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No. 98514-6

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

ROBERT FOX, an individual,

Plaintiff/Respondent,

v.

CITY OF BELLINGHAM,

Defendant/Appellant.

RESPONDENT'S RESPONSE BRIEF

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I. INTRODUCTION

This lawsuit arises from the City of Bellingham’s (“Defendant” or “City”) firefighters, paramedics, and office personnel tortiously interfering with Bradley Ginn, Sr.’s (“Mr. Ginn”) corpse when, after he died, the City’s employees performed on his body 15 medically unnecessary intubations without prior consent from Mr. Ginn or his family. As a result, Robert Fox (“Plaintiff”), Mr. Ginn’s undisputed natural brother and close family member, suffered severe emotional distress caused by the City’s tortious interference with a corpse.

The claim of tortious interference with a corpse is based on Washington common law. *Adams v. King County*, 164 Wn.2d 640, 656 (2008). Since the inception of the tort, Washington cases have consistently reasoned that where there is intentional mutilation or handling of a dead body, “in such a manner as to cause the relatives or persons charged with its decent sepulture to naturally suffer mental anguish, it would shock the sensibilities to hold that there was no remedy for such a wrong.” *Wright v. Beardsley*, 46 Wash. 16, 20 (1907) (emphasis added).

Contrary to Defendant’s argument, the tort is not based on statute nor is it derived from *The Restatement (Second) of Torts* § 868 (1979). Indeed, “[t]his court has never adopted that section of the *Restatement*.” *Adams*, 164 Wn.2d at 656. The action is not based on a property interest in the body itself, but rather an interest in the proper treatment of the body. *Id.* at 658. The tort of interference with a corpse allows recovery to close

family members or next of kin for their mental suffering caused by the intentional, not negligent, misuse of a body. *Id.* at 658.

The only case to directly cite to RCW 68.50.160 was *Adams*, in a string cite, where this Court reaffirmed long-standing precedent: “The interest extends to relatives of the deceased and those who control the right to dispose of the body.” *Id.* at 658 (emphasis added) (citing *Wright*, 46 Wash. at 20). Thus, contrary to Defendant’s position, standing for the tort is not limited to those responsible for disposing of the body. Based on references in case law to relatives and those who have a right to dispose of the body, the United States District Court in the Western District has certified two questions for this Court related to a party’s standing to bring a claim for tortious interference with a dead body:

- (1) Whether only those individuals identified as “next of kin” as defined by RCW 68.50.160 at the time of a decedent’s death have standing to bring a claim for tortious interference with a corpse?
- (2) If the answer to the above question is “no,” whether plaintiff, the decedent’s brother, is within the class of plaintiffs that may bring a claim for tortious interference with a corpse?

The answer to the first question is “no” and the answer to the second question is “yes”.

A close reading of Washington cases dating back to 1907 shows that this Court intended the tort to provide a remedy to close family members for the intentional interference with or mutilation of their loved one’s body. Despite Defendant’s contentions to the contrary, foreseeability standards in

negligence cases are inapplicable because this tort is based on intentional conduct.

As the decedent's close brother, Plaintiff has standing to bring a claim for tortious interference with a corpse. Such a result is consistent with Washington precedent and policy considerations.

II. CERTIFIED QUESTIONS

- (1) Whether only those individuals identified as "next of kin" as defined by RCW 68.50.160 at the time of a decedent's death have standing to bring a claim for tortious interference with a corpse? **No.**
- (2) If the answer to the above question is "no," whether plaintiff, the decedent's brother, is within the class of plaintiffs that may bring a claim for tortious interference with a corpse? **Yes.**

III. STATEMENT OF THE CASE

A. Factual Background.

The details of what occurred with Mr. Ginn's corpse are devastating and disturbing to any reader, let alone to a close relative. On July 31, 2018, Mr. Ginn suffered a medical emergency. Dkt. 1 at 2:08–09; Dkt. 17-1 at 6. While being transported by the Medic Unit, Mr. Ginn stopped breathing and died. Dkt. 1 at 2:08–09; Dkt 13 at 2:12–15.

