No. 1031114

Court of Appeals No. 388921 – Division III

SUPREME COURT OF THE STATE OF WASHINGTON

BARBARA ANDERSON and ROD BATTON, and each of them, INDIVIDUALLY, and BARBARA ANDERSON and ROD BATTON as Co-Personal Representatives of the Estate of Derek Batton,

Respondents/Cross-Appellants,

vs.

GRANT COUNTY, WASHINGTON,

Petitioner/Appellant/Cross-Respondent.

BRIEF OF AMICUS CURIAE KING COUNTY

LEESA MANION
King County Prosecuting Attorney
Colin M. George, WSBA #45131
Senior Deputy Prosecuting Attorney
King County Prosecuting Attorney's Office
701 5th Avenue, Suite 600
Seattle, WA 98104
Telephone: (206) 477-1120 | Fax: (206) 296-0191
cogeorge@kingcounty.gov
Attorney for Amicus Curiae King County

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I. STATEMENT OF INTEREST

King County is the largest county in Washington and operates three county correctional facilities that house adult inmates and juveniles: the King County Correctional Facility, the Maleng Regional Justice Center, and the Clark Children and Family Justice Center. King County also provides social services to citizens in a variety of contexts.

II. INTRODUCTION

In *Anderson and Batton v. Grant County,* Division Three discarded the longstanding statutory immunity enacted by the legislature in RCW 4.24.420 by substituting its own public policy preferences. The decision is flawed in multiple respects. First, this Court has long held that courts must interpret statutes so as to carry out the intent of the legislature, not second guess and bypass it. Second, Division Three's policy considerations were not only improper, but also short-sighted. RCW 4.24.420 provides both predictability and a thoughtful compromise between the need for local

governments to provide social services and the need to compensate injured parties. Division Three's decision will make it more difficult and costly for local governments to provide social services, contrary to the legislature's express intent. Review is needed to restore the separation of powers and to ensure that local governments can provide services within a predictable legal framework that balances the social benefits of public services with the need to limit excessive litigation.

III. ISSUES PRESENTED FOR REVIEW

1. Whether the Court of Appeals improperly extended the holding in *Gregoire v. City of Oak Harbor*, 170 Wn.2d 628, 244 P.3d 924 (2010), to eliminate the statutory defense provided in RCW 4.24.420.
2. Whether the Court of Appeals' invocation of public policy considerations failed to consider the true policy consequences of its decision for local governments.

IV. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

1. Division Three Improperly Substituted Its Own Policy Judgments for the Intent of the Legislature and Thus the Decision Conflicts With Numerous Decisions of This Court That the Fundamental Objective of Statutory Construction Is to Carry Out the Legislature's Intent.

Division Three misinterpreted this Court's holdings in two cases and eliminated a statutory defense on which defendants, including local governments, are entitled to rely. It began by characterizing *Gregoire v. City of Oak Harbor*, 170 Wn.2d 628, 244 P.3d 924 (2010), and *Hendrickson v. Moses Lake School District*, 192 Wn.2d 269, 428 P.3d 1197 (2018), as prohibiting a jail from shedding a "duty to protect an inmate" through either of two affirmative defenses: assumption of risk or comparative fault. *Anderson v. Grant Cnty.*, 28 Wn.App.2d 796, 808, 539 P.3d 40 (2023).[1]

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[1] The opinion's analysis of these two cases is discussed at

Division Three then ruled against Grant County with three flawed conclusions. First, because the statutory immunity defense provided in RCW 4.24.420 was "predicated on an assumption of the risk," *Gregoire* had left that defense unavailable to jails under the facts of the case. *Id.* Second, allowing the county to rely on RCW 4.24.420 was "unsupportable from a policy perspective." *Id. (*quoting *Gregoire*, 170 Wash.2d at 643–44). Third, RCW 4.24.420 is unavailable because "but for the County's failure to properly search" another inmate, the decedent would have lacked an opportunity to commit a felony. *Id.*

With respect to the first conclusion, there is no support for the proposition that RCW 4.24.420 is "predicated" on assumption of the risk and a recent decision by Division One of the Court of Appeals

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length in Grant County's Petition for Review and need not be recited here.

illustrates the distinctions between the statutory immunity defense and the common law doctrine of assumption of the risk.

