NO. 47438-7-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

HAELI HAMRICK, et al.,

Appellants,

v.

STATE OF WASHINGTON,

Respondent.

APPELLANTS' OPENING BRIEF

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I. INTRODUCTION

The Hamrick Appellants/Plaintiffs submit this memorandum in request of a new trial based upon multiple errors on the part of the trial court. This matter involves the preventable childhood physical, sexual and emotional abuse of five (5) beautiful young women during the time that they resided in the Hamrick foster home. The nature, extent, and severity of the abuse are not contested between the parties. The only true matter of dispute is whether or not there was a fundamental breakdown of the safety net that was designed to protect these young women. Specific to this case was the issue of DSHS's obligations to follow established protocols that are intended to prevent that type of abuse that somehow did occur here. This case was submitted to a jury which returned a defense verdict after a full week, including a passing over a weekend, of prolonged deliberations. This case was a close call for the jury. In this regard, the Hamricks contend that the trial court erred in granting a partial-motion for a directed verdict under CR 50 and thereby eviscerating the primary theory of the case. The ruling at issue is so clearly in error and in conflict with the evidence that it is hard to understand how or why Judge Katherine Stolz could ever made such a judicial determination after such as long trial. In essence, the Hamrick presented a compelling case to the jury explaining in opening statements and then supporting with compelling evidence that the

assigned social workers repeatedly dropped the ball to include failing to adhere to the DSHS policy mandating that foster children receive regular "health and safety visits" while place in foster care settings. Towards the end of the trial, Judge Stolz completely undermined the Hamricks' trial presentation and inexplicably took the key issues away from jury consideration. Staci Hamrick represents the beliefs of her adoptive sisters when stating under oath that she is dismayed by Judge Stolz's disposition from the bench that included sharing her personal political leanings during a casual colloquy in between witness testimony. There were many oddities that occurred during this trial but the Hamricks have distilled this appeal down to a few key issues. As is fully set forth herein, the Hamricks did not receive a fair trial. Judge Stolz repeatedly committed reversible error. And this matter should be remanded for a new trial before a newly assigned trial judge.

II. ASSIGNMENTS OF ERROR

Assignment of Error 1: The trial court erred by granting a CR 50 motion for a directed verdict as pertained to the Hamrick's primary theory of the case.

Issue 1: Should this Court grant a new trial premised upon the evidence of record establishing that the Hamricks proved a cause of action

for DSHS negligence that pre-dated the timeframe to which the jury was ultimately instructed to deliberate upon on the verdict form?

Assignment of Error 2: The trial court erred by utilizing a special verdict form that was not consistent with Washington law and prevented the Hamricks from arguing their theory of the case.

Issue 2: Should this Court require the submission of an appropriate special verdict form on remand and re-trial?

Assignment of Error 3: The trial court erred by excluding witnesses without considering lesser included alternatives.

Issue 3: Should this Court reverse this matter for trial based upon the trial court's wrongful exclusion of witnesses?

Assignment of Error 4: The trial court erred by cumulative legal misjudgments including compromising the appearance of fairness by expressing political pre-dispositions from the bench during trial.

Issue 4: Should this Court grant a new trial based upon the cumulative legal errors including compromising the appearance of fairness doctrine by stating political leanings from the bench?

III. STATEMENT OF THE CASE

During the summer of June 2011, During properly conducted forensic interviews that were ultimately performed by another laws enforcement agency, the Pierce County Sheriff's Department, the Hamrick children disclosed (1) pervasive sexual abuse that was perpetrated by their adoptive father, a local firefighter Scott Hamrick, (2) being denied food for days at a time, (3) being regularly beat with metal spatulas, hot curling irons and other kitchen products, (4) being locked in a room for days on end without anything but a blanket to sleep on the floor and a bucket to pee in, (5) being starved to the point of unhealthy body mass, (6) disparaging and degrading comments about their bodies and abilities, (7) being forced to sleep in the woods outside of the home, (8) unusual forms of corporal punishment such as being forced to move rocks and bails of hay from one side of the yard to the other for no real reason besides punishment, (9) slashes in the face with scissors to the point of permanent scarring, (10) repeated threats of being returned to foster care, and other assorted forms of egregious abuse. [1]

Over a decade earlier, on October 29, 1999, Staci and Haeli Hamrick were placed, as foster children, in the Hamrick home.[2] Both

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[1] Verbatim Report of Proceedings of February 9, 2015 (Debbie Heishman)
[2] CP 267-89

Staci and Haeli recall being abused by both Scott Hamrick, sexually, and Drew Anne Hamrick, physically and emotionally, immediately upon being placed in the home.[3] Staci describes that the "*abuse included sexual touching and groping by Scott Hamrick and physical and emotional abuse by Drew Anne Hamrick.*"[4] Haeli describes "*Drew Anne Hamrick slammed my head up against the wall. My head was slammed so hard that my hair clip dug into my skin.*"[5] The assorted forms of physical abuse were imposed by Drew Anne Hamrick as forms of punishment and/or discipline.[6]

The girls' assigned DSHS social worker was Mary Woolridge.[7] According to DSHS own policies, Social Worker Woolridge was required to conduct regular "health and safety" visits that required a visit away from the home in a safe setting, such as a school, at least every ninety (90) days.[8] The applicable DSHS policy requires that the social worker ask the foster child "*Whether they feel safe or have concerns about their home setting*" and "*How they are disciplined.*"[9] If the policy is followed, the

