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STATE OF WASHINGTON
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NO. 81920-3

IN THE
SUPREME COURT OF THE STATE OF WASHINGTON

ANDREW JAMES CLAYTON

Respondent,

v.

MARY KAY WILSON,

Appellant.

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Appeal from the Superior Court of Washington
for King County
(Cause No. 04-2-14443-4 SEA)
Court of Appeals, Division One
(No. 57891-0-I)

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SUPREME COURT
STATE OF WASHINGTON

ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

Andrew Clayton was 8 years old when he was first employed by the Wilsons doing yard work for their community rental property business. Petitioner's husband used this employment to groom Andrew and then to commit the molestation and rapes that would destroy his adolescence. These assaults were always committed in close connection with the community business as the extensive record below documents.

After the rape and molestation was discovered in December of 2002 and Mr. Wilson was jailed, he and his wife, petitioner Mrs. Wilson, quickly conspired to fraudulently transfer all of their non-exempt community assets to Mrs. Wilson to keep them from the reach of Andrew Clayton and other young boys Mr. Wilson had molested. The fraud involved was so clear that the trial court and the Court of Appeals agreed the transfers were fraudulent under four separate and distinct legal bases.

Mrs. Wilson continues her efforts through this Petition to keep as much of the substantial community assets as possible out of the reach of the real victim here, Andrew Clayton. Her Petition manufactures conflicts with Washington caselaw that do not exist. She distorts the facts to make her appear to be a victim, but her fraudulent conspiracy with her husband and the horrible facts of the molestation and rape of this young boy

forcefully underscore the propriety of making sure Andrew is fairly compensated for the harm done to him.

This case was tried to the bench before the Honorable Theresa Doyle over 10 days of trial that included 12 lay witnesses and 7 expert witnesses generating 1,527 pages of trial transcript. The Court of Appeals upheld every finding and conclusion Judge Doyle made as well supported by the record.¹

Contrary to what petitioner argues, the Court of Appeals opinion serves the public interest justifiably concerned with the sexual assault of minors. When a community business is used to accomplish a spouse's sexual predatory acts, it is reasonable to make community property available to pay for the damages caused by such acts. The public also has a great interest in defeating fraudulent attempts to transfer property to make it unavailable to victims of torts. The petition should be declined.

II. COUNTER-STATEMENT OF THE FACTS

A. Employment And Years Of Abuse.

Andrew and his family moved to a home owned by the Wilsons when Andrew was seven. Report of the Proceedings January 3, 2006 (hereinafter RPIV) 42. At age 8½ Andrew began doing yard work for the

¹ The Court of Appeals clarified that the Judgment was not applicable to or recoverable from Mrs. Wilson's separate property. We do not request review of that clarification.

Wilson's at their home, and at their various rental properties, for which he was paid. RPIV 45. Andrew was 9 the first time Douglas Wilson physically touched him. Andrew had accompanied Mr. Wilson to the Wilson property in Monroe to assist with yard work. Mr. Wilson gave Andrew a back massage over his clothing after the work was concluded. RPIV 48-9. The next few visits to the Monroe cabin included yard work followed by Wilson massaging Andrew's back over his clothing, and then paying him for the work done. RPIV 50. The physical contact progressed to Wilson having Andrew remove his shirt while Wilson gave him a back rub, and also began occurring at the Wilsons' Kenmore home. RPIV 50. The routine was always the same: work, massage, payment. RPIV 51. At the Kenmore home, Andrew was required to go into the house at the end of the work day to return the tool shed keys and to be paid. RPIV 52.

Mr. Wilson's contacts progressed to requiring Andrew to remove his pants and receive full body massages. He then had Andrew remove his underwear for the massages. Each progression in abuse started at the cabin in Monroe and then also occurred at the Kenmore home, and later at property owned by the Wilsons in Seabeck. RPIV 53, 59. Wilson escalated to arousing Andrew by brushing against Andrew's genitals, and then masturbating Andrew. RPIV 54. Wilson started masturbating Andrew

when he was 10½, and began performing oral sex on Andrew when Andrew was age 11 to 12. RPIV 55, FOF 4.² Wilson later included removing his own clothing during the molestations, and at age 13 Andrew was required to masturbate Wilson. RPIV 54, 56. On two occasions at the Kenmore house, Wilson made Andrew perform oral sex on Wilson. RPIV 57.