The Medic Unit then transported Mr. Ginn's body to the Bellingham Fire Department because the hospital could not store his body. Dkt. 1 at 2:11–12; Dkt. 17-1; Dkt. 13 at 2:14–18. Once at the Fire Department's Station, Mr. Ginn's body was placed in a body bag, which was then unzipped to expose his face and torso, and laid on the cold concrete ground of the Station's floor where an ambulance usually parked. Dkt. 1 at 2:14–

15; Dkt. 17-1 at 7–8. The City’s employees—including firefighters, paramedics, and non-medical office personnel—then shockingly decided to use Mr. Ginn’s dead body as a “training opportunity”. Dkt. 1 at 2:15–17; Dkt. 17-1 at 8. Although the City employees knew Mr. Ginn had a “do not resuscitate” order, they proceeded to take turns intubating his body while it was on the ground. Dkt. 1 at 2:09–21; Dkt. 17-1 at 6–23; Dkt. 13 at 2:18–22. In total, 11 City employees intubated Mr. Ginn’s corpse a total of 15 times. Dkt. 1 at 2:22–23; Dkt. 17-1 at 3. These intubations served no medical purpose and were in direct contradiction to Mr. Ginn’s order that no invasive procedures, like intubation, be performed. Dkt. 1 at 2:23–25; Dkt. 17-1 at 3.

The City’s intentional actions were done with gross carelessness and an utter indifference to Mr. Ginn’s body. The City’s employees took turns “high fiving” each other for a job well done as they took turns violating Mr. Ginn’s corpse with invasive intubations. Dkt. 17-1 at 19. These facts are undisputed and set forth in the City’s own investigation report. *See* Dkt. 17-1.

As a result of the City’s tortious interference with Mr. Ginn’s corpse, his natural brother Plaintiff has experienced significant emotional distress. Dkt. 18. Plaintiff and Mr. Ginn were close brothers. Dkt. 18 at ¶ 2. In the years leading up to his death, they spoke and saw each other weekly and even lived together at times. Dkt. 18 at ¶ 2. Now Plaintiff suffers the daily anguish of imagining his beloved brother’s dead body lying

on the cold ground and being humiliated and violated in front of a crowd of people high fiving one another. Dkt. 18 at ¶¶ 3, 4.

B. Procedural History.

Due to his close familial relationship, Plaintiff suffered significant emotional distress from the City's intentional mishandling of his brother's corpse. On June 19, 2019, Plaintiff filed this lawsuit in the United States District Court of Western Washington based on diversity jurisdiction alleging tortious interference with a corpse against the City. Dkt. 1. On January 30, 2020, the City filed a motion for summary judgment contesting Plaintiff's standing, claiming that recovery under the tort of interference with a corpse is limited to next of kin. Dkt. 13.

The Honorable Judge Robert Lasnik, however, acknowledged that the tort is not rooted in statute and, in fact, cases dating back from 1907 suggest "that the tort is designed to compensate relatives for the foreseeable mental anguish they suffer as a result of the intentional desecration of the body of a loved one." Dkt. 20 at 3–4 (citing the seminal Washington cases *Wright* and *Gadbury*). Judge Lasnik went on to say, "the Supreme Court [in *Reid*] suggested that the plaintiffs, including the decedent's surviving niece, could bring claims for tortious interference with a corpse without directly addressing standing." Dkt. 20 at 4. Acknowledging that Washington Supreme Court cases discuss standing for close relatives and next of kin, but have never taken the issue up directly, Judge Lasnik certified the question of standing directly to this Court for clarification. Dkt. 20 at 4–5.

IV. LEGAL ARGUMENT

A. **Standard of Review.**

The Court reviews certified questions from the Federal Court *de novo*. *Brady v. Autozone Stores, Inc.*, 188 Wn.2d 576, 580, 397 P.3d 120 (2017).