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[3] *Id.*
[4] *Id.*
[5] CP 290-316
[6] CP 267-316
[7] CP 29-156
[8] CP 277-78
[9] *Id.*

social worker must log the visits in the Service Episode Record.[10] In that regard, there are no (0) documented health and safety visits between the time that the girls were placed in the home in October of 1999 until they were adopted in October of 2000 for Staci or Haeli Hamrick.[11]

Social Worker Woolridge did not do her job and did not conduct any health and/or safety visits and/or log those visits in the Service Episode Record over the period of an entire year.[12] Staci recalls that these visits "*never occurred at anytime between October 29, 1999 and October 20, 2000.*"[13] A contemporaneous counseling record from a scheduled therapy session from December 21, 1999 documented that Staci was anxious to speak with an adult alone at the time: "*[Staci] was anxious to speak with me alone, and I told her she would have her turn next time.*"[14] During these particular counseling sessions, Scott and/or Drew Anne would typically sit right outside the counselor's door or be in the same room.[15] In this regard, Staci explained that "*I wanted someone to give me an opportunity to tell what was happening to me during the first year that I was placed in the Hamrick home.*"[16] Haeli indicates that if asked as

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[10] *Id.*
[11] CP 267-316
[12] *Id.*
[13] CP 267-89
[14] *Id.*
[15] *Id.*
[16] *Id.*

required by DSHS policy, she too would have disclosed being abused: "*I feel like it would have been easier for me at the beginning of the placement in the Hamrick home rather than later. I would have described being hit with a belt and spatula as a form of discipline.*"[17] If the DSHS health and safety visit policy had been followed, both girls could have been spared over a decade of abuse thereafter.

DSHS, specifically Child Protective Services ("CPS"), continued to drop the ball. On April 8, 2008, Staci disclosed to a school counselor, Mary Ann Baker, that Drew Anne Hamrick had assaulted her: "*Staci has a bruise on inside of her left knee – the size is bigger than a golf ball.*"[18] Counselor Baker documented Staci's report and sent a formal mandated abuse and neglect report to CPS.[19] The referral to CPS documented that there were several other children in the home: "*Haeli (twin) 17, Kaeli 14, Kayci 11, Jessica 9.*"[20] But CPS failed to investigate.[21] The intake worker elected to "*screen out*" the referral rather than have it looked into by a trained investigator, as required by law.[22] As illustrated by the report authored by Counselor Baker, if CPS had investigated, Staci and/or the

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[17] CP 290-316
[18] CP 267-289.
[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] *Id.*

other Hamrick children would have disclosed the ongoing abuse within the home.[23] But CPS failed to conduct any investigation whatsoever.[24]

After Staci's 2008 report, CPS continued to drop the ball. On March 16, 2010, a Hamrick neighbor called CPS and reported that Kayci had "*been telling neighbors that her mother does not feed her at times. Apparently, meals are withheld if the girl does not complete her chores to their satisfaction...The neighbor girl also reports her parents lock her in her bedroom at night and have boarded up the windows so she can't get out.*"[25] The CPS files also note that "*Kayci has been without shoes and a coat and one time the dad came out stating to the wife, 'isn't it time to feed Kayci it's been 4 days.'*"[26] On March 17, 2010, the assigned CPS investigator, April Alizae, called the Hamrick home and forewarned Drew Anne Hamrick that CPS was conducting an investigation and would like to inspect the home and meet with the children: "*Drew Anne informed me that she had been warned by a telephone call that CPS was conducting an investigation and wanted to speak with other family members.*"[27]

The next day, on March 18, 2010, prior to the investigator's arrival, other children including Haeli Hamrick were enlisted to prepare

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[23] CP 267-372
[24] CP 267-289
[25] CP 290-316
[26] *Id.*
[27] *Id.*

the Hamrick home for the CPS investigators: "*we were all instructed by Drew Ann to furiously clean the home in order to make it presentable for CPS. This was the same day that I was interviewed before the CPS investigator showed up that afternoon.*"[28] Haeli recalls that the "*bucket that Kayci was given to defecate and urinate in was also removed prior to the investigator's arriving. Also prior to the investigator arriving, the lock of Kayci's bedroom door was removed or adjusted so that it would appear that she was not being locked in the bedroom...*"[29] When the investigator finally arrived for the announced visit, Haeli, Jessica, Kaelie and Kayci all report being interviewed in the presence and/or direct proximity of the alleged abusers, Scott and Drew Anne Hamrick.[30] Out of fear of having to disclose the abuse in front of Scott and Drew Anne Hamrick, the girls remained quiet.

However, when interviewed, Scott and Drew Anne Hamrick admitted to neglecting Kayci: "*The family did have a lock on Kayci's door which Kat told them was inappropriate. They admitted to having a piece of plywood over her window in the past. The family was also told not to use food as a carrot and stick with Kayci.*"[31] In relation to confining

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[28] *Id.*
[29] *Id.*
[30] CP267-372
[31] CP 290-316

Kayci to the bedroom, the Hamricks claimed that Kayci's physician recommended the course of action: "*Dr. Jootsen is who told Drew to lock Kayci in her room at night for safety of the animals and the family.*"[32] When the CPS investigator contacted Dr. Jootsen, he denied ever having provided such an instruction: "*spoke to SW. don't recall having an ongoing discussion about allowing anyone to be locked in a room or as social worker further revealed per a comment from the father whom she interviewed 'not given food and drink either when kept in her room'. Given this information, I would advise that indeed CPS enquiry does needs to proceed forward obviously.*"[33] Not long thereafter, CPS designated the referral as "*unfounded*" as related to the abuse that had been reported within the Hamrick home.

