No. 103737-6

SUPREME COURT
OF THE STATE OF WASHINGTON

DELAURA NORG, as Litigation Guardian ad Litem for her husband, FRED B. NORG, an incapacitated man, and DELAURA NORG, individually,

Respondents,

v.

CITY OF SEATTLE,

Petitioner.

ANSWER TO PETITION FOR REVIEW

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A. Introduction.

The trial court scrupulously adhered to this Court's mandate in its 2023 Opinion, a properly instructed jury reached a verdict in favor of respondents Fred and DeLaura Norg, and the Court of Appeals' unpublished decision affirming judgment on that verdict provides no basis for further review in this Court. The law of the case barred petitioner City of Seattle's argument that the City did not owe the Norgs a duty of reasonable care in responding to their 911 call, and in any event the "voluntary rescue doctrine" would not limit the City's duty to exercise reasonable care once it affirmatively undertook to come to the Norgs' assistance. The jury appropriately determined the extent to which the City's negligence proximately caused the Norgs' damages.

The City's allegation that the decision below "eliminates" or "misapplies" this Court's precedent (Pet. 1–2) is particularly inapt—the Court of Appeals relied on this

Court's prior decision, not just as "precedent," but as establishing the law of the case. Resolving the element of duty in this negligence action as a matter of law, this Court previously held "that the City owed [respondents Fred and Delaura Norg] an individualized, actionable duty of reasonable care when it undertook to respond to their 911 call." *Norg v. City of Seattle*, 200 Wn.2d 749, 766, ¶39, 522 P.3d 580 (2023).

The City now gives short shrift to the undisputed fact that the existence of a "negligence duty of care" (Pet. 2) was the precise issue the City insisted on litigating in this very Court in its prior appeal. In any event, the Court of Appeals' affirmance is well supported by established precedent and neither of its alternative holdings presents grounds for review under RAP 13.4(b.)

B. Restatement of Issues.

1. Does the law of case establish that the City owed the Norgs a duty of reasonable care once

affirmatively undertaking to provide medical assistance to Fred Norg, where the City not only could have, but actually did argue in its previous appeal that it owed the Norgs no duty whatsoever under the "voluntary rescue doctrine?"

2. Regardless whether the law of the case applies, does Division One's unpublished decision that a properly instructed jury awarded only those damages it found were proximately caused by the City's unchallenged breach of a duty to exercise reasonable care in affirmatively undertaking to come to the Norgs' aid present any issue for review by this Court?

C. Restatement of the Case.

In holding that the City's argument was barred by the law of the case, the Court of Appeals relied on this Court's previous decision, which accurately summarized the "undisputed facts" in holding that the City owed the Norgs "an individualized actionable common law duty to use reasonable care" when it undertook to respond to their 911

call. (Op. 2,[1] quoting 200 Wn.2d at 752, ¶4) The Court of Appeals correctly noted that the City previously raised its voluntary rescue argument in this Court, "where it devoted an entire section to the issue" in its supplemental brief. (Op. 7) In fact, the City challenged the existence and scope of its common law duty of care at every previous stage of this litigation:

1. The City's prior appeal challenged not just the trial court's rejection of its public duty defense, but also the partial summary judgment that the City owed the Norgs a duty of reasonable care.

The Court of Appeals rejected the City's contention, the premise of its current petition, that its earlier appeal was limited to the public duty doctrine. (Op. 6) In its previous appeal the City challenged the trial court's order on the parties' cross-motions for summary judgment that (1) rejected the City's motion to dismiss the Norgs' action

[1] This Answer cites to the Court of Appeals' slip opinion, which is attached to the Petition for Review.

based on the public duty doctrine (CP 107–27), and (2) granted the Norgs' cross-motion to establish a matter of law the City's common law duty of "reasonable care in responding to the Norgs' 911 medical emergency," as the Norgs had alleged in their complaint[2] and motion. (CP 10, 27; *see* CP 374: "the defendant City of Seattle owed plaintiffs a duty of ordinary care.")

