

75029-1

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CAUSE No. 75029-1

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

JESSICA SIMPSON,

Petitioner/Plaintiff,

v.

LINDA GIPSON and JOHN DOE GIPSON, husband and wife, and the
marital community composed, thereof,

Respondent/Defendant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR ISLAND COUNTY

The Honorable Vickie Churchill

BRIEF OF RESPONDENT

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Introduction

This appeal arises from the denial of a motion to continue the hearing of a summary judgment motion. The summary judgment motion was then granted, dismissing the plaintiff's complaint with prejudice. The present lawsuit was the second lawsuit filed by the plaintiff for the same injuries arising out of the same incident.

In the first lawsuit plaintiff had two different sets of attorneys. In that first lawsuit she sued the alleged tortfeasor's employer, a hospital, alleging that the tortfeasor, the Chief Nursing Officer of the defendant employer-hospital, injured the plaintiff while the tortfeasor-nurse was acting in the course and scope of her employment. That lawsuit was dismissed with prejudice on a summary judgment motion. The plaintiff did not appeal that dismissal.

Instead, she filed a second lawsuit, *pro se*, this time against the alleged tortfeasor-nurse, making virtually identical allegations. The defendant nurse filed a motion for summary judgment, arguing that the second lawsuit was barred by *res judicata*. The factual bases for the MSJ were the plaintiff's own complaints in the two lawsuits and the unappealed summary judgment order. The very well established and widely recognized rule of law is that if one sues a principal or an agent for actions done in the

course and scope of the agent's work, but loses that lawsuit, then one cannot sue the other in a second lawsuit arising out of the same incident.

Four days before the summary judgment motion the new lawyers appeared for the plaintiff; made a written motion for continuance, but did not even come close to providing the court with any fact, citation of authority or legal argument that they would be able to make with more time, that would create a material issue of fact. That type of information was not provided either in the written motion or during oral argument. In fact, no such information could be provided, because the motion was based on the plaintiff's very own complaints.

The court listened to the arguments and expressed on the record a very rational basis for denying the motion to continue. The motion for summary judgment was granted and a follow up motion for reconsideration of the denial of the continuance motion was denied. Even then the plaintiff did not provide any fact, citation of authority or legal argument that could create an issue of material fact.

Assignments of Error

The only real assignment of error is whether the trial Judge, the Hon. Vickie Churchill of Island County Superior Court, abused her discretion in denying the motion for continuance.

Issues Presented for Review

Did Judge Churchill abuse her discretion when she denied plaintiff Simpson's CR 56(f) motion to continue defendant Gipson's motion for summary judgment when plaintiff did not identify any evidence or citation of authority that with more time would enable plaintiff to create a material issue of fact? After which denial Judge Churchill granted defendant's motion for summary judgment, which was an issue of law, based on (1) plaintiff's own complaint and amended complaint in the first lawsuit "*Simpson v Whidbey General Hospital*;" (2) Judge Hancock's unappealed order granting defendant's motion for summary judgment in that case; (3) plaintiff's complaint in the current lawsuit, "*Simpson v Gipson*;" and (4) the overwhelming and uniform legal authority provided in defendant's motion for summary judgment.

In other words, was it an abuse of discretion to deny a continuance of a summary judgment motion when the summary judgment motion was based factually on plaintiff's own legal documents; the unappealed summary judgment in the prior, basically identical case; when the law was clear and unquestionably supported the MSJ; and the party asking for the continuance never provided any fact, citation of authority or argument that, in time, would create an issue of material fact?

Statement of the Case

A. Background Facts.

The facts contained in this subsection of the Statement of the Case are background facts that set the scene for the trial court decision that is under review, but, unless restated in the following subsection, are not the factual bases for the court's decision. They are provided only to introduce the parties and the underlying dispute.

On May 13, 2013, defendant (respondent) Linda Gipson, PhD, RN was employed as the Chief Nursing Officer of Whidbey General Hospital (the true legal name of which is Whidbey Island Public Hospital District No. 1 dba Whidbey General Hospital and Clinics, but for purposes of this brief will be referred to as "Whidbey General Hospital," or "WGH"). CP 42; 325-329.

Island County Superior Court had ordered that Plaintiff Jessica Simpson be placed in involuntary treatment because she was a danger to herself. Island County authorities obtained her admission to Whidbey General Hospital until she could be placed at an appropriate mental health facility. This was difficult, because Ms. Simpson is not welcome at most of the appropriate facilities, so she remained at WGH until near the time of her release.

During the day of May 13, 2013, the last day of the hold, Ms. Simpson was aggressive and abusive. She assaulted a nurse in the morning. At about 1:30 p.m. another “Code Gray” was called when she was tearing up her room, yelling and screaming obscenities, and being non-cooperative. She needed to be placed in four point restraints and to have medication administered to her to calm her down. A “Code Gray” was called to deal with this emergency.

Dr. Gipson heard this “Code Gray” and went to assist, because she thought that the nurse who had been assaulted in the morning was still in the ER. Ms. Simpson resisted and threatened staff who were trying to care for her.

Chief Nursing Officer Gipson is a person of excellent experience, skill, ability and quality. The declaration that was submitted by her in support of the summary judgment in first lawsuit, *Simpson v WGH*, is attached to this brief as appendix 5.¹ There the court can see for itself her remarkable qualifications and what happened with Ms. Simpson on March 13, 2013, although, as stated above, this is just setting the stage for the events that are actually under review. In short, Dr. Simpson assisted in

¹ Dr. Gipson’s declaration is provided as a source of background information regarding Dr. Gipson, Ms. Simpson and the events of May 13, 2013, even though the summary judgment itself did not turn on that information, but upon Ms. Simpson’s pleadings, the complaints in the two lawsuits and the unappealed summary judgment order of Judge Hancock in the first lawsuit.

caring for Ms. Simpson during the Code Gray. Ms. Simpson, among other things, was threatening the nurses and was positioned such that she could have carried out those threats. In the process of caring for plaintiff Simpson and in order to help redirect her attention from her biting targets (the nurses) and to make it easier to get Ms. Simpson's left hand restrained so that the nursing staff could inject an anti-anxiety medication, Dr. Gipson put one hand on Ms. Simpson's shoulder to bring her back forward and she placed the soft part of her other hand on the hard part of Ms. Simpson's chin. Dr. Gipson did not touch Ms. Simpson's neck and did not "strangle" her.

For some unknown reason the Island County Prosecuting Attorney, on July 2, 2014, filed a single criminal charge against Dr. Gipson in Island County District Court, Assault 4th Degree, RCW 9A.36.041. CP 13-14; 198.

The criminal case was tried to a jury for nine days between April 2 and April 10, 2015. Twenty-seven witnesses, including experts testified, including Ms. Simpson, Dr. Gipson and emergency medicine expert Nathan Schlicher, MD, J.D. The jury returned a verdict of "not guilty." Immediately thereafter the jury was instructed on RCW 9A.16.110 and asked to determine, by a preponderance of the evidence, if the force exerted by Dr. Gipson was lawful. After further deliberation, the jury returned a special verdict, finding by a preponderance of the evidence that Dr. Gipson

had used lawful force in the interaction with Ms. Simpson. The Court subsequently issued Findings of Fact and Conclusions of Law in which it ordered the State to pay Dr. Gipson's attorney's fees and costs. On September 17, 2015, the Attorney General of Washington filed a notice of appeal in the district court. CP 13-14; 198-221; 221; 225-26; 228; 230-52; 254-300.

We can now turn to the facts that directly relate to the rulings that Ms. Simpson is asking the Court of Appeals to review.

B. Facts Relating Directly to Decision under Review.

On September 26, 2014, long before the criminal trial, plaintiff Simpson, through her then attorneys, filed a "Complaint for Damages" against WGH. The complaint alleged six causes of action (there are two "fifth" causes of action). These were:

- 1) Battery;
- 2) Assault;
- 3) Intentional Infliction of Emotional Distress;
- 4) Corporate Negligence;
- 5) Medical Negligence; and
- 6) Negligent Infliction of Emotional Distress. CP 177-182; 14-15. Ap. 1.

It is undisputed from reading the complaint and subsequent amended complaint that Ms. Simpson pleaded that alleged acts complained

of were those of Dr. Gipson; that Dr. Gipson was in the course and scope of her employment with WGH when she allegedly committed those acts; and that WGH was vicariously liable for the conduct of its agent, Dr. Gipson.

The “factual allegations” are set forth in paragraphs 4.1 through 4.19, pages 2-4 of the Complaint for Damages. The events complained about allegedly occurred on May 13, 2014. Dr. Gipson is identified as WGH’s “Chief Nursing Officer” in paragraph 4.9. Dr. Gipson’s alleged actions are set forth in paragraphs 4.9 through 4.18. The alleged injury and damage from those alleged actions is set forth in paragraph 4.19. CP 179. Ap. 1.

The legal theories are set forth in paragraphs 5.1 through 5.19.

With regard to the alleged battery plaintiff pleaded:

5.1 At all times relevant herein, the conduct alleged herein was within the scope of the employees’ employment, in furtherance of the hospital’s business, and committed during the normal course of employment.

5.2 Nurse Gipson so battered Plaintiff when she intentionally placed her hands around Plaintiff’s throat and choked her.

CP 180; Ap. 1 (emphasis added).

With regard to the alleged assault plaintiff pleaded:

5.4 At all times relevant herein, the conduct alleged herein was within the scope of the employees’ employment, in furtherance of the hospital’s business, and committed during the normal course of employment.

5.5 Nurse Gipson assaulted Plaintiff when she placed Plaintiff in imminent apprehension of her life by placing her hands around Plaintiff's throat and choking her.

CP 180; Ap. 1 (emphasis added).

With regard to the alleged intentional infliction of emotional distress plaintiff pleaded:

5.7 At all times relevant herein, the conduct alleged herein was within the scope of the employees' employment, in furtherance of the hospital's business, and committed during the normal course of employment.

5.8 Nurse Gipson engaged in extreme and outrageous conduct by intentionally choking a patient unprovoked.

CP 181; Ap. 1 (emphasis added).

The next causes of action, fourth, "corporate negligence" and fifth, "medical negligence," are not quoted here because they were not included in the "*Simpson v Gipson*" complaint, although review of those causes of action and the complaint show that it is the conduct of Dr. Gipson to which Ms. Simpson objected. CP 181-82; 14-15; Ap. 1, 2, 4.

The sixth (denominated a second "fifth") cause of action was for negligent infliction of emotional distress. The allegations for that cause of action are:

Plaintiff re-alleges paragraphs 2.1 through 5.18 and incorporates them herein as if set forth in full.

5.19 On information and belief, Plaintiff's mental anguish and emotional distress would not have occurred, had the Defendant and its employees, servants and agents, exercised the proper standard of care.

CP 182; Ap. 1 (emphasis added).

On November 21, 2014, plaintiff amended her complaint. The only differences between the original and the amended complaints are that: 1) the cause of action for negligent infliction of emotional distress was properly denominated as a “sixth” cause of action, and (2) a new theory of liability was added based on the vulnerable adult statute. That later cause of action was not included in the case before the court, *Simpson v Gipson*. CP 185-91; 41-45; 14-16; Ap. 2.

