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SUPREME COURT NO. 85679-6

SUPREME COURT
STATE OF WASHINGTON

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In Re: THE ESTATE OF ASHLIE BUNCH:

AMY KOZEL,
Petitioner

v.

MCGRAW RESIDENTIAL CENTER d/b/a
SEATTLE CHILDREN'S HOME and
THE ESTATE OF ASHLIE BUNCH,
Respondents.

**RESPONDENT MCGRAW RESIDENTIAL CENTER'S
RESPONSE TO BRIEF OF AMICUS CURIAE
FILED BY WSAJ FOUNDATION**

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I. IDENTIFICATION OF RESPONDENT

Respondent McGraw Residential Center d/b/a Seattle Children's Home ("McGraw"), the defendant in the underlying case.

II. INTRODUCTION

Amicus Curiae WSAJ Foundation submits that RCW 4.24.010 "gives parents the right to bring an action for injury or death of their child," and argues that requiring a parent to follow civil rule joinder requirements denies the joining parent "access to courts." In framing the argument this way, the Foundation implies the statute was intended to provide every parent standing to file a loss of consortium claim. The plain language of the statute indicates this is not the case. Only a parent who has regularly contributed to the support of their child may maintain or join an action for loss of consortium.

The Foundation next conflates holdings providing a liberal, or remedial, construction of the prerequisites for recovery under wrongful death statutes with the proper interpretation of the phrase "has regularly contributed" under the parental loss of consortium statute. The analyses are not equivalent, however.

The Court of Appeals in this case appropriately construed the language of the statute, consistent with the express legislative intent, to

hold that, on the record created by Kozel in the trial court, her motion to join in the underlying action was properly denied.

III. SUMMARY OF RESPONSE TO AMICUS BRIEF

WSAJ Foundation has raised a new issue that joinder of a second parent in a loss of consortium claim under RCW 4.24.010 should be “a matter of right” and “automatic.” This theory was never raised by Appellant Kozel, was never briefed or argued in the lower courts, and is not properly before this Court. Except in rare circumstances, the Court should decline to consider new arguments raised solely by amicus curiae.

Even if considered, the Foundation’s new argument is unsupported by case law or legislative intent. Citing cases where would-be intervenors failed to comply with procedural requirements for joinder under Civil Rule 19 such that their claims were barred, the Foundation claims there are “procedural traps” in RCW 4.24.010. However, no court has held that joinder under RCW 4.24.010 is automatic. “[U]nless express procedural rules have been adopted by statute or otherwise, the general civil rules control.” *Neighborhood Alliance of Spokane County v. County of Spokane*, --- P.3d ---, 2011 WL 4485941, at *5 (Wash. Sept. 29, 2011). Here, Kozel moved for joinder under Civil Rule 19, and CR 19 controls.

Finally, WSAJ Foundation’s argument that the Court should apply a liberal construction to the interpretation of whether a parent “has

regularly contributed” to their child’s support is unpersuasive. The Foundation analogizes to cases where the Court recognized a more “inclusive” definition of children or which broadened the definition of a parent’s financial dependency on their adult child. In ruling on the side of inclusion in those cases, the Court did not adopt either a strict or liberal construction standard for loss of consortium statutes generally, but concluded that social policy considerations favored inclusion. Contrasted with those holdings, the record in this case reveals Kozel did not regularly contribute to Ashlie’s support after 2003, when she sent Ashlie to live with her father, Stephen Bunch, in Washington. The extent of Kozel’s contact with thereafter was stated by Kozel in three sentences:

After I sent Ashlie to live with Stephen, I was able to stay in contact. I spoke with her regularly by phone, at least once a week, until she was admitted to inpatient facilities. I sent her Christmas presents.

CP 57. The threshold in RCW 4.24.010 is not whether the parent had regular “contact” with her child, but whether the parent “has regularly contributed” to the minor child’s “support.” On this record, the trial court correctly deemed Kozel’s limited contact with Ashlie between 2003 and 2008—based on Kozel’s own declaration—did not rise to the level of regularly contributing to support. To find otherwise would render meaningless the “has regularly contributed” language of RCW 4.24.010.