The Court of Appeals accepted the City's motion for discretionary review of *both* aspects of the order under RAP 2.3(b)(4), without in any way limiting the issues to be considered on review. In seeking review, the City argued that the trial court's order contravened "cases involving application of the rescue doctrine," and claimed the partial summary judgment would erroneously hold "both public and private rescuers [to] an individual duty of care to those

[2] The Norgs' complaint contained a single cause of action for common law negligence. (CP 9–10) They did not plead the voluntary rescue doctrine.

they assure of assistance, regardless of detrimental reliance or whether the rescuer made the situation worse than it otherwise would have been." (CP 381) That is the same argument it advances now, more than five years (and three appellate decisions) later. (Pet. 15–20)

The Court of Appeals affirmed both aspects of the trial court's order. It held *both* that the public duty doctrine did not bar the Norgs' claim *and* that the City owed the Norgs "a common law duty to exercise reasonable care in providing emergency services," arising out of its "affirmative acts of misfeasance." 18 Wn. App. 2d 399, 412–13, ¶24, ¶26, 491 P.3d 237 (2021). (*Compare* Pet. 18: arguing duty can only arise "from affirmative acts, not omissions")

The Court of Appeals expressly rejected the City's contention (repeated in its current petition) that it could not be liable because SFD's "failure to show up at the Norg apartment in a timely manner—did not cause Fred to suffer

a heart attack," correctly recognizing that the City's argument "conflated the concepts of duty and causation:"

> The Norgs allege that the delay in responding to the correct address caused Fred to experience oxygen deprivation, causing permanent brain damage. Whether the Norgs can establish a causal link between the paramedics' delay and Fred's brain injury remains unresolved at this stage in the litigation.

18 Wn. App. 2d at 412–13, ¶¶24–25.

2. This Court rejected the City's argument that it could owe no common law duty of reasonable care once undertaking to come to the Norgs' rescue.

The City once again rewrites the procedural history of this case and ignores its prior arguments, claiming that this Court accepted review of the Court of Appeals' prior published decision to consider "one narrow issue: the applicability of the public duty doctrine." (Pet. 24) Not so. Having not limited the issues accepted for review, this Court not only rejected the City's public duty argument, but held that the City owed the Norgs a common law duty of

reasonable care once undertaking to come to their assistance. 200 Wn.2d at 766, ¶39.

The City itself identified the "voluntary rescue doctrine" as one of the issues in its prior appeal to this Court. (City Supp. Br. 5) The City "devoted an entire section [of its supplemental brief] to the issue" in its previous appeal to this Court (Op. 7), arguing that "[e]ven if the public duty doctrine does not apply" (City's Supp. Br. 26), the City could owe the Norgs only a limited duty under the "voluntary rescue doctrine:"

> The elements of the voluntary rescue doctrine were not met . . . because there was no admissible evidence that the 911 dispatcher or SFD increased the risk of harm to Mr. Norg—the person being helped—beyond the risk that preceded the aid.

(City's Supp. Br. 27–28; *see also* Amicus Memo of Washington State Association of Municipal Attorneys 11) (City "should have been treated the same as a volunteer rescuer.")

This Court thus also expressly rejected the City's current arguments over two years ago, in deciding its previous appeal. Reviewing as a question of law "whether an actionable duty was owed to plaintiff," 200 Wn.2d at 759, ¶23 (internal quotation omitted), this Court held "[t]he undisputed facts establish that once the City undertook its response to the Norgs' 911 call, the City owed the Norgs an actionable, common law duty to use reasonable care." 200 Wn.2d at 752, ¶4.

The Court's previous decision refutes the City's claim that it decided only the "narrow issue" of the application of the public duty doctrine. This Court held the Norgs' claim was "based solely" on the City's breach of the common law of duty of reasonable care, as they alleged in their complaint:

> The Norgs have established that the City owed them an individualized, actionable duty of reasonable care when it undertook to respond to their 911 call. The Norgs' negligence claim is based solely on the City's alleged breach of this common law duty.