On December 14, 2015, the Hon. Alan R. Hancock granted WGH’s motion for summary judgment, dismissing with prejudice plaintiff’s complaint in *Simpson v WGH*. The defendant’s moving papers included many declarations, including those of Dr. Gipson and Dr. Schlicher. At the hearing plaintiff was represented by a different attorney than the one who filed the complaint and amended complaint. Judge Hancock gave a very detailed and thorough ruling from the bench. CP 195-196; 15; Ap. 3.

That order of dismissal was never appealed, and the time for appeal elapsed on Wednesday, January 13, 2016. CP 15.

Instead, on January 7, 2016, Ms. Simpson, *pro se*, filed the complaint for the matter presently before the court, *Simpson v Gipson*. The new complaint is basically word-for-word the prior complaints, with the

exceptions of omitting the theories of “corporate negligence,” “medical negligence,” and violation of the vulnerable adult statute. Because there was no defendant against whom respondeat superior liability was being asserted, those allegations were also omitted. Dr. Gipson was clearly the object of Ms. Simpson’s wrath and the accusations were identically worded to their counterparts in the prior two complaints. CP 41-45; 15; Ap. 4.

On January 22, 2016, Ms. Simpson was served with a new motion for summary judgment. That motion set forth the abundant law from this and other states that once a plaintiff loses an action against either the principal or the agent, the plaintiff then is barred by *res judicata* from filing a subsequent action against the principal or agent that was not sued in the first lawsuit. CP 11-35; 172-73; 170-71.

The motion for summary judgment in the second lawsuit was based on indisputable “facts.” In short, the factual basis for the MSJ can be summarized as follows:

- plaintiff filed a lawsuit against the defendant’s employer, Whidbey General, based on the same facts as alleged in the second lawsuit;
- the first lawsuit alleged the same causes of action that are contained in the second lawsuit;
- in the first lawsuit plaintiff contended that defendant’s employer was liable for the alleged conduct of defendant via *respondeat superior*;

–Judge Hancock granted a motion for summary judgment dismissing the first lawsuit the first lawsuit, the one against the employer, with prejudice; and

–the dismissal was not appealed.

CP 11-35; 155-56.

The motion for summary judgment was set for hearing on the regular, Monday motion calendar on February 22, 2016. CP 172-73.

On Thursday, February 18, 2016, attorney Victor Ro appeared in writing for Ms. Simpson and made a written motion to continue the motion for summary judgment. In that motion he did not offer any evidence that he could produce given more time that would create an issue of fact. He did not identify any witness that he could produce given more time that would create an issue of fact. He did not provide the court with any legal authority that would cause the court to deny the motion for summary judgment. At no time, did Mr. Ro provide any written opposition that addressed the merits of the motion for summary judgement. CP 161-62; 163-65; 166-69.

In response, defense counsel served and filed an opposition to the motion for continuance, expressly pointing out what a party requesting a continuance of a MSJ motion must provide pursuant to CR56(f). Although that written objection also argued that the motion was untimely, the

timeliness objection was not asserted at oral argument. CP 154-60; RP 2-22-16, pp. 1-11.

At the hearing on Monday, February 22, 2016, defense counsel did not object to the short notice, but instead let Mr. Ro make his motion for continuance without asserting a timeliness objection. RP 2-22-16, pp. 1-11.

While waiting in the courtroom for the matter to be called, counsel spoke briefly. It was apparent that Mr. Ro had not even read defendant Gipson's motion for summary judgment. That was called to the attention of the court in a charitable manner as follows:

Justice does not require a continuance of our summary judgment motion.

The facts that-- This Court is very able to render a just decision.

The facts that our motion are -- is or are based on are indisputable. They're undisputed.

They are Ms. Simpson's Complaint, an Amended Complaint in the action that was dismissed by Judge Hancock. Her -- And -- Her Complaint in this action and Judge Hancock's Order of Dismissal.

There is nothing to be gained by -- by contesting this motion. The law-- It -- it's purely a question of law.

They're not going to be able to come up with any other facts. And they have not even attempted to do so.

In our brief we provided the Court with three cases that expressly discuss the requirements to get a continuance on a motion for summary judgment under Rule 56(f).

The -- the party requesting the continuance must inform the Court of what evidence they expect to produce. They must inform the Court of what efforts they have made to get that evidence, why they haven't got the evidence, and that that evidence will be material.

There's nothing in this case that they're going to produce that, in my opinion – The Court, of course, will make her own – make its own decision – is going to force – is going to case the Court not to grant our summary judgment motion.

It's purely a matter of law. And the law is so well established it's been followed in this state, almost every other state and the United Kingdom.

So Linda Gipson has lived with this miserable trumped-up situation for a long time now. The Plaintiff got the Prosecutor to prosecute – to try to prosecute her. They lost that. She filed her own lawsuit with the lawyer. The lawyer withdrew. And they got another lawyer. The – the— Judge Hancock dismissed it.

She filed another lawsuit, this time *pro se*. As we all know, if a person wants to be a *pro se*, they're expected to follow the same rules as a lawyer does.

Now, after-hours Thursday night Mr. Ro sends me his Motion for a Continuance.

They don't tell us any reason why. And, in fact, **Mr. Ro told me this morning that if he's read it, our motion, he's barely skimmed it.**

Well, the motion is not that long. You could read it on the ferry coming over here.

Justice requires that this case be ended today.

RP 2-22-16, pp.5-7 (emphasis added).

In fact, in his oral presentation, Mr. Ro essentially confirmed that he had not read defendant Gipson's motion for summary judgment or that he had done any investigation of the case.

We're asking for this motion for continuance. I just got on this case. **I don't know anything about this case whatsoever.**

RP 2-22-16, p.3 (emphasis added).

Mr. Ro did not even know if there was a trial date:

I'm not sure what the trial – docket says for trial date right now.

Is it 2017? Or –

Mr. Freise: There's no trial date right now.

Mr. Ro: No trial date set?

RP 2-22-16, p.3.

In other words, Mr. Ro accepted this case on a Thursday, knowing nothing about it other than that a summary judgment motion was set for the following Monday, and by the time of the hearing on Monday he still knew nothing about the case—had not even read the motion for summary judgment.

The motions for continuance and for summary judgment were argued before and decided by the Hon. Vickie Churchill.

After listening to all the arguments from both sides she denied the motion for continuance and granted the motion for summary judgment. She expressed her reasoning and judgment as follows:

The Court: Thank you.

I – I understand that your position that this would have to go up on appeal.

The first case-- You have no—**You've given me no reason for continuing this case other than there may be something somewhere somehow.**

I'm denying the Motion to Continue.

Now, this Court, **in looking at this, went through the first case and the second case; exact word-for word except for the claim against the corporate entity, Whidbey General Hospital. (Colloquy omitted re the hospital's subsequent name change.) But that – that case**

was not appealed. And it was dismissed on summary judgment.

So there is *res judicata*. And I am dismissing-- I'm granting the Motion for Summary Judgment.

Okay.

* * *

The Court: I'm – I'm granting the Motion for Summary Judgment. Thank you. No continuance.

RP 2-22-16, pp. 9-10 (emphasis added).

An order denying the motion for continuance and granting the summary judgment dismissal with prejudice was entered the day of the hearing. CP 59-69; 9-10.

Ms. Simpson then filed a motion for reconsideration. For various court reasons the motion for reconsideration was not heard until Monday, April 11, 2016. Again, Ms. Simpson and her counsel did not provide any fact, argument or citation of authority that would create an issue of material fact and/or require the court to deny the motion for summary judgment. That was 53 days after counsel for Ms. Simpson appeared in this action. It was 80 days after Ms. Simpson had been served with the MSJ. Without any factual support it was suggested in oral argument that “perhaps, a frolic; that she [Dr. Gipson] went outside the scope of employment, that she acted in some way that was not within her, you know, instructions from Whidbey General Hospital.” RP 4-11-16 p. 11. In her motion for reconsideration, although not at the original hearing, Ms. Simpson similarly argued:

More importantly, in reference to Defendant's *res judicata* issue here for summary judgment, the Plaintiff could have responded to and opposed successfully as to the actual privity of Ms. Gipson's alleged attachment to Defendant Whidbey General Hospital *inter alia*.

CP 68.

But that imagining, which diametrically contradicts the allegations made by Ms. Simpson in the complaint and amended complaint in *Simpson v Whidbey General Hospital*. was not supported by reference to any evidence, or to any person who might support that allegation, or to any policy or other document that would support such fantasy. CP 49-52.

Judge Churchill, then explained and ruled:

Mr. Kittleson: Brief response, Your Honor.

The Court: Yes. Because-- Let me just say this.

The-- The same issue was before Judge Hancock. The – It was Whidbey General, but it was the actions of Linda Gipson, who was employed by Whidbey General that brought this case before Judge Hancock. And so, necessarily, Judge Hancock had to be ruling on those actions in order to grant a Motion for Summary Judgment.

And then the case was not appealed.

So it seemed to me a very clear-cut case of *res judicata*.

So Go ahead.

* * *

The Court: Okay. Thank you.

It-- It's the same actions that brought the case to Judge Hancock. The same actions. The same allegations. It was—And I still believe that it is *res judicata*. And that that-- The fact that she never appealed that case. And that's it before me.

I'm - I'm sorry. I cannot reconsider that it is *res judicata*.

Motion for Reconsideration is denied.

RP 4-11-16 p. 15-17.

An order denying the motion for reconsideration was entered the day of the hearing. CP 47-48.

Prior to argument on the motion for reconsideration, Ms. Simpson filed a motion for discretionary review and a notice of appeal.

Argument

A. Argument Stated.

Plaintiff Simpson has produced no evidence that Judge Churchill abused her discretion in denying Ms. Simpson's motion for continuance and then granting Dr. Gipson's motion for summary judgment. In fact, Ms. Simpson has not produced even one fact, citation of authority or argument that would warrant a continuance. The mere fact that she obtained new counsel four days before the hearing alone is not enough to warrant a continuance. She still needed to comply with the requirements of CR 56(f). She had not even complied with the requirements of CR 56(f) when the motion for reconsideration was argued, 53 days after her new counsel first appeared; 80 days after the MSJ was served on her.

The summary judgment was based on the facts as alleged by Ms. Simpson in her three complaints; together with the unappealed summary dismissal of the first lawsuit. It was merely an issue of law for Judge

Churchill to decide based on the facts as alleged by Ms. Simpson in those complaints. When counsel for Ms. Simpson argues that he should have been allowed time to take unidentified depositions of unidentified witnesses, engage in written discovery etc., counsel shows that he either does not understand the legal analysis or he is trying to confuse the court.

The basis of the Court's decision was expressed on the record and is rational and tenable. There was no abuse of discretion.

There has been no violation of any applicable constitutional, statutory, decisional or procedural protection.

The basis of the summary judgment motion was plaintiff Simpson's very own complaints in these two lawsuits, and the unappealed order of Judge Hancock dismissing with prejudice the first lawsuit. Does plaintiff think that she can contradict her own pleadings and create a different outcome?