B. **The answer to the first certified question is “no”. At the time of a decedent’s death, next of kin are not the only individuals who have standing to bring a claim for tortious interference with a corpse because standing extends to close relatives of the deceased.**

Standing for tortious interference with a corpse should not be limited to next of kin. First, the tort is based on common law and is not derived from statute. Neither Washington courts, nor the state legislature, have limited standing to next of kin. This Court in *Adams* confirmed that two groups of individuals have an interest to bring a claim for tortious interference with a corpse: close relatives and next of kin. This is in line with Washington precedent, which has been instructive, and indicates that both close relatives and next of kin have a right to bring a claim of tortious interference with a corpse. Second, limiting standing to both relatives and next of kin is consistent with long-standing policy considerations for the tort.

1. Washington common law clearly recognizes standing for close relatives of the deceased to bring suit for tortious interference with a corpse.

The tort of interference with a corpse allows recovery for mental suffering derived from the intentional misuse of a body. *Gadbury v. Bleitz*,

133 Wash. 134, 136, 233 P. 299 (1925). There are two approaches to standing for tortious interference with a corpse: (1) the traditional approach, which follows *The Restatement (Second) of Torts § 868 (1979)*, where only next of kin have standing as a result of their “quasi-property” right in the body itself; and (2) the modern approach, where a “‘close’ or ‘immediate’ member of the decedent’s family may bring a suit.” *Amaker v. King County*, 540 F.3d 1012, 1015–16 (9th Cir. 2008).

In *Adams v. King County*, this court explicitly declined to adopt *The Restatement (Second) of Torts § 868 (1979)* (“This court has never adopted that section of the *Restatement*.”). *Adams*, 164 Wn.2d at 656. Instead, in Washington, the tort “is not based on a property interest in the body itself, but rather on an interest in the proper treatment of the body.” *Id.* at 658 (internal citations omitted). Accordingly, Washington follows the modern theory of liability in which the interest extends to those who control the right to dispose of the body and to those close relatives who suffer emotional damages caused by the willful misuse of their loved one’s body. *Wright*, 46 Wash. at 20; *Gadbury*, 133 Wash. at 139.

The most recent Supreme Court case to discuss the tort is *Adams*, where the court reaffirmed that two groups of individuals have an interest to bring a claim for tortious interference with a corpse. *Adams*, 164 Wn.2d at 658. First, the interest extends to close relatives of the deceased. *Id.* (citing *Gadbury*, 133 Wash. at 139 (“those persons who, by relationship have a peculiar interest in seeing that the last sad rites are properly given the deceased, may maintain the action”). Second, the interest extends to

next of kin, *i.e.*, those who control the right to dispose of the body. *Adams*, 164 Wn. 2d at 658 (citing RCW 68.50.160(3)).

In *Adams*, before 21-year-old Jesse Smith died, she signed a card attached to her driver's license that she intended to make a gift of her organs, but the card did not designate a donee. *Id.* at 645. The nature of the dispute in *Adams* for tortious interference with a corpse hinged on whether the decedent's mother consented that her daughter's entire brain to be used for private research. *Id.* at 646.

The court held that, "as mother of the deceased, Adams falls within the recognized category of plaintiff who can maintain a claim for mental suffering from such misuse." *Id.* at 659. This Court in its analysis, did *not* limit standing to next of kin, *i.e.*, those who by RCW 68.50.160 have a right to dispose of the body. To the contrary, the Court clearly reaffirmed that, "[t]he interest [to bring a claim for tortious interference with a corpse] extends to relatives of the deceased **and** those who control the right to dispose of the body." *Id.* at 646 (emphasis added).

The City mischaracterizes *Adams*, claiming that the Court "specifically cited to RCW 68.50.160 as the controlling statute to determine who has standing to bring an action for tortious interference of a dead body" and thus, in order to have standing, a plaintiff must be next of kin. Dkt. 13 at 6:15–25; App. Opening Br. at 13. Indeed, the Court cited to the statute as a string cite, indicating *one* of the ways standing is conferred. The relevant portion of the passage the City refers to in *Adams* reads:

The action is not based on a property interest in the body itself, but rather an interest in the proper treatment of the body. *See Herzl Congregation v. Robinson*, 142 Wash. 469, 471, 253 P. 654 (1927); *Wright*, 46 Wash. at 19, 89 P. 172. The interest extends to relatives of the deceased and those who control the right to dispose of the body. *See Gadbury*, 133 Wash. at 139, 233 P. 299 (“those persons who by relationship have a peculiar interest in seeing that the last sad rites are properly given the deceased may maintain the action”); RCW 68.50.160(3).