200 Wn.2d at 766, ¶39. Having resolved the issue of duty, this Court remanded for trial on the remaining elements of the Norgs' negligence claim—breach, causation, and damages.

3. The trial court on remand followed the Court's mandate, and the jury found the City's negligence to be a proximate cause of the Norgs' damages.

On remand, the trial court denied the City's motion for summary judgment, in which it claimed that, of the "two common law duties" to which it could be held, "the voluntary rescue doctrine, rather than ordinary negligence," was "the most applicable legal theory" (CP 699, 702) and "the only common law duty that applies here, as a matter of law." (CP 628) The trial court refused to revisit the "threshold negligence determination . . . whether a duty of care is owed to the plaintiff." (CP 629) The trial court recognized that City had previously litigated

both the nature and scope of its duty to the Norgs, both in the trial court and on appeal:

> [T]he sole issue before the supreme court and the court of appeals, of course, before was duty, duty, duty, duty, duty, and it's hard for me to conceive of a situation where the entire bundle of duty wasn't squarely before me and before the courts, the two courts that have reviewed that decision, and that could have been briefed and should have been briefed.

(6/2/23 RP 12)

4. The City's negligence was unchallenged at trial and is undisputed now.

Improperly relying on its summary judgment pleadings to argue the facts it wishes the jury had found in its favor (Pet. 5–6), the City ignores the evidence the jury actually considered in finding, after a 13-day trial, that the City's negligence caused the Norgs' damages. On this appeal from the jury's verdict, this Court considers the evidence presented at trial, not the record made on summary judgment. *Adcox v. Children's Orthopedic Hosp. & Med. Ctr.*, 123 Wn.2d 15, 35, n.9, 864 P.2d 921 (1993).

Mrs. Norg gave the 911 dispatcher the correct address, but the City's responders (who were two blocks away) drove past the Norgs' apartment to an assisted living facility, all the while assuring Mrs. Norg during a 17-minute 911 call that they had already or were about to arrive at the Norgs' apartment. (Exs. 10, 16, 25, 39; CP 2261) At trial, the City told the jury that it "admits that its first responders went to the wrong address . . . by mistake." (RP 499) What the City ignores in claiming a mere "omission" is that those "mistakes" included a complete failure of any of the ten firefighters in three separate responding vehicles to verify the address given to them by their dispatcher (RP 754–55, 1261), substantially delaying the responders' arrival to the Norgs' residence. (RP 1187, 1190–94, 1199–1202)

Claiming that "Mr. Norg survived but suffered severe injuries as a result of his heart attack" (Pet. 6), the City also elides that its own expert conceded that part of Mr. Norg's brain injury was caused by the City's negligent delay in

responding to his medical emergency. (RP 1850, 1944) The jury heard undisputed evidence that the City's delay caused Mr. Norg to suffer "severe, prolonged oxygen deprivation" (RP 1422), resulting in "extensive" damage from the "front to the very back of his brain." (RP 1414, 1417, 1446)

Under pattern instructions, and wholly consistent with the previous appellate decisions in this case, the trial court instructed the jury that the "Seattle Fire Department owed the Norgs a duty of reasonable care when it undertook to respond to the Norgs' 911 call" (CP 2265; *see* 6 Wash. Pattern Jury Instr. Civ. WPI 10.01–.02 (7th ed. 2022 Update)), that "'proximate cause' means a cause in which a direct sequence produces the injury complained of and without which such injury would not have happened" (CP 2266; *see* 6 Wash. Pattern Jury Instr. Civ. WPI 15.01.01), and that any damage award should "fairly compensate the plaintiffs for the total amount of such damages as you find were proximately caused by the

negligence of the defendant." (CP 2267; *see* 6 Wash. Pattern Jury Instr. Civ. WPI 30.01.01) The jury rejected as a matter of fact the City's argument, in closing, that the City's "delay . . . did not cause Mr. Norg's brain damage" (RP 2072), awarding the Norgs damages of $3.275 million. (CP 2277)

