NO. 1036833

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

MESHAL Y. EL GAMAI, a married man,

Petitioner,

vs.

MICHAEL J. ROMOSER and TRACY A. ROMOSER, husband and wife, and the marital community composed thereof,

Respondents,

and

JOHN DOES 1-5,

Defendants,

APPEAL FROM KING COUNTY SUPERIOR COURT
Honorable Marshall L. Ferguson, Judge

ANSWER TO PETITION FOR REVIEW

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I. NATURE OF THE CASE

While plaintiff/petitioner was delivering a package to defendants' house, their dogs frightened him and he fell. The dogs did not bite him. Since defendants/respondents had no notice the dogs had vicious or dangerous propensities likely to cause the injury, the superior court correctly granted summary judgment of dismissal, and the Court of Appeals correctly affirmed.

This is not the case to consider whether to reevaluate the standard for premises liability. It is not a premises liability case at all. The alleged injury was not caused by a condition on the land. This Court should deny the Petition for Review.

II. STATEMENT OF THE CASE

A. STATEMENT OF RELEVANT FACTS.

Plaintiff Meshal El Gamai alleged in his complaint that on September 8, 2019, he was delivering a package to the home of defendants Michael and Tracy Romoser. He alleged three dogs lunged at him through the door, and the big dog bit him. As he

backed down the stairs in front of the house, he tried to kick the dogs. He lost his balance and fell down the stairs. As he was falling, the dogs ran away. (CP 2-3)

Plaintiff later testified that the dogs did not actually bite him. The big dog grabbed his shirt and jacket. Another dog tried to bite his foot, but he kicked it. (CP 72-73)

Mr. Romoser testified that on September 8, 2019, three dogs lived in the Romoser home. (CP 74) The three dogs had never bitten or harmed anyone. (CP 75)

September 8, 2019, was a warm sunny day. On warm summer days, the Romosers would leave their front door open with the front screen door closed. (CP 74)

Mr. Romoser heard the dogs barking. (CP 74) He went to the front door and found the screen door open. (CP 75) He saw the dogs on the porch barking at plaintiff. (CP 75) Mr. Romoser concluded that one of his children must have left the screen door unlatched. (CP 75)

Plaintiff told Mr. Romoser that the dogs frightened him, but he did not appear injured. He did not say anything about falling down the stairs or being injured. (CP 75)

B. STATEMENT OF PROCEDURE.

An order granting defendants' motion for summary judgment was entered on January 6, 2024. (CP 102-03) Plaintiff then filed a Notice of Appeal. (CP 104-07)

On November 25, 2024, the Court of Appeals, Division I, affirmed the trial court's ruling in an unpublished opinion.

Petitioner filed a motion to publish the opinion on or about December 5, 2024, which was denied on December 27, 2024. Petitioner filed a Petition for Review with this Court on January 13, 2025.[1]

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[1] On November 27, 2024, petitioner filed with the Court of Appeals a motion for extension of time to file the Petition for Review. Respondents received the motion on December 2, and filed an answer objecting to the motion on December 4. Although this Court's December 10, 2024, and January 13, 2025, letters address the motion for extension, the Petition for Review was filed within 30 days of the Order Denying Motion to Publish.

III. ARGUMENT

Discretionary review is allowed only under the limited circumstances described in RAP 13.4(b), which provides:

> (b) **Considerations Governing Acceptance of Review.** A petition for review will be accepted . . . only: (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

The petition does not even mention RAP 13.4(b). The Petition for Review should be denied because petitioner has not and cannot demonstrate that this case satisfies any of the criteria of RAP 13.4(b). There is no conflict, no constitutional issue, and no issue of substantial public importance this Court should review.

Preliminarily, although petitioner has chosen to represent himself, rather than to retain legal counsel, this Court will treat this case just as if he was represented by an attorney. *See In re*

Personal Restraint of Connick, 144 Wn.2d 442, 455, 28 P.3d 729 (2001). "[T]he law does not distinguish between one who elects to conduct his or her own legal affairs and one who seeks assistance of counsel—both are subject to the same procedural and substantive laws." *In re Marriage of Wherley,* 34 Wn. App. 344, 349, 661 P.2d 155, *rev. denied,* 100 Wn.2d 1013 (1983). A *pro se* litigant is held accountable to the same standards of ethics and legal knowledge as an attorney. *Batten v. Abrams*, 28 Wn. App. 737, 739 n.1, 626 P.2d 984, *rev. denied*, 95 Wn.2d 1033 (1981).