IV. ARGUMENT

A. Joinder Is Not a Matter of Right Under Parental Loss of Consortium Statute.

1. New Argument Should Not Be Considered.

The general rule is that issues in amicus briefs raising new arguments—arguments not addressed by the parties—will not be considered. See *Citizens for Responsible Wildlife Mgmt. v. State*, 149 Wn.2d 622, 631, 71 P.3d 644 (2003). In *Coburn v. Seda*, 101 Wn.2d 270, 274, 677 P.2d 173 (1984), the Washington State Trial Lawyers Association (the predecessor name to WSAJ Foundation), filed an amicus brief to urge a new procedure which would require *in camera* review whenever the statutory protection of RCW 4.24.250 (regarding health care quality assurance committee information) is asserted. This Court declined to consider the argument as it was raised only by amici. *Id.* The Court similarly should disregard the Foundation's newly raised argument regarding procedural issues under RCW 4.24.010. The argument was never made by appellant Kozel. Kozel has conceded she had to satisfy CR 19 (the rule under which she moved to join), and asserted she did so.

The Foundation relies on *Maynard Investment Co. v. McCann*, 77 Wn.2d 616, 465 P.2d 657 (1970), for the proposition that in certain circumstances, the Court has considered arguments of amici not raised

below. However, those circumstances do not apply here. The parties have not ignored a statutory mandate or an established precedent that may warrant deviation from the rule that issues and theories not presented to the trial court should not be considered for the first time on appeal. *Id.* at 622. Nor are there are concerns over deprivation of life or liberty or questions of a fair or impartial trial. *Id.* Recognizing that “[c]ourts are created to ascertain the facts in a controversy and to determine the rights of the parties according to justice,” Respondent respectfully submits that in this matter, the rights of the parties are appropriately served by the Court considering the issues raised below. *See id.* at 623. Any new arguments raised by amici should not be considered.

2. Joinder Is Not a Matter of Right Under RCW 4.24.010.

Even if considered, the new argument should be rejected. The Foundation would ask the Court to interpret the statute such that any parent automatically has standing to join in an action for loss of consortium. However, the language of RCW 4.24.010 does not support the automatic joinder argument. “[U]nless express procedural rules have been adopted by statute or otherwise, the general civil rules control.” *Neighborhood Alliance of Spokane County v. County of Spokane, supra.* There are no express procedural rules in RCW 4.24.010 which would trump CR 19 requirements. The statute allows a parent of a minor child

who has regularly contributed to the support of his or her minor child to “maintain” or “join as a party an action as plaintiff” for the injury or death of the child. RCW 4.24.010.

There is nothing in RCW 4.24.010 which adopts express procedural rules in contravention of the civil rules for intervention. Indeed, the Legislature is presumed to know the difference between initiating and joining as a party in an action. “It is well settled that where the Legislature uses certain language in one instance but different, dissimilar language in another, a difference in legislative intent is presumed.” *Sheehan v. Cent. Puget Sound Reg’l Transit Auth.*, 155 Wn.2d 790, 811, 123 P.3d 88 (2005) (citing *Millay v. Cam*, 135 Wn.2d 193, 202, 955 P.2d 791 (1998)). *See also Donohue v. Nielson*, 161 Wn. App. 606, 612, 255 P.3d 760 (2011) (a preeminent canon of statutory interpretation requires the court to “presume that the legislature says in a statute what it means and means in a statute what it says there”); *Clallam County Citizens for Safe Drinking Water v. City of Port Angeles*, 137 Wn. App. 214, 221, 151 P.3d 1079 (2007) (courts presume the legislature says what it means and means what it says. The Legislature is fully capable of crafting statutes that provide for intervention as a matter of right, has done

so in other instances,¹ and declined to do so for RCW 4.24.010. Reading intervention as a matter of right into RCW 4.24.010 conflicts with the expressed intent of the Legislature that parental loss of consortium claims are permitted only for parents who had significant involvement in the minor child's life. *See* Laws of 1998, Ch. 237, §1.²

The case *Philippides v. Bernard*, 151 Wn.2d 376, 88 P.3d 939 (2004), is instructive. There, the Court declined to modify the definition of the word "support" as it would result in redefining who has standing to sue under the statute. *Id.* at 384-85. In this case, the Foundation is asking the Court to impose a significant change in the law by implication if automatic joinder is read into the statute. The Court should decline to do so. *See id.* at 385 (citing *Schumacher v. Williams*, 107 Wn. App. 793, 801, 28 P.3d 792 (2001) (internal citation omitted)).