In *Watness v. City of Seattle*, 16 Wn.App.2d 297, 481 P.3d 570 (2021), the decedent threated to stab police officers and was shot and killed. The estate sued for negligence and assault. The City of Seattle raised multiple defenses, including the felony-defense statutory immunity provided by RCW 4.24.420 and the affirmative defense of implied primary assumption of risk. To benefit from statutory immunity, the court explained, the officers must prove that the decedent formed the requisite *mens rea* to commit a felony. *Id.* at 309. To establish a defense of assumption of risk, by contrast, the officers had to prove that the decedent "(1) had full subjective understanding (2) of the presence and nature of the specific risk, and (3) voluntarily chose to encounter the risk." *Id.* at 317 (citing *Gregoire*, 170 Wn.2d at 636).

The *Watness* case illustrates that the defenses have distinct elements and there is no basis to say that one is "predicated" on the other. A review of Washington law finds no support in any other case for the proposition that RCW 4.24.420's statutory immunity is "predicated" in any sense on the common law doctrine of assumption of risk.

With respect to the second conclusion, courts may not substitute their own judgments about "policy perspective" for the intent of the legislature. When considering statutes, this Court has held that the courts' "fundamental objective is to ascertain and carry out the Legislature's intent, and if the statute's meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent." *State v. Keller*, 2 Wn.3d 887, 910, 545 P.3d 790 (2024) (quoting *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wash.2d 1, 9-10, 43 P.3d 4 (2002)). *See Frias v. Asset Foreclosure Servs., Inc.,* 181 Wn.2d 412, 421, 334 P.3d 529 (2014) ("In

matters of statutory construction, we are tasked with discerning what the law is, not what it should be.").

In this matter, there is an unusually clear expression of the legislature's intent on which to rely. In the 1986 preamble to RCW 4.24.420, at RCW 4.16.160, the legislature explained why the immunizing local governments from suit would have socially beneficial policy effects:

> The purpose of this chapter is to enact further reforms in order to create a more equitable distribution of the cost and risk of injury and increase the availability and affordability of insurance.
>
> The legislature finds that counties, cities, and other governmental entities are faced with increased exposure to lawsuits and awards and dramatic increases in the cost of insurance coverage. These escalating costs ultimately affect the public through higher taxes, loss of essential services, and loss of the protection provided by adequate insurance. In order to improve the availability and affordability of quality governmental services, comprehensive reform is necessary.

RCW 4.16.160, 1986 c 305 §100. The legislature concluded with an explicit statement of its intent: "Therefore, it is the intent of the legislature to reduce costs associated with the tort system, while assuring that adequate and appropriate compensation for persons injured through the fault of others is available." *Id.*

Division Three failed to engage with the statement of legislative intent. It failed to support its own invocation of public policy with details, examples, or explanation. And it failed to explain why its policy considerations superseded those of the legislature.

With respect to the third conclusion, rather than follow legislative intent, Division Three effectively rewrote RCW 4.24.420. The court acknowledged that Batton's possession of a controlled substance while incarcerated was a felony in violation of RCW 9.94.041(2). The court then concluded that the statutory felony-bar defense was not applicable because "but for the

County's failure to properly search Mr. Tebow, Mr. Batton would have lacked the opportunity" to commit a felony. *Anderson,* 28 Wn.App.2d at 808.

This is a revision of the statutory language. RCW 4.24.420 provides immunity where an injured party's own felonious behavior is a "proximate cause of the injury or death." The Court of Appeals has effectively added new language eliminating the defense where the defendant's actions preceding commission of the felony were a "but-for" cause of the injury or death. This revision of the plain language and intent of the statute based on Division Three's independent "policy" concerns is in conflict with this Court's cases detailing the rules of statutory construction and warrants review by this Court. RAP 13.4(b)(1).