We could have discovery for a hundred years and spend thousands of dollars and it would not make any difference!

Plaintiff Simpson had plenty of time to bring to the Court's attention some fact, argument or citation of authority showing that a continuance would have made a difference in the outcome of the summary judgment, which was a legal issue based upon plaintiff Simpson's own complaints.

Plaintiff's current counsel had at least four calendar days to read and respond to the summary judgment motion. He did not produce anything at the time of the hearing regarding the summary judgment. By the time that he filed the motion for reconsideration, he had had 13 calendar days since he had appeared. By the time the motion for reconsideration was heard he had had 53 calendar days. That is more than a "ten minute ferry ride," which, of course, is understated.² Yet there has not been one fact or citation to authority that plaintiff has proffered to show that the outcome of the summary judgment would have been different.

Plaintiff Simpson, who is on her third attorney for her civil lawsuits related to the 5-13-14 incident, had even more time: 31 days from time of service of the MSJ until hearing date; 80 days from service of the MSJ until the hearing for the motion for reconsideration.

The arguments that plaintiff Simpson does make reveal that counsel either does not grasp the pertinent legal analysis or counsel is trying to confuse and mislead the court.

Ms. Simpson argues that with a continuance there could have been "Experts and affidavits from experts . . . medical records . . . depositions . .

² When counsel harps on needing more time to respond to the MSJ than a "ten minute ferry ride," he is trying to divert the court from what should be his shame—not having read the MSJ at all during the four days between having been hired and the MSJ hearing, or, at the most, perhaps having skimmed it.

. interrogatories and other litigation efforts . . .” See Appellant’s brief. p. 13. Aside from the fact that plaintiff Simpson does not specify what those materials would have proved or who the witnesses would have been, that is all irrelevant. Ms. Simpson’s opportunity to litigate the merits of her claim (of which there are none), was in the case that was dismissed on summary judgment by Judge Hancock and not appealed by Ms. Simpson and her then lawyer. The issue in the present case is one solely of law based upon plaintiff’s very own pleadings.

Likewise, it was in the first case that Ms. Simpson had the opportunity to attempt to prove her trumped up, unsubstantiated and universally contradicted claim that Dr. Gipson “choked” her. That allegation is irrelevant to the legal analysis of the MSJ in the second case.

The fact that the AG has appealed in the criminal case is wholly irrelevant to the analysis that the Court was required to make in the second civil lawsuit.

The closest that plaintiff Simpson came to presenting any argument that is relevant to the second case is when she states:

More importantly, in reference to Defendant’s *res judicata* issue for summary judgment, the Plaintiff could have responded to and successfully opposed the actual privacy of Ms. Gipson to Whidbey General Hospital *inter alia*.

See Appellant’s Brief p. 13. That argument was never made at the time of

the motion for continuance. It first appeared in the motion for reconsideration. But not only, even now, has Ms. Simpson not supplied the court with even one citation of authority to support this, but her own pleadings clearly allege that Dr. Gipson was an employee of WGH, its “Chief Nursing Officer.” And those pleadings unequivocally alleged that Dr. Gipson was acting in the course and scope of her employment with WGH. *See* complaint and amended complaint in *Simpson v Whidbey Island Public Hospital Dist.*, Cause No. 14-2-00622-0, paragraphs 4.9; 4.10, 4.11; 4.13; 4.15-18; 5.1-2; 5.4-5; 5.7-8; 5.14-15; 5.18; 5.19. CP 177-182; 185-19; Ap. 1, 2. They are quoted above. There is absolutely no question that Dr. Gipson, is and at all times material hereto has been, an employee of and, therefore, “in privity” with WGH. To suggest otherwise is baseless fantasy that contradicts plaintiff’s own complaints and all evidence.

The controlling law is straight forward.

B. Standard of Review.

Although this court hardly needs any lectures from counsel regarding defining what “standard of review” is, or what the standard of review is for reviewing a trial court’s ruling on a motion for continuance, the RAPs seem to call for that, so, briefly, here it is.

The concept of “Standard of Review is discussed in one of the Washington Practice volumes and although that volume specifically relates

to family law, the principles are applicable to a review of a trial court's decision regarding a motion for continuance:

The attorney contemplating an appeal should consider the standard of review that will govern appellate review of the claimed errors. **The standard of review will often affect what the appellate court will and will not consider on appeal, thereby affecting the chances of a reversal.**

As used by the appellate courts, **the term *standard of review* refers to that body of law** residing in the shadows between substance and procedure, **defining a test by which an appellate court will decide whether a trial court decision is reversible error.** It can be thought of as the burden of proof on appeal, though it should not be confused with the burden of proof at trial. More often than not, the two operate independently of each other.

At one extreme are cases in which the claimed errors relate to matters within the discretion of the trial court. Here, reversals are relatively rare because they are granted only for a manifest abuse of discretion. Most, but not all, family law decisions fall into this category. At the other extreme are cases in which the issue on appeal is a pure question of law, which the appellate court will decide on a de novo basis. In between are a variety of other tests that may or may not be applied, depending on the nature of the case and the trial court decision being appealed.

Standard of Review—Generally, 21 Wash. Prac. § 51:26, Family and Community Property Law (Dec. 2015)(accessed on line, hereinafter abbreviated as “aol” 8-10-16) (citations omitted)(emphasis added).

There is no question that the standard of review of a trial court's decision on a motion for continuance, including a motion for continuance of a summary judgment motion, is the “abuse of discretion” standard. As

stated in *Stranberg v. Lasz*, 115 Wn.App. 396, 406, 63 P.3d 809, 814 (2003)

(denial affd.—additional evidence would not have made a difference)

The denial of a continuance requested under CR 56(f) is reviewed for an abuse of discretion. *Tellevik v. Real Property Known as 31641 W. Rutherford St.*, 120 Wn.2d 68, 90, 838 P.2d 111 (1992); 845 P.2d 1325.

Id.

Stated another way,

Decisions whether to grant a motion for a continuance are generally within the discretion of the trial court and are upheld absent an abuse of discretion *State v Campbell*, 103 Wn.2d 1, 14, 691 P.2d 929 (1984), cert. denied, 471 US 1094, 105 S.Ct. 2169, 85 L.Ed.2d 526 (1985).

In re Detention of G.V., 124 Wn.2d 288, 295, 877 P.2d 680, 684 (1994).

But what constitutes an abuse of discretion?

Abuse of discretion means that the trial court exercised its discretion on untenable grounds or for untenable reasons, or that the discretionary act was manifestly unreasonable. *Coggle v Snow*, 56 Wn.App. 499, 507, 784 P.2d 554 (1990).

Lindgren v Lindgren, 58 Wn.App. 588, 595, 794 P.2d 526, 531 (1990).

In re Marriage of Littlefield, 133 Wn.2d 39, 46-47, 940 P.2d 1362

(1997), explains:

A court's decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if

the factual findings are unsupported by the record; it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard.

Littlefield, 133 Wn.2d at 47.

C. What a Party Moving for a Continuance of an MSJ Must Prove.

A court may deny a continuance if: (1) the requesting party fails to offer a good reason for the delay in obtaining the desired evidence, (2) the requesting party fails to explain what evidence it would establish through additional discovery, or (3) the desired evidence will not raise a genuine issue of material fact. *Id.* (citing *Turner v. Kohler*, 54 Wn.App. 688, 693, 775 P.2d 474 (1989)).

Stranberg v. Lasz, 115 Wn.App. 396, 406, 63 P.3d 809, 814 (2003).

To obtain a continuance of an adverse party's motion for summary judgment, the non-moving party must comply with the requirements of CR 56(f).

(f) When Affidavits Are Unavailable. Should it appear from the affidavits of a party opposing the motion that, for reasons stated, the party cannot present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

CR 56(f).

As stated in another Washington Practice volume,

Generally. Rule 56(f) provides a possible escape valve for a party who is unable to produce affidavits or other evidence in response to a motion for summary judgment. The rule affords the responding party an opportunity to

explain why he or she is unable to present evidence in opposition to the motion. The court may then, in its discretion, deny the motion for summary judgment or order a continuance for the gathering of additional evidence.

The rule requires the party seeking a continuance to justify the request by affidavit, demonstrating good cause for the delay and outlining the evidence sought to be discovered if the continuance is granted. In the absence of sufficient justification, a continuance may be denied and summary judgment granted. Illustrative cases are collected below in which the courts ultimately concluded that a continuance should be granted or denied.

Most of Washington's reported cases have resulted in the denial of a continuance. In at least one case, however, the court held on the facts presented that the trial court abused its discretion in refusing to grant a continuance requested by the plaintiff. The court stated, "Where a party knows of the existence of a material witness and shows good reason why the witness' affidavit cannot be obtained in time for the summary judgment proceeding, the court has a duty to give the party a reasonable opportunity to complete the record before ruling on the case."

When Supporting Materials Are Filed Late or Are Unavailable, Continuances, Tegland, 14A Wash. Prac., Civil Prcdr. §25:21 (2d ed.) (aol 16-8-10) (footnotes omitted)(emphasis added).

In other words, a party requesting a continuance of a summary judgment motion must show (1) the specific evidence or witness that will be produced with more time; (2) how that evidence will create an issue of material fact; and (3) a good explanation for not obtaining the information in a timely fashion.

In *Turner v Kholer*, 54 Wn.App. 688, 775 P.2d 474 (1989), Division One of the Court of Appeals affirmed the granting of a medical malpractice

defendant's motion for summary judgment and the denial of the patient-plaintiff's motion to continue. The Court declared:

The trial court may . . . deny a motion for continuance where: (1) the requesting party does not offer a good reason for the delay in obtaining the desired evidence; (2) the requesting party does not state what evidence would be established through the additional discovery; or (3) the desired evidence will not raise a genuine issue of material fact. The trial court's grant or denial of a motion for continuance will not be disturbed absent a showing of manifest abuse of discretion.

54 Wn.App. at 693, 775 P.2d at 476-77 (citations omitted). In *Turner* the plaintiff's attorney asked for more time for discovery and submitted a report from a doctor which was insufficient to create a material issue of fact.

Similarly, in *Colwell v Holy Family Hospital*, 104 Wn.App 606, 15 P.2d 210 (2001), a medical defendant's motion for summary judgment was granted and the plaintiff's request for additional time was denied. The trial court concluded that the expert from whom a declaration was submitted by the plaintiff opposing the summary judgment motion was not qualified to render the necessary opinions. The Court of Appeals affirmed.

A good example of what must be shown to obtain a continuance comes from the above referenced case, *Coggle v Snow*, 56 Wn.App. 499, 784 P.2d 554 (1990). The Court of Appeals reversed the trial court's granting of the summary judgment and denial of the motion for continuance. The Court of Appeals found that the plaintiff had met his burden by showing

not only a sufficient reason for delay (that his former attorney was in the process of retiring and a newly associated attorney was just working on the case), but also that there were specific, qualified physicians who would express the necessary opinions, if the plaintiff were only given an additional 30 to 45 days. The plaintiff's attorney's declaration was as follows:

1. Declarant. I am Harvey Grad, attorney for plaintiff in this motion. Matt L. Alexander, plaintiff's attorney, who is in the process of retirement and has moved from his downtown office, has asked that I substitute as plaintiff's counsel. I met with Mr. Alexander on 16 August 1988, and on that same date, called plaintiff's physician. My declaration is based upon that which I learned that date.