On its face, RCW 4.24.010 provides a parent who meets the threshold that she "has regularly contributed to the support of ...her minor child" may maintain or join in an action. Where a parent initiates the action, whether she may maintain the action could be challenged in a

¹ *See, e.g.*, RCW 51.24.030(2) (providing for intervention by the Department Labor and Industries or self-insurers in actions brought by an injured work or beneficiary against a third party).

² In *Philippides v. Bernard*, the Court addressed the intent section of RCW 4.24.010, noting that the statute was changed in 1998 to address the need for parents to have "significant involvement" in a minor child's life in order to recover under the statute. 151 Wn.2d 376, 384, 88 P.3d 939 (2004).

summary judgment motion. This was the procedural posture of *Blumenshein v. Voelker*, 124 Wn. App. 129, 100 P.3d 344 (2004).

A parent who seeks to join in an action similarly has to show she “has regularly contributed to the support of his or her minor child.” As in any case where a person seeks to join in a lawsuit, the joining parent must satisfy the requirements of the civil rule under which joinder is sought. There is nothing inherently unfair in this. In any matter where a second plaintiff comes along, he or she would have to present evidence to satisfy the civil rules providing for joinder. The Foundation would have the Court give preference to parents asserting loss of consortium claims over parties who might join in other types of actions.

The Foundation claims procedural “traps” require express guidance from the Court, citing *Alexander v. Food Services of America*, 76 Wn. App. 425, 889 P.2d 231 (1994). In that case, a minor child of divorced parents was injured and the custodial parent (father) filed a personal injury action and provided notice to the mother under RCW 4.24.010. The mother filed a notice of joinder six months later, but did not otherwise participate in the case or attend the trial on the father’s suit. The trial court granted summary judgment dismissing the mother’s claim and the Court of Appeals affirmed, noting the mother failed to properly join the father’s suit or appear at trial. The Foundation appears to rely on *dicta*

that the Court of Appeals was concerned about lack of clarity in RCW 4.24.010, but this was not the basis for its holding. Rather, the court concluded that the trial court acted within its discretion because the mother failed to appear at trial, despite her knowledge of the trial date.³

The Foundation cites *Wrenn v. Spinnaker Bay Homeowners Association*, 60 Wn. App. 400, 804 P.2d 645 (1991) to support its argument that “notice pleading should suffice.” In *Wrenn*, the custodial parent (mother) filed suit for wrongful death of the minor child and properly notified the father. The father appeared on the twenty-third day after notice but failed to serve the defendant with the notice for two years and failed to plead his claim until twelve days before trial. The appellate court found this to be failure to comply with the requirements of RCW 4.24.010. The *Wrenn* court noted that “[d]eclaring one’s intent to join in an action as a plaintiff ... does not fulfill the requirements of CR 8(a),” but did not hold that notice pleading would be sufficient to effectuate a joinder. *Id.* at 405. Rather, the court held that once the mother provided notice to the father, it was incumbent on the father to then satisfy all the joinder requirements within the allotted 20-day time period.⁴

³ The court in *Alexander* also noted that a determination of joinder (in that case, an alleged improper and untimely joinder) should be made prior to trial. 76 Wn. App. at 429.

⁴ Neither *Wrenn* nor *Alexander* held that joinder is automatic. In *Alexander*, the mother filed a “notice of joinder” but failed to litigate her claim (or attend trial). In *Wrenn*, the

The Foundation also cites *Westerman v. Cary*, 125 Wn.2d 277, 303-4, 892 P.2d 1067 (1994), but that case is inapposite. *Westerman* involved the standards for permissive and mandatory intervention under CR 24. However, CR 24 is not at issue in this case.⁵

3. “Access to Courts” Argument Is Inapposite.