Adams, 164 Wn.2d at 658 (emphasis added) (parentheticals omitted). These are not “curious” and “passing comment regarding ‘relatives’” as the City contends. App. Opening Br. at 12, 18. Rather, the *Adams* Court was echoing *Wright* which clearly conferred standing to “relatives or persons charged with its decent sepulture”. *Wright*, 46 Wash. at 20 (emphasis added).

The City further mischaracterizes Washington law by claiming that Washington follows the traditional rule which limits standing to next of kin, in accord with *The Restatement (Second) of Torts* § 868 (1979). App. Opening Br. at 10. However, the Supreme Court in *Adams* specifically declined to adopt *The Restatement* and cited *Wright* and *Gadbury* as the two controlling cases:

Adams’s complaint raised a cause of action titled ‘Tortious Interference with a Dead Body Restatement (Second) of Torts § 868 [1979].’ CP at 193–94. This court has never adopted that section of the Restatement. However, this court has recognized a common law action for tortious interference with a dead body. *See Wright v. Beardsley*, 46 Wash. 16, 20, 89 P. 172 (1907); *Gadbury v. Bleitz*, 133 Wash. 134, 136, 233 P. 299 (1925). We recently affirmed the viability of the tort in *Reid v. Pierce County*, 136 Wash.2d 195, 207, 961 P.2d 333 (1998) (citing *Wright* and *Gadbury*).

Adams, 164 Wn.2d at 656 (emphasis added).

A close reading of *Wright* and *Gadbury* shows that this Court intended the tort to extend beyond those responsible for disposing of the decedent's body. The City incorrectly relies on *Wright* for the proposition that the court limited standing to persons charged with the decedent's burial. App. Opening Br. at 8, 13. This is incorrect. The Supreme Court in *Wright* clearly provided standing for "relatives or persons charged with its decent sepulture," not only those charged with the burial of the decedent. 46 Wash. at 20 (emphasis added).

In *Wright*, a mother and father brought an action to recover damages for the improper burial of their deceased child. *Id.* at 16. When their standing was challenged, the court held that parents could certainly bring an action because when a defendant willfully violates a corpse and causes "relatives or persons charged with its decent sepulture to naturally suffer mental anguish, it would shock the sensibilities to hold that there was no remedy for such a wrong." *Id.* at 20 (emphasis added).

Then in *Gadbury*, the Supreme Court reaffirmed *Wright*. *Gadbury*, 133 Wash. 134. The defendant in *Gadbury* argued that because the plaintiff's son was of age, she could not bring the action for tortious interference with a corpse. *Id.* at 138–39. The *Gadbury* court dismissed this argument, stating "but it has been held in many cases that those persons who, by relationship have a peculiar interest in seeing that the last sad rites

are properly given the deceased, may maintain the action.” *Id.* at 139 (emphasis added).

The City, without support, claims that the *Gadbury* Court meant the phrase “those persons who by relationship have a peculiar interest” to be synonymous with “right of custody”. App. Opening Br. at 7, 12–13. The City misinterprets this language and makes a circular argument for support, contending that the quote “speaks for itself – those responsible for the burial of the body have standing”. *Id.* at 13. To the contrary, the *Gadbury* court meant “peculiar interest” to mean “special interest” (*i.e.*, close or other relationship). The Supreme Court in *Adams* affirmed this interpretation. 164 Wn.2d at 658 (“The interest extends to relatives of the deceased and those who control the right to dispose of the body. *See Gadbury*, 133 Wash. at 139, 233 P. 299.”).

