

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
2009 MAY 12 A 7:56
BY RONALD R. CARPENTER

CLERK

No. 81195-4

SUPREME COURT
OF THE STATE OF WASHINGTON.

JOSIE ARMANTROUT, personal representative of the estate
of KRISTEN ARMANTROUT; JOSIE ARMANTROUT and
WARREN ARMANTROUT, husband and wife and the
marital community composed thereof,

Petitioners

vs.

CASCADE ORTHOPAEDICS, a partnership

Respondent

**RESPONDENT'S RESPONSE TO BRIEF OF AMICUS CURIAE
WASHINGTON STATE ASSOCIATION FOR JUSTICE**

TIMOTHY R. GOSSELIN, WSBA #13730
Attorneys for Respondent

Gosselin Law Office, PLLC
1901 Jefferson Avenue, Suite 304
Tacoma, WA 98402
Phone: 253.627.0684
Fax: 253.627.2028

FILED AS
ATTACHMENT TO EMAIL

ORIGINAL

ARGUMENT

At page 13 of its brief, Amicus Curiae Washington State Association for Justice (hereafter WSAJ) makes this statement: “The proper inquiry is whether there is any legitimate reason to distinguish between direct monetary contributions and the provision of services having economic value.” That is not the proper inquiry.

This case presents a question of statutory interpretation. The goal of statutory interpretation is to determine and carry out the intent of the Legislature.

This Court already has said, that the phrase “dependent for support” as used in this statute has consistently been interpreted to mean financial support. *Philippides v. Bernard*, 151 Wn.2d 376, 386, 88 P.3d 939 (2004). It also has said that there is a reasonable basis for the Legislature’s classification within the statute. *Id.* at 392. Thus, the task is to give effect to the Legislature’s intent, not second guess it.

As WSAJ’s brief itself demonstrates, when the Legislature wanted to broaden the category of eligible beneficiaries, and to broaden the type of support on which a category may depend, it knew how to do so. At footnote 5 of its brief, WSAJ cites to RCW 4.24.010. In that statute, the Legislature used specific words in addition to “financial support” which allows including

providing services into the consideration. The words the Legislature used in that statute are “significant involvement in the child’s life.” Those words allow actions such taking the child to school, sporting and extra-curricular activities, repairing a broken bike or car, etc. to establish support. Notably, the Legislature included those words in addition to “financial support” within that statute. Because the Legislature clearly knows how to identify beneficiary classifications other than those based on financial support when it wants to, the better question for WSAJ to focus on is “whether there is any legitimate reason *not* to distinguish between direct monetary contributions and the provision of services having economic value.”

WSAJ argues that the Court should apply a liberal standard of review. But, as the Court noted in *Armijo v. Wesselius*, 73 Wn.2d 716, 720, 440 P.2d 71 (1986), whether the standards are described as liberal or strict does not change the ultimate goal: to give effect to the Legislature’s intent. This Court has consistently said the Legislature intended to limit second tier beneficiaries to those who are dependent on the deceased child for financial support. *Philippides v. Bernard*, 151 Wn.2d 376, 386, 88 P.3d 939 (2004). It does not take strict or liberal construction to decide that providing services is not the same as providing financial support.

WSAJ dismisses looking to the definition of the word “financial” as

“crabbed interpretation.” Brief of WSAJ at 13. But, WSAJ offers nothing in its place. Whether the court looks to dictionary definitions or common understanding, the result is the same: to consider the provision of services as financial support requires tortured analysis. Under WSAJ’s interpretation, the parents of an adult child who is fully dependent on them for financial support may nonetheless be dependent upon the child for financial support if the child provides essential services. This turns both the meaning of the words and common understanding on its ear.

Really, what WSAJ wants is for this Court to second guess, not affirm, the Legislature’s intent. The Legislature created a bright line for determining beneficiary status. Bright lines often cannot be justified on a basis other than that a line needed to be drawn. One can hardly say that a tort claim that is three years and one day old is less deserving of merit than one that is only three years old. Yet one will have a day in court, the other will not. WSAJ’s question improperly tasks this Court with finding an explanation where the only explanation is that a line is needed, and the one that was drawn was fair.

In RCW 4.20.020, the Legislature clearly did not believe parents of adult children merited absolute beneficiary status. The Legislature made their recovery contingent on the absence of first tier beneficiaries. Only if there are

no first tier beneficiaries may parents recover under that statute. Even then, the Legislature clearly did not believe every parent of an adult child should recover. As this court recognized in *Philippides*, the Legislature only recognized those parents who are dependent upon the child for financial support. The Legislature's obvious intent was to establish a limit to the reach of tort damages. And, just as it did with statutes of limitation, it established a bright line.

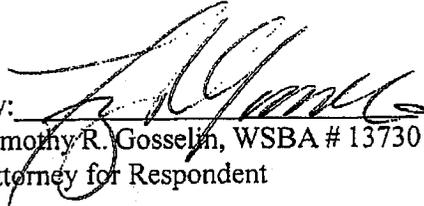
The fallacy of WSAJ's reasoning is that every bright line is subject to the kind of incremental challenges it employs. Under WSAJ's reasoning, if a statute of limitation is three years and one day, or four years, or ten, it could be extended to three years and two days, or four years and one day, eleven years because a "legitimate reason to distinguish between" the statutory period and the additional day cannot be found. But to get that result, WSAJ needs this court to ignore the statute and the wording it uses. Here, the Legislature meant financial support. Whether there is a "legitimate reason to distinguish between" between financial support or other types of support, such as emotional support, support through services, or just simple love and dependability, is not the question. Because it was within the Legislature's prerogative to establish the line, and because this Court already has determined it had a reasonable basis for drawing the line where it did, it is the

Court's responsibility to enforce the statute as the Legislature intended.¹

Because providing services is not financial support, evidence of those services is not relevant to whether Mr. and Mrs. Armantrout meet the requirements to be beneficiaries under RCW 4.20.020. WSAJ's arguments notwithstanding, the decision of the Court of Appeals should be affirmed.

Submitted this 11th day of May, 2009.

GOSSELIN LAW OFFICE, PLLC

By: 
Timothy R. Gosselin, WSBA # 13730
Attorney for Respondent

1. At page 14, WSAJ is critical of what it presents as Cascade's reliance on the failure of the Legislature to amend RCW 4.20.020. WSAJ erects a straw man. Cascade did not argue that legislative intent could be gleaned from its failure to amend the statute. Cascade, only argued that the proposed amendment indicated including the provision of services in the statute is properly a legislative function.