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2. Future Courts Could Expand *Anderson* to Eliminate Statutory Immunity In a Variety of Contexts Where Local Governments Have a "Special Relationship" with Plaintiffs.

Any judicial revision of legislation is fraught, but the *Anderson* case presents a heightened potential for adverse consequences for local governments. That is because it rejects RCW 4.24.420's limitation on liability based on the "special relationship" between an inmate and the jail, reasoning that could expand far beyond the jail context.

Justice Sanders held in *Gregoire* that a jail could not assert an assumption-of-the-risk defense in cases of inmate suicide because of the special relationship between the jailer and the inmate. 170 Wn.2d at 644.

But where Justice Sanders held that the special duty made a common law defense unavailable, Division Three held that the special duty rendered a *statutory* defense unavailable:

> As an inmate in its jail, the County possessed complete control over Mr. Batton's liberty. This created a special relationship wherein the County owed a nondelegable affirmative duty to protect Mr. Batton from harm and ensure his health, welfare, and safety. Allowing the County to advance the defenses of complete immunity under RCW 4.24.420 or comparative fault under RCW 5.40.060, would nullify the County's duty to protect Mr. Batton.

Anderson, 28 Wn.App.2d at 810.

Again, this holding was informed by the court's determination that requiring jails to protect inmates from their own felonious conduct was preferable "public policy." *Id.* at 808. But the Court of Appeals failed to consider the negative public policy consequences of its decision.

If *Anderson* stands, local governments could face liability in a variety of situations beyond the jail where an individual commits a felony and then claims that a special relationship with that local government created a government duty to prevent him from injury resulting

from commission of that felony. Because there are several situations in which courts have found special relationships between local governments and plaintiffs, this holding could affect a variety of public services.

A special relationship between a plaintiff and a government entity arises when "(1) there is direct contact or privity between the public official and the injured plaintiff which sets the latter apart from the general public, and (2) there are express assurances given by a public official, which (3) gives rise to justifiable reliance on the part of the plaintiff." *Beal v. City of Seattle*, 134 Wn.2d 769, 785, 954 P.2d 237 (1998) (quoting *Taylor v. Stevens Cnty.*, 111 Wn.2d 159, 166, 759 P.2d 447 (1988)).

In *Munich v. Skagit Emergency Commc'n Ctr.*, 175 Wn.2d 871, 288 P.3d 328 (2012), this Court recognized the existence of a special relationship between a 911 dispatch center and a decedent based on assurances made to the decedent. The Court held that the special

relationship arose whether the assurances were accurate or inaccurate. *Id.* at 885.

In *Caulfield v. Kitsap Cnty.*, Division Two of the Court of Appeals recognized a special relationship between the plaintiff, a disabled adult and both the Washington State Department of Social and Health Services and Kitsap County, which were providing the plaintiff with in-home care services. 108 Wn.App. 242, 251-252, 29 P.3d 738 (2001).

In *Hunt v. King Cnty.*, Division 2 of the Court of Appeals found that a county-run hospital had a duty to safeguard patients from the reasonably foreseeable risk of self-harm through escape. 4 Wn.App. 14, 20, 481 P.2d 593 (1971).

Washington Courts have long recognized that a common carrier "owes the highest degree of care toward its passengers commensurate with the practical operation of a coach at the time and place in question." *Benjamin v.*

City of Seattle, 74 Wn.2d 832, 833, 447 P.2d 172 (1968) (citing *Boyd v. City of Edmonds*, 64 Wash.2d 94, 390 P.2d 706 (1964)).

In each of these instances, counties and other local governments have been able to rely on RCW 4.24.420 where the plaintiff engaged in felonious behavior that proximately caused their injuries. The statute provides the appropriate balance between the need to provide critical public services for residents in need and the need to limit liability and reduce insurance costs. As set forth above, the intent of the legislature in passing RCW 4.24.420 was to "reduce costs associated with the tort system, while assuring that adequate and appropriate compensation for persons injured through the fault of others is available." RCW 4.16.160, 1986 c 305 §100.