The City then incorrectly relies on *Herzl* for the proposition that the right to maintain an action belongs exclusively to the next of kin. App. Opening Br. at 7, 19. First, *Herzl* did not involve claims of tortious interference with a corpse. Second, *Herzl* evaluates who has the right to control the disposition of a dead body generally. In *Herzl*, despite the fact that the decedent’s uncle was in charge of the burial, the decedent’s father rightfully brought a claim for the removal of his son’s body from its place of burial. *Herzl Congregation v. Robinson*, 142 Wash. 469, 471, 253 P. 654 (1927). When the appellant cemetery questioned the father’s right to disinterment of his son, the court held “the right to bury a corpse and to preserve its remains is a legal right, which the courts will recognize and

protect.” *Id.* at 471–73. The Court went on to hold that the next of kin have the legal right to dispose of or remove the body from the ground. *Id.* at 473. The *Herzl* Court did not mention, let alone intend to limit, tortious interference with a corpse to next of kin.

Indeed, this Court has repeatedly made reference to “relatives,” beyond next of kin, in discussing tortious interference with a corpse. In *Reid v. Pierce Cty.*, the Supreme Court suggested the viability of tortious interference with a corpse for close relatives. 136 Wn.2d 195, 207 (1998). In *Reid* relatives of decedents sued the county, asserting claims of negligent infliction of emotional distress, outrage, and common law invasion of privacy based on allegations that county employees had appropriated and displayed photographs of decedents’ corpses. *Id.* at 195. In dicta, the Supreme Court suggested that plaintiffs, as relatives of the deceased, could have standing for tortious interference with a corpse: “It is clear that had the County employees physically mutilated or otherwise physically interfered with the corpses of the Plaintiffs’ relatives, liability would certainly exist.” *Id.* at 207.

As discussed above, based on a close reading of *Wright*, *Gadbury*, and *Herzl* and on the court’s recent interpretation in *Adams*—as Mr. Ginn’s close and natural brother—Plaintiff has standing as a “relative of the deceased.”

Because this Court has made clear its intention to include “relatives” of a decedent in the class of plaintiffs who can recover for claims of intentional interference with a corpse, but has not explicitly done

so, Judge Lasnik in this matter and the Ninth Circuit in *Amaker* were right to certify the question of standing to this Court. Contrary to the City's contention that "*Amaker* is flawed" because it found language in Washington precedent to be "cryptic", *Amaker* correctly identified that "[n]o Washington state court has explicitly defined the class of plaintiffs with standing" (*i.e.*, close, distant, or blood relative). 540 F.3d 1012. *Amaker* rightfully concluded that the holdings in *Wright* and *Gadbury* allowed for unintended and divergent interpretations of standing for the tort.

Because the court has never taken the issue up to address specifically the parameters of standing, defendants like the City, have taken the opportunity to cherry-pick quotes and twist precedent to limit standing for the tort. For example, no Washington Supreme Court case has ever given exclusive standing to next of kin. Despite this fact, intentional wrongdoers like the City cite *Herzl* as the seminal case to limit standing. Although *Herzl* held that next of kin have the legal right to dispose of the body, that case did not involve tortious interference with a corpse but, rather, the right to control the disinterment of a body. 142 Wash at 471–73.

This limited reading, as proposed by the City and *The Restatement (Second) of Torts* § 868 (1979), is in direct conflict with this Court's prior holdings and reasoning for adopting the tort.

2. Policy considerations weigh in favor of including relatives.

Contrary to the City's assertion, Plaintiff does not request that the court apply a "free-for-all" standing rule for any relative. Rather, Plaintiff's position would still limit the tort to *close* relatives, as contemplated by *Adams*, *Wright*, and *Gadbury*.

Courts that follow the *Restatement* and give exclusive standing to next of kin base their reasoning on "quasi-property" rights in the deceased's body. *Amaker*, 540 F.3d at 1015. In contrast, tortious interference with a corpse in Washington is "not based on a property interest in the body itself, but rather on an interest in the proper treatment of the body." *Adams*, 164 Wn.2d at 658. Moreover, the reasoning behind the tort is that "mental suffering and injury to the feelings would be ordinarily the natural and proximate result of knowledge that the remains of a deceased husband had been mutilated is too plain to admit of argument." *Wright*, 46 Wash. at 20 (internal citations omitted). In other words, the tort exists to compensate those individuals, like close relatives, who would suffer significant emotional distress as a result of the intentional mistreatment of their loved one's corpse.