5. The Court of Appeals affirmed on two grounds.

The City again appealed, and the Court of Appeals again affirmed. Division One held that "[u]nder the law of the case doctrine, the City could not properly relitigate on remand whether, as the Supreme Court ruled, it owed the Norgs a duty of reasonable care when it responded to their 911 call." (Op. 7) The Court of Appeals also rejected the City's argument that the voluntary rescue doctrine limited its liability for undertaking a rescue once its duty had been established as a matter of law. The Court held that the doctrine is the "test for determining whether a party's

voluntary rescue gives rise to a duty to exercise reasonable care . . . " (Op. 10), that the jury instructions properly stated the City's duty of care, and affirmed the judgment for the Norgs. (Op. 11)

D. Why Review Should Be Denied.

1. The Court of Appeals properly held the City's attempt to relitigate its duty of reasonable care was barred by the law of the case.

The Court of Appeals followed settled law in holding that the law of the case bars the City's attempt to relitigate its duty of care. "[Q]uestions determined on appeal, or which might have been determined had they been presented, will not again be considered on a subsequent appeal." *State v. Clark*, 143 Wn.2d 731, 745, 24 P.3d 1006, *cert. denied*, 534 U.S. 1000 (2001) (quoted case omitted) (Op. 5–7). The City argues that the Court of Appeals' unpublished decision conflicts with this Court's voluntary rescue cases and implicates important policy concerns

affecting both "public and private" rescuers (Pet. 3–5, 17–22), but fails to disclose that this Court relied on the very cases it cites in the City's prior appeal challenging its duty of reasonable care in responding to the Norgs' call. 200 Wn.2d at 765, ¶33 (citing *Folsom v. Burger King*, 135 Wn.2d 658, 674–75, 958 P.2d 301 (1998) and *Brown v. MacPherson's, Inc.*, 86 Wn.2d 293, 299, 545 P.2d 13 (1975)). Further, the City entirely ignores the policies that the Court of Appeals deemed controlling in holding its appeal barred by the law of the case.

The law of the case doctrine "serves to promote the finality and efficiency of the judicial process by 'protecting against the agitation of settled issues.'" *State v. Harrison*, 148 Wn.2d 550, 562, 61 P.3d 1104 (2003) (alterations and quoted source omitted). The doctrine "[f]urther[s] the goals of finality, efficiency, and fairness in the judicial process, . . . [and] helps avoid prejudice to the parties," *State v. Tyler*, 191 Wn.2d 205, 210, ¶10, 422 P.3d 436

(2018), by preventing "successive reviews of issues that a party raised, or could have raised, in an earlier appeal in the same case." *Estate of Langeland v. Drown*, 195 Wn. App. 74, 82, ¶16, 380 P.3d 573 (2016), *rev. denied*, 187 Wn.2d 1010 (2017). The doctrine "avoid[s] indefinite relitigation of the same issue, to obtain consistent results in the same litigation, to afford and to assure the obedience of lower courts to the decisions of appellate courts." *Harrison*, 148 Wn.2d at 562 (quoted source omitted).

The Court of Appeals was correct that "the City reads [this Court's] opinion too narrowly" (Op. 6) in arguing, as it does now, that "applicability of the voluntary rescue doctrine is not the 'same legal issue'" that this Court previously addressed. (Pet. 25) The City now takes this argument a step further, claiming that Division One's decision actually "conflicts with this Court's [previous] decision" in this case, and that this Court should now grant review under RAP 13.4(b)(1). (Pet. 23) The City's argument

ignores the entire course of this litigation, starting in 2019 with the original partial summary judgment in favor of the Norgs establishing the City's duty of care in this negligence action, which this Court affirmed in the City's first appeal.