Wilson molested Andrew in conjunction with Andrew performing yard work, the frequency of which varied depending on the work needed, but occurred regularly from the time Andrew was 10 until age 16. RPIV 58, 104. The sexual assaults only happened in conjunction with Andrew doing yard work for the Wilsons. RPIV 58; RPVI 183.

B. Andrew Clayton Suffered Severe And Permanent Emotional And Psychological Harm.

Prior to being molested, Andrew was a happy, fun loving child who played with friends and rode bikes. RPIV 42, RPVI 162. During the years of abuse, Andrew experienced an array of negative emotions. He was scared when the assaults began in Monroe, and felt vulnerable and alone. RPIV 61. He told no one what Mr. Wilson was doing, and then felt extreme guilt for not disclosing the abuse to his mother. RPIV 62.

Andrew has experienced severe anxiety since disclosing the abuse. He vomits in the mornings, has difficulty concentrating, misses work on

² The court's Findings of Fact and Conclusions of Law (FOF) are found at CP 844-862. Hereinafter, respondent Clayton will cite to the individual Finding, using FOF.

occasion, and doesn't want to go to work. RPIV 68, 70. The vomiting occurs every day of the week and became so severe that he threw up pieces of skin/tissue. RPIV 71-72.

Psychologist Dr. Robert Wheeler evaluated Andrew and found Andrew's early development, pre-abuse, was normal, and determined Wilson's abuse of Andrew occurred during the major formative years when personalities are formed. RPIV 96, 101, 105, 129, 130. Because the abuse started when Andrew was age 9½ to 10, and continued through most of his adolescence, it altered the course of Andrew's development as a person and the development of his personality in harmful ways. RPIV 104-5, 138-9. The years of abuse have rendered him permanently unassertive, lacking self-confidence, and excessively worried and apprehensive. RPIV 141, 143.

Dr. Wheeler diagnosed Andrew as having Axis I mental disorders with both acute and chronic characteristics. The disorders are characterized predominantly by symptoms of anxiety and depression. RPIV 105. The mental disorders are Post Traumatic Stress Disorder, chronic with delayed onset, and Adjustment Disorder with Depressed Mood. RPIV 122.

The impact on Andrew's vocational functioning includes a lack of self-confidence, fear of making mistakes, difficulty advocating for himself and asserting himself in the world of work. As a plumber, he will struggle. He will have a hard time advocating for himself and being assertive. Because of the acute symptoms of anxiety, he will have difficulty working. RPIV 114, 184, FOF 20, FOF 21, FOF 22, RPV 103.

C. Mr. And Mrs. Wilson Fraudulently Transferred Substantially All Non-Exempt Assets From Mr. Wilson To Mrs. Wilson Within Weeks Of Mr. Wilson's Arrest.

Mr. Wilson was arrested for sexually assaulting Andrew Clayton on December 5, 2002. RPIII 69-70. He admitted sexually assaulting Andrew to Mrs. Wilson when she visited him in the King County Jail on December 7, 2002 and told her there were other victims. RPIII 68; RPVIII 166; RPIX 124-125; FOF 8.

Mr. Wilson was released from custody on December 9, 2002 and returned to the family home to talk to Mrs. Wilson. RPVIII 169; RPIX 126; FOF 9. They agreed to file for divorce and to give Mrs. Wilson all their assets. RPVII 42-43; RPVIII 172-173; RPIX 126-127; FOF 9.

Mrs. Wilson contacted Victoria Smith, a divorce attorney, on December 10, 2002 and scheduled an appointment for the next day to initiate an agreed dissolution of the Wilsons' marriage. RPVIII 174; FOF 10. Prior to the execution of the property settlement agreement, both Mr. and Mrs.

Wilson knew that Andrew Clayton, and perhaps other victims of Mr. Wilson's past child sex abuse, had claims for damages from that abuse. RPIX 119-124; FOF 30.

Ms. Smith worked the ensuing weekend and prepared a property settlement agreement in accordance with the decisions reached at the December 11th meeting. RPV 143; FOF 12. Mrs. and Mr. Wilson, respectively, signed the property settlement agreement on December 19 and 20, 2002. RPV 142; FOF 12. The transfer of the community interest in the Wilsons' property from Mr. Wilson to Mrs. Wilson was accomplished through the execution of their property settlement agreement on or about December 20, 2002. RPV 144-145; FOF 26; Trial Exhibit 13.