Opening statements commenced on February 5, 2015.[34] Counsel for the parties offered extensive discussion anticipating proving the opposing sides of the case described herein.[35] The parties presented extensive law and expert testimony over the following weeks that followed. Counsel for the Hamrick family outlined the following key component of the case:

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[32] *Id.*
[33] CP 330-361
[34] Verbatim Report of Proceeding of February 5, 2015, Pages 1-41
[35] *Id.*

> *...health and safety visits are mandated by higher-ups; and it's a policy that they've developed to make sure and try and prevent little children from being abused, or at least if they're in the process of being abused, have an opportunity to make sure that it stops. Well, there's an actual policy within DSHS that – and if I didn't make it clear enough, Staci Hamrick, for example, when she was in the Hamrick home, and had an assigned social worker, one person who was supposed to do this job; and this one person, assigned to Staci and Haeli, was supposed to go to the home at least every 90 days and ask them – pull them outside of the home – and this critical – pull them outside of the home, get them away from the parents, hopefully visit them at their schools, visit them at their daycare, someplace where they don't have the foster parent hovering over their shoulder and someplace where they can actually talk to them privately and ask them questions. These are actually right out of their own policies: Do you feel safe?...I want to really focus on Staci and Haeli because here's what we discovered in investigating this case. We discovered that even though they have these mandated visits, DSHS, at least at that point in time back in 1999/2000 time frame, they were failing. Systemically, they were failing to do their health and safety visits...*[36]

Witnesses such as Stack Hamrick and a DSHS expert, Barbara Stone, testified in corroboration with these opening statements.[37] A Pierce County detective, Deborah Heishman, testified as to the egregiousness of the abuse that was ultimately uncovered.[38] Haeli and Staci Hamrick's assigned social worker, Mary Woolridge, testified and could not support critical information about her social work obligations:

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[36] Verbatim Report of Proceeding on February 5, 2015, Pages 18-21

[37] Verbatim Report of Proceeding of February 11, 2015 (Staci Hamrick) and February 9, 2015 (Barbara Stone)

[38] Verbatim Report of Proceedings of February 5, 2015

> Q. (By Mr. Beauregard) And I'm going to show you Plaintiff's Exhibit 41, and I want to have you take a look and just represent to you that the first 19 page of that are your service episode records –
>
> A. Correct.
>
> Q. – from that that time frame. Have you had a chance to look at those records then?
>
> A. I have, yes, now.
>
> Q. All right. You're aware that there's no health and safety visits in there.
>
> A. I am aware.
>
> * * *
>
> Q. And you're aware that the actual – you're aware that there was a policy that said you have to write it down?
>
> A. Right. And – I thought I had written in down.
>
> Q. Okay. All the visits?
>
> A. Yes.
>
> Q. Is it possible that you forgot every time?
>
> A. I wouldn't think so.
>
> Q. Okay. Then where are the visits? Why aren't they in there?
>
> A. I – I wish I knew. I – I wish I knew were my file was when we originally met.[39]

Towards the end of the trial, on March 5, 2015, the parties argued, and the trial court ruled upon, DSHS's motion for a directed verdict.[40]

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[39] Verbatim Report of Proceedings of February 9, 2015, Pages 11-13 (Mary Woolridge)

The trial court dismissed certain key portions of the Hamrick family's theory of liability including the claim that DSHS failed to conduct proper health and safety visits for Staci and Haeli Hamrick during the years 1999-2000.[41] The jury was read instructions on March 9, 2015 and the matter was submitted for deliberations thereafter.[42] On the special verdict form, the jury was not asked to deliberate as to issues of negligence that included Ms. Woolridge's documented failure to conduct health and safety visits.[43] After a full week of deliberating, on March 16, 2015, the jury returned a defense verdict.[44] On April 3, 2015, the trial court denied the Hamricks' motion for a new trial.[45]

IV. ARGUMENT: THE TRIAL COURT ERRED BY GRANTING (IN PART) DSHS' MOTION FOR A DIRECTED VERDICT

The Hamrick Plaintiffs put on an entire trial with the leading liability theory reliant upon the failures of DSHS from the year 1999/2000. At the end of the case, on March 5, 2015, without reviewing the case law that was originally cited by the Hamrick Plaintiffs to bring this case to trial, the Court suddenly decided that there could be no argument on negligence issues that pre-date 2008, ruling that "*I mean it doesn't really*

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[40] Verbatim Report of Proceedings of March 5, 2015
[41] *Id.*
[42] Verbatim Report of Proceedings of February 9, 2015(Debbie Heishman)
[43] CP 636-640
[44] *Id.*
[45] CP 716-17

matter whether Mary Woolridge was or was not doing her health and safety visits..."[46] At one point, the undersigned counsel handed up a copy of *Caulfield v. Kitsap County*, 108 Wash. App. 242, 29 P.3d 738 (2001) and the trial court did not read it. This gross error prejudiced the Hamrick Plaintiffs not only by disallowing them to argue their main theory of the case. The trial court's ruling also compromised their counsel's credibility as to all claims. At end of the trial, the jury would undoubtedly mystified as to why evidence was presented regarding negligence pre-dating 2008 and never any closing argument and/or verdict form correlating with this evidence.