As Division One noted, this Court's previous decision cited *Brown* and *Folsom*, "two cases that squarely address the voluntary rescue doctrine [] in concluding, 'a common law duty of reasonable care "arises when one party voluntarily begins to assist an individual needing help."'" (Op. 6, quoting 200 Wn.2d at 763, ¶33 (quoting *Folsom*, 135 Wn.2d at 675, and citing *Brown*, 86 Wn.2d at 299)) In holding the City to a duty of ordinary care in this common law negligence action, this Court thus followed its established precedent that a duty to act reasonably arises where, as here, "a defendant takes steps to assist a person in need and acts negligently in rendering that assistance." *Folsom*, 135 Wn.2d at 675. (*See* Arg., §D.3, *infra*)

Regardless whether this Court mentioned "the voluntary rescue doctrine by name," its holding that the City owed the Norgs a duty of reasonable care once undertaking to assist them "is sufficient to establish law of the case." (Op. 6) "Not only is the voluntary rescue doctrine an issue that City could have raised in the prior appeal, it in fact raised the issue" previously in this Court (Op. 7), as it had in each preceding stage of the litigation. (Restatement of the Case, §C, *supra*) The Court of Appeals' adherence to the law of the case is wholly consistent with this Court's precedent and presents no issue for review.

2. The Court of Appeals could not and did not ignore the law of the case, and the City fails to advance any basis for this Court to do so now.

The City cites RAP 2.5(c) to argue that the Court of Appeals' decision to follow the law of the case as established by this Court's earlier decision was "discretionary." (Pet. 24) Not so. The Court of Appeals, like

the trial court, had no "discretion" to ignore this Court's mandate, which established the law of the case. The mandate was "binding on the lower court and must be followed." *Bank of America, N.A. v. Owens*, 177 Wn. App. 181, 183, ¶1, 311 P.3d 594 (2013), *rev. denied*, 179 Wn.2d 1027 (2014); *see also, Scott v. Amazon.com, Inc.*, __ Wn. App. 2d __, 559 P.3d 528, 543, ¶42 (2024) ("intermediate appellate court is bound to follow the controlling case law of our Supreme Court").

While this Court may now have the discretion to reconsider its earlier decision under RAP 2.5(c), in treating its duty of care as a "novel" issue the City gives this Court no basis for doing so. The City does not assert that there has been an "intervening change in controlling precedent," or that this Court's earlier decision in this case is "clearly erroneous" and "would work a manifest injustice"—the two "historically recognized exceptions to the law of the case doctrine." (Op. 7, quoting *Roberson v. Perez*, 156 Wn.2d

33, 42, ¶¶23–24, 123 P.3d 844 (2005)) The City suggests that the courts have "broad discretion" to ignore the law of the case on grounds other than those established by RAP 2.5(c) (Pet. 24, n.2), but fails to articulate any other basis for this Court to revisit its prior decision that the City owed the Norgs a duty of reasonable care once it affirmatively undertook to come to their assistance.

This Court should not reconsider that holding, as the City's cursory argument for doing so is "not supported by argument and citation of authority." *McKee v. Am. Home Prods., Corp.*, 113 Wn.2d 701, 705, 782 P.2d 1045 (1989). Division One's adherence to the law of the case presents no issue for review under RAP 13.4(b).

3. The Court of Appeals correctly rejected on the merits the City's attempt to limit its duty of reasonable care based on the voluntary rescue doctrine.

As an alternative basis for affirming the judgment on the jury's verdict, the Court of Appeals held that the

voluntary rescue doctrine "sets forth the test for determining whether a party's voluntary undertaking gives rise to a duty to exercise reasonable care in the performance of the undertaking" (Op. 8), and that the City owed the Norgs a duty of care once undertaking a response to their 911 call and repeatedly (and falsely) assuring them that a response was imminent. The Court of Appeals properly rejected the City's argument that the rescue doctrine is a "substantive limitation on liability for entities that undertake a voluntary rescue" (Op. 8), and its related contention that a jury must therefore decide the purely legal issue whether a rescuer should be held to a duty of reasonable care. (Op. 10)