2. Unavailability of Affidavits. Mr. Alexander has prepared and transmitted to Mr. Coggle, plaintiff, a reply declaration for his execution and return for filing, in response to defendant's motion. Mr. Coggle was also seen by a Tacoma physician, whose declaration is intended to rebut that of defendant and the deposition testimony of Doctor Mitchell upon his earlier finding that the defendant breached the applicable standard of care for the administration of medication, and that such breach was the proximate cause of injuries of which plaintiff has complained. However, it was not possible to obtain his affidavit within the time required by LR 56.

3. Continuance. The current motion date should be continued an additional thirty (30) to forty-five (45) days, because plaintiff "cannot, for reasons stated, present by affidavit facts essential to justify his opposition ...", Civil Rule 56(f) and the court should therefore deny defendant's motion and continue this case for that reason.

56 Wn.App. at 502, 784, P.2d at 556-57.

Moreover, on a motion for reconsideration the plaintiff actually

produced an adequate declaration from the physician.

Cogle then filed a Motion for Reconsideration, supported by his own declaration and that of a Tacoma pulmonary specialist, Dr. James Billingsley. Billingsley stated that he examined Cogle in March, 1988, and reviewed Valley General Hospital's records of Cogle's treatment in 1983 and 1985. He stated that in 1983 "Doctor Mitchell noted the association between the onset of [ARDS] and the methadone prescribed by Doctor Snow, i.e., the 'pain cocktail'." Billingsley also stated:

Doctor Snow knew, or should have known of the prior adverse reaction to this medication. He should have checked the records from the prior admission to establish no adverse consequence from medications or treatment previously administered. Under the circumstances, Doctor Snow breached the standard of care required of a reasonably prudent practitioner possessing the degree of skill, care and learning possessed by other members of the same profession in this state.

Billingsley stated further that Cogle's injuries were a result of the administration of the pain cocktail which "posed a known risk of injury."

Cogle's declaration submitted in support of the motion for reconsideration stated that he does not have any allergies but that, if he had been specifically asked regarding adverse drug reactions, he would have informed Snow and other hospital personnel of the effect of the pain cocktail administered in 1983. Cogle further stated that he was advised by Dr. Mitchell in 1983 that his respiratory problems at that time were probably due to an allergic reaction to the pain cocktail. He would not have requested a pain cocktail or accepted such medication had he been aware of its nature.

56 Wn.App. at 503, 784, P.2d at 557.

As noted above, Ms. Simpson and her attorneys, the third (not counting the Prosecuting Attorney, who was not actually representing her, but certainly tried to prove wrongdoing on the part of Dr. Gipson), have not identified one fact, document or witness, let alone any legal authority that they would have been able to produce with more time, that would have created a genuine issue of material fact, and that would excuse their delay.

D. Newly Appearing Attorney on Case Does Not Warrant Granting of Continuance, and Denial in This Case Not an Abuse of Discretion.

Butler v Joy, 116 Wn.App. 291, 65 P.3d 671 (2003), like *Coggle v Snow*, 56 Wn.App.499, 784 P.2d 554 (1990), does not provide the help to Ms. Simpson that she needed for the Judge Churchill to grant Ms. Simpson's motion for continuance and motion for reconsideration. Nor does it establish an abuse of discretion by Judge Churchill.

It must be acknowledged at the outset that the purported holding that plaintiff is relying on in *Butler v Joy*, is nothing but *dicta*. In the very first sentence of the first paragraph in the section of the opinion regarding the "Motion for Continuance," the Court of Appeals stated:

Although unnecessary to our disposition of this appeal, we next address Ms. Butler's contention that the trial court erred in denying her newly retained counsel's oral motion for a continuance of the hearing on the January 2002 motion for summary judgment.

Butler v Joy, 116 Wn.App. 291, 298-299, 65 P.3d 671, 675 (2003).

In other words, the Court expressly stated that its pronouncements on the continuance issue were not necessary to its decision of the case. That is the definition of *dicta*, and, as such, it is of no precedential value. *United States v Crawley*, 837 F.2d 291, 292-93 (7th Cir. 1988); *Export Group v Reef Industries, Inc.*, 53 F.3d 1466, 1521 (9th Cir. 1995).

Just to make sure that readers would get the message that it was issuing *dicta* of no precedential value, the Court concluded the opinion with these two sentences:

Because we cannot find a tenable ground for the trial court's decision, we hold that the denial of the continuance was an abuse of discretion. However, because we also hold that the trial court erred as a matter of law in granting summary judgment dismissal, we reverse.

116 Wn.App. at 300, 65 P.3d at 676.

What the court did decide that had precedential value was as follows. The Court of Appeals reversed the trial court's granting of the defendant's motion for summary judgment because the Court of Appeals concluded that the trial court erred as a matter of law in its analysis of whether the defendant had waived her defense of insufficiency of service of process, which was the basis for granting the summary judgment motion. It was only after reaching that conclusion the Court of Appeals then discussed the trial court's denial of the plaintiff's motion to continue the summary judgment hearing.

As quoted above, the *Butler* court concluded that discussion and the opinion as a whole with the following two sentences:

Because we cannot find a tenable ground for the trial court's decision, we hold that the denial of the continuance was an abuse of discretion. However, because we also hold that the trial court erred as a matter of law in granting summary judgment dismissal, we reverse.

116 Wn.App. at 300, 65 P.3d 676 (emphasis added).

Butler is significantly distinguishable from *Simpson v Gipson* because in *Butler* there was no recording of the hearing; no elucidation by the trial court of its basis for the denial of the motion for continuance; no indication of what was argued regarding what additional discovery was requested and what it would produce; etc. 116 Wn.App. at 299-300, 65 P.3d 675-76. As quoted above, "we cannot find a tenable ground for the trial court's decision."

In the present case we have the transcript of the argument and the Court's ruling.

That transcript clearly sets forth the basis of the Court's decision:

THE COURT: * * * You've given me no reason for continuing this case other than there may be something, somewhere, somehow.

I'm denying the Motion to Continue.

Now, the Court, in looking at this, went through the first case and the second case; exact word-for-word except for the claim against the corporate entity, Whidbey General Hospital * * * But that case was not appealed. And it was dismissed on summary judgment.

So there is *res judicata*. And I am dismissing--I'm granting the Motion for Summary Judgment.

* * *

I'm granting the Motion for Summary Judgment. Thank you. No continuance.

RP 2-24-16, p. 9 line 7 to p. 10 line 24.

The mere fact that a party is *pro se* and obtains new counsel shortly before a motion for summary judgment is heard, by itself, is not enough to warrant a continuance of the summary judgment motion. It is not an abuse of discretion to deny a motion for to continue a motion for summary judgment just because a *pro se* gets new counsel at or around the time of the summary judgment hearing. See *Bonneville v. Pierce County*, 148 Wn.App. 500, 202 P.3d 309 (2008).

All the foregoing authorities agree that a motion to continue a summary judgment hearing is addressed to the discretion of the trial court; that to prove abuse of discretion the appealing party must provide the record from which his or her assignment of error arose so that the appellate court can determine whether discretion was abused; and that the appellate court cannot find an abuse of discretion unless the trial court's decision is manifestly unreasonable or based on untenable grounds or untenable reasons.

Here the Court articulated on the record a reasonable and tenable basis and rationale for its denying Ms. Simpson's motion for continuance.

Ms. Simpson has never, even to this day, provided any fact, rational argument or citation of authority to establish that a continuance would have made any difference in the outcome of defendant Gipson's motion for summary judgment.

In short, plaintiff has simply not complied with any of the three requirements to obtain a continuance under CR 56(f).

The recent case of *Keck v. Collins*, 184 Wn.2d 358, 357 P.3d 1080 (2015), which requires a trial court to expressly consider the factors set forth in *Burnet v Spokane Ambulance*, 131 Wn.2d 484, 933 P.2d 1036 (1997) before excluding late supplied opposition materials is inapplicable because in the Simpson case no evidence was presented, timely or untimely. How is a court to weigh, "there may be something somewhere somehow?"

Nor is there any dispute that pro se litigants are "bound by the same rules of procedure and substantive law as attorneys." *Westberg v All-Purpose Structures, Inc.*, 86 Wn.App. 405, 411, 936 P.2d 1175 (1997).

E. No Merit to Plaintiff's Constitutional Arguments.

Plaintiff's resort to constitutional provisions also fails. The Sixth Amendment, by its very terms, relates to criminal proceedings. The mere fact that Ms. Simpson would even cite the Sixth Amendment shows the speciousness of all her arguments.

Regarding procedural due process, there is no question that Ms. Simpson has been afforded due process. All proceedings were orderly and in conformance with local and general civil rules, statutes and reported proceedings. There is no basis for seriously contending that Ms. Simpson was deprived of a protected liberty interest without appropriate procedural safeguards. See *In re Detention of June Johnson*, 179 Wn.App. 579, 322 P.3d 22 (2014). There is no constitutional right to counsel for a civil tort matter. There were no violations of the Civil Rules of procedure. Those rules are for all to follow, including *pro se* plaintiffs. If anything, plaintiff Simpson is the one trying to not follow the Civil Rules in order to work an injustice on Dr. Gipson.

F. The Summary Judgment based on *Res Judicata* is Well Founded.

Although the only real issue for appeal is whether Judge Churchill abused her discretion when denying plaintiff Simpson's motion for continuance, defendant Gipson does not want the Court to think that her motion for summary judgement, and Judge Churchill's granting of it, are not well founded.

This issue is not addressed in plaintiff-appellant's brief, so defense counsel is probably being overly cautious, and, accordingly asks for this Court's indulgence.

This issue was thoroughly briefed in defendant Gipson's motion for summary judgment. The law of this state is in accord with that of other states and even the United Kingdom. Once a party loses, with prejudice, a lawsuit against either the principal or the agent over the same injuries and the same facts where the allegation is respondeat superior liability, as it was here, the losing party cannot sue in a second case the one who was not sued in the first case. If that is an issue that this Court feels is properly before it, the Court is asked to refer to defendant Gipson's motion for summary judgment and the authorities cited therein, including, but not limited to, *Ensley v. Pitcher*, 152 Wn.App. 891, 222 P.3d 99 (Div. 1 2009); and *W. G. Platts, Inc. v. Wendt*, 70 Wn.2d 561, 424 P.2d 629 (1967). CP 17-35.