Specifically, in violation of CR 50, the trial improperly decided issues of negligence that pre-date 2008 as a matter of law.[47] DSHS owes foster children a duty of care premised upon the "special relationship" doctrine. *See Caulfield v. Kitsap County*, 108 Wash. App. 242, 29 P.3d 738 (2001); Restatement (Second) of Torts Section 315 ("a special relation

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[46] Verbatim Report of Proceedings of March 5, 2015, Page 83

[47] DSHS may contest the existence of a legally recognized duty that was owed to the Hamrick children. As illustrated in *Caulfield v. Kitsap County*, 108 Wash. App. 242, 29 P.3d 738 (2001), clearly there was a duty owed. Moreover, at common law, "[a]s a general rule, one who undertakes to act in a given situation has a duty to follow through with reasonable care, even though he or she had not duty to act in the first instance." *Borden v. Olympia*, 113 Wash. App. 359, 53 P.3d 1020 (2002); *Pruitt v. Savage*, 128 Wash. App. 327, 115 P.3d 1000 (2005). Here, DSHS assumed the responsibility for the care of the Hamrick girls while in foster care. By law, DSHS and the assigned social workers were required to care out that duty diligently – to include conducing health and safety visits as dictated by DSHS policy. DSHS also owed a duty under RCW Chapter 26.44.

exists between the actor and the other which gives rise to the other a right of protection"). "Washington courts describe those relationships between a defendant and a foreseeable victim where the defendant has a special relationship with the victim as 'protective in nature, historically involving an affirmative duty to render aid.'" *Caulfield*, at 253. Such a duty is owed by schools to students. *See McLeod v. Grant County*, 42 Wash.2d 316, 255 P.2d 360 (1953). Nursing homes to patients. *See Niece v. Elmview Group Home*, 131 Wash. 2d 39, 929 P.2d 420 (1997). And, as illustrated in *Caulfield*, a duty is owed by governmental social workers to those under their care. *Id.*

The facts of *Caulfield* are analogous. The plaintiff, Mr. Caulfield, was a vulnerable adult and "suffered from Multiple Sclerosis and needed 24 hours care." *Id.* at 245. Mr. Caulfield was placed with a caregiver named James Sellars. *Id.* The placement was monitored by an assigned DSHS and then Kitsap County social worker. *Id.* The Kitsap County social worker failed to monitor the placement and "never performed a reassessment of Caulfield or had any contact with Caulfield." *Id.* at 247. Mr. Caulfield's condition deteriorated and went undetected by the Kitsap County social worker resulting in severe injuries. *Id.* Based upon the Kitsap County social worker's failure to conduct visits and ensure Mr.

Caulfield's safety by a licensed care provider, Mr. Caulfield filed and won a lawsuit. *Id.*

On appeal, Kitsap County tried to argue that it owed Mr. Caulfield no duty under the existing law. Division II of the Court of Appeals noted that the nature of the relationship, and Mr. Caulfield's vulnerability and reliance upon the social worker for safety, established a duty and satisfied the requisites of Restatement (Second) of Torts Section 315. The Kitsap County social worker owed Mr. Caulfield a duty, as did the DSHS social worker. *Id.* The result here, as relates to Staci and Haeli's assigned social worker's obligations to ensure that they were in a safe placement, should be no different. In fact, the fact that Staci and Haeli Hamrick were helpless foster children with no real parents to turn to weighs even more heavily in favor of finding that a duty of care was owed.

A duty is typically derived when "the courts have found that the relationship involved an element of 'entrustment', *i.e.* one party was, in some way, entrusted with the well-being of the other party." *Webstad v. Storini*, 83 Wash. App. 857, 924 P.2d 940 (1996). And a custodial relationship is not a specific requirement. *Id.* It is difficult to imagine a more cognizable special relationship than that between foster children and the social workers that were assigned to protect them. A child that is

placed in a bad foster care arrangement has no other place to turn. In this setting, the State owed the Hamrick girls a duty of care by virtue of their "special relationship" derived from their statute as vulnerable foster children. It must be noted that at trial, a well credentialed expert witness on DSHS practices, Barbra Stone, opined as to a systemic failure as to the all of the assigned social workers to conduct proper health and safety visits:

> Q. All right. In a general sense -- well, did you review all the service episode records for those young women?
>
> A. I did.
>
> Q. And is it your opinion that in relation to doing health and safety visits in a big picture sense, reviewing those service episode records, that DSHS was doing a good job with those visits for the other young women?
>
> A. No. DSHS also failed to meet the requirements for health and safety for the other children.
>
> Q. And in that, are you speaking in a general sense about the other girls' health and safety visits?
>
> A. Yes.
>
> Q. But they -- there were some that were completed; is that right?
>
> A. No. There were visits that were completed.
>
> Q. Okay.
>
> A. So some of -- they would write down health and safety for -- I'm talking about the other three girls now.

> Q. Right.
>
> A. They would write down health and safety visit in the service episode record, but it would be them talking to Drew Hamrick. One of them was: The girls weren't even in the home that day. Another one was: They were transporting one of the other girls somewhere. Those aren't health and safety visits. That's not sitting down with a child alone and saying, how are you today? Do you feel safe today? Is there something I can do to help you? Are you getting enough to eat? How are you disciplined? None of that happened, so even though -- and I documented for each of those girls when the workers went out -- at least they made home visits. There were some visits. It wasn't health and safety visits, but I did document for each girl individually what the circumstances were for each of those.[48]

In relation to what actually occurred during the relevant timeframe, Staci Hamrick's trial testimony was unambiguous:

> Q. I'm going to put up here Plaintiffs' 59. And, Staci, turning back to Mary Woolridge, the woman that testified on Monday, during that first-year time period, something called a health and safety visit was to occur every 90 days.
>
> A. Yes.
>
> Q. And I want to ask you about that. Did Mary Woolridge come every 90 days?
>
> A. No.
>
> Q. Do you ever remember her coming at all?
>
> A. I remember her dropping us off and picking us up, not showing up any other days, no.