The Foundation cites *Putnam v. Wenatchee Valley Medical Center*, 166 Wn.2d 874, 126 P.3d 374 (2009) for the proposition that a parent should be permitted join in a loss of consortium as a matter of right in order to have “access to courts.” *Putman* is inapposite. In that case, the Supreme Court reversed dismissal of plaintiff’s medical malpractice claim where she failed to file a certificate of merit from a medical expert per an earlier version of RCW 7.70.150. In *Putman*, the requirement to submit medical testimony supporting the claim prior to discovery violated the plaintiff’s right of access to courts. There is no such issue with respect to a parent establishing the threshold of having “regularly contributed” to the child’s support. The threshold in RCW 4.24.010 does not restrict access

father filed a notice stating he was joining pursuant to RCW 4.24.010 and CR 18 and CR 19, but his failure to serve the defendants until two years after the notice was fatal to his claim. Neither *Wrenn* nor *Alexander* challenged the joinder due to the parent failing to satisfy the threshold requirement under the statute to show he or she has regularly contributed to the child’s support.

⁵ As the Court of Appeals pointed out: “Kozel also claims a right to intervene under CR 24. She did not make this argument below. Consequently, we do not address it on appeal.” *Estate of Bunch v. McGraw Residential Ctr.*, 159 Wn. App 852, 868, 48 P.3d 565 (2011).

to courts. All plaintiffs must establish that they have standing to bring a claim or it will be subject to dismissal.

In this case, the civil rule under which Kozel sought to intervene was CR 19. The Foundation argues that imposing the procedures of CR 19 on a joining parent would result in an “unseemly” race to the Court and parents therefore should be able to maintain or join an action without making a threshold showing in a motion for joinder. Such a holding would allow so-called “deadbeat parents” who never contributed to their child’s support to join an action, the precise circumstance which, as Kozel herself has conceded, the Legislature sought to avoid. *See* Pet. at 11.

The Foundation’s access to courts argument also presupposes that a superior court judge cannot review evidence and make the threshold determination that the parent “has regularly contributed” to the support of the child in order to join in the action. However, it is the province of the trial judge to make factual determinations regarding parental rights including custody, child support, and relocation of children. *See, e.g., In re Marriage of Littlefield*, 133 Wn.2d 39, 46, 52, 940 P.2d 1362 (1997) (the trial court has broad discretion in developing and order a permanent parenting plan if the parents cannot agree); *In re Marriage of Fahey*, --- P.3d ---, 2011 WL 4366794, at *6 (Wash. Ct. App. Sept. 20, 2011) (the trial court has broad discretion is granting or denying relocation after

consideration of the statutory relocation factors and interests of the parties and children). A party who believes the trial court erred can, as Kozel did, appeal the ruling. In most cases, a parent who has regularly contributed to their child's emotional, psychological, or financial support easily will be able to make such a showing. In this case, the record created by Kozel is woefully inadequate, as discussed further below. The statute is not unduly burdensome and does not restrict access to courts.

B. The Court of Appeals' Construction of the "Has Regularly Contributed to the Support" Requirement Is Correct.

Preliminarily, WSAJ Foundation misrepresents the basis upon which the trial court found Kozel was not entitled to join the action under Civil Rule 19. Specifically, the Foundation claims that the trial court "ruled that Kozel failed to establish that she regularly contributed to the support of Ashlie after March 2007, when Ashlie entered inpatient facilities, until January 2008, when Ashlie died, and that she was not therefore entitled to join the action under RCW 4.24.010. The Court of Appeals affirmed, over dissent." Amicus Br. at 4. This significantly misstates the record on which the trial court and Court of Appeals found Kozel not entitled to joinder under the rule.

Kozel stated the extent of her contact with Ashlie after 2003:

After I sent Ashlie to live with Stephen, I was able to stay in contact. I spoke with her regularly by phone, at least

once a week, until she was admitted to inpatient facilities. I sent her Christmas presents.