Conclusion

In sum, it is respectfully submitted that Judge Churchill's denial of plaintiff Simpson's motion for continuance was an appropriate exercise of her discretion. At no time did plaintiff Simpson ever provide any fact, argument or citation of authority that would have made a material issue of fact. The summary judgment motion was based on Ms. Simpson's own, uncontradicted pleadings and the order of Judge Hancock dismissing the first lawsuit with prejudice, an order that Ms. Simpson did not appeal. Judge Churchill patiently heard the arguments and expressed a rational basis for her decision. Justice was served by bringing an end to Ms. Simpson's

repeated and baseless claims against Dr. Gipson. This is all the more true considering that this current crusade is being continued by an attorney who told Judge Churchill, "I don't know anything about this case whatsoever."³

DATED: August 12, 2016.

FREISE & FERGUSON PLLC



By _____
Eric L. Freise, WSBA #7126
Of Attorneys for Defendant/Respondent
Linda Gipson, Ph.D, R.N.

³ As set forth above, that statement was made by Mr. Ro, not his associate, Mr. Kittleson.

Appendix

- Ap 1. Complaint for Damages, *Simpson v Whidbey Island Public Hospital Dist.*
- Ap 2. Amended Complaint for Damages, Simpson v Whidbey Island Public Hospital Dist.
- Ap 3. Order Granting Defendant [WGH]'s Motion of Summary Judgment-Dismissing Plaintiff's Complaint with Prejudice
- Ap 4. Complaint for Damages, Simpson v Gipson
- Ap 5. Declaration of Linda Gipson, PhD, RN Supporting Defendant [WGH]'s Motion for Summary Judgment (without exhibits)

Appendix 1

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FILED-COPY

SEP 26 2014

DEBRA VAN PELT
ISLAND COUNTY CLERK

**IN THE WASHINGTON STATE SUPERIOR COURT
IN AND FOR ISLAND COUNTY**

JESSICA SIMPSON, an individual,

Plaintiff,

v.

WHIDBEY ISLAND PUBLIC HOSPITAL
DISTRICT, a Washington State Corporation,

Defendant.

Case No. **14 2 00622 0**

COMPLAINT FOR DAMAGES

TO: The Island County Superior Court Clerk's Office

I. INTRODUCTION

COMES NOW, the Plaintiff Jessica Simpson, by and through her attorney Gregory M. Skidmore and the law firm of Chung, Malhas & Mantel, PLLC, and brings this Complaint for Damages against the Defendant Whidbey Island Public Hospital District and alleges as follows:

II. JURISDICTION AND VENUE

2.1 This Court has jurisdiction over the parties and the subject matter of this action and the venue is proper in Island County of the State of Washington because all facts surrounding this action occurred in Island County.



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III. PARTIES

- 3.1 Plaintiff Jessica Simpson (hereinafter, "Simpson") is a resident of Island County, Washington.
- 3.2 Defendant Whidbey Island Public Hospital District (hereinafter, "the Hospital" or "Whidbey General") is a Washington State Corporation authorized to perform business in Washington State with its principal offices located in Coupeville, Island County, Washington.

IV. FACTUAL ALLEGATIONS

Plaintiff re-alleges paragraphs 2.1 through 3.2 and incorporates them herein as if set forth in full.

- 4.1 On or about April 30, 2014, Simpson was admitted to Whidbey General for the purposes of treating a variety of medical disorders.
- 4.2 On or about May 13, 2014, Simpson was scheduled for transfer to an inpatient facility in Mukilteo.
- 4.3 On or about 7:38 a.m., Simpson was placed in locked "four-point restraints."
- 4.4 Due to her good behavior and calm demeanor, Simpson was permitted to release one arm and one leg from the restraint.
- 4.4 At approximately 11:30 a.m., Simpson's restraints were removed by nurse Cammy Campbell (hereinafter, "Nurse Campbell") and nurse Ashley Daprato (hereinafter, "Nurse Daprato") to permit Simpson to use the restroom.
- 4.5 Simpson was placed back in the four-point restraint upon her return to her room.
- 4.6 Hospital policy states that nurses are required to conduct "safety checks" each 15 minutes.

- 1 4.7 Knowing that Simpson was in a four-point restraint, the Hospital staff only conducted safety
2 checks on Simpson every one hour.
3
- 4 4.8 At about Noon, Nurse Campbell stepped out to get Simpson's required medication.
5
- 6 4.9 Angry at Simpson for an earlier incident in the Hospital, Chief Nursing Officer Linda S. Gipson
7 (hereinafter, "Nurse Gipson") entered Simpson's room intent on retaliating against her.
8
- 9 4.10 Nurse Campbell returned to the room and Simpson was shouting to Nurse Gipson that she did
10 not want to be given the medication Ativan.
11
- 12 4.11 Nurse Gipson then told her, "we have heard enough" and "you need to calm down."
13
- 14 4.12 Nurse Campbell began to administer the medication, with Nurse Daprato in the room.
15
- 16 4.13 While the medication was being administered, Nurse Gipson, unprovoked, pushed Simpson's
17 shoulder with one hand, and grabbed Simpson's neck with the other, tightly clenching it.
18
- 19 4.14 She proceeded to choke Ms. Simpson for at least a few seconds. Simpson was unable to breathe
20 and felt like she was going die.
21
- 22 4.15 Just prior to Simpson losing consciousness, Nurse Gipson stopped choking Simpson. Simpson
23 then gasped, "Stop it. You're hurting me," to which Nurse Gipson responded, "I will not stop
24 until you calm down."
25
- 26 4.16 Nurse Gipson then placed her hand on Simpson's face and squeezed, restraining Ms. Simpson's
27 face for approximately two minutes.
28
- 29 4.17 Simpson then yelled that she wanted to contact a lawyer. Nurse Gipson responded, "You are not
30 talking to anyone. You have lost your privileges."



- 1 4.18 After the incident, Nurse Gipson asked to speak to Nurse Campbell and Nurse Daprato outside of
2 the room. She told them that her aggressive handling of Simpson was to open her airways. When
3 Nurse Campbell responded that Ms. Simpson showed no signs of either having an obstructed
4 airway or fighting the restraints, Nurse Gipson told Nurse Campbell, "you can sign your patients
5 off, and you're done here."
6
7
8 4.19 Simpson suffered severe mental and emotional damages as a result of the choking incident
9 during which she felt that her life was in jeopardy and was prohibited from being able to stop the
10 choking.
11

12 **V. CAUSES OF ACTION**

13 **FIRST CLAIM**
14 **(BATTERY)**

15 *Plaintiff re-alleges paragraphs 2.1 through 4.19 and incorporates them herein as if set forth in full.*

- 16
17 5.1 At all times relevant herein, the conduct alleged herein was within the scope of the employees'
18 employment, in furtherance of the hospital's business, and committed during the normal course
19 of employment.
20 5.2 Nurse Gipson so battered Plaintiff when she intentionally placed her hands around Plaintiff's
21 throat and choked her.
22 5.3 Simpson suffered severe mental and emotional distress as a result of the choking.
23

24 **SECOND CLAIM**
25 **(ASSAULT)**

26 *Plaintiff re-alleges paragraphs 2.1 through 5.3 and incorporates them herein as if set forth in full.*

- 27 5.4 At all times relevant herein, the conduct alleged herein was within the scope of the employees'
28 employment, in furtherance of the hospital's business, and committed during the normal course
29 of employment.
30 5.5 Nurse Gipson assaulted Plaintiff when she placed Plaintiff in imminent apprehension of her life
by placing her hands around Plaintiff's throat and choking her.



1 5.6 Simpson suffered severe mental and emotional distress as a result of the choking.

2
3 **THIRD CLAIM**
(INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS)

4 *Plaintiff re-alleges paragraphs 2.1 through 5.6 and incorporates them herein as if set forth in full.*

5
6 5.7 At all times relevant herein, the conduct alleged herein was within the scope of the employees' employment, in furtherance of the hospital's business, and committed during the normal course of employment.

7
8
9 5.8 Gipson engaged in extreme and outrageous conduct by intentionally choking a patient, unprovoked.

10
11 5.9 Simpson suffered severe mental and emotional distress as a result of the choking.

12 **FOURTH CLAIM**
13 **(CORPORATE NEGLIGENCE)**

14 *Plaintiff re-alleges paragraphs 2.1 through 5.9 and incorporates them herein as if set forth in full.*

15
16 5.10 Whidbey General at all times material herein, was under a continuing duty to provide the staffing, training, monitoring, and supervision of its employees and agents needed to exercise the skill, care, and learning expected of a reasonably prudent hospital acting at that time in the same or similar circumstances.

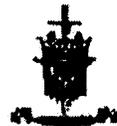
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19 5.11 As the operator of a hospital and/or nursing unit, Defendant's duties included, in pertinent part, the duty to: (1) adopt and implement appropriate policies for the care of its patients and residents, (2) intervene in the treatment of residents if there is negligence, (3) select and supervise competent employees and agents with reasonable care, and (4) monitor and supervise all persons who practice health care within the hospital and/or nursing unit.

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23 5.12 Defendant failed to exercise their duty of care and this failure directly and proximately caused Plaintiff to sustain permanent pain and suffering and mental anguish.

24
25
26 5.13 Plaintiff's injuries were not due to any contribution on her part.

27 5.14 Defendant is legally responsible for the actions and omissions of its agents and employees. The actions and omissions of the Defendant directly or through their agents or employees constituted neglect under respondeat superior.

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**FIFTH CLAIM
(MEDICAL NEGLIGENCE)**

Plaintiff re-alleges paragraphs 2.1 through 5.14 and incorporates them herein as if set forth in full.

5.15 On information and belief, Plaintiff's injuries would not have occurred had the Defendant and the employees, servants and agents of the Defendants, exercised the proper standard of care.

5.16 At all relevant times herein, Defendants, their agents, servants and employees, treated Plaintiff negligently, carelessly and unskillfully. Defendants failed to follow the standard of care and skill of the average qualified member of the profession practicing the specialties practiced by the Defendants, and the employees, servants and agents of the defendants, taking into account advances in the profession.

5.17 Defendant failed to follow the standard of care and skill of an average hospital and/or nursing care unit undertaking the care of patients and/or residents such as Plaintiff.

5.18 As a direct and proximate result of the negligence and carelessness of the Defendant, its agents, servants and employees, Plaintiff has sustained serious pain and suffering and mental anguish.

**FIFTH CLAIM
(NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS)**

Plaintiff re-alleges paragraphs 2.1 through 5.18 and incorporates them herein as if set forth in full.

5.19 On information and belief, Plaintiff's mental anguish and emotional distress would not have occurred, had the Defendant and its employees, servants, and agents, exercised the proper standard of care.

VI. REQUEST FOR RELIEF

WHEREFORE, Plaintiff requests that this Court enter judgment in her favor and award the following relief:

CLAIMANT FOR DAMAGES
PAGE 107

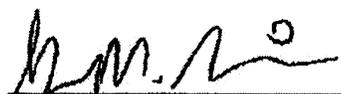


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- 6.1 Damages caused by services that resulted in personal injuries, pain and suffering, and severe mental and emotional distress, including general damages, medical costs and expenses, financial loss, costs and disbursements to be taxed;
- 6.2 For an award of damages to be determined at trial;
- 6.3 For an award of reasonable attorney's fees, costs and expenses in bringing this action in an amount to be determined at trial; and
- 6.3 For such other relief as this Court deems just and equitable.