[48] Verbatim Report of Proceedings of February 9, 2015: Pages 62-63

> Q. Okay. At any point during that first year, did a social worker take you to a private and safe place outside the presence of Drew Ann, outside the presence of Scott, not within earshot or eyeshot, and ask you things like, do you feel safe?
>
> A. No.[49]

In that regard, the evidence supported conclusion DSHS failed all of the children by failing to adhere to DSHS policy and conduct regular health and safety visits that would have led to the early discovery of Scott and Drew Anne Hamrick's abusive proclivities.[50]

In relation to the arguments that were presented in relation to these issues, Staci Hamrick observed the trial court's disposition:

> *At various stages throughout the proceedings, I became concerned that we were not receiving a fair trial. My lawyers would make arguments and hand up briefs and copies of case law for Judge Stolz to read, and she would often just sit the materials aside and make rulings without having ever reviewed the materials. I understand that at one point my lawyers actually handed a copy of the case law that supports of negligence case from 1999-2000 but Judge Stolz did not read it. Over the course of the trial, my lawyers objected to the admission of different pieces of evidence. Other than towards the end, I do not recall Judge Stolz ever actually reviewing the actual evidence before overruling my lawyers' objections.*
>
> *From the proceedings, I have also come to understand Judge Stolz's personal description of her political views. There was a day that I understand her to have described those political views from the bench. According to Judge*

[49] Verbatim Report of Proceedings of February 11, 2015, Pages 29-30
[50] *Id.*

> *Stolz's description from the bench during trial, it is my understanding that she was previously very politically conservative when she was younger and now describes herself as incredibly liberal politically and that she continues to have grown even more so over the years. There is also a "Judge Chushcoff" that she indicated wants her to be more like him in relation to his political views.*
>
> *I am very concerned to have had my childhood abuse trial presided over by a judge that describes her political views from the bench. It has also been my understanding that judges were supposed to be fair and impartial and not openly express their political views while sitting on the bench presiding over a trial. I would like to have my case reassigned to a judge who ensures that the proceedings at least appear fair.*[51]

Ms. Hamrick observed most of the trial, including opening and closing arguments. At one point, in relation to the Health and Safety visits, Judge Stolz actually explained that "*I can't really see there are any claims based on anything Mary Woolridge did or did not do.*"[52] In this regard, in support of the motion for new trial, Ms. Hamrick offered the following declaration:

> *I question whether or not my sisters and I received a fair trial. The main basis of our lawsuit relied upon the fact that our social worker, Mary Woolridge, never came to check on Haeli or myself during the first year that we were placed in the Hamrick home. Haeli and I both testified on this topic and explained that Ms. Woolridge was not actively part of our lives during that timeframe.*

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[51] CP 695-98

[52] Verbatim Report of Proceedings of March 5, 2015: Pages 83-84

At the beginning of the trial, my lawyers argued during opening statements that this lawsuit was based upon Ms. Woolridge's failures as our social worker from 1999-2000. In my view, this the main portion of our lawsuit. The trial proceeded with multiple witnesses testifying upon these topics. My lawyers argued back and forth with the defense lawyers and the witnesses for extended periods of time about the negligence that occurred during that timeframe. There were multiple witnesses that testified about who was supposed to have been watching over us prior to being adopted.

* * *

At the end of the trial, it is my understanding that Judge Stolz ruled that none of what happened prior to the year 2008 would be used to prove our negligence case. Mr. Helmberger also asked Judge Stolz not to allow my lawyers to be able to rely upon the attached timeline (Illustrative 60) that had been in front of the jury during the entire trial. Judge Stolz granted Mr. Helmberger's request. My lawyers were not permitted to even talk about the main illustrative exhibit during closing arguments. I do not understand why an exhibit is admissible during trial but not at the end of my trial to make arguments about for the jury to hear. The jurors looked at the exhibit during the entire trial.

During closing arguments, I listened to my lawyers and watched the jury closely. My lawyers were not permitted to argue about the main issue that they discussed in opening statements about the negligence of Ms. Woolridge from 1999-2000. As a result, it seemed to me that a major part of my case was missing. Members of the jury looked confused in that the issues related to Ms. Woolridge were not discussed. Judge Stolz's ruling made my lawyers look like they wasted most of the trial, and the jury's time, arguing about evidence from 1999-2000 that was not relevant. And the closing arguments did not link up with

the opening statements based upon the absence of any negligence arguments pre-dating 2008.[53]

The evidence of record, particularly the testimony of Staci Hamrick, Debbie Heishman, Mary Woolridge, and Barbara Stone, supported the health and safety visit component of the claims being decided by the jury.[54] Ms. Woolridge admitted at trial that the Service Episode Records do not reflect that she properly discharged her duty to conduct health and safety visits.[55] When reviewing a trial court's decision on a motion for judgment as a matter of law, this Court applies the same standard as the trial court. *Esparza v. Skyreach Equip., Inc.,* 103 Wash. App. 916, 926, 15 P.3d 188 (2000), *review denied,* 144 Wash.2d 1004, 29 P.3d 718 (2001). Judgment as a matter of law may be granted at the close of a plaintiff's case if the plaintiff has been "fully heard" and "there is no legally sufficient evidentiary basis for a reasonable jury to find or have found for that party[.]" CR 50(a)(1). The trial court must view all conflicting evidence in the light most favorable to the nonmoving party and determine whether the proffered result is the only reasonable conclusion. *Esparza,* 103 Wash. App. at 927, 15 P.3d 188 (citing *Hollmann v. Corcoran,* 89 Wash. App. 323, 331, 949 P.2d 366 (1997)). In

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[53] CP 695-98

[54] Verbatim Report of Proceeding of February 11, 2015 (Staci Hamrick) and February 9, 2015 (Barbara Stone)

[55] Verbatim Report of Proceedings of February 9, 2015, Pages 11-13 (Mary Woolridge)

this regard, in violation of CR 50, the trial court gutted the Hamrick's theory of the case when deciding the issues as a matter of law.