The transfer of community, personal and real property through the property settlement agreement was a transfer of substantially all of Mr. Wilson's personal and real property community assets to Mrs. Wilson. RPVII 10; RPIX 128; FOF 31. Mrs. Wilson's own expert accountant, Roland Nelson, determined 98% of the non-exempt personal and real community property was distributed to Mrs. Wilson. RPIX 43; FOF 31. Mabry DeBuys is a family law attorney who has handled over 750 dissolution cases, each with total assets at or exceeding \$2,000,000. RPIX

208; FOF 34. Ms. DeBuys testified that the property division here was very skewed and not fair and equitable. RPIX 212; FOF 34.

After the property was transferred, Mr. Wilson continued to live on one of the transferred properties – Seabeck property – without paying rent and with no express rental agreement. RPIX 96; FOF 28. He also continued to maintain all of the transferred properties without compensation from Mrs. Wilson until his incarceration. RPIX 11, 66; FOF 28. Mrs. Wilson prepared Mr. Wilson's 2003 income tax return, as she had always done. RPIX 91; RPIX 92; FOF 28. She spoke at the sentencing hearing, asking for a reduced sentence. RPIX 105-106; 108-109; FOF 28. She visited Mr. Wilson in prison approximately monthly. RPIX 138; FOF 28. She asked the Department of Corrections to transfer him to Monroe to be closer to the family. RPIX 137; FOF 28.

III. ARGUMENT

A. **The Court Of Appeals Relied Upon Both The Reasoning And Holding In *deElche v. Jacobsen*.**

Petitioner claims the Court of Appeals opinion conflicts with *deElche v. Jacobsen*, 95 Wn.2d 237 (1980), but the Court of Appeals actually relies heavily upon that opinion and carefully analyzes the facts of this case in light of *deElche* and other Washington caselaw. Petitioner

attempts to build her case by first mischaracterizing the facts and then by ignoring the relevant half of the *deElche* holding.

Petitioner claims the molestation and rape of Andrew Clayton is “indistinguishable” from *deElche*, but that obviously is not true. *DeElche* did not involve sexual assaults committed in the course of managing a community business. *DeElche* did not involve sexual assaults upon a young child employed in the community business. *DeElche* did not involve years of abuse all connected in time, place, activity, and opportunity with the community business, committed by an owner/manager of that business.

The Court in *deElche v. Jacobsen, supra*, was concerned with the general approach to community liability and the recovery of victims for torts committed by a spouse. The court modified the remedy for such torts *where the community was not implicated* in order to reduce the injustice to tort victims from inability to access any of the community property for their recovery. *Id.* That decision, however, did not alter the test for community liability for a spousal tort, and it is that test that the trial court here used and which was affirmed by the Court of Appeals.

Before and after *deElche*, community liability for a spousal tort existed where the tort either was committed for the benefit of the community

or committed in the management of the community business. *Id.* The latter was the basis for liability here but petitioner acts as if that basis for liability does not exist.

Both the trial court and the Court of Appeals carefully evaluated the connection between these sexual assaults and the community business. Andrew Clayton was placed in the care and control of Mr. and Mrs. Wilson for years, beginning at 8 years old. The grooming of his trust in Mr. Wilson occurred completely within the context of his employment in the community rental property business. When massages initiated the actual molestation, Mr. Wilson gave them under his authority as employer of his young worker for “muscle relief” from the hard work. Every molestation and rape occurred when Andrew Clayton was there for performance of yard work and occurred before he was paid for that work. The Court of Appeals agreed with Judge Doyle that these torts occurred while the tortfeasor spouse was participating in the management of the community’s real property. *Court of Appeals opinion* at p. 11.³

Petitioner claims any reliance upon *LaFramboise v. Schmidt*, 42 Wn.2d 198, 254 P.2d 485 (1953) by the trial court or the Court of Appeals

³ We argued that determination of whether an act occurred within the course and scope of employment was a question of fact for the trier of fact. *Dickinson v. Edwards*, 105 Wn.2d 457, 466-467 (Wash. 1986); *Balise v. Underwood*, 62 Wn.2d 195, 381 P.2d 966 (1963). The Court of Appeals determined this was a legal question reviewed de novo but still came to the same conclusion as the trial court. *Court of Appeals opinion* @ p. 5.

is “misguided” but *LaFramboise* is the closest Washington fact pattern to the present case. *LaFramboise* involved molestation of a 6 year old child under the care and custody of a community business. *Id.* at 199. There, the appellant also argued that the “secret and concealed” molestation could not have been within the course and scope of the husband’s employment by the community. *Id.*

LaFramboise used the same legal test upheld in *deElche*, asking whether the tort (1) results or is intended to result in a benefit to the community or (2) is committed in the prosecution of the business of the community. *Id.* at 200.