Respectfully submitted this 24th day of September, 2014


Gregory M. Skidmore, WSBA No. 47462
Chung, Malhas & Mantel, PLLC
600 First Avenue, Suite 400
Seattle, WA 98104
gskidmore@cmmlawfirm.com
Attorney for Plaintiff

Appendix 2

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**IN THE WASHINGTON STATE SUPERIOR COURT
IN AND FOR ISLAND COUNTY**

JESSICA SIMPSON, an individual,

Plaintiff,

v.

WHIDBEY ISLAND PUBLIC HOSPITAL
DISTRICT, a Washington State Corporation,

Defendant.

Case No. 14-2-00622-0

AMENDED COMPLAINT FOR DAMAGES

TO: The Island County Superior Court Clerk's Office
TO: Defendant's Counsel, Eric L. Freise

I. INTRODUCTION

COMES NOW, the Plaintiff Jessica Simpson, by and through her attorney Gregory M. Skidmore and the law firm of Chung, Malhas & Mantel, PLLC, and brings this Amended Complaint for Damages against the Defendant Whidbey Island Public Hospital District and alleges as follows:

II. JURISDICTION AND VENUE

2.1 This Court has jurisdiction over the parties and the subject matter of this action and the venue is proper in Island County of the State of Washington because all facts surrounding this action occurred in Island County.



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III. PARTIES

- 3.1 Plaintiff Jessica Simpson (hereinafter, "Simpson") is a resident of Island County, Washington.
- 3.2 Defendant Whidbey Island Public Hospital District (hereinafter, "the Hospital" or "Whidbey General") is a Washington State Corporation authorized to perform business in Washington State with its principal offices located in Coupeville, Island County, Washington.

IV. FACTUAL ALLEGATIONS

Plaintiff re-alleges paragraphs 2.1 through 3.2 and incorporates them herein as if set forth in full.

- 4.1 On or about April 30, 2014, Simpson was admitted to Whidbey General for the purposes of treating a variety of medical disorders. Simpson has been diagnosed with a form of autism.
- 4.2 On or about May 13, 2014, Simpson was scheduled for transfer to an inpatient facility in Mukilteo.
- 4.3 On or about 7:38 a.m., Simpson was placed in locked "four-point restraints."
- 4.4 Due to her good behavior and calm demeanor, Simpson was permitted to release one arm and one leg from the restraint.
- 4.4 At approximately 11:30 a.m., Simpson's restraints were removed by nurse Cammy Campbell (hereinafter, "Nurse Campbell") and nurse Ashley Daprato (hereinafter, "Nurse Daprato") to permit Simpson to use the restroom.
- 4.5 Simpson was placed back in the four-point restraint upon her return to her room.
- 4.6 Hospital policy states that nurses are required to conduct "safety checks" each 15 minutes.
- 4.7 Knowing that Simpson was in a four-point restraint, the Hospital staff only conducted safety checks on Simpson every one hour.
- 4.8 At about Noon, Nurse Campbell stepped out to get Simpson's required medication.
- 4.9 Angry at Simpson for an earlier incident in the Hospital, Chief Nursing Officer Linda S. Gipson (hereinafter, "Nurse Gipson") entered Simpson's room intent on retaliating against her.



- 1 4.10 Nurse Campbell returned to the room and Simpson was shouting to Nurse Gipson that she did
2 not want to be given the medication Ativan.
- 3 4.11 Nurse Gipson then told her, "we have heard enough" and "you need to calm down."
4
- 5 4.12 Nurse Campbell began to administer the medication, with Nurse Daprato in the room.
6
- 7 4.13 While the medication was being administered, Nurse Gipson, unprovoked, pushed Simpson's
8 shoulder with one hand, and grabbed Simpson's neck with the other, tightly clenching it.
- 9 4.14 She proceeded to choke Ms. Simpson for at least a few seconds. Simpson was unable to breathe
10 and felt like she was going die.
- 11 4.15 Just prior to Simpson losing consciousness, Nurse Gipson stopped choking Simpson. Simpson
12 then gasped, "Stop it. You're hurting me," to which Nurse Gipson responded, "I will not stop
13 until you calm down."
- 14 4.16 Nurse Gipson then placed her hand on Simpson's face and squeezed, restraining Ms. Simpson's
15 face for approximately two minutes.
- 16 4.17 Simpson then yelled that she wanted to contact a lawyer. Nurse Gipson responded, "You are not
17 talking to anyone. You have lost your privileges."
- 18 4.18 After the incident, Nurse Gipson asked to speak to Nurse Campbell and Nurse Daprato outside of
19 the room. She told them that her aggressive handling of Simpson was to open her airways. When
20 Nurse Campbell responded that Ms. Simpson showed no signs of either having an obstructed
21 airway or fighting the restraints, Nurse Gipson told Nurse Campbell, "you can sign your patients
22 off, and you're done here."
- 23 4.19 Simpson suffered severe mental and emotional damages as a result of the choking incident
24 during which she felt that her life was in jeopardy and was prohibited from being able to stop the
25 choking.
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V. CAUSES OF ACTION

**FIRST CLAIM
(BATTERY)**

Plaintiff re-alleges paragraphs 2.1 through 4.19 and incorporates them herein as if set forth in full.

5.1 At all times relevant herein, the conduct alleged herein was within the scope of the employees' employment, in furtherance of the hospital's business, and committed during the normal course of employment.

5.2 Nurse Gipson so battered Plaintiff when she intentionally placed her hands around Plaintiff's throat and choked her.

5.3 Simpson suffered severe mental and emotional distress as a result of the choking.

**SECOND CLAIM
(ASSAULT)**

Plaintiff re-alleges paragraphs 2.1 through 5.3 and incorporates them herein as if set forth in full.

5.4 At all times relevant herein, the conduct alleged herein was within the scope of the employees' employment, in furtherance of the hospital's business, and committed during the normal course of employment.

5.5 Nurse Gipson assaulted Plaintiff when she placed Plaintiff in imminent apprehension of her life by placing her hands around Plaintiff's throat and choking her.

5.6 Simpson suffered severe mental and emotional distress as a result of the choking.

**THIRD CLAIM
(INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS)**

Plaintiff re-alleges paragraphs 2.1 through 5.6 and incorporates them herein as if set forth in full.

5.7 At all times relevant herein, the conduct alleged herein was within the scope of the employees' employment, in furtherance of the hospital's business, and committed during the normal course of employment.

5.8 Gipson engaged in extreme and outrageous conduct by intentionally choking a patient, unprovoked.

5.9 Simpson suffered severe mental and emotional distress as a result of the choking.



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**FOURTH CLAIM
(CORPORATE NEGLIGENCE)**

Plaintiff re-alleges paragraphs 2.1 through 5.9 and incorporates them herein as if set forth in full.

- 5.10 Whidbey General at all times material herein, was under a continuing duty to provide the staffing, training, monitoring, and supervision of its employees and agents needed to exercise the skill, care, and learning expected of a reasonably prudent hospital acting at that time in the same or similar circumstances.
- 5.11 As the operator of a hospital and/or nursing unit, Defendant's duties included, in pertinent part, the duty to: (1) adopt and implement appropriate policies for the care of its patients and residents, (2) intervene in the treatment of residents if there is negligence, (3) select and supervise competent employees and agents with reasonable care, and (4) monitor and supervise all persons who practice health care within the hospital and/or nursing unit.
- 5.12 Defendant failed to exercise their duty of care and this failure directly and proximately caused Plaintiff to sustain permanent pain and suffering and mental anguish.
- 5.13 Plaintiff's injuries were not due to any contribution on her part.
- 5.14 Defendant is legally responsible for the actions and omissions of its agents and employees. The actions and omissions of the Defendant directly or through their agents or employees constituted neglect under respondeat superior.

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**FIFTH CLAIM
(MEDICAL NEGLIGENCE)**

Plaintiff re-alleges paragraphs 2.1 through 5.14 and incorporates them herein as if set forth in full.

- 5.15 On information and belief, Plaintiff's injuries would not have occurred had the Defendant and the employees, servants and agents of the Defendants, exercised the proper standard of care.
- 5.16 At all relevant times herein, Defendants, their agents, servants and employees, treated Plaintiff negligently, carelessly and unskillfully. Defendants failed to follow the standard of care and skill of the average qualified member of the profession practicing the specialties practiced by the Defendants, and the employees, servants and agents of the defendants, taking into account advances in the profession.



1 5.17 Defendant failed to follow the standard of care and skill of an average hospital and/or nursing
2 care unit undertaking the care of patients and/or residents such as Plaintiff.

3
4 5.18 As a direct and proximate result of the negligence and carelessness of the Defendant, its
5 agents, servants and employees, Plaintiff has sustained serious pain and suffering and mental
6 anguish.

7
8 **SIXTH CLAIM**
(NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS)

9 *Plaintiff re-alleges paragraphs 2.1 through 5.18 and incorporates them herein as if set forth in full.*

10 5.19 On information and belief, Plaintiff's mental anguish and emotional distress would not have
11 occurred, had the Defendant and its employees, servants, and agents, exercised the proper
12 standard of care.

13
14 **SEVENTH CLAIM**
(VULNERABLE ADULT PROTECTION ACT)
15 **RCW 74.34**

16 *Plaintiff re-alleges paragraphs 2.1 through 5.19 and incorporates them herein as if set forth in full.*

17
18 5.20 At all relevant times herein, Plaintiff was a "vulnerable adult" pursuant to RCW 74.34.020
19 because she suffers from autism, a developmental disability as defined under RCW 71A.10.020.

20 5.21 Defendant abused Plaintiff as defined in RCW 73.34.020 by choking her, improperly using
21 physical restraints, and verbally assaulting her through intimidation.

22 5.22 Defendant neglected Plaintiff as defined in RCW 73.34.020 by falling below the necessary
23 standard of care for a vulnerable adult.

24 5.23 Plaintiff suffered damages and pain and suffering as a result this abusive and neglectful conduct.
25
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27 **VI. REQUEST FOR RELIEF**

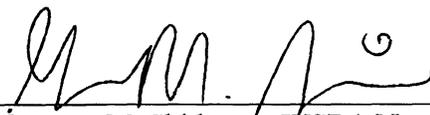
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29 **WHEREFORE**, Plaintiff requests that this Court enter judgment in her favor and award the following
30 relief:



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- 6.1 Damages caused by services that resulted in personal injuries, pain and suffering, and severe mental and emotional distress, including general damages, medical costs and expenses, financial loss, costs and disbursements to be taxed;
- 6.2 For an award of damages to be determined at trial;
- 6.3 For an award of reasonable attorney's fees, costs and expenses in bringing this action in an amount to be determined at trial; and
- 6.4 For such other relief as this Court deems just and equitable.

Respectfully submitted this 21st day of November, 2014



Gregory M. Skidmore, WSBA No. 47462
Chung, Malhas & Mantel, PLLC
600 First Avenue, Suite 400
Seattle, WA 98104
gskidmore@cmmlawfirm.com
Attorney for Plaintiff



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**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF ISLAND**

JESSICA SIMPSON, an individual,

Case No. 14-2-00622-0

Plaintiff,

v.