The *Anderson* decision will disrupt this careful balance by greatly expanding government liability. There is nothing in the language of *Anderson* that limits the

holding to jails. The Court of Appeals did not, and could not, hold that jails are unique in having a special relationship with citizens under tort law. The court simply held that a jail has a duty to a prisoner "to keep him in health and safety." *Anderson*, 28 Wn.App.2d at 805 (citing *Shea v. City of Spokane*, 17 Wn.App. 236, 242, 562 P.2d 264 (1977)).

A court that was determined to follow *Anderson* might find that a local government has a duty to keep callers to 911 dispatchers, customers of public transit, disabled individuals receiving in-home care, or residents of psychiatric care "in health and safety" and further find it foreseeable for these individuals to commit felonies. Such a court could hold that local governments are not entitled to the felony-bar immunity defense in any of these contexts, in violation of the explicitly stated intent of the legislature.

Division Three ignored the legislature's determination that liability to those engaged in felonious activities would lead to diminished public services. This egregious rejection of legislative intent raises an issue of substantial public importance that should be determined by this Court. RAP 13.4(b)(4).

V. CONCLUSION

For the reasons above, local governments are depending on this Court to correct the errors in the *Anderson* decision and restore the balance created by the legislature in RCW 4.24.420.

The undersigned hereby certifies under RAP 18.17(2)(b) that this document contains 2271 words.

RESPECTFULLY SUBMITTED this 23rd day of July, 2024.

LEESA MANION
King County Prosecuting Attorney

By:/s/Colin M. George
COLIN M. GEORGE, WSBA #45131
Senior Deputy Prosecuting Attorney
Attorney for Amicus Curiae King County
701 5th Avenue, Suite 600
Seattle, WA 98104
Telephone: (206) 477-1120 | Fax: (206) 296-0191
Email: cogeorge@kingcounty.gov

CERTIFICATE OF SERVICE

I, Margaret Flickinger, hereby certify that a true and correct copy of the foregoing BRIEF OF AMICUS CURIAE KING COUNTY was served upon the following via the manner noted below:

Michael E. McFarland, Jr.
Scott A. Flage
Evans, Craven & Lackie, P.S
818 W. Riverside Ave., Suite 250
Spokane, WA 99201
mmcfarland@ecl-law.com
sflage@ecl-law.com
ldavis@ecl-law.com
(Via E-Service)

Kenneth W. Masters
Shelby R. Frost Lemmel
Masters Law Group, PLLC
321 High School Road Ne, D3-#362
Bainbridge Island, WA 98110
ken@appeal-law.com
shelby@appeal-law.com
(Via E-Service)

James Dixon
Dixon & Cannon, Ltd.
701 N 36th St, Ste 420
Seattle, WA 98103
james@dixoncannon.com
litigators@dixoncannon.com
(Via E-Service)

Michael Schwartz
Schwartz Law Office, PLLC
701 5th Ave, Ste 2460
Seattle, WA 98104
mschwartzlaw@hotmail.com
(Via E-Service)

Damon A. Platis
Feldman & Lee
519 Beach Ave
Marysville, WA 98270-4525
dplatis@feldmanlee.com
(Via E-Service)

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

SIGNED and DATED this 23rd day of July 2024 at Seattle, Washington.

By: _____
MARGARET FLICKINGER
Paralegal I – Civil Division
King County Prosecuting Attorney's Office

KING COUNTY PROSECUTING ATTORNEYS OFFICE CIVIL DIVISION

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- mmcfarland@ecl-law.com
- mschwartzlaw@hotmail.com
- office@appeal-law.com
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Filing on Behalf of: Colin George - Email: cogeorge@kingcounty.gov (Alternate Email:)

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Phone: (206) 477-1120

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