The Court of Appeals did not hold "that the voluntary rescue doctrine did not apply." (Pet. 29) It held that, as with any private entity, the City's actions in affirmatively coming to the Norgs' aid were sufficient to give rise to a duty to exercise reasonable care in its undertaking. (Op. 5)

Division One properly applied this Court's precedent and the *Restatement*, both of which establish the "test for determining whether a party's voluntary rescue gives rise to a duty to exercise reasonable care in the performance of the rescue." (Op. 8–9, citing *Folsom*, 135 Wn.2d at 676; W. Page Keeton et. al., *Prosser and Keeton on Torts* 56 (5th ed. 1984); and *Restatement (Second) of Torts* § 323 (1965)).

In *Folsom*, the Court recited the general rule that there is "no legal duty to come to the aid of a stranger," 135 Wn.2d at 674, but recognized in the same sentence the corollary principle that once a defendant "takes steps to assist a person in need and acts negligently in rendering that assistance," they may be held liable for breach of a common law duty of ordinary care. 135 Wn.2d at 675; *accord, Brown*, 86 Wn.2d at 299 ("One who undertakes, albeit gratuitously, to render aid to or warn a person in danger is required by our law to exercise reasonable care in

his efforts, however commendable."); *Restatement (Third) of Torts: Phys & Emot. Harm* § 44 (2012) (defendant that affirmatively undertakes to take control of the plaintiff's well-being owes plaintiff duty of ordinary care).

That one who assumes a duty to act must act reasonably was the basis for the Norgs' common law negligence claim, their original motion for partial summary judgment, and their argument at every subsequent level of appeal. It is also the principle relied upon by both the Court of Appeals and by this Court in holding the City to a duty of reasonable care. (Op. 5, quoting 200 Wn.2d at 752, 766, ¶4, ¶39: "once the City undertook its response to the Norgs' 911 call, the City owed the Norgs an actionable, common law duty to use reasonable care.")

The City's assertion that there is a "key distinction between . . . liability in the case of a voluntary rescue as opposed to acts of general negligence" (Pet. 19) finds no

support in this Court's precedent—and thus provides no basis for further review. The City's related argument that the jury should have been instructed on the "limitations on liability that flow from the [rescue] doctrine" (Pet. 12) confuses the role of judge and jury in a negligence action and was properly rejected by the trial and appellate court.

"Whether a defendant owes a duty of care to the complaining party is a question of law." *Hansen v. Friend*, 118 Wn.2d 476, 479, 824 P.2d 483 (1992); *Osborn v. Mason Cnty.*, 157 Wn.2d 18, 23, ¶6, 134 P.3d 197 (2006) ("[E]xistence of duty is a question of law, not a question of fact."). The court, not the jury, undertakes a "careful weighing of interests" (Pet. 15) to determine whether to impose a duty of care. *Affiliated FM Ins. Co. v. LTK Consulting Servs., Inc.*, 170 Wn.2d 442, 450, ¶13, 243 P.3d 521 (2010) (In deciding to impose a duty of care court must "balance the interests at stake.").

That careful weighing of interests was performed by the trial court, by Division One, and by this Court in this case, before the trial court directed the jury on remand to determine, under pattern instructions, the extent to which the City's negligence was responsible for the "harm caused by its breach of the common law duty of reasonable care in the performance of a voluntary rescue." (Op. 9) The City has never explained how, for purposes of the voluntary rescue doctrine, it could cause harm to the Norgs without increasing the risk of harm, and substantial evidence supported the jury's finding, as a matter of fact, that the City negligently caused harm to the Norgs. (CP 2276–77)

This juridical process provided the protection "from excessive liability that the City claims is missing here." (Op. 9) Emergency responders can avoid liability by the simple expedient of reading, locating, and going to the address they are given. The City's hyperbole—no different than that it raised in its previous appeal to this Court—that holding

the City to a duty of reasonable care will "reverberate . . . throughout the state" (Pet. 20), ignores that courts are fully capable of balancing the interests and weighing public policy in deciding whether to impose a duty of care in tort.