CP 57. In her petition to the Supreme Court, Kozel abandoned her assertion that she regularly supported Ashlie during those last five years, instead arguing that there should be no temporal limitation on the construction of “has regularly supported,” and the fact that she once had custody of Ashlie was sufficient. The Foundation nonetheless now argues that Kozel’s involvement during the last five years of Ashlie’s life, after Ashlie moved to Washington to live with her father, should be considered. The trial court and Court of Appeals did consider evidence regarding Kozel’s involvement during the last five years of Ashlie’s life, and found the evidence insufficient to meet the threshold support requirement.

According to Kozel’s declaration she “spoke with [Ashlie] regularly by phone, at least once a week, until she was admitted to inpatient facilities.” CP 57. Ashlie was admitted to inpatient treatment facilities several times between 2003 and 2007 and for the last time in March 2007 until her death in 2008. The Court of Appeals summarized the record as follows: “Significantly, Kozel does not testify that she spoke with Ashlie at any time from March 2007 to the time of Ashlie’s death in January 2008.” *Estate of Bunch v. McGraw Residential Ctr.*, 159 Wn. App. 852, 861, 48 P.3d 565 (2011). Further, “the record shows that Kozel

did not provide any financial support to Ashlie after her move to Washington to live with her father in 2003. The record also shows there was only one five minute telephone communication between Kozel and Ashlie after March 2007 until her death in January 2008.” *Id.* at 862. Based on this record, the Court of Appeals concluded Kozel “provided no evidence” to show that she “regularly contributed” to Ashlie’s support after March 2007. *Id.* at 863. Further, “the record also supports the determination that she did not ‘regularly’ contribute to Ashlie’s ‘support’ between 2003 and March 2007. This failure is fatal to her claim that the trial court abused its discretion in denying her motion to intervene pursuant to CR 19 and RCW 4.24.010.” *Id.* at 863.

Kozel submitted nothing to rebut the declaration of Mr. Bunch, which stated that Kozel “did not provide any financial support from the time Ashlie came to live with me... to the time of Ashlie’s death,” and that from 2003 until Ashlie’s death, Kozel “did not have a relationship of any kind with Ashlie.” CP 69. Mr. Bunch also testified that Kozel never attempted to contact Ashlie while she was in inpatient care, which was consistent with Kozel’s own statement that she had phone contact with Ashlie “until she was admitted to inpatient facilities.” *See* CP 57, 69-70.

Kozel neither refuted Mr. Bunch’s assertions nor submitted any further information to the court regarding the nature and extent of her

purported support of Ashlie. She expressly declined the opportunity for an evidentiary hearing. CP 88-89. The paltry evidence in Kozel's declaration did not show she "regularly" contributed to Ashlie's "support" in the five years prior to Ashlie's death.

1. The Legislative History Supports the Lower Courts' Interpretation of the Statute.

The legislative history of RCW 4.24.010 evidences a need for a parent to establish regular contributions to the child. The 1973 revisions added "and the father has regularly contributed to the child's support." After *Guard v. Jackson*, 83 Wn. App. 325, 921 P.2d 544 (1996), *aff'd*, 132 Wn.2d 660, 940 P.2d 642 (1997), the statute was rewritten to address an equal protection challenge to the earlier version of the statute. However, the Legislature maintained the language "regularly contributed to the child's support," evidencing the Legislature's intent that support—whether emotional, psychological or financial—be continuous and on-going.⁶

2. The Cases Cited by WSAJ Foundation Do Not Call for Liberal Construction of the "Has Regularly Contributed" Language.

The Foundation cites several cases which either are inapposite or do not support the construction the Foundation seeks. For example, the court in *Armantrout v. Carlson*, 166 Wn.2d 931, 214 P.3d 914 (2009),

⁶ The purpose of the statute and intent of the Legislature also has been expressly addressed by the Legislature in its intent statement, which limits standing to parents with "significant involvement" in the lives of their child. *See* Laws of 1998, Ch. 237, § 1.

