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No. 94679-5
Court of Appeals No. 33697-2-III

SUPREME COURT
OF THE STATE OF WASHINGTON

Judith Margarita Reyes, on her own behalf and on behalf of the Estate of Jose Luis Reyes, Deceased, and on behalf of her minor children, Erik (n/m/n) Reyes (dob:3/12/98) and Leslie Maria Reyes(dob:6/23/99);

PETITIONER

vs.

Yakima Health District, a public entity in the State of Washington; Christopher Spitters, M.D.;
John Does Nos. 1 – 20;

RESPONDENTS

SUPPLEMENTAL BRIEF OF PETITIONER JUDITH REYES

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TABLE OF CONTENTS

Page numbers

1. Identity of Petitioner……3

2. Citation to Court of Appeals Decision……3

3. Issues Presented for Review……3-4

4. Statement of the Case…….....4

5. Argument……4-5

6. Conclusion……5-6

7. Certificate of Service……7

CASE

Ripley v. Lanzer, M.D., 152 Wn.App. 296,
215 P.3d 1020 (Wash.App. Div. 1 2009)……..5

1. Identity of Petitioner.

The petitioner is Judith Margarita Reyes, acting on her own behalf and on behalf of the Estate of Jose Luis Reyes, Deceased, and on behalf of her minor children, Erik (n/m/n) Reyes and Leslie Maria Reyes. She is a widow, prosecuting this action to seek justice for her family.

2. Citation to Court of Appeals Decision.

The petitioner seeks review of the Court of Appeals, Division III decision dated February 14, 2017, finding insufficient facts to establish a cause of action, concluding that the petitioner provided no facts to support a claim of medical negligence. Upon timely motion for reconsideration, the Court of Appeals, Division III denied the motion on May 16, 2017, and this Supplemental Brief of Petitioner Judith Reyes seeks reversal of both of these appellate court decisions.

3. Issues Presented for Review.

(a) Did the Court of Appeals commit error when it ruled there were no facts provided by the petitioner's expert, Rosa Martinez, M.D., which supported her conclusion that there was a breach of the standard of care in this instance? [*This issue has been briefed in the Petition for Review, previously filed with this Supreme Court*.]

(b) Did the Court of Appeals commit error when it concluded the respondents had a duty to the public to require petitioner's husband, Jose Reyes, to ingest tuberculosis medicine, even though the medicine was deadly to him, and contraindicated for Mr. Reyes because of his diseased liver? [*This issue has been briefed in the Petition for Review, previously filed with this Supreme Court.*]

(c) Should this Supreme Court consider the doctrine of *res ipsa loquitur*, since it was presented to Division III in the petitioner's Motion for Reconsideration, filed on March 7, 2017?

4. Statement of the Case.

The facts relevant to this Supplemental Brief for Petitioner Judith Reyes are the same as those provided in the Petition for Review, previously filed; except that the facts and legal arguments found in the Division III Appellant's Motion for Reconsideration are now referenced, because the defendants have claimed the doctrine of *res ipsa loquitur* was never raised before the Court of Appeals, Division III. This representation by the defendants is incorrect, as more fully illustrated in the briefing in the appellant's Motion for Reconsideration filed with the Court of Appeals, Division III, on March 7, 2017.

5. Argument.

Perhaps a helpful approach is to analyze the Death Certificate of Jose Reyes, Appendix A, page A-1 in the appellant's Motion for Reconsideration filed March 7, 2017 in Division III and forwarded to this Supreme Court as a part of the lower court records.

The death certificate clearly states:

(a) "*Immediate cause of death:* ACUTE LIVER FAILURE. Appellant's Motion for Reconsideration, at p. A-1, Block #34, Death Certificate, dated August 9, 2010 (hereinafter "Reconsideration") (emphasis added).

(b) *Conditions leading to the cause of death:* ASSOCIATED WITH ISONIAZID THERAPY FOR TUBERCULOSIS. "Reconsideration," at p. A-1, Block #34 (emphasis added).

(c) *Other significant conditions contributing to death but not resulting in the underlying cause of death:* MICRONODULAR CIRRHOSIS OF UNDETERMINED ETIOLOGY, PULMONARY INTERSTITIAL FIBROSIS." "Reconsideration," at p. A-1, Block #35 (emphasis added).

Notably, there was no documentation of the disease of tuberculosis, in Mr. Reyes' death certificate. Clearly, there should have been a finding of tuberculosis disease if it existed. See "Reconsideration," at p. A-1. Block #36, proving an autopsy of Mr. Reyes' corpse was conducted. Result? No evidence of tuberculosis.

Judith Reyes contends this is a case of medical malpractice articulated by her expert witness , Rosa Martinez, M.D., as expressed in her two declarations of record. Also, this case fits the required facts for a claim of *res ipsa loquitur*. *Ripley v. Lanzer, M.D.*, 152 Wn.App. 296, 215 P.3d 1020 (2009); "Reconsideration," at pp. B-1 through B-28.

The undisputed facts are that Mr. Reyes died because of drug poisoning of his liver, and there was no tuberculosis disease in his body. The respondents controlled the requirement that Mr. Reyes ingest this deadly drug, and there were ample clinical findings Mr. Reyes was suffering from a compromised liver. It is not a difficult step to infer the respondents' negligence killed Mr. Reyes. Dr. Martinez's declarations support these conclusions, based upon her review of the medical records, and the death certificate and autopsy findings. Those facts are sufficient to defeat summary judgment. This court is requested to reverse the dismissal of the petitioner's claims, and to remand this case for jury trial.

6. Conclusion.

The Court of Appeals found the actions of the respondents were not outrageous, apparently because the court was not moved by the threat of incarceration and force-feeding the deadly drug, INH, to this doomed man, Mr. Reyes. Erroneously, the wrongful death claim was dismissed because the court could not find any negligent act by the respondents, which flies in the face of the proved facts.

The petitioner asks this court to reverse the lower courts' dismissal of these actions because the lower courts have ignored or refused to honor the general principles involving summary judgment motions, by circumventing the clear facts that explained why Mr. Reyes died, by failing to find the inferences presented by the petitioner that support denial of summary judgment, and by giving credibility to the respondents' specious argument that Mr. Reyes suffered from tuberculosis and that the respondents' hands were tied—they had to give Mr. Reyes the poisonous drug, INH. Essentially, the lower courts granted the defendants-respondents a license to kill Mr. Reyes.

Respectfully submitted this 3rd day of November, 2017, at Zillah, Washington 98953.

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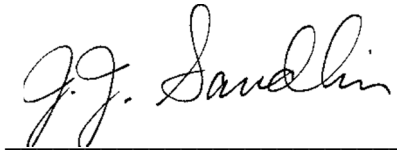

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CERTIFICATE OF SERVICE

J.J. SANDLIN declares under penalty of perjury of the laws of the State of Washington as follows:

1. I electronically filed the petitioner-appellant's Supplemental Brief to the Clerk of the Court, Washington State Supreme Court, WA on November 3, 2017, by filing said document on the WSSC website under counsel's User ID and Password.

2. On November 3, 2017 I mailed, and emailed a copy of the above Supplemental Brief to opposing counsel as listed below:

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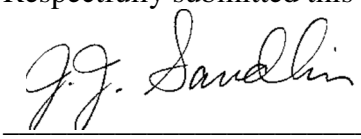

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Comments:

supplemental brief of Petitioner Judith Reyes, et al.

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