A. DIVISION I'S OPINION DOES NOT CONFLICT WITH OTHER WASHINGTON APPELLATE DECISIONS.

Petitioner fails to identify any decision of the Court of Appeals or the Supreme Court in conflict with the decision of the Court of Appeals in this case. To the contrary, "Petitioner concedes that under the existing law, the Appeals Court application of law in this case was properly applied". (Petition for Discretionary Review at 1)

B. PETITIONER FAILS TO SHOW THAT THE PETITION INVOLVES A CONSTITUTIONAL ISSUE OR AN ISSUE OF SUBSTANTIAL PUBLIC INTEREST.

Petitioner has failed to show that the petition involves a constitutional issue or an issue of substantial public interest that should be determined by this Court. Petitioner asserts that this Court should accept this case to abandon the traditional common law approach to liability of landowners for conditions on land. However, even if common law classifications should be reconsidered, this is not the case to do it. This is not a premises liability case; it is a case alleging injury caused by dogs. Further, the parties agreed that petitioner was an invitee, and a reasonable care standard already applies to invitees. The Court should therefore deny the petition.

1. This Case Does Not Involve Premises Liability.

This is not a premises liability case. It did not involve a condition on land. This case involved a claim for injury caused by dogs. A dog is not a condition on land.

Under Washington law, "the conditions generally associated with premises liability duties involve physical features of the property." *Saralegui Blanco v. Sandoval*, 197 Wn.2d 553, 562-63, 485 P.3d 326 (2021). A dog is not a dangerous condition on the land. *Id*. at 564.

The Court of Appeals therefore did not base its ruling on the standard for premises liability. The Court of Appeals stated:

> In Saralegui Blanco, our Supreme Court concluded that a dog was not a dangerous "condition" on land. Saralegui Blanco, 197 Wn.2d at 563. The court reasoned that "conditions generally associated with premise[s] liability duties involve physical features of the property." Saralegui Blanco, 197 Wn.2d at 563. Thus, based on Saralegui Blanco, we agree with the Romosers that the dog is not a dangerous condition on land. The trial court correctly granted summary judgment for the Romosers as a matter of law on the premise[s] liability claim.

(Slip op. at 4) (footnote omitted).

Therefore, this case does not present the issue of a landowner's duty of care that petitioner wants addressed. This case presents no issue of substantial public interest. The Court should deny the Petition for Review.

2. If This Was a Premises Liability Case, a Reasonable Care Standard Would Apply Under Existing Law Because the Parties Agreed Petitioner Was an Invitee.

Petitioner asks the Court to abandon common law distinctions and base premises liability on the reasonableness of the conduct of the parties. (Petition at 15) However, the parties have conceded that Petitioner entered defendants' property as a business invitee. (*See* slip op. at 3) Therefore, if this was a premises liability case, a reasonable care standard would apply under existing Washington law. There is no reason to grant review.

Under Washington law, a landowner's general duties to invitees are set forth in RESTATEMENT (SECOND) OF TORTS § 343 (1965):

> A possessor of land is subject to liability for physical harm caused to his invitees by a condition on the land if, but only if, [the possessor]
>
> (a) knows or by the exercise of reasonable care would discover the condition, and should realize that it involves an unreasonable risk of harm to such invitees, and

> (b) should expect that they will not discover or realize the danger, or will fail to protect themselves against it, and
>
> (c) *fails to exercise reasonable care to protect them against the danger.*

Tincani v. Inland Empire Zoological Soc'y, 124 Wn.2d 121, 138, 875 P.2d 621 (1994) (italics emphasis added).

Under this standard, an invitee can expect that the possessor will exercise reasonable care to make the land safe for his entry. Reasonable care requires the landowner to inspect for dangerous conditions, "'followed by such repair, safeguards, or warning as may be reasonably necessary for [the invitee's] protection under the circumstances.'" *Tincani*, 124 Wn.2d at 138-39 (*quoting* RESTATEMENT (SECOND) OF TORTS § 343 cmt. b).

The parties agree that petitioner entered respondents' property as a business invitee. The standard of liability for an invitee is already reasonable care under current law.

Petitioner asserts that a majority of jurisdictions have now abandoned the common law classifications and created a new

method of determining fault.[2] (Petition at 12) This is incorrect. Instead, cases relied upon by petitioner eliminate the distinction between licensees and invitees, extending the standard already applicable to invitees to licensees. *See e.g. Demag v. Better Power Equip., Inc.*, 102 A.3d 1101, 1110 (Vt. 2014); *Jones v. Hansen*, 254 Kan. 499, 509-10, 867 P.2d 303 (1994).[3]

Petitioner was an invitee, not a licensee. If this was a premises liability case, the reasonable care standard would apply without any change in the law. This case presents no issue of substantial public interest. The Court should deny the Petition for Review.

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[2] Petitioner fails to provide citations to the case decisions he asserts comprise this "majority." "[A] decision is not necessarily incorrect merely because it lacks universal acceptance." *State v. Otton*, 185 Wn.2d 673, 684, 374 P.3d 1108 (2016).