declined to choose between liberal or strict methodologies in interpreting the dependent-for-support requirement of the wrongful death and survival statutes. That court turned to the plain language of the statute, readings well grounded in prior judicial constructions, and dictionary definitions of words used in the statute. Using this analysis, the court held the wrongful death statute, RCW 4.20.020, allows triers of fact to consider services that have a monetary value when assessing a claimant's dependency on the decedent for support.⁷

The *Armantrout* holding does not call for a different result here. In this case, the Court of Appeals looked to the statutory terms, the relevant statement of legislative intent and relevant case authority and standard dictionary definitions to construe the statute. *Estate of Bunch*, 159 Wn. App. at 862-67. The Court of Appeals determined that the definition of support includes emotional, psychological, or financial support as stated in the legislative intent. *Id.* at 860 (citing *Postema v. Postema Enters., Inc.*, 118 Wn. App. 185, 197-98, 72 P.3d 1122 (2003)). The Court of Appeals next determined whether Kozel demonstrated that she “regularly

⁷ The court reaffirmed that parents of adult children, as second tier beneficiaries under 4.20.020, could not maintain a claim based on emotional support alone; there had to be a showing of dependency of the parent of a financial nature. *Armantrout*, 166 Wn.2d 940-41 (citing *Philippides v. Bernard*, 151 Wn.2d 376, 384-85, 88 P.3d 939 (2004) (interpreting RCW 4.24.010 to hold that the legislature's creation of a new support requirement for parents of minors that included emotional support did not abolish the financial support requirements for second tier beneficiaries in RCW 4.20.020)).

contributed” to Ashlie’s support as the statute requires. *Estate of Bunch*, 159 Wn. App. at 862-866. Because the statute did not define “regularly,” a standard dictionary definition controls, and the court cited the American Heritage Dictionary definition of “regular” as “1. Occurring at fixed intervals; periodic; regular payments. 2. Occurring with normal or healthy frequency. 3. Not varying; constant.” *Id.* at 862. The court concluded Kozel provided no evidence to show she “regularly contributed” to Ashlie’s support after March 2007, and the record supported the determination that she did not “regularly contribute” to Ashlie’s support between 2003 and March 2007.

The Foundation argues a liberal construction is supported by the 1968 case *Armijo v. Wesselius*, 73 Wn.2d 716, 440 P.2d 471 (1968), in which the court interpreted the words “child or children” in the wrongful death statute to include so-called illegitimate children. The Foundation misstates that a “liberal construction” was applied in *Armijo* (Amicus Br. at 15), but in fact, the court did not adopt either a strict or liberal construction per se but noted that judicial interpretation was required because illegitimate children are “not necessarily excluded” by the reference to children in the statute. *Id.* at 720. The court concluded that social policy considerations favored inclusion of illegitimate children.

Armijo is not on point here, where the question is how to construe the phrase “regularly contributed.” There are not the same social considerations of inclusion because the statute’s purpose was to provide recovery only to those parents who “regularly contribute” to the support of the child. The statute is intended to exclude people who happen to be parents but have minimal or occasional contact without providing regular support. By contrast, the *Armijo* court was concerned with updating the concept of “child” to address more modern day notions of families; this is also not present here as the statute addresses both married parents and separated, divorced, or unmarried parents. The question is a parent’s contribution, not his or her status as a parent.

The Foundation also cites *Klossner v. San Juan County*, 93 Wn.2d 42, 605 P.2d 330 (1980), for applying a liberal construction standard, but in that case, the court addressed construction of the wrongful death and survival statutes in a case involving unadopted stepchildren. Again, the court did not expressly adopt a method of statutory construction. The *Klossner* court expressly refused to “read into the statute matters which are not there.” *Id.* at 47 (citation omitted). Because the statute in that case did not contain any mention of stepchildren, the court concluded it would not expand the statute to include stepchildren when the legislature had not done so as it would run contrary to the intent of the legislature. *Id.* at 48.

Finally, the court in *Mitchell v. Rice*, 183 Wn. 402, 48 P.2d 949 (1935), did not opine on the issue of strict statutory construction when addressing the financial dependency of a father after the death of his adult son. In that case evidence submitted that the father's business and rental properties generated insufficient funds to sustain him provided sufficient evidence of dependency. In contrast, the record before the trial court in this case was devoid of sufficient evidence to establish Kozel's standing to join the action. Thus, *Mitchell* similarly is not instructive.