CERTIFICATE OF SERVICE

WHIDBEY ISLAND PUBLIC HOSPITAL
DISTRICT, a Washington State Corporation.,

Defendant.

TO: The Island County Superior Court Clerk; and
TO: Eric L. Freise, Attorney for Defendant.

I, Lucie Merwin, hereby certify that I am a Legal Assistant of the law firm of Chung, Malhas & Mantel PLLC with the address of 1511 Third Avenue, Suite 1088, Seattle, Washington 98101, that I am not a party to this action, and that I am of such age and discretion to be competent to serve papers. I declare under penalty of perjury under the laws of the State of Washington that I caused a copy of AMENDED COMPLAINT FOR DAMAGES to:

Mr. Eric L. Friese
Friese & Ferguson, PLLC
108 S. Washington St., Suite 400
Seattle, WA 98104

- Legal Messenger
- Hand Delivered
- Electronic Mail
- Facsimile
- First Class Mail

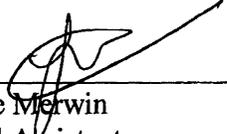


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Island County Superior Court
Island County Clerk's Office
P.O. Box 5000
Coupeville, WA 98239

Legal Messenger
 Hand Delivered
 Electronic Mail
 Facsimile
 First Class Mail

Dated this 21st day of November, 2014.



Lucie Merwin
Legal Assistant



Appendix 3

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DEBRA VAN PELT
ISLAND COUNTY CLERK
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The Honorable Alan R. Hancock

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF ISLAND

JESSICA SIMPSON, an individual,

Plaintiff,

v.

WHIDBEY ISLAND PUBLIC HOSPITAL
DISTRICT, a Washington State Corporation,

Defendant.

No. 14-2-00622-0

ORDER GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT—
DISMISSING PLAINTIFF'S
COMPLAINT WITH PREJUDICE

~~Plaintiff~~

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THIS MATTER, having come on for hearing on this date upon the MOTION of
DEFENDANT for an ORDER SUMMARILY DISMISSING with prejudice all of
6 of 55 4
plaintiff's claims against them, and the Court having considered the following materials:

- 1) Defendant's Motion for Summary Judgment;
- 2) Declaration of Linda Gipson, PhD, RN Supporting Defendant's Motion for Summary Judgment (dated November 12, 2015);
- 3) Declaration of Nathaniel R. Schlicher, MD, JD, FACEP Supporting Defendant's Motion for Summary Judgment (dated November 9, 2015)
- 4) Declaration of Ann Freise Supporting Defendant's Motion for Summary Judgment (dated November 11, 2015)

ORDER GRANTING D'S MSJ—DISMISSING
P'S COMPLAINT WITH PREJUDICE - 1

FREISE & FERGUSON PLLC
ATTORNEYS AT LAW
19109 - 36TH AVE. W., SUITE 204
LYNNWOOD, WA 98036 (206)-587-6570
ERICF@FREISE-FERGUSON.COM

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and the other documents contained in the Clerk's file including Plaintiff's ~~response~~ *untimely and unserved motion for continuance*,
~~Defendant's reply if any~~, the Court having heard the oral arguments of counsel for both Plaintiff and Defendant; and the Court having found that there is no dispute of material fact and that defendant is entitled to dismissal with prejudice as a matter of law; NOW, THEREFORE,

It is hereby ORDERED that Plaintiff's Complaint and Cause of Action against defendant is DISMISSED WITH PREJUDICE:

The Court having determined that there is no reason for delay, the Clerk is ordered to immediately enter a final order and judgment dismissing with prejudice all of plaintiff's claims against defendant.

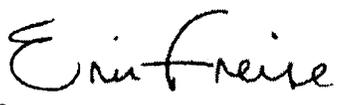
Done in open court this 14th day of December, 2015

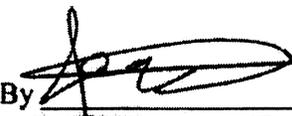

The Honorable Alan R. Hancock

Presented by:

Approved as to Form, Notice of Presentation Waived

FREISE & FERGUSON PLLC


By
Eric L. Freise, WSBA #7126
Of Attorneys for Defendant


By ~~Jeremiah Styles~~ Jeremiah Styles
~~Pro Se~~ WSBA # 49543
Attorney for Plaintiffs
FREISE & FERGUSON PLLC
ATTORNEYS AT LAW
19109 - 36th AVE. W., SUITE 204
LYNNWOOD, WA 98036 (206)-587-6570
ERIC@FREISE-FERGUSON.COM

ORDER GRANTING D'S MSJ—DISMISSING P'S COMPLAINT WITH PREJUDICE - 2

Appendix 4

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JAN - 7 2016

ISLAND COUNTY SHERIFF

**DEBRA VAN PELT
ISLAND COUNTY CLERK**

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**IN THE WASHINGTON STATE SUPERIOR COURT
IN AND FOR ISLAND COUNTY**

JESSICA SIMPSON, an individual

No. **16 2 00012 1**
Complaint for Damages

Plaintiff,

v.

LINDA GIPSON and JOHN DOE GIPSON,
husband and wife, and the marital community
composed thereof

Respondent.

I. INTRODUCTION

Plaintiff Jessica Simpson brings this Complaint for Damages against the Defendant Whidbey Island Public Hospital District and alleges as follows:

II. JURISDICTION AND VENUE

2.1 This Court has jurisdiction over the parties and the subject matter of this action and the venue is proper in Island County of the State of Washington because all facts surrounding this action occurred in Island County.

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III. PARTIES

3.1 Plaintiff Jessica Simpson (hereinafter, "Simpson") is a resident of Island County, Washington.

3.2 Defendant Linda S. Gipson (hereinafter, "Ms. Gipson" or "Nurse Gipson") is a resident of Island County, Washington.

IV. FACTUAL ALLEGATIONS

Plaintiff re-alleges paragraphs 2.1 through 3.2 and incorporates them herein as if set forth in full.

4.1 On or about April 30, 2014, Simpson was admitted to Whidbey General for the purposes of treating a variety of medical disorders. Simpson has been diagnosed with a form of autism.

4.2 On or about May 13, 2014, Simpson was scheduled for transfer to an inpatient facility in Mukilteo.

4.3 On or about 7:38 a.m., Simpson was placed in locked "four-point restraints."

4.4 Due to her good behavior and calm demeanor, Simpson was permitted to release one arm and one leg from the restraint.

4.4 At approximately 11:30 a.m., Simpson's restraints were removed by nurse Cammy Campbell (hereinafter, "Nurse Campbell") and nurse Ashley Daprato (hereinafter, "Nurse Daprato") to permit Simpson to use the restroom.

4.5 Simpson was placed back in the four-point restraint upon her return to her room.

4.6 Hospital policy states that nurses are required to conduct "safety checks" each 15 minutes.

4.7 Knowing that Simpson was in a four-point restraint, the Hospital staff only conducted safety checks on Simpson every one hour.

4.8 At about Noon, Nurse Campbell stepped out to get Simpson's required medication.

4.9 Angry at Simpson for an earlier incident in the Hospital, Chief Nursing Officer Linda S. Gipson (hereinafter, "Nurse Gipson") entered Simpson's room intent on retaliating against her.

- 1 4.10 Nurse Campbell returned to the room and Simpson was shouting to Nurse Gipson that she did not
2 want to be given the medication Ativan.
- 3 4.11 Nurse Gipson then told her, "we have heard enough" and "you need to calm down."
4
- 5 4.12 Nurse Campbell began to administer the medication, with Nurse Daprato in the room.
6
- 7 4.13 While the medication was being administered, Nurse Gipson, unprovoked, pushed Simpson's
8 shoulder with one hand, and grabbed Simpson's neck with the other, tightly clenching it.
- 9 4.14 She proceeded to choke Ms. Simpson for at least a few seconds. Simpson was unable to breathe
10 and felt like she was going die.
- 11 4.15 Just prior to Simpson losing consciousness, Nurse Gipson stopped choking Simpson. Simpson
12 then gasped, "Stop it. You're hurting me," to which Nurse Gipson responded, "I will not stop
13 until you calm down."
- 14 4.16 Nurse Gipson then placed her hand on Simpson's face and squeezed, restraining Ms. Simpson's
15 face for approximately two minutes.
- 16 4.17 Simpson then yelled that she wanted to contact a lawyer. Nurse Gipson responded, "You are not
17 talking to anyone. You have lost your privileges."
- 18 4.18 After the incident, Nurse Gipson asked to speak to Nurse Campbell and Nurse Daprato outside of
19 the room. She told them that her aggressive handling of Simpson was to open her airways.
20 When Nurse Campbell responded that Ms. Simpson showed no signs of either having an
21 obstructed airway or fighting the restraints, Nurse Gipson told Nurse Campbell, "you can sign
22 your patients off, and you're done here."
- 23 4.19 Simpson suffered severe mental and emotional damages as a result of the choking incident during
24 which she felt that her life was in jeopardy and was prohibited from being able to stop the
25 choking.
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V. CAUSES OF ACTION

FIRST CLAIM
(BATTERY)

Plaintiff re-alleges paragraphs 2.1 through 4.19 and incorporates them herein as if set forth in full.

5.1 Nurse Gipson so battered Plaintiff when she intentionally placed her hands around Plaintiff's throat and choked her.

5.2 Simpson suffered severe mental and emotional distress as a result of the choking.

SECOND CLAIM
(ASSAULT)

Plaintiff re-alleges paragraphs 2.1 through 5.2 and incorporates them herein as if set forth in full.

5.3 Nurse Gipson assaulted Plaintiff when she placed Plaintiff in imminent apprehension of her life by placing her hands around Plaintiff's throat and choking her.

5.4 Simpson suffered severe mental and emotional distress as a result of the choking.

THIRD CLAIM
(INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS)

Plaintiff re-alleges paragraphs 2.1 through 5.4 and incorporates them herein as if set forth in full.

5.5 Gipson engaged in extreme and outrageous conduct by intentionally choking a patient, unprovoked.

5.6 Simpson suffered severe mental and emotional distress as a result of the choking.

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FORTH CLAIM
(NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS)

Plaintiff re-alleges paragraphs 2.1 through 5.6 and incorporates them herein as if set forth in full.

5.7 On information and belief, Plaintiff's mental anguish and emotional distress would not have occurred, had the Defendant exercised the proper standard of care.

VI. REQUEST FOR RELIEF

WHEREFORE, Plaintiff requests that this Court enter judgment in her favor and award the following relief:

- 6.1 Damages caused by services that resulted in personal injuries, pain and suffering, and severe mental and emotional distress, including general damages, medical costs and expenses, financial loss, costs and disbursements to be taxed;
- 6.2 For an award of damages to be determined at trial;
- 6.3 For an award of reasonable attorney's fees, costs and expenses in bringing this action in an amount to be determined at trial; and
- 6.4 For such other relief as this Court deems just and equitable.