IV. ARGUMENT RE: SPECIAL VERDICT FORM

When reviewing jury instructions, they are considered in their entirety and are sufficient if they: (1) permit each party to argue his theory of the case; (2) are not misleading; and (3) when read as a whole, properly inform the trier of fact of the applicable law. *See Hue v. Farmboy Spray Co., Inc.,* 127 Wash.2d 67, 92, 896 P.2d 682 (1995) (citing *Adcox v. Children's Orthopedic Hosp. & Med. Ctr.,* 123 Wash.2d 15, 36, 864 P.2d 921 (1993); *Farm Crop Energy, Inc. v. Old Nat'l Bank,* 109 Wash.2d 923, 933, 750 P.2d 231 (1988)). Special verdict forms are reviewed under this same standard. *Id.* Essentially, when read as a whole and with the general charge, the special verdict must adequately present the contested issues to the jury in an unclouded, fair manner. *See Lahmann v. Sisters of St. Francis,* 55 Wash. App. 716, 723, 780 P.2d 868 (1989). An erroneous statement of the applicable law is reversible error if it is also prejudicial. *Hue,* 127 Wash.2d at 92, 896 P.2d 682 (citing *State v. Wanrow,* 88 Wash.2d 221, 559 P.2d 548 (1977)). Notwithstanding the legal sufficiency of the instructions, we must find these instructions insufficient if they are misleading or if the special verdict form clouds the jury's

vantage point of the contested issues. *See Lahmann v. Sisters of St. Francis,* 55 Wash. App. 716, 723, 780 P.2d 868 (1989).

A. The special verdict form prevented the Hamricks from arguing their theory of the case.

As a result of the trial court's erroneous rulings, the Hamrick's theory of the case was seriously compromised. The opening statements did not match up with those argued during closing arguments:

> *There has been a lot of talk about burden of proofs and all these sorts of things. Here in this case it is true. I'll even show you the jury instruction. We have – I don't like to use too many of these there. I want you to use your common sense more than anything. Take a look at this Jury Instruction No. 6. It talks about our burden of proof, our burden of proof on behalf of these women. Take a good look at Instruction No. 6. It says this: We have, as plaintiffs, the burden of proving only two things in this case to win this lawsuit. One, the 2008 investigation was negligently investigated, and/or, two, that the 2010 investigation was negligently investigated.*
>
> *You'll notice we don't have a burden of proof prior to that period of time. We don't have to prove anything prior to that period of time to win this case. It might sound counterintuitive to you, but what you do with this particular burden of proof is you look at it and you say – and we did prove this case – the 2008 referral was negligently investigated. You award for all the damages the State of Washington could have prevented as a result of their negligence in accord with the law, in accord with your instructions. don't fall for this hocus-pocus by Mr. Helmberger, oh, there is only a little bit of damages. You have heard all of the evidence...*[56]

[56] Verbatim Report of Proceeding of March 10, 2015, Pages 21-22

The jury was left wondering: why did these lawyers waste our time during the trial arguing about health and safety visits during 1999-2000?[57] This error not only compromised the Hamricks' ability to argue, it also compromised their credibility as to entirety of the case. As a result of the trial court's approval of a tortured special verdict form, they were unable to argue their theory of the case and deprived the opportunity of a fair trial on the merits.

B. The special verdict and jury instructions together improperly instructed the jury regarding the segregation of damages.

The trial court also erred by approving the use of a verdict form that asked the jury to segregate negligent and intentional conduct when the approved jury instructions already required the jury to do so once. The special verdict from precluded the Hamricks from arguing their theory of the case in relation to damages: the DSHS could have prevented all of the intentionally inflicted abuse by Scott and Drew Anne Hamrick post-dating 1999/2000. In this regard, the trial court properly approved Instruction No. 19 and it instructed the jury that the total *negligence* at issue must add up to 100%:

/ / /

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[57] *Id.*

INSTRUCTION NO. 19

If you find that more than one entity was negligent, you must determine what percentage of the total negligence is attributable to each entity that proximately caused the damage to the plaintiff. Entities may include the defendant State of Washington/DSHS, nonparty Trey Hamrick, and/or nonparty Kelly Hamrick.

For those entities or persons whom you find negligent and proximately caused injury to the Plaintiffs, you must allocate the damages proximately caused to the Plaintiffs by each such person or entity by apportioning the damages among those persons or entities. The allocation of damages will be done by percentages. **The total must equal 100%.**

The court will provide you with a special verdict form for this purpose. Your answers to the questions in the special verdict form will furnish the basis by which the court will apportion damages, if any.[58]

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[58] CP 457-488

The trial court also approved Instruction No. 21 that instructed the jury not to include any damages on the verdict form that were not caused by negligence of DSHS, Trey Hamrick, and/or Kelly Hamrick:

INSTRUCTION NO. 21

> In calculating any damage award, you must not include any damages that were caused by the intentional acts of Drew Anne Hamrick and/or Scott Hamrick and not proximately caused by negligence of State of Washington/DSHS, nonparty Trey Hamrick, and/or nonparty Kelly Hamrick. **Any damages caused solely by the intentional acts of Drew Ann Hamrick and/or Scott Hamrick and not proximately caused by negligence of State of Washington/DSHS, Trey Hamrick and/or Kelly Hamrick must be segregated from and not made part of any damage award against State of Washington/DSHS.**[59]

Instruction No. 21 accomplishes "segregating" the damages that were not caused by the State of Washington/DSHS. By using the verdict form that