Mrs. Wilson suggests that *deElche* overruled *LaFramboise*, but it did not. As the Court of Appeals observed in its opinion, Professor Harry Cross directly addressed the facts of *LaFramboise* in his seminal article: The Community Property Law in Washington, 61 Wash.L.Rev. 13, 139 (1986). Specifically, he analyzed pre-*deElche* cases to determine whether they likely would continue to be decided similarly under the approach set forth in *deElche*. He concluded community liability probably would still be found under the facts of *LaFramboise*:

“*LaFramboise* involved indecent liberties taken during the care of a minor child; the reasoning that there was a community enterprise being conducted during which the tort occurred probably leaves the community liability intact.”.... at p. 139

Other cases cited by Mrs. Wilson as in conflict with the Court of Appeals opinion were properly found by the Court of Appeals to be distinguishable from the facts here. For example, Mrs. Wilson cites *Francom v. Costco*, 98 Wn.App. 845, 991 P.2d 1182 (2000), but that case did not involve employment of minor. It also did not involve a “community business.” Rather, it was a sexual harassment case involving adults where the only connection between the tortfeasor’s actions and the marital community were the tortfeasor’s earnings.

The vicarious liability and *respondeat superior* cases are further distinguishable from the present fact because they did not involve high level managers of the employer. As the Court of Appeals noted⁴, if any employment case is applicable here, it is *Glasgow v. Georgia-Pacific Corp.*, 103 Wn.2d 401, 407 (1985).⁵ There, this Court held liability is automatically imputed to the employer “if an owner, manager, partner, or corporate officer personally participate[d]” in creating the hostile work environment. Mr. Wilson used his position as “master” of Andrew to cause great harm.

⁴ Court of Appeals opinion at p. 13.

⁵ *Glasgow* is a sexual harassment case, just as is *Francom* referred to above and relied upon by Mrs. Wilson.

B. The Wilsons' Fraudulent Transfer Of Community Property.

1. Washington Law Does Not Condone Fraudulent Transfers Of Property Between Husbands And Wives.

Essentially, petitioner argues that it does not matter if she and her husband intended to fraudulently transfer all their non-exempt assets out of reach of tort victims by transferring them all to her. She claims that as long as this was done in connection with a dissolution, nothing can be done about it. There is no authority for this sweeping claim.

We note the petition only requests review of two of the four bases used by the trial court and affirmed by the Court of Appeals to hold the transfers of property fraudulent.⁶ Even one such conclusion would invalidate the transfer as to creditors.⁷ RAP 13.7(b) limits review to the specific fraudulent transfer issues raised by petitioner. We will address petitioner's claims even though a reversal on these issues would not change the result here.

2. Actual Fraud.

Actual fraud requires evaluation of "good faith" in the transfer. Judge Doyle found the Wilson property transfers lacked good faith even if the burden was on Mr. Clayton to prove lack of good faith. However,

⁶ The Court of Appeals specifically affirmed constructive fraudulent transfer under RCW 19.40.041(a)(2) and RCW 19.40.051(a), Court of Appeals opinion @ p. 17-18.

⁷ Petitioner signals her motive in contesting the fraudulent nature of the transfers in her petition when she complains that invalidating the transfers would allow creditors to claim against the present value of the assets versus their value at the time of the transfers. We agree that is true, but believe this is an appropriate penalty for the Wilsons to pay for fraudulently trying to put their assets out of the reach of creditors.

Judge Doyle concluded that because the Wilsons were married at the time of transfer, Washington law required they prove they acted in good faith. This “good faith” burden issue is the reason the trial court and Court of Appeals cite to *Jones v. Jones*, 56 Wn.2d. 328, 353 P.2d 441 (1960).

