first proceeding. *Id.* at 908.

It is undisputed that the Armantrouts claimed Kristen as their dependent for purposes of obtaining medical insurance, tax deductions, and additional Social Security benefits. The Armantrouts claim their positions are not "clearly inconsistent" by suggesting they did not claim Kristen as a dependent on their federal income tax return for the year of her death. *Respondents' brief at 31; see also pages 29 and 33.* The Armantrouts have misstated the record. Josie testified that she and Todd claimed Kristen as a dependent on their returns for the year preceding *and* the year of Kristen's death. *RP 7/20 at 20.*

The facts (1) that the Armantrouts claimed Kristen as their dependent on their tax returns (which necessarily requires a finding that the filer provided more than one-half of the dependent's support for the taxable year [26 U.S.C.A. § 152(c)(1)(A)-(D)]); (2) that Kristen received money from SSA as the dependent child of a disabled parent; and (3) that Todd provided medical insurance for Kristen as his dependent child are all clearly inconsistent with the Armantrouts' claim in this case that they were substantially financially dependent upon their daughter. The Armantrouts clearly benefited from these inconsistent positions, both previously in the form of increased benefits and in this case in the form of a substantial jury award. It would be unfair to allow the Armantrouts to use these same facts to gain substantial financial benefits under two diametrically opposed scenarios – one in which Kristen is their dependent and one in which they are Kristen's dependents.

The Armantrouts also ask this Court to reject the judicial estoppel argument because Cascade Orthopaedics was able to argue this theory to the jury. *Respondents' brief at 33*. Just like the interpretation of the wrongful death statutes, application of judicial estoppel is not a question

of fact for the jury. See *Cunningham v. Reliable Concrete Plumbing*, 126 Wn. App. 222, 227, 108 P.3d 147 (2005) (trial court's application of the doctrine is reviewed for abuse of discretion). Either Kristen was substantially dependent upon her parents, thereby justifying the deductions and the benefits, or they were substantially financially dependent upon her, thus allowing them to bring a wrongful death claim. The Armantrouts should be estopped from maintaining both positions and appealing to the sympathies of the jury to evade the legal consequences of their inconsistent legal positions.

E. **Even Assuming The Armantrouts Are Statutory Beneficiaries, There Was Not Substantial Evidence to Support the Jury's Finding That They Were Substantially Financially Dependent Upon Their Daughter at the Time of Her Death.**

In its opening brief, Cascade Orthopaedics directed this Court to the cases of *Bortle v. Northern Pac. R. Co.*, 60 Wash. 552, 111 Pac. 788 (1910); and *Kanton supra*, 65 Wash. 614, to show the Armantrouts' evidence was insufficient to support a finding of substantial financial dependence within the meaning of the wrongful death statutes. *Appellant's Brief at 32-34*. The Armantrouts make no effort to distinguish those cases, nor do they cite to any other cases supporting a finding of

substantial financial dependence under similar factual circumstances. Thus, even assuming the jury properly considered the question of whether they were substantially financially dependent upon Kristen, the evidence presented by the Armantrouts was insufficient to support such a finding.

Cascade Orthopaedics does not dispute that the Armantrouts were experiencing financial difficulties at the time of Kristen's death. *Cf. Respondents' Brief at 17.* Nor does Cascade Orthopaedics dispute that Kristen provided assistance to her parents through this difficult time. The Armantrouts were supporting two households because Todd chose to take a job out of state; they borrowed money from Josie's sister to assist in making ends meet until Josie could join Todd in Minnesota. Cascade Orthopaedics never intended to question the wisdom of their decisions, nor does it contend the Armantrouts could not make whatever decisions they felt best for the welfare of their family. *Cf. Respondents' Brief at 18.* However, the fact remains that the financial difficulties experienced by the Armantrouts at the time of Kristen's death – which, in turn, necessitated the provision of services from Kristen – were only anticipated to be temporary, and were entirely within their own control.

In order to establish substantial financial dependence, there must be a substantial need on the side of the parents and a substantial financial recognition of that need on the side of the adult child. *Kanton*, 65 Wash. at 617-18. Assistance from an adult child to her parents during a temporarily difficult financial situation does not create the type of “necessitous want” on the part of the parent necessary to justify a wrongful death claim. *Bortle*, *supra*. The fact that Kristen’s assistance may have “increase[ed] the general prosperity of the family” does not make the Armantrouts substantially financially dependent within the meaning of the wrongful death statutes. *Kanton*, at 618.

A parent’s dependence on his or her adult child is not measured by the parent’s ability or inability to generate a larger income, but rather by the parent’s ability to make the effort. *Bortle*, 60 Wash. at 555. Certainly a parent need not be entirely unable to make a living. *Kanton*, 65 Wash. at 617. But a parent may experience financial difficulties and still be independent of any substantial financial dependence on his adult child. *Id*. When an adult claims dependence on his or her adult child, there must be some evidence of an inability to support him- or herself. *Grant v. Libby*,

et al, 145 Wash. 31, 37, 258 Pac. 842 (1927). No such evidence was shown by the Armantrouts in this case.

With respect to Kristen's services, the only evidence that the Armantrouts were substantially financially dependent upon those services is the Armantrouts' testimony that they could not have afforded to replace those services, presumably without borrowing additional money from Josie's sister. The fact that the Armantrouts received more substantial, *financial* contributions from Josie's sister however, weighs against their alleged dependence on Kristen. *See Grant*, 145 Wash. at 35 (considering fact that plaintiff received more frequent contributions from her mother for her and her children's support than she did from her deceased child).