Respectfully submitted this 7th of January, 2016

Jessica Simpson
Jessica Simpson, Plaintiff
547 E Rockett Lake Dr
Louisa, VA 22829
360.678-6153

Appendix 5

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The Honorable Alan R. Hancock

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF ISLAND

JESSICA SIMPSON, an individual,

Plaintiff,

v.

WHIDBEY ISLAND PUBLIC HOSPITAL
DISTRICT, a Washington State Corporation,

Defendant.

No. 14-2-00622-0

DECLARATION OF LINDA
GIPSON, PhD, RN SUPPORTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGEMENT

LINDA GIPSON, PhD, RN declares and states as follows:

My name is LINDA GIPSON, PhD, RN. I am over 18 years of age, am not a party to this lawsuit, am competent to testify herein and make this declaration from personal knowledge.

I am the Chief Nursing Officer at Whidbey Island General Hospital ("WGH"). I have been in this position for nearly 3 years.

Whidbey Island is classified as a hospital and is governed and licensed by the Department of Health.

I have a Bachelor of Science in Nursing from the University of Maryland; a Master of Science in Nursing from Duke University; an MBA from Cleveland State; and a Ph.D. in Public Health with a focus in Health Policy and Management from the University of South Florida.

DECLARATION OF LINDA GIPSON, PhD, RN
SUPPORTING DEFENDANT'S MSJ - 1

FREISE & FERGUSON PLLC
ATTORNEYS AT LAW
19109 - 36TH AVE. W., SUITE 204
LYNNWOOD, WA 98036 (206)-587-6570
ERICF@FREISE-FERGUSON.COM

1 I am board certified in Advanced Nursing Administration. I have been board certified
2 in Critical Care Nursing and Emergency Nursing and in Legal Nurse Consulting. I have been
3 qualified as an expert witness on multiple occasions for hospitals that are defending
4 themselves against malpractice suits. As such, I have formed and expressed opinions
5 regarding the clinical care that was provided to patients and whether that care met medical
standards. Exhibit A attached to this declaration is a true and correct copy of my Curriculum
Vitae.

6 I have managed numerous medical facilities over my administrative career including
7 one psychiatric hospital and several inpatient psychiatric units. My experience managing
8 psychiatric hospitals included one-on-one contact with patients in those facilities as well as
developing team strategies for caring for those patients.

9 I have a great deal of experience dealing with difficult patients who are a physical
10 danger to themselves as well as others including those who are a danger to medical staff.
11 When a patient engages in behavior that is deemed to be extremely combative or dangerous
12 to themselves or hospital staff, a message announcing a Code Gray is made over the hospital's
public address system. A Code Gray requires an immediate management response.

13 My experience with Code Gray procedure is extensive. I have frequently been an
14 invited speaker at major national meetings, including meetings of the American College of
Emergency Physicians, on the topic of Code Gray procedure.

15 By virtue of my training and experience, my review of Ms. Simpson's medical and
16 psychiatric records, including those of her stays at WGH, and by virtue of my personal
17 knowledge of the events of May 13, 2014, I have formed a number of opinions, some of which
18 are expressed in this declaration. All such opinions are expressed on a more probable than
not basis. Here are facts and opinions pertinent to WGH's motion for summary judgment.

19 On April 3, 2014, Jessica Simpson ("Ms. Simpson") was admitted to WGH pursuant
20 to judicial order for a 14 day hold, based on claimed severe suicidal ideation. Ms. Simpson
21 has been diagnosed with a borderline personality disorder. An important aspect of providing
care and treatment for a patient like Ms. Simpson is to keep her safe and make sure she does
not harm others through her violent behavior.

22 Ms. Simpson entered the hospital pursuant to an order of Island County Superior Court
23 for an involuntary, 14 day hold. Under this order, WGH was charged with keeping her safe
24 until she could be successfully transferred to a psychiatric facility. WGH is not a psychiatric
25 institution and does not provide psychiatric care. We provide a place for the person until an
26 appropriately licensed and staffed facility will accept her. WGH was prohibited from
discharging Ms. Simpson and she was prohibited from leaving. Exhibit B attached to this
declaration is a true and correct copy of the paperwork on the order detaining Ms. Simpson
for involuntary treatment. Through this order, WGH was given consent to provide treatment
to keep her from hurting herself, others and property.

DECLARATION OF LINDA GIPSON, PhD, RN
SUPPORTING DEFENDANT'S MSJ - 2

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2 Ms. Simpson has a psychological condition where she frequently cries out for
3 attention, whether positive or negative. So she will frequently call out that people are hurting
4 her, choking her, killing her, when no one is even near her. That has been sort of a normal
5 thing for her to do during each admission. Another behavior which she has frequently
6 exhibited during her hospitalizations has been persistent threats to call a lawyer or sue WGH.
Ms. Simpson is also manipulative and completely aware of her actions. She is able to threaten
and follow-through with complete recollection of the events. She has no remorse for her
threatening and violent actions.

7 At the time Ms. Simpson entered the hospital on April 30, 2014, I knew a great deal
8 about Ms. Simpson because part of my supervisory duties is to review violent behavior reports
9 and incident reports entered by medical staff about violent patients like Ms. Simpson. I read
10 materials in these reports that indicated that Ms. Simpson had engaged in multiple incidents
11 of striking, punching and kicking staff members. These records also list multiple acts of biting
12 or attempted biting by Ms. Simpson. I also became aware of multiple instances where Ms.
Simpson had spit on staff. Ms. Simpson also had, on multiple occasions, threatened staff with
specific acts of violence and had followed through with her threats.

13 As a result of Ms. Simpson's violent, self-destructive and chaotic behavior, she
14 frequently had to be placed in 4-point restraints (all four limbs of a patient are placed in
cushioned restraints).

15 Whenever Ms. Simpson was a patient at WGH she was the focus of numerous Code
16 Gray announcements where she was dangerous to staff, to herself or was trying to leave the
17 facility. Ms. Simpson was adept at getting free from restraints, either fully or partially. In
18 fact, there were several occasions where she was able to free herself from her restraints and
then made an attempt to leave the hospital.

19 May 13, 2014, was the last day of Ms. Simpson's 14-day mandatory hold. Her
20 behavior that day was typical of other visits to WGH. She began acting out more and more
as the end of the mandatory hold approached.

21 At approximately 7:30 a.m. on May 13, 2014, Ms. Simpson attempted to leave her
22 room. Supervising Nurse Cindy Holland was present. Ms. Simpson forcefully pushed nurse
23 Holland into the wall and as a result nurse Holland's shoulder was injured. I learned about
24 this event later in the morning and instructed nurse Holland to go to the Emergency
Department to receive treatment.

25 At approximately 1:30 p.m. a Code Gray was called over the public announcement
26 system for Ms. Simpson's room. Because I believed nurse Holland was in the Emergency
Department, I responded to the Code Gray.

DECLARATION OF LINDA GIPSON, PhD, RN
SUPPORTING DEFENDANT'S MSJ - 3

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1 When I arrived at the room the nursing staff had already placed Ms. Simpson in four-
2 point restraints. The room, however, was in disarray and the curtains had been ripped from
3 the ceiling. Ms. Simpson was in her bed sitting up at a 45 degree angle. Ms. Simpson was
4 improperly positioned so that she could easily pitch her body forward and possibly harm
5 members of the medical staff if she became agitated. While I was discussing the situation
6 with the staff in the hallway, Ms. Simpson managed to free her left arm from the restraints.

7 Certified Nursing Assistant Ashley DaPrato ("CNA DaPrato") squatted down to eye
8 level with Ms. Simpson and tried to get Ms. Simpson's left arm back into the restraint. Ms.
9 Simpson was thrashing all over the place, flinging her torso back and forth, doing everything
10 to prevent CNA DaPrato from getting her left arm back into the restraint. CNA DaPrato was
11 unable to get Ms. Simpson's arm restrained.

12 Ms. Simpson was also yelling profanities at the top of her lungs "B---s," "F---ers" and
13 "C-----s," and at one point yelled, "How would you like me to bite you, you F---ing B---ch."
14 Immediately after shouting this, she attempted to advance in the direction of CNA DaPrato,
15 who was at her face level attempting to reapply the restraint to her left arm.

16 As Ms. Simpson was flinging her torso forward, I put one hand on her shoulder to
17 bring her back forward and I placed the soft part of my hand on the hard part of her chin. The
18 purposes of this later movement were (1) to re-direct her gaze toward my eyes so that her
19 attention was taken away from potential biting targets; and (2) to make it easier to get her left
20 hand restrained so that the nursing staff could inject an anti-anxiety medication, Ativan, that
21 had been ordered by a physician which hopefully would calm her down.

22 I first learned about this standard technique used to re-direct a patient's attention many
23 years before I began working at WGH. The technique is typically used to manage the patient's
24 head and to limit his/her ability to move the upper part of their body.

25 Initially, Ms. Simpson responded by even more cursing and screaming. The nursing
26 staff was then able to restrain Ms. Simpson's left arm and subsequently, nurse Cammy
Campbell was able to inject Ms. Simpson in the thigh with Ativan. Shortly after the injection
was administered we all stepped back.

Shortly after the nursing staff had successfully restrained Ms. Simpson, she was
examined by the hospitalist, Ngozi Achebe, MD. Dr. Achebe did not find any signs of
bruising or redness associated with pressure being applied to Ms. Simpson's jaw or neck.

Ms. Simpson remained in four-point restraints until she was successfully transferred
to another facility later that day.

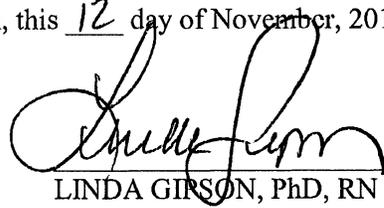
I am an expert in determining whether the proper standard of care was applied by
nursing staff. With regard to the events of the Code Gray called on May 13, 2014, in my
opinion, on a more probable than not basis, the actions of the WGH staff were well within

1 standard of care for the treatment of violent patients and of the standard of care for Involuntary
2 Treatment Act patients.

3 The State of Washington filed a criminal case against me in Island County on a single
4 charge of fourth degree assault. The trial lasted 9 days. Twenty-seven witnesses testified,
5 including me and Ms. Simpson. Ms. Simpson appeared to play a big role in the case. The
6 jury returned a verdict of not guilty and then returned a special verdict finding by a
preponderance of the evidence that force used I used to restrain Ms. Simpson during the Code
Gray was lawful.

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

9 EXECUTED at Coupeville, Washington, this 12 day of November, 2015.

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12 LINDA GIPSON, PhD, RN

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DECLARATION OF SERVICE

I declare that I served the forgoing BRIEF OF RESPONDENT on the attorneys below:

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Victor Ro
WSBA #49628
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[X] By causing a full, true and correct copy thereof to be e-mailed to litigation@rofirm.com; ro@rofirm.com; mkittleson@rofirm.com; rpaige@rofirm.com, on the date set forth below per Agreement to Allow Electronic Service.

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

Executed at Lynnwood, Washington, on the 12th day of August, 2016.



Ann Freise
Legal Assistant to Eric L. Freise