3. There Is No Conflict With *Jones v. Jones*.

Petitioner’s claim that the Court of Appeals decision conflicts with *Jones* is erroneous. The Court of Appeals expressly followed *Jones*. The court in *Jones* case applied RCW 26.16.210 and found the burden to prove good faith was on the ex-wife defending a transfer of property to her.⁸

Petitioner argues that her “good faith” is identical to the wife in *Jones*. That argument ignores the vastly different sequence of events surrounding the transfer of assets and the continuing relationship between Mr. and Mrs. Wilson after that time. Mrs. Wilson apparently is arguing that the facts here *require* a finding of good faith on her part. Such an argument is specious.

Petitioner tries to use the *Jones* case and a predecessor case, *In re Bubb’s Estate*, to argue that since transfers between spouses are not “presumptively fraudulent,” it is error to place the burden on a spouse to prove a transfer was made in good faith. This directly misreads *Jones*,

⁸ “In every case, where any question arises as to the good faith of any transaction between husband and wife, whether a transaction between them directly or by intervention of third person or persons, the burden of proof shall be upon the party asserting the good faith.”

which, while agreeing interspousal transfers are not “presumptively fraudulent, expressly finds the appellant ex-spouse had the duty to prove good faith:

We think appellant sustained the burden of proving the good faith of the transfers to her as imposed by RCW 26.16.210...

4. Evaluation Of Good Faith.

Whoever has the burden of proving good faith under Actual Fraud, the UFTA focuses on the same factors. The trial court found the transfers lacking in good faith even if the burden was on Mr. Clayton to show such lack.

Our counter-statement of facts refers to the record and attendant Findings of Fact related to the transfer of assets. Petitioner claims innocence despite the damning circumstantial evidence, but the trial court assessed the relevant factors, including the credibility of the Wilsons’ protests of “good faith”, and found for Mr. Clayton. The UFTA factors suggesting bad faith expressly include facts present here: the relationship of the people making the transfer, to events surrounding the timing and manner of the transfer, to the transferor/ee’s knowledge of the existence of multiple tort claims, to the rush to transfer, to the maintaining of a relationship after the transfer, and to lack of reasonable value given in return as circumstantial evidence of good or bad faith in the transfer.

⁹ *Jones v. Jones*, 56 Wn.2d 328, 339 (Wash. 1960).

5. Joint And Several Liability As To Mr. Wilson's Separate Property And The Community Property Is The Correct Characterization Of The Judgment.

Petitioner follows her criticism of the Court of Appeals in regard to the *Jones* case with a confusing and mistaken attack on the Court of Appeals clarification of the joint and several nature of the underlying Judgment. The Court of Appeals clarified that the Judgment is only applicable to (a) Mr. Wilson's separate property and (b) community property from the marriage. Mrs. Wilson's separate property (which is not former community property) is not at risk. The Judgment is joint and several as to (a) and (b), meaning the Judgment may be executed against either or both properties.

Petitioner claims joint and several liability conflicts with *deElche*, but she is wrong. The several liability referred to in *deElche* is for the entire harm. Under long-standing Washington law, including *deElche*, for a community tort Mr. Clayton could collect the Judgment against either Mr. Wilson's separate property or the community property or both at his option.

The Court of Appeals clarification expressly protects Mrs. Wilson's separate property that was not formerly community property and that is the only protection she is due.

6. Conclusive Common Law Fraud.

The second fraudulent transfer claim raised in the Petition is the

claim of “Conclusive Common Law Fraud.” While there may be a case where this issue is important, this is not the case. The trial court and Court of Appeals upheld three other bases for fraudulent transfer, two of which are not even before this Court because they are not raised in the Petition.

In Washington, it has long been the common law rule that where one spouse transfers assets to the other, *and the transferring spouse is insolvent*, “the act of transferring the property is conclusive evidence of fraud, and the intent is presumed from the act.”¹⁰ Davison v. Hewitt, 6 Wn.2d 131, 135-6, 106 P.2d 733, 735-6 (1940).¹¹ Fraud does not arise simply from the act of transfer, but from the transfer in combination with the insolvency of the transferring spouse.

RCW 19.40.902 (UFTA) states that prior principles of law relating to fraud and equity continue to supplement Chapter RCW 19.40 unless “displaced” by the provisions of the Chapter (emphasis supplied).¹²

¹⁰ In the face of “overwhelming evidence,” defense counsel admitted both that Andrew Clayton was a creditor at the time of the transfer and that Mr. Wilson was insolvent as a result of his transfer of community property to Mrs. Wilson. FOF 38, 40.

