No. 102795-8

SUPREME COURT
OF THE STATE OF WASHINGTON

IAN ATKERSON, individually and as Personal Representative to the Estate of RUSTIN ATKERSON,

Plaintiff - Petitioner,

v.

STATE OF WASHINGTON DEPARTMENT OF CHILDREN, YOUTH, and FAMILIES, John and Jane Doe 1-10,

Defendant - Respondents.

RESPONDENT STATE OF WASHINGTON, DEPARTMENT OF CHILDREN, YOUTH, AND FAMILIES' ANSWER TO AMICUS CURIAE MEMORANDUM OF LAW OFFICES OF RESSLER & TESH

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I. INTRODUCTION

DCYF is obligated to protect children *and* preserve family unity when possible. *See Tyner v. Dep't of Soc. & Health Servs.*, 141 Wn.2d 68, 1 P.3d 1148 (2000) (citing RCW 26.44.050); *see also* Engrossed Second Substitute H.B. 1227, 67th Leg., Reg. Sess. (2021) (the Keeping Families Together Act). The Court of Appeals' plain-text interpretation of RCW 4.24.595(1) upholds these dual requirements. On the other hand, amicus Law Offices of Ressler & Tesh (R&T) supports an interpretation of RCW 4.24.595(1) at odds with DCYF's ability to fulfill its duties and satisfy overall legislative intent. This Court should reject R&T's approach.

II. ARGUMENT

A. R&T Fails to Explain how the Court of Appeals' Decision Supports Absurd Results

R&T asserts, without factual support, that DCYF seeks to extend the Court of Appeals' decision "to any and all of its investigations." Amicus R&T Br. at 3, 4. This mischaracterization suggests that DCYF claims the gross

negligence standard in RCW 4.24.595(1) has no bounds, an argument DCYF has not made to either a trial or appellate court.

Further, R&T falsely casts DCYF's position—and by extension, the Court of Appeals' decision adopting it—as "fatuous arguments … [to] avoid tort liability…." Amicus R&T Br. at 4. DCYF's interpretation of RCW 4.24.595(1) does not *avoid* a liability risk in this case, but rather, it applies the correct legal standard to RCW 26.44 investigations during a timeframe when social workers have minimal information available and must act to preserve family integrity.

Likewise, R&T contends that affirming the Court of Appeals will allow DCYF to "avoid its responsibility to this State's most vulnerable children." Amicus R&T Br. at 4. This statement is nothing more than a rhetorical bogeyman. The recognition that RCW 26.44 investigations are subject to RCW 4.24.595(1)'s gross negligence standard, prior to a real or potential shelter care hearing, will not lessen DCYF's

commitment to child safety or alter DCYF's investigatory focus to keep children out of harm's way.

R&T's approach, by contrast, would give rise to a panoply of absurd scenarios contrary to both the plain wording of RCW 4.24.595(1) and the Legislature's clear preference to maintain family integrity. *See*, *e.g.*, *State v. Weatherwax*, 188 Wn.2d 139, 148, 392 P.3d 1054 (2017) ("In interpreting statutes, we presume the legislature did not intend absurd results and thus avoid them where possible." (Internal quotations and citation omitted)). For example, in investigations commenced after a report is screened-in pursuant to RCW 26.44.030(12)(a)(i), R&T's interpretation produces irrational results such as:

- Actions taken while reasonable efforts are made over the course of days or weeks to keep a family together, consistent with DCYF's statutory obligations, would be subject to ordinary negligence, but later actions taken in the very short time after a social worker seeks to disrupt a

family unit would be subject to the greater protection of gross negligence;

- Actions taken prior to meeting the high burden of a pick-up order would be subject to ordinary negligence, but actions taken after hastily removing a child from home contrary to the mandate of E2SHB 1227, the Keeping Families Together Act, would be subject to gross negligence;
- Actions taken at *any* point before removal is granted through a pick-up order would be subject to ordinary negligence, actions taken in a 72-hour (or shorter) period before a shelter care hearing would be subject to gross negligence, and actions taken after the hearing would then be subject to ordinary negligence again, resulting in a pendulum of back-and-forth liability standards in the same investigation.

