

NO. 75324-0-1

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION 1

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OLIVIA MORA,

Appellant,

v.

GREEN RIVER COLLEGE,

Respondents

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APPELLANT'S BRIEF

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COURT OF APPEALS DIV 1  
STATE OF WASHINGTON

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## I. APPELLANT'S STATEMENT OF THE CASE

### A. Introduction

The core of this appeal is the extent to which the four elements for res judicata to apply as enumerated by the Washington State Supreme Court in *Williams v. Leone & Keeble, Inc.*, 171 Wn.2d 726, 730, 254 P.3d 818 (2011), are subject to the discretion of the Superior Court, and further whether the four-factor test used by Washington Courts for determining whether there is an identity in causes of action noted in *DeYoung*, 100 Wn. App. at 892. (quoting *Kuhlman v. Thomas*, 78 Wn. App. 115, 122, 897 P.2d 365 (1995)), is also subject to the same discretion of the Superior Court.

Once established that these two tests are not open to the liberal interpretation of the Superior Court, but rather serve as the definitive methodology for determining these matters, the companion issue of statute of limitations related to causes of action in an amended complaint fall squarely within the purview of CR 15(c) and such amendments relate back to the date of the original pleading.

While trial court in its decision recited the four elements for res judicata to apply, its failed to consider that in this case all four elements were not present, and therefore erroneously held that in Appellant Mora's

amended complaint was subject to res judicata.

Having glossed over the test for the applicability of res judicata in this case, the trial court failed to further explore the four-factor test related to identity in causes of action critical in distinguishing Mora's amended complaint from her previous filing.

The trial court's decision in effect presents a mixed message which allows for Mora's amended complaint to be subject to res judicata on the one hand, and subject to statute of limitations on the other. Clearly if Mora's amended complaint is subject to res judicata, then the causes of action contained therein relate back to her previous filing. The trial court erred in failing to consider that Mora's amended complaint presented new causes of action which relate back to her original filing pursuant to CR 15(c) and are therefore not subject to the statute of limitations.

**B. Assignment of Error**

1. The trial court erred in ruling that Mora's amended complaint was subject to res judicata.
2. The trial court erred in ruling that claims made in Mora's amended complaint are time barred and subject to statute of limitations.
3. The trial court abused its discretion when it stated at a hearing to

dismiss Mora's claims that "the court makes no determination as to the merit", and then subsequently stating Mora's amended complaint was "frivolous" in its written order, and in awarding attorney fees to Defendant's counsel.

4. The trial court abused its discretion in signing its order granting Defendant's Motion to Dismiss on May 5, 2016, one day prior to the hearing for Motion to Dismiss of May 6, 2016.

### **C. Issues Presented**

1. Did the trial court err in failing to properly examine Mora's claims in her amended complaint utilizing the four elements for res judicata to apply as enumerated by the Washington State Supreme Court to dismiss here claims herein?

2. Did the trial court err in disregarding the nexus of claims made in Mora's amended complaint to her original filing pursuant to CR 15 (c) and dismiss her claims as time barred and subject to statute of limitations?

3. Did the trial court abuse its discretion when it stated that court "would make no finding as to the merits of Mora's claims" at the hearing on Defendant's Motion to Dismiss, and then finding that Mora's claims were "frivolous" in its written order?

4. Did the trial court abuse its discretion in signing a written order granting Defendant's Motion to Dismiss on May 5, 2016, one day prior to the

hearing on Defendant's Motion to Dismiss on May 6, 2016?

**D. Statement of Facts**

(For purposes of convenience in this statement, Plaintiff is referred to as "Mora"; Defendants collectively are referred to as "Green River". No disrespect is intended to any party.)

Mora suffers from a developmental disability the onset of which occurred at an early age as the result of a childhood illness.

In May 2007, Mora enrolled for a six-week aviation course Green River. CP 6 After two-weeks of instruction Mora underwent her first written examination, but did not receive a passing grade. CP 6 Mora was then informed by her instructor that she would be provided with the opportunity to re-take the examination before undergoing the final examination CP 6

On May 14, 2007, Mora was called to a meeting with Green River employees Comollo and Himes (Disability Services), where it was unilaterally decided by these Green River employees that Mora was to be dropped from the aviation class despite Mora's objections CP 6 Mora then informed Comollo and Himes that she had in fact paid for the class from her own personal funds, and further that since she had undergone only one initial examination, this was no way indicative of her inability to achieve a passing

grade in the course CP 6 Mora went on to inform Comollo and Himes that no other student who had received only one unsuccessful test result would in fact be dropped from the class, and as such the same standards should apply in to her in this case. CP 6 Despite Mora's vehement objections Comollo and Himes dropped her from the class, and Himes stated to Mora that she could "complete the class for the heck of it without receiving any credit."