¹¹ Tegland’s 1997 edition of Washington Practice presents this principle as current law: “Washington law has always reflected a concern that spouses will make agreements in contravention of the rights of creditors...Due to this concern that spouses may use their agreements in an effort to avoid creditors, the following rules apply: ...

2. If the transferring spouse is insolvent, the agreement and transfer are void, irrespective of whether or not the motive was to defraud creditors. Fraudulent intent is conclusively presumed.”

Washington Practice, Vol. 19, Ch. 15, §15.5 (1997).

¹² See *Freitag v. McGhie*, 133 Wn.2d 816, 947 P.2d 1186 (1997) (holding that prior case law providing a one year discovery rule for fraudulent transfers supplemented the statute of limitations language of RCW 19.40.091(a).

RCW 19.40 et seq. has no specific provision dealing with transfers between husband and wife. The UFTA does consider “insider” transfers in general, but the definition of insider is broad and encompasses not only relatives, but partners, affiliates, officers, directors, etc. The reasoning behind the Conclusive Common Law Fraud rule applies expressly to husbands and wives.

C. Does A Conclusion Of Fraudulent Transfer Automatically Set Aside A Dissolution Decree As Alleged By Petitioner?

The trial court specifically declined to do set aside the dissolution. For example, Conclusion of Law No. 9 refers to “formerly community property,” and to both the property settlement agreement and to the dissolution decree.¹³

Judge Doyle did find the transfers fraudulent under the UFTA and the common law and voided them accordingly. However, there is no authority cited indicating this voiding affects the division of property as between Mr. and Mrs. Wilson. The effect of the voiding of the transfers without modifying the dissolution is to limit the effect of the voiding to the nature and extent the assets are now reachable by creditors of the community. The effect Mrs. Wilson is trying to avoid is consideration of

¹³ 9. Mr. and Mrs. Wilson should be enjoined from any further disposition or encumbrance upon formerly community property distributed as part of their property settlement agreement and dissolution decree unless approved by further Order of this Court. Mr. and Mrs. Wilson may use available cash funds or the existing line of credit on the Kenmore residence to pay ordinary costs of daily living until Mr. Clayton's Judgment is satisfied.

the current value of those assets versus the value otherwise “locked in” as of the time of the fraudulent transfer to her in 2002.

Even if the result was a voiding of the transfer, other Washington cases finding fraudulent transfer between husband and wife have voided such transfers, ordered such property sold, and otherwise fashioned a remedy directed at the property transferred. See, e.g. *Davison v. Hewitt*, *supra* at 137. Even *Jones*, *supra*, and *In re Bubb’s Estate* cited by petitioner affirm that (*emphasis added*)

this court has scrutinized, with particular care, transactions between husband and wife and agreements affecting their property rights, *and, if the facts warrant, has set aside such agreements...*¹⁴

The law does not require a change in the dissolution agreement here. The issues raised by Mrs. Wilson in this respect are illusory. Her dissolution may remain in place. The former community property, however, is reachable by creditors whether in her possession or in the possession of Mr. Wilson as if the transfer did not occur.

D. The Court’s Award Of Future Earnings Loss Was Consistent With Washington Law.

Petitioner’s inclusion of this “issue” is an insult to the review process. The 1910 case alleged to be “in conflict” with the Court of Appeals decision merely stands for the obvious and long accepted principle that earnings loss damages are the difference in earning capacity

¹⁴ *Jones*, *supra* at p. 337 citing *In re Bubb’s Estate*, 53 Wn.2d 131, 134 (Wash. 1958).

before and after an accident.¹⁵ Petitioner alleges that Andrew failed to prove his “pre-injury” capacity.

Andrew’s “pre-injury” age was 9 years old. Expert testimony established the years of abuse and rape will seriously and detrimentally impact his ability to succeed vocationally. Such testimony formed a substantial foundation for an award of future wage loss/loss of earning capacity.¹⁶ The attack on this aspect of the Judgment and Court of Appeals opinion is completely without merit, without authority, and frivolous.

IV. CONCLUSION

For the foregoing reasons, the Petition for Review should be DENIED.

RESPECTFULLY SUBMITTED this 15th day of August, 2008.

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¹⁵ *Cook v. Danaher Lumber Co.*, 61 Wn. 118, 112 P. 241 (1910).

¹⁶ RPVI 7, 12, 14, 15, 19-21, 54, 64, 81, 92, 94, 95-97, 98-99, 100-101, 103-104, 114, 130, and 130.