3. Too Liberal a Construction Would Render the Plain Language of the Statute Meaningless.

The liberal construction advocated by the Foundation would swallow the statutory threshold. According to the Foundation's analysis, "has regularly contributed" could apply to the parent who paid child support for a year and then called once a year for the next fifteen years. That is not the type of "regular" support intended by the Legislature.

"[C]auses of action for wrongful death are strictly a matter of legislative grace and are not recognized at common law." *Philippides v. Bernard*, 151 Wn.2d 376, 390, 88 P.3d 939 (2004) (citation omitted). "It is neither the function nor the prerogative of courts to modify legislative enactments." *Id.* (citation omitted). As *Philippides* recognized, "[t]he legislature has created a comprehensive set of statutes governing who may

recover for wrongful death and survival and there is no room for this court to act in that area.” *Id.* (citation omitted).

In this case, construing the statute as the Foundation argues would undermine the use of the word “regularly” and provide standing to a parent who can only say she had contributed to a child’s support in the past but in the years prior to the child’s injury or death had only occasional contact with the child. This is precisely the result the Legislature sought to avoid. As the Court of Appeals noted, the definition of “regular” implies a “normal” frequency and is “not varying; constant.” *Estate of Bunch*, 159 Wn. App. at 862. All Kozel established is that she provided varying and inconsistent support to Ashlie after 2003. Her sporadic involvement in her daughter’s life cannot satisfy “has regularly contributed” without rendering part of the statutory language moot.

V. CONCLUSION

The reasoned decision of the Court of Appeals should be affirmed.

RESPECTFULLY SUBMITTED this 1st day of November, 2011.

ANDREWS SKINNER, P.S.

By 
KRISTEN DORRITY, WSBA #23674
Attorneys for Respondent McGraw
Residential Center d/b/a Seattle
Children’s Home

DECLARATION OF SERVICE

I, SALLY GANNETT, hereby declare as follows:

1. That I am a citizen of the United States and of the State of Washington, living and residing in King County, in said State, I am over the age of eighteen years, not a party to the above-entitled action, and competent to be a witness therein.

2. On the 1st day of November, 2011, I caused a copy of the attached **Respondent McGraw Residential Center's Response to Brief of Amicus Curiae Filed by WSAJ Foundation** to be served upon the following, on or before November 1, 2011, in the manner noted:

<p align="center"><u>Attorneys for appellant Amy Kozel:</u></p> <p>Jeffrey L. Herman Herman Law Firm LLC 10303 Meridian Avenue N., Suite 300 Seattle, WA 98133-9483 <i><u>Via First Class Mail</u></i></p>	<p align="center"><u>Attorneys for Plaintiff:</u></p> <p>Lawrence M. Kahn Lawrence Kahn Law Group, P.S. 1621 114th Ave. SE, Ste. 123 Bellevue, WA 98004-6905 <i><u>Via First Class Mail</u></i></p>
<p align="center"><u>Attorneys for appellant Amy Kozel:</u></p> <p>Elena Luisa Garella 3201 1st Ave S Ste 208 Seattle, WA 98134-1848 <i><u>Via Email and First Class Mail</u></i></p>	<p align="center"><u>Attorneys for Plaintiff:</u></p> <p>Lisa Michele Voso Law Office of Lisa Voso 6703 S. 234th Street, Suite 300 Kent, WA 98032-2903 <i><u>Via First Class Mail</u></i></p>
<p align="center"><u>Attorneys for amicus WSAJ Foundation</u></p> <p>George M. Ahrend 100 E. Broadway Avenue Moses Lake, WA 98837 <i><u>Via Email and First Class Mail</u></i></p>	<p align="center"><u>Attorneys for amicus WSAJ Foundation</u></p> <p>Brian P. Harnetiaux 517 E. 17th Avenue Spokane, WA 99203 <i><u>Via Email and First Class Mail</u></i></p>

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 1st day of November, 2011 at Seattle, Washington.



SALLY GANNETT