CP 2

Mora did subsequently attend the class on May 15, 16, 2007, but was prohibited from participating in class work, group study, assignments and field trips. CP 6 As a result, Mora became discouraged and suffered from severe emotional distress CP 6

On May 17, 2007, Mora received an email from Himes which stated "even if you were to pass all your classes, you may not be able to pass the industry tests and requirements. We strongly encourage you to look at other career options." CP 6

Mora, on her own initiative, subsequently underwent and successfully completed aviation training through a program offered by the U.S. Forrest Service. CP 6 As a result Mora received the following credentials; 1) Certificate Award for A-202 Interagency Aviation Organizations Online in

June 2007; 2) Aviation Policy & Regulations, and invitation to Sentry Eagle 07 Airspace Coordination in August 2007; 3) A-111 Flight Payment Document Online in September 2007. CP 6

### 1. Procedural History

These circumstances gave rise to Mora filing a complaint for disability discrimination with the United States Department of Education, Office for Civil Rights (OCR) to pursue administrative remedy against Green River on May 21, 2007 CP 6.

The subsequent investigation and final administrative adjudication of Mora's case did not conclude until July 18, 2011.

Mora subsequently filed a complaint against Green River in the United States District Court, Western District of Washington on December 10, 2012, Dkt. C12-02134-JCC. That action was dismissed with prejudice on April 23, 2013.

On January 13, 2016, Mora filed a complaint against Green River in King County Superior Court, Case No. 16-2-00862-3 KNT, CP 1.

On March 28, 2016, Mora filed an amended complaint which included additional factual allegations against Green River Employees Comollo and Himes specifically related to their actions in dropping Mora from the

aviation program; objections made to Comollo and Himes by Mora concerning their disparate treatment of her in comparison to other non-disabled students; additional information regarding Mora's subsequent completion of an aviation program upon her own initiative, and an additional allegation of discrimination against Green River for violation of the Washington Law Against Discrimination (WLAD) RCW 49.60.010 CP 6

On March 29, 2016, Green River filed Notice of Hearing/Motion to Dismiss Mora's amended complaint CP 7,8

On May 6, 2016, a Summary Judgement Hearing was held and order issued dismissing Mora's amended complaint with prejudice CP 14, 15

On May 11, 2016, Green River filed Notice of Hearing and Motion/Attorney Fees. CP 16,17

On May 31, 2016, Judgement vs Olivia Mora for attorney fees was entered by the court.

Mora appeals from the order dismissing her amended complaint, and judgment for attorney fees.

## **II. ARGUMENT**

### **A. Standard for Review**

Whether res judicata bars an action is a question of law we review de

novo. *Ensley v. Pitcher*, 152 Wn. App. 891, 899, 222 P.3d 99 (2009) Emeson v. Dep't of Corr., 194 Wn. App. 617, 626, 376 P.3d 430, 436, 2016 Wash. App. LEXIS 945, \*9 (Wash. Ct. App. 2016)

Our Supreme Court has enumerated four requirements for res judicata to apply. *Williams v. Leone & Keeble, Inc.*, 171 Wn.2d 726, 730, 254 P.3d 818 (2011). Res judicata applies and bars the subsequent action where there is a concurrence of identity in (1) subject matter, (2) cause of action, (3) persons and parties, and (4) quality of the persons for or against whom the claim is made. *Id.*; *DeYoung*, 100 Wn. App. at 891. Emeson v. Dep't of Corr., 194 Wn. App. 617, 627, 376 P.3d 430, 436, 2016 Wash. App. LEXIS 945, \*10 (Wash. Ct. App. 2016)

Washington courts use a four-factor test for determining whether there is an identity in the causes of action. *DeYoung*, 100 Wn. App. at 892.

“(1) whether rights or interests established in the prior judgment would be destroyed or impaired by prosecution of the second action; (2) whether substantially the same evidence is presented in the two actions; (3) whether the two suits involve infringement of the same right; and (4) whether the two suits [\*\*\*13] arise out of the same transactional nucleus of facts.”*Id.* (quoting *Kuhlman v. Thomas*, 78 Wn. App. 115, 122, 897 P.2d 365 (1995)); *see also Pederson v. Potter*, 103 Wn. App. 62, 72, [\*629] 11 P.3d 833 (2000) (stating the same), *review denied*, 143 Wn.2d 1006 (2001) Emeson v. Dep't of Corr., 194 Wn. App. 617, 628-629, 376 P.3d 430, 437, 2016 Wash. App. LEXIS 945, \*12-13 (Wash. Ct. App. 2016)

- B. The doctrine of res judicata does not apply to Mora’s claims and her amended complaint does not meet the test for concurrence of identify in cause of action

While the trial court in its order of May 5, 2016 glossed over the issue

of res judicata with a bare recital of the four requirements needed for res judicata to apply CP 14,15, the court clearly did not consider the failure of the second requirement of identity in cause of action in this case. Had the trial court conducted a diligent inquiry into the res judicata claim in light of the four-requirement test, its inquiry would have led further into another four-factor test specifically related to cause of action requirement.