[59] CP 457-488

was ultimately submitted, the jury would have been required impermissibly "segregate" damages twice.[60]

More specifically, based upon approved Instructions Nos. 19 and 20, the jury would not have been putting any of the damages that were *not* caused by the negligence of State of Washington/DSHS, Trey Hamrick and/or Kelly Hamrick on the verdict form.[61] This is exactly the method approved by the Court of Appeals in *Rollins v. King County*, 148 Wash. App. 370, 199 P.3d (2009). In *Rollins*, the trial court dealt with this same issue and approved a jury instruction that is similarly formatted. *Id.* To illustrate, the following is the jury instruction that was used in *Rollins*:

> In calculating a damage award, you must not include any damages that were caused by acts of the unknown assailants and not proximately caused by negligence of the defendant. Any damages caused solely by the unknown assailants and not proximately caused by negligence of defendant King County must be segregated from and not made a part of any damage award against King County.

Id. at 379. Instruction No. 21 in this case, and that this Court approved (and actually edited to add Trey and Kelly over the Hamrick girls objection), was modeled after the *Rollins* jury instruction. In *Rollins*, the intentional tort criminals were not included on the verdict form either. *Id.*

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[60] CP 636-40
[61] CP 457-488

If the Hamrick girls had sued Scott and Drew Hamrick in the same lawsuit, then the Court could follow the process in *Tegman v. Accident & Medical Investigations, Inc.*, 150 Wash. 2d 102, 75 P.3d 497 (2003) for segregating damages:

> *Tegman* is about joint and several liability. Here, Metro is the only defendant and negligence is the plaintiffs' only theory. To recover at all, plaintiffs had to prove their injuries were proximately caused by Metro's negligence. There is no issue of joint and several liability in this case.
>
> Rather, as the trial court observed, this case is akin to *Welch.* The intentional conduct of unknown assailants was a proximate cause of injury in both cases, but no recovery was sought for those injuries. **Here and in *Welch,* plaintiffs sought recovery only for damages proximately caused by the *defendant's* negligence. In neither case was there a risk that the negligent defendant would be held liable for the assailants' "share" of the damages, so there was no need for the jury to determine the size of that share or to deduct it from its damages award.**
>
> The jury here was instructed that plaintiffs had to prove that Metro was negligent, that Metro's negligence was a proximate cause of plaintiffs' injury, that there may be more than one proximate cause of an injury, and that its verdict should be for Metro if it found the sole proximate cause of injury was a cause other than Metro's negligence.

Rollins, 148 Wash. App. at 379 (emphasis added). Here, the *Rollins* case (interpreting and applying *Tegman*) applies. *Id.* The appellate courts are clear on these well established principles:

> Our Supreme Court interpreted these provisions in *Welch v. Southland Corp.* There, plaintiff Mark Welch was robbed

> and shot by a fellow patron at a 7–11 convenience store. The assailant was never apprehended. Welch sued Southland, owner of the 7–11 store, alleging it negligently failed to maintain safe premises for business invitees. As an affirmative defense, Southland argued that fault should be apportioned between the negligent and intentional actors under RCW 4.22.070. But under the statute, apportionment occurs only between at fault entities, which do not include intentional tortfeasors. The Supreme Court thus held that a negligent defendant is not entitled to apportion liability to an intentional tortfeasor. Because Welch's assailant was not "at fault" under the statute, Southland was not permitted to allocate liability to him.

Rollins, 148 Wash. App. at 377-78. This is the law. *Id.* It is not proper to combine negligence and intentional torts on the special verdict form. *Id.*

The law does not allow negligence and intentional (especially criminal) torts to be segregated on the verdict form. *Id.* According to the law and this Court's approved Instruction No. 19, the total negligence on the verdict form must add up to 100%: "**The total must equal 100%.**" There is no way for the total negligence to add up to 100% if intentional crimes are combined with negligent acts on the verdict form. In this regard, the trial court erred in submitting the special verdict form that was ultimately utilized by the jury.

Instruction No. 21 told the jury to segregate the intentional (*aka* criminal) conduct of Drew and Scott Hamrick that was not caused by negligence of State of Washington, Trey or Kelly Hamrick: "**Any**

damages caused solely by the intentional acts of Drew Ann Hamrick and/or Scott Hamrick and not proximately caused by negligence of State of Washington/DSHS, Trey Hamrick and/or Kelly Hamrick must be segregated from and not made part of any damage award against State of Washington/DSHS."[62] This is the correct method and has been approved by the Court of Appeals. Based upon the special verdict form that was ultimately submitted, the jury would be reducing the damages twice: first based upon Instruction No. 21 and then again on the verdict form.[63] DSHS cannot be permitted to double dip. On remand, the assigned trial court should be required to revise the verdict form that is submitted to the jury.

VI. ARGUMENT RE: WRONFGUL EXCLUSION OF WITNESSES

On February 5, 2015, the trial court excluded the testimony of two key witnesses: Lori Smith and Summer Smith. These witnesses were highly probative in relation to topics pertaining to DSHS failures related to a 2009 sex abuse referral:

> THE COURT: All right. Regarding Lori Smith, what is Lori Smith going to be -- what is the summary of her testimony?
>
> MR. BEAUREGARD: If you would go outside, please.