The Armantrouts also claim that Josie would have been dependent on Kristen after Josie and Kristen moved to Minnesota. *Respondents' brief at 20*. The only support for that claim is the Armantrouts' statement that Kristen would have continued to be Josie's driver and reader in Bemidji. *Id.* But there is no evidence the Armantrouts would have been *dependent* on these services, or that they could not have managed the same as they did before Todd lost his job and moved to Minnesota. Certainly it

is to be expected that Kristen would have continued to help her mother. It is also to be expected that Todd and Robert (the Armantrouts' son) would have as well. Such is life when one parent is blind, even for a blind person as independent and self-sufficient as Josie. The fact that an adult child did provide and would have likely continued to provide her blind mother with assistance does not make the adult's parents substantially financially dependent upon her.

The quantum of evidence to support a finding of substantial financial dependence becomes even more clear if one contrasts the facts of this case with those in the examples provided by the Armantrouts. *Respondents' Brief at 23.* The Armantrouts did not live with Kristen. Instead, Kristen lived with them and they subsidized *Kristen's* day-to-day living expenses. Kristen did not pay her parents' mortgage. She did not pay their utilities. Kristen did not buy her parents' groceries. She did not provide services without which Josie would have been forced into a nursing home. The Armantrouts claim that "[w]ithout Kristen . . . , Josie had to leave her home and find aid elsewhere for her basic needs." *Respondents' Brief at 26.* The Armantrouts ignore the fact that they

always intended for Josie to “leave her home” and join her husband and son in Minnesota, who were, following Kristen’s death, able to help Josie with her “basic needs.”

Even when viewed in the light most favorably to the Armantrouts, the evidence adduced at trial establishes only that Kristen provided her parents with assistance during a temporary, financially difficult time. The fact that the Armantrouts claim they could not have afforded to fully replace all services provided by Kristen while they were temporarily maintaining two households does not make them substantially financially dependent upon her under Washington’s wrongful death statutes. The judgment against Cascade Orthopaedics should be dismissed.

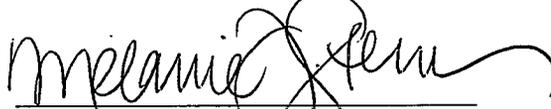
III. CONCLUSION

The Armantrouts rely upon sympathy and positions legally inconsistent with those that they have taken previously in order to evade the plain terms of the wrongful death statute. Their arguments ask this court to disregard Washington law and prior interpretations of the statute in order to reach a result consistent with the sympathies of their situation. The Armantrouts’ arguments are best addressed to the Legislature. As the

law currently exists, the trial court erred in allowing this issue to go to the jury. Cascade Orthopaedics respectfully requests that this portion of the judgment be reversed.

Respectfully submitted this 22nd day of June, 2007.

BURGESS FITZER, P.S.



STEVEN F. FITZER, WSB#6792
MELANIE T. STELLA, WSB #28736

NO. 58831-1

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**APPELLANT'S REPLY BRIEF
APPENDIX A**

Steven F. Fitzer, WSBA #6792
Melanie T. Stella, WSBA #28736
Attorneys for Appellant

BURGESS FITZER, P.S.
1145 Broadway, Suite 400
Tacoma, WA 98402-3584
(253) 572-5324

SB 5816 - 2007-08

Changing the requirements for, and recoveries under, a wrongful injury or death cause of action.

History of Bill

as of Friday, June 22, 2007 8:49 AM

Sponsors: Senators Kline, Fairley, Kohl-Welles, Weinstein

2007 REGULAR SESSION

Feb 1 First reading, referred to Judiciary. (View Original Bill)

Feb 16 Public hearing in the Senate Committee on Judiciary at 1:30 PM.

NO. 58831-1

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

CASCADE ORTHOPAEDICS, a partnership,

Appellant,

vs.

JOSIE ARMANTROUT and WARREN ARMANTROUT, husband and
wife and the marital community composed thereof,

Respondents.

**AFFIDAVIT OF MAILING
APPELLANT'S REPLY BRIEF**

Steven F. Fitzer, WSBA #6792
Melanie T. Stella, WSBA #28736
Attorneys for Appellant

BURGESS FITZER, P.S.
1145 Broadway, Suite 400
Tacoma, WA 98402-3584
(253) 572-5324

FILED
COURT OF APPEALS DIV. #1
STATE OF WASHINGTON
2008 SEP 29 PM 1:17

STATE OF WASHINGTON)
)ss
COUNTY OF PIERCE)

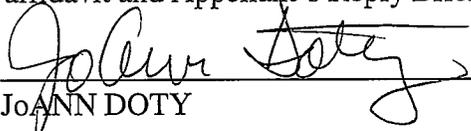
JoAnn Doty, being first duly sworn upon oath, deposes and says:

I am a citizen of the United States of America and of the State of Washington, over the age of twenty-one years, not a party to the above-entitled matter and competent to be a witness therein.

That on June 22, 2007, I sent via facsimile and placed for delivery with Legal Messengers, Inc. to:

Simeon Osborn
Osborn Machler
2125 Fifth Avenue
Seattle, WA 98121

a true and correct copy of this affidavit and Appellant's Reply Brief.



JoANN DOTY

Subscribed and sworn to before me this 22nd day of June, 2007.



Notary Public in and for the State of
Washington, residing at Spanaway
My Commission Expires: 10-3-07