When Mora's amended, complaint is viewed in light of the four-factor test specifically related to cause of action it is apparent that its claims do not present the same evidence. Mora's amended complaint contains allegations related to her clear protests of disparate treatment in being dropped from the aviation class, while other non-disabled students were yet allowed to remain in classes at Green River despite their having received a failing grade in only one examination. Additional allegations in Mora's amended complaint provide details of Mora's completion of an aviation program upon her own initiative, despite having been dropped from Green River's aviation class. CP 6

Mora's amended complaint does not involve infringement of the same right. In her amended complaint Mora brings separate and distinct allegations of discrimination against Green River pursuant to the Washington Law Against

Therefore, the issues herein are not precluded by res judicata and the trial court erred in dismissing Mora' amended complaint.

C. Mora's claims are not barred by the statute of limitations

The trial court's decision states that Mora's claims in her amended complaint are subject to res judicata. Clearly this reflects the court's position that her claims relate back to her previous filing. The trial court then takes the next step of finding that Mora's claims in her amended complaint are now time barred by the statute of limitations. Since the trial court has established that Mora's claims relate back to her previous filing, but has failed to properly evaluate the claim of res judicata pursuant to the four requirements for res judicata to apply in, *Williams v. Leone & Keeble, Inc.*, 171 Wn.2d 726, 730, 254 P.3d 818 (2011), and the four-factor test for determining whether there is an identity in the causes of action. *DeYoung DeYoung*, 100 Wn. App. at 892., the claims in Mora's amended complaint clearly relate back to her previous filing and are not time barred pursuant to Wash. CR 15 Amended and supplemental pleadings

(c) *Relation back of amendments*: Whenever the claim or defense asserted in the

amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading.....

Therefore, the issues herein are not precluded by statute of limitations and the trial court erred in dismissing Mora's amended complaint.

D. The trial court abused its discretion in dismissing Mora's case based upon the merits of her amended complaint

In the hearing May 6, 2016, on Green River's Motion to Dismiss, the Honorable Veronica J. Galvin stated:

THE COURT: I want to make clear that my judgment, Ms. Mora, is not on the merits of your claim. This court is not passing judgment on whether or not Green River College acted inappropriately. That's not what is before me today. RT 6:24-7:3

THE COURT: I'm taking out the term "frivolous" Again this court is not ruling on the merits and is not going to make a finding of frivolity. RT 8:1-4

The trial court's order stated:

## II. CONCLUSIONS OF LAW

2.5 Plaintiff's lawsuit, in its entirety, is frivolous and advanced without reasonable cause. It cannot be supported by any rational argument based in fact or law. Plaintiff's lawsuit was therefore filed in violation of CR 11 and RCW 4.84.185. CP 14,15

Therefore, the trial court abused its discretion in dismissing Mora's case based upon the merits of her amended complaint, and in awarding attorney's fees to Defendant's counsel. CP14,15, 19

- E. Mora was denied a fair hearing on Green River's Motion to Dismiss, as an order dismissing her case was signed by the Honorable Veronica J. Galvan on May 5, 2016, one day prior to the hearing of May 6, 2016.

There was no tentative ruling was issued in this case prior to the hearing on Green River's Motion to Dismiss, which took place on May 6, 2016. Upon the trial court's issuance of its signed order dismissing Mora's case, it is readily apparent the order was signed and dated by Judge Veronica J. Galvan on May 5, 2016. Further, the order states that it was "Done in open court." CP 14,15.

Mora, a pro-se litigant with developmental disabilities, attempted advocate for herself during the hearing, and informed the court that her amended complaint contained new factual allegations, which she could prove during a trial:

MORA: Thank you. While here on my amendment, there is new claims. There's new evidence, too, that I was discriminated, and I feel—I know I have the opportunity—and if you read the amendment, it says that I do have new evidence to prove to you and to the jury.  
RT 5: 15-21

MORA: And if you read it (amended complaint) there is new evidence. And I have proof of that too. RT 6:7-9

MORA: And I was, and I can prove to you and to the jury if I—you give me the opportunity. I have been successful in the aviation program. And I want to thank you for your time. RT 6:20-23

Therefore, the trial court denied Mora a fair hearing on Green River's Motion to Dismiss her amended complaint, as no tentative decision had been issued, and the court's order already dismissing Mora's case had already been signed on May 5, 2016, one day prior to the hearing of May 6, 2016.

### III. CONCLUSION

For the foregoing reasons, Appellant respectfully requests the order of the trial court be reversed.

Submitted this 2<sup>nd</sup> day of November, 2016

  
Olivia Mora    NOV. 2-16  
Appellant, Self-Represented

CERTIFICATE OF SERVICE

I certify that I mailed, or caused to be mailed, a copy of the foregoing brief postage prepaid, via U.S. and email at [kaylynnw@atg.wa.gov](mailto:kaylynnw@atg.wa.gov) on the 2<sup>nd</sup> day of November 2016 to the following counsel of record at the following address:

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Appellant-Self Represented



Olivia \$  
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