[62] CP 457-488
[63] CP 636-40

> THE COURT: If you would go outside, ma'am, please. Thank you.
>
> (Ms. Smith left the courtroom.)
>
> MR. BEAUREGARD: Lori Smith, who is the lady that just walked out, she's the woman who made the 2009 referral. She's all over the CPS documents, and we recently -- recently, she came forward, and we identified her and decided that we were going to call her. She's all over CPS's own documents; and clearly, there's no sabotage here because we put her on the witness list, you know, after pulling her name out of the documents a couple weeks ago.
>
> Again, the Court asked Mr. Helmberger last week, hey, any problems with these witnesses? He said no, and then they want to object this morning. There's been a couple of things to alleviate any prejudice because she's just going to testify to what's in her CPS referral.
>
> We invited Mr. Helmberger and Mr. Silvey over the lunch break, and we said -- and we told those witnesses, tell them anything they want to ask you, and they actually went out and interviewed them in the hall; and then no additional objection was called to our attention. Ms. Smith is entirely cooperative. If they want to depose her tomorrow or over the weekend, they could have; but they're not going to want to because there's no real prejudice. They know exactly what she's going to say, but so there's an abundance of reasons why we shouldn't even have had the last objection. We just -- we're going to waste 45 minutes of court time over something that's not even prejudicial.[64]

Before ruling, Judge Stolz failed to apply the well established legal standard set forth under *Jones v. City of Seattle*, 179 Wash. 2d 322, 314

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[64] *Id.* at 21-22

P.3d 380 (2013).[65] In fact, the Judge Stolz made not attempt to follow *Jones v. City of Seattle* at all:

> THE COURT: Summer Smith. Sorry. You know, I mean, gentlemen, if you recall, we were four days into picking a jury last April, I believe it was, when the State suddenly discovered all of this evidence which had not been turned over, and the Court declared a mistrial; and the Court sanctioned them, you know. At this point, Lori and Summer, if you were intending on calling them as witnesses, they could have been disclosed at least a month ago; so I'm not going to allow them to testify at this time. I don't think that their testimony is going to add materially to anything. We already know the subject of the 2009 referral, and I would assume at some point we're going to have a caseworker that's going to be testifying about that referral and why they did or did not do anything. All right? So I don't think we need either Ms. Smith to add anything to that; so at this point, I'm not going to allow Lori or Summer Smith, as lay witnesses, to testify.[66]

By excluding these witnesses without conducting the required analysis, Judge Stolz committed reversible error. On this basis, the Hamricks should be granted a new trial.

VII. ARGUMENT RE: CUMULATIVE ERRORS & JUDICAL BIAS

Cumulative legal errors justify granting a new trial. *See In re Morris*, 288 P.3d 1140 (2012) (cumulative errors warrant new trial even when single error alone would not). In this regard, key rulings were decided on the fly without any serious consideration as to the controlling

[65] Verbatim Report of Proceedings of February 5, 2015, Pages 20-25
[66] *Id.*

law and/or admitted evidence. The special verdict form was so confusing and legally incorrect that Albert Einstein would not be able to argue the case effectively. Moreover, under the appearance of fairness doctrine, a judicial proceeding is valid only if a reasonable person, who knows and understands all the relevant facts, would conclude that the parties received a fair, impartial, and neutral hearing. *State v. Gamble,* 168 Wash.2d 161, 187, 225 P.3d 973 (2010); *Sherman v. State,* 128 Wash.2d 164, 205–06, 905 P.2d 355 (1995). Staci Hamrick is fully aware of Judge Stolz's political pre-disposition premised upon comments that were offered from the bench.[67] This was not a real trial on the merits. This was some other form of trial that did not provide for a just result. Based upon the compounded errors of law, the Hamrick are entitled to a fair re-trial. In light of the fact that Judge Stolz has expressed a political slant from the bench, a new trial court should be assigned on remand.

VIII. CONCLUSION

The trial court erred in multiple respects and the Hamricks are entitled to a new trial. The evidence of record established a clear obligation on the part of the assigned social workers, most particularly Mary Woolridge, to take diligent efforts to protect the children under their

[67] CP 695-698

care within the foster system. Judge Stolz did not let the primary theory of the case be decided by the jury. Instead, Judge Stolz adopted a convoluted special verdict form that was not consistent with the admitted evidence, arguments, or Washington law on the issue of damages. The Hamricks presented an entire trial about Ms. Woolridge's failures the Judge Stolz did not seem to have presided over the same courtroom: "*I can't really see there are any claims based on anything Mary Woolridge did or did not do.*"[68] These childhood abuse victims are entitled to a fair trial on the merits and respectfully request that the trial court's erroneous ruling be reversed and this matter remanded for a new trial on the merits.

DATED this 22nd day of September, 2015.

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[68] Verbatim Report of Proceedings of March 5, 2015: Pages 83-84

NO. 47438-7-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

HAELI HAMRICK, et al.,

Appellants,

v.

STATE OF WASHINGTON,

Respondent.

CERTIFICATE OF SERVICE

COURT OF APPEALS
DIVISION II
2016 SEP 23 AM 10: 37
STATE OF WASHINGTON
BY _____
DEPUTY

The undersigned certifies under penalty of perjury under the laws of the state of Washington, that she is now, and at all times materials hereto, a citizen of the United States, a resident of the state of Washington, over the age of 18 years, not a party to, nor interested in the above entitled action, and competent to be a witness herein.

I caused to be served this date the following:

- Appellants' Opening Brief

in the manner indicated to the parties listed below:

Peter J. Helmberger Gregory G. Silvey Office of the Attorney General 1250 Pacific Ave. Ste. 105 PO Box 2317 Tacoma, WA 98401 Attorneys for Respondent (State of WA) peterh@atg.wa.gov gregorys1@atg.wa.gov	☒ ☐ ☐ ☒	Hand Delivered Facsimile U.S. Mail Email

DATED this 22nd day of September, 2015.

s/Marla H. Folsom
Marla H. Folsom, Paralegal