It is for these reasons that this Court in *Adams*, like many others, declined to adopt *The Restatement (Second) of Torts* § 868 (1979). As discussed in *Amaker*, courts in other jurisdictions, like the Ninth Circuit, have moved away from this section of the *Restatement* for the following policy reasons:

Courts in other jurisdictions have moved away from this approach and recognized that other close family members

generally can bring suits for interference with a corpse under a subspecies of the tort of infliction of emotional distress. *Carney*, 514 N.E.2d at 435. Under this theory the claim is not based on “a property right in a dead body but in the personal right of the family of the deceased to bury the body.” *Id.* (citations omitted). These jurisdictions now conclude that any “close” or “immediate” member of the decedent’s family may bring suit for tortious interference with a corpse. *See, e.g., id.* (rejecting “the theory that a surviving custodian has quasi-property rights in the body of the deceased, and acknowledg[ing] the cause of action for mishandling of a dead body” but declining to define precisely which class of family members has standing); *Christensen v. Sup.Ct. of Los Angeles*, 54 Cal.3d 868, 2 Cal.Rptr.2d 79, 820 P.2d 181, 183 (1992) (concluding that the class of plaintiffs with standing to sue went beyond those “who have the statutory right to control disposition of the remains and those who contract for disposition,” to include those “close family members who were aware that the funeral. . . services were being performed”); *Contreras v. Michelotti–Sawyers*, 271 Mont. 300, 896 P.2d 1118, 1122 (1995) (holding that “close relatives,” including children and grandchildren, have standing to sue).

Amaker, 540 F.3d at 1016 (alterations in original).

Indeed, other state courts within the Ninth Circuit have held that the particular person that holds the legal right to dispose of the body is not “a reliable indicator of who may suffer the greatest emotional distress” as a result of mishandling the deceased’s body. *Christensen v. Superior Court*, 54 Cal. 3d 868, 887, 820 P.2d 181, 191 (1991); *Boorman v. Nevada Mem’l Cremation Soc’y*, 126 Nev. 301, 307, 236 P.3d 4, 8 (2010).

Accordingly, as *Wright* and *Gadbury* clearly reason, the tort is designed to compensate relatives for the foreseeable mental anguish they suffer as a result of the intentional desecration of the body of a loved one.

Wright, 46 Wash. at 19; *Gadbury*, 133 Wash. at 136; *see also* Dkt. 20 at 3–4 (Judge Lasnik’s Order).

The Ninth Circuit cases cited in *Amaker* and *Christensen* and *Boorman* are more closely aligned with Washington’s reasoning and policy considerations for the tort than the negligence and *Restatement* cases cited by the City.

C. The answer to the second certified question is “yes”. Plaintiff Fox, as the decedent’s natural brother and close relative has standing to bring a claim for tortious interference with a corpse.

Because standing to bring a claim of tortious interference with a corpse is not limited to “next of kin” as defined by RCW 68.50.160, but extends to close relatives as well, Plaintiff has standing. *See Adams*, 164 Wn.2d at 658; *Gadbury*, 133 Wash. at 139. “[T]hose persons who, by relationship have a peculiar interest in seeing that the last sad rites are properly given the deceased, may maintain the action”. *Gadbury*, 133 Wash. at 139.