[3] These cases maintain the traditional standard of liability for the third classification, trespassers.

3. As This Court Already Held, Decades of Common Law Regarding Premises Liability Should Not Be Changed.

Even if the premises liability standard had been applied in this case, the Court should deny the Petition for Review. This Court has already rejected a request to abandon the common law distinctions of invitee, licensee, and trespasser for landowner liability. There is no reason to revisit this issue.

This Court already ruled as follows:

> The reasons proffered for continuing the distinctions include that the distinctions have been applied and developed over the years, offering a degree of stability and predictability and that a unitary standard would not lessen the confusion. Furthermore, a slow, piecemeal development rather than a wholesale change has been advocated. Some courts fear a wholesale change will delegate social policy decisions to the jury with minimal guidance from the court. . . . Also, it is feared that the landowner could be subjected to unlimited liability.
>
> We find these reasons to be compelling. As noted by the Kansas court in *Gerchberg [v. Loney*, 223 Kan. 446, 450-51, 576 P.2d 593 (1978)]: "The traditional classifications were worked out and the exceptions were spelled out with much thought, sweat and even tears". We are not ready to abandon them for a standard with no contours. . . . We do not choose to erase our developed jurisprudence for a

> blank slate. Common law classifications continue to determine the duty owed by an owner or occupier of land in Washington.

Younce v. Ferguson, 106 Wn.2d 658, 666, 724 P.2d 991 (1986).

This Court later reaffirmed the holding in *Younce*.

> [I]n *Younce v. Ferguson*, this court declined to abandon the common law classifications of entrants upon land -- invitees, licensees, and trespassers -- in favor of a single standard of reasonable care under all the circumstances. Several reasons were given for adhering to the traditional classifications, and the corresponding duty owed by the possessor of land. One reason given is that the classifications have been applied and developed over the years, offering predictability and stability. Further, the court expressed concern about the extent to which a landowner could be subject to liability.
>
> Three ideas may be drawn from *Younce* which are important in the circumstances of this case: (1) a possessor of land should not be subject to unlimited liability; (2) a possessor of land is not an insurer as to all those who may be affected by activity involving the possessor's premises; and (3) a possessor of land has no duty as to all others under a generalized standard of reasonable care under all the circumstances.

Hutchins v. 1001 Fourth Ave. Assocs., 116 Wn.2d 217, 221, 802 P.2d 1360 (1991) (citations omitted).

This analysis is as valid today as it was in 1991. There is no reason to revisit the issue.

Prior decisions by this Court bind it via stare decisis. Stare decisis is a doctrine developed by courts to accomplish the requisite element of stability in court-made law. *W.H. v. Olympia Sch. Dist.*, 195 Wn.2d 779, 787, 465 P.3d 322 (2020).

There are two ways to overcome stare decisis. First, a party may show that a prior decision was incorrect and harmful. Alternatively, there are relatively rare occasions when a court should eschew prior precedent in deference to intervening authority where the legal underpinnings of precedent have changed or disappeared altogether. *Id.*

The question is not whether the Court would make the same decision if the issue presented were a matter of first impression. Instead, the question is whether the prior decision is so problematic that it must be rejected, despite the many benefits of adhering to precedent—promoting the evenhanded, predictable, and consistent development of legal principles,

fostering reliance on judicial decisions, and contributing to the actual and perceived integrity of the judicial process. *State v. Otton*, 185 Wn.2d 673, 678, 374 P.3d 1108 (2016).

Petitioner has failed to show that this state's longstanding jurisprudence regarding landowner liability is incorrect or harmful, or so problematic that it must be rejected despite the benefits of stare decisis. In *Younce*, this Court was already asked whether this landowner liability standard presents the rare occasion where the legal underpinnings of the Court's precedent have changed or disappeared altogether. The Court answered this question in the negative. The Court should deny the Petition for Review.

IV. CONCLUSION

This case has not met any of the criteria of RAP 13.4(b). The petition should be denied.

CERTIFICATE OF COMPLIANCE

I certify that the Answer to Petition for Review of contains 2,463 words.

Dated this 31st day of January, 2025.

REED McCLURE

By 

Michael S. Rogers WSBA #16423
Attorneys for Respondents

CERTIFICATE OF SERVICE

I hereby certify that on January 31, 2025, a copy of the following document was served on counsel as follows via the Washington State Appellate Court's Electronic Filing Portal:

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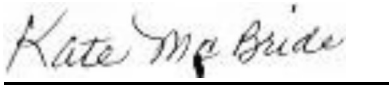
I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Dated this 31st day of January, 2025, at Lillian, Alabama.



Kate McBride

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January 31, 2025 - 10:52 AM

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