Our courts engage in this analysis all the time, as reflected in Division One's decision *Zorchenko v. City of Federal Way*, 31 Wn. App. 2d 390, 549 P3d 743, *rev. denied,* 599 P.3d 486 (2024). The City's contention that *Zorchenko* is "in direct conflict with" the Court of Appeals' (and, necessarily, this Court's) decision in this case (Pet. 28) is baffling. *Zorchenko* instead illustrates how courts draw the line between undertakings that trigger a duty of reasonable care and inaction that does not. Division One relied on *Norg* in rejecting the appellant's contention that every 911 call "'trigger[s]' a specific duty owed to him by the City" and that "the City owed a common law duty of care to the Norgs, as individuals, simply because Delaura dialed 911." *Zorchenko*, 31 Wn. App. 2d at 396, 398, ¶14, ¶17.

Zorchenko noted that in *Norg,* "'the City, through its dispatcher, established a direct and particularized relationship with the Norgs.'" 31 Wn. App. 2d at 398, ¶17, quoting *Norg*, 200 Wn.2d at 762–63, ¶¶30, 33. By contrast, the plaintiffs in *Zorchenko* could cite "nothing in the record to indicate a prolonged or in-depth interaction with the 911 dispatcher." 31 Wn. App. 2d at 399, ¶19.

That distinction—based on the nature and extent of the interaction between plaintiff and defendant—is fully supported not only by this Court's precedent, but by hornbook tort law. It is "unlikely that any court will ever hold that one who has begun to pull a drowning man out of the river after he has caught hold of the rope is free, without good reason, to abandon the attempt, walk away and let him drown . . . ." William L. Prosser, *Handbook of the Law of Torts* 348 (4th ed. 1971). Yet that would be the consequence of the City's misguided effort to, in the absence of a statutory directive, remove from the courts the

responsibility of determining whether a defendant's undertaking to come to a plaintiff's assistance establishes a tort duty of reasonable care.

Here, the City's dispatcher repeatedly assured Ms. Norg that "help was on the way" during a 17-minute direct and particularized interaction in which the dispatcher repeatedly and emphatically instructed Mrs. Norg to stay in the apartment, continue attempts at CPR, and await what turned out to be the much-delayed arrival of aid, all while she questioned the dispatcher about the whereabouts of the SFD responders. The jury found, based on largely undisputed evidence, that the City was negligent, and under pattern instructions limited the Norgs' damages to those proximately caused by the City's negligence (Op. 9)—just as this Court intended in rejecting the City's previous appeal and remanding for trial.

E. Conclusion.

"It is ancient learning that one who assumes to act, even though gratuitously, may thereby become subject to the duty of acting carefully . . . " (Op. 4, quoting *Glanzer v. Shepard*, 233 NY. 236, 239, 135 N.E. 275 (1922) (Cardozo, J.)) Division One properly applied that principle here in rejecting the City's attempt to relitigate the issue of duty in this common law negligence action, both under the law of the case and on the merits.

The City has lost its argument that it could owe the Norgs no duty of care once in this Court, twice in the Court of Appeals, and twice in the superior court. Eight years after its misfeasance caused Mr. Norg's devastating injuries, it is time for the City to accept responsibility for its negligence that a properly instructed jury found to be the proximate cause of the Norgs' damages. This Court should deny the petition.

I certify that this answer is in 14-point Georgia font and contains 5,000 words, in compliance with the Rules of Appellate Procedure. RAP 18.17(b).

Dated this 17th day of January, 2025.

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DECLARATION OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on January 17, 2025, I arranged for service of the foregoing Answer to Petition for Review, to the Court and to the parties to this action as follows:

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DATED at Brooklyn, New York this 17th day of January, 2025.

/s/ Andrienne E. Pilapil
Andrienne E. Pilapil

SMITH GOODFRIEND, PS

January 17, 2025 - 2:55 PM

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Appellate Court Case Number:	103,737-6
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