Despite the plain language of cases like *Adams* and *Gadbury*, the City attempts to limit the class of plaintiffs who have standing by citing to negligence cases, such as *Colbert v. Moomba Motor Sports, Inc.*, 163 Wn.2d 43 (2008). App. Opening Br. at 20–23. In *Colbert*, the Court evaluated the plaintiff’s claim of negligent infliction of emotional distress and which family members would have standing to bring such a claim. 163 Wn.2d 43. In its analysis, the Court evaluated the foreseeability of harm to certain classes of individuals in order to establish the extent of the

defendant's duty. *Id.* at 49–62. Considerations of “foreseeability” and “duty” are negligence principles which are irrelevant to this analysis. The City, unlike the defendant in *Colbert*, committed an intentional tort. Indeed, this Court has repeatedly rejected considerations of “foreseeability” in the context of intentional torts. *See, e.g., Cagle v. Burns and Roe, Inc.*, 106 Wn.2d 911, 726 P.2d 434 (1986) (plaintiff need not establish that the emotional distress was a foreseeable consequence of an employer's intentional discriminatory conduct); contrast with *Hegel v. McMahon*, 136 Wn.2d 122, 960 P.2d 424 (1998) (a defendant has a duty to avoid only the negligent infliction of emotional distress that is foreseeable).

Here, unlike in the negligence context, Plaintiff need not establish that the City had a duty to him as Mr. Ginn's brother. Accordingly, issues of foreseeability of harm are irrelevant. Instead, Plaintiff need only establish that the City engaged in an intentional act which caused him emotional distress. Whether that emotional distress, given his relationship with his brother, is real or reasonable is an issue of credibility for a jury to decide, not a matter of standing.

Even assuming, *arguendo*, that foreseeability of harm to Plaintiff is a consideration, there is no question that an immediate family member, like a natural brother, is a foreseeable plaintiff for the purposes of this claim. Plaintiff and Mr. Ginn were close siblings. As adults, they lived together off and on at their mother's home. Before Mr. Ginn's death, Plaintiff and the Mr. Ginn spoke weekly. Additionally, Plaintiff was involved in planning the burial of his brother and attempted to pay for his cremation. Dkt. 14,

Ex. A at 69:02–24. Plaintiff and Mr. Ginn’s closeness and brotherly bond is undeniable.

Certainly, the City does not get to pick and choose who its intentional and shocking acts impacted. In this case, City employees—including firefighters, paramedics, and office personnel—took turns intubating Mr. Ginn 15 times while he was on the ground of the apparatus bay. These intubations served no medical purpose and were in direct contradiction to Mr. Ginn’s order that no invasive procedures, like intubation, be performed. No one from the City of Bellingham obtained consent or approval from Mr. Fox or any other family member of the deceased. Dkt. 1 at 2:25–26; Dkt. 17-1 at 22. The City’s intentional actions are of the type that, without question, would cause any loved one emotional distress.

Indeed, as a direct result of the City’s intentional indifference to Mr. Ginn’s corpse, Plaintiff has experienced significant emotional distress. The City’s actions have caused him to imagine his brother’s dead body lying on the cold ground while members of the City of Bellingham surrounded him, taking turns conducting invasive, unnecessary procedures while high fiving each other for a job well done.

V. CONCLUSION

Washington precedent has long held that the interest for tortious interference “extends to relatives of the deceased.” This is further demonstrated by the Supreme Court’s refusal to adopt *The Restatement (Second) of Torts* § 868 (1979), which limits standing to next of kin.

Moreover, providing standing to both relatives and next of kin is consistent with long-standing policy considerations for the tort. Where there is intentional mutilation or handling of a dead body, “in such a manner as to cause the relatives or persons charged with its decent sepulture to naturally suffer mental anguish, it would shock the sensibilities to hold that there was no remedy for such a wrong.” *Wright*, 46 Wash. at 20. Plaintiff, as decedent Mr. Ginn’s natural brother, is a close relative as contemplated by Washington precedent and has standing to bring this claim.

RESPECTFULLY SUBMITTED this 6 day of July, 2020.

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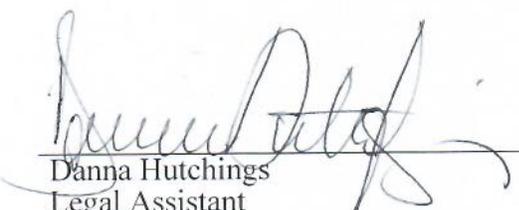
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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that on July 6, 2020, I caused to be served a copy of the foregoing on the following person(s) in the manner indicated below at the following address(es):

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