By contrast, the Court of Appeals' decision in this case reflects a reasonable interpretation of RCW 4.24.595(1) that

gives effect to both the statute's plain language and overall legislative intent favoring family integrity. *See*, *e.g.*, *State v. Asotin County*, 79 Wash. 634, 641, 140 P. 914 (1914) ("An act of the Legislature should not be given an interpretation which would make it an absurdity when it is susceptible of a reasonable interpretation which could carry out the manifest intent of the Legislature."). Claims related to an emergent placement investigation arising under RCW 26.44 and concluding prior to an actual or potential shelter care hearing, including investigations that maintain the status quo of a child residing at home (as RCW 4.24.595(1) unambiguously provides), should be adjudicated using the statute's gross negligence standard. After the conclusion of an investigation or if court action becomes necessary, then ordinary negligence and RCW 4.24.595(2) apply to DCYF's conduct.

Consequently, this Court should hold that the express language of RCW 4.24.595(1) governs the Atkerson investigation.

B. R&T's Other Arguments are Incorrect

First, R&T suggests that a child's removal from their home need not occur prior to a shelter care hearing under RCW 13.34.065. Amicus R&T Br. at 5-6. R&T misapprehends the statutory framework that requires DCYF to first obtain a custodial pick-up order before it can effectuate shelter care removal. RCW 13.34.060(1) (a child must be "taken into custody pursuant to RCW 13.34.050 or 26.44.050"). DCYF cannot rely on the court order exemptions found in RCW 26.44.050(2) or RCW 26.44.056(1).

The phrase "petitioner is seeking the removal" in RCW 13.34.065(1)(a) does not alter DCYF's statutory requirements, nor does it compel the conclusion that RCW 4.24.595(1) is inapplicable to investigations that maintain family unity, particularly when RCW 4.24.595(1) unambiguously includes investigations leaving a child at home within its scope.

Second, R&T advances a new argument never raised in this case, namely that RCW 4.24.595(1) only pertains to claims

brought by parents, custodians, or guardians. Amicus R&T at 6. RCW 4.24.595(1) does not say this, and no such interpretation can possibly be inferred from either its text or any other source.

The statute plainly defines emergent placement investigations as including "any determination to leave a child with a parent, custodian, or guardian, or to return a child to a parent, custodian, or guardian," and provides that "[g]overnmental entities, and their officers, agents, employees, and volunteers, are not liable in tort for any of their acts or omissions" in such investigations "unless the act or omission constitutes gross negligence." RCW 4.24.595(1). DCYF's investigatory duty under RCW 26.44.050 was owed to children even before its expansion to parents. *Tyner*, 141 Wn.2d at 77. Atkerson and DCYF each agree that duty is applicable here. CP 223, CP 873, CP 884. Thus, the liability limitation in RCW 4.24.595(1) covers negligent investigation actions brought by both children and their parents. R&T does not offer a sound basis for this Court to deviate from the Court of Appeals' decision.

III. CONCLUSION

R&T's arguments misconstrue RCW 4.24.595(1) and would lead to outcomes promoting the removal of children from their homes. This Court should instead affirm the Court of Appeals.

This document contains 1,107 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 23rd day of August, 2024.

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CERTIFICATE OF SERVICE

I certify that, on the date below, I caused to be electronically filed the **RESPONDENT STATE OF WASHINGTON, DEPARTMENT OF CHILDREN, YOUTH, AND FAMILIES' ANSWER TO AMICUS CURIAE MEMORANDUM OF LAW OFFICES OF RESSLER & TESH** with the Clerk of the Court using the electronic filing system which caused it to be served on the following electronic filing system participant(s) as follows:

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

EXECUTED this 23rd day of August 2024 at Olympia, Washington.

s/ Beverly Cox
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