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NO. 1040822

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

From Court of Appeals No. 868462 – Div I

M.G., SAMANTHA GERLACH and SUZANNE GERLACH,

Appellants,

v.

BAINBRIDGE ISLAND SCHOOL DISTRICT #303, a
municipal corporation; WASHINGTON STATE HOSA, a non-
profit corporation, NASZYA BRADSHAW an individual,
ELEANOR WILSON an individual AND DOES 1-100.,

Respondents.

**WASHINGTON STATE HOSA'S
RESPONSE TO PETITION FOR REVIEW**

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I. INTRODUCTION

Respondent Washington State HOSA (hereinafter “HOSA”) hereby opposes M.G. and Gerlach Petitioners’ Petition for Review and respectfully requests this Court deny said Petition for Review. The trial court correctly dismissed all of Petitioners’ alleged claims against HOSA. (See CP 1305–06; CP 1389–90). On appeal, the appellate court held that the Petitioners did not present sufficient argument to warrant review of HOSA’s dismissal. (Appendix A at pp. 28, 29).

Like Petitioners’ briefing at the Court of Appeals, Petitioners’ arguments related to HOSA are extremely limited. None of the arguments in the short section regarding HOSA’s dismissal, found at Petition for Review pp. 19–21, provide any basis for review under the Rules of Appellate Procedure. The Petition for Review does not cite any Rule of Appellate Procedure on which Petitioners are basing their request for review of the dismissal of HOSA. The Petition is entirely lacking as to any argument in support of reversal of HOSA’s dismissal and fails to apply any

relevant facts in this case to any relevant legal authority. Petitioners fail to make any demonstration of how their Amended Complaint states a claim for negligence, defamation, civil conspiracy, and fraud. Since Petitioners never filed an opposition to HOSA's motion to dismiss the remaining claims of cyberstalking, loss of consortium, and emotional distress, Petitioners have waived any error as to the trial court's dismissal of such claims. See RAP 2.5(a); *Ryder v. Port of Seattle*, 50 Wn. App. 144, 150, 748 P.2d 243 (1987) (CP 1385–86 stating that the motion to dismiss was unopposed).

II. IDENTITY OF RESPONDENT

Respondent Washington State HOSA, Respondent and Defendant in the lower court briefings, requests this Court deny Petitioners' request for review.

III. STATEMENT OF FACTS RELEVANT TO THE DISMISSAL OF HOSA

A. Petitioners' First Amended Complaint Is Devoid of Facts Sufficient to Survive a Motion to Dismiss.

Petitioners' First Amended Complaint alleges damages for violation of WLAD, negligence, cyberstalking, defamation, fraud, conspiracy, and loss of consortium. (See CP 427–33). All named claims were alleged against HOSA, one of several defendants named in this action. (*Id.*). Petitioners claim that the defendants participated in, benefitted from, or engaged in conduct that caused Petitioners' damages. (See *Id.*).

This case involves a former student of Bainbridge Island School, M.G., as well as his sister and mother, Samantha and Suzanne Gerlach. (CP 416). The Gerlach father is Petitioners' attorney.

The First Amended Complaint contains sparse facts regarding HOSA. The facts are limited to:

1. A March 2019 alleged incident whereby M.G. was “threatened with physical violence” by a student who was a member of HOSA. (CP 417:5–7). There is no allegation that this threat came during the course of the student's participation in HOSA;

2. Between October and December 2019, M.G. was allegedly a target of “false, malicious and defamatory social media publications by female School/HOSA students...” (CP 417:9–10). There is no allegation that this occurred during the course of the students’ participation in HOSA;
3. Actions or inactions by Chrisa Moore, a teacher and the school’s HOSA sponsor, including that Moore called M.G.’s parents about social media posts that included inappropriate name calling, and informing a HOSA member that she faced removal from the club (CP 417:9–23); and
4. In 2021, two students who were members of HOSA allegedly sent Moore a request that M.G. be removed from HOSA and Moore forwarded information to the principal regarding the students’ complaints (CP 417:24–27).

These alleged facts, even if they are assumed to be true, do not support a claim for negligence, violation of WLAD,

cyberstalking, defamation, fraud, conspiracy, loss of consortium, or any other claim against HOSA.

B. The Significant Procedural History Has Consistently Found Petitioners Failed to State Any Claim Against HOSA.

HOSA filed a motion to dismiss on May 3, 2023. (CP 1229:2). Following Petitioners’ response and HOSA’s reply, the trial court granted HOSA’s motion. (CP 1305–06). The trial court “**ORDERED** that Defendant Washington State HOSA’s Second CR 12(b)(6) Motion to Dismiss is **GRANTED** and all claims against Defendant Washington State HOSA for Violation of Chpt. 49.60 RCW, Negligence, Defamation, Civil Conspiracy, and Fraud are hereby **DISMISSED**.” (CP 1306:5–8). The trial court denied Petitioners’ motion for reconsideration. (CP 557–58). The Motion for Reconsideration was devoid of any substantive arguments or applications of the law to the facts. (CP 517–27). Instead, the Motion for Reconsideration merely restated law regarding when a notice to dismiss may be granted and renewed arguments regarding Judge Forbes. (CP 518–520).

Thereafter, HOSA moved for dismissal of the remaining claims which included cyberstalking, loss of consortium, and emotional distress. (CP 1307–1313). Petitioners did not file any opposition brief. (CP 1385:23–24). The trial court granted HOSA’s motion to dismiss, thereby dismissing HOSA entirely from the action. (CP 1389–90).

Petitioners turned to the Court of Appeals and again filed a brief with no substantive arguments regarding HOSA’s dismissal. (Opening Brief of Appellants, M.G., Samantha Gerlach et al. at pp. 42–44). HOSA filed an answer to Petitioner’s opening brief. (Respondent Washington State HOSA’s Opening Brief). The Court of Appeals made the following relevant findings and rulings:

1. Petitioners failed to “cite to any facts in their complaint or present any meaningful argument”;
2. Petitioners “do not present sufficient argument to warrant review as to the trial court’s granting of HOSA’s second CR12(b)(6) motion”;

3. Since Petitioners “did not respond to HOSA’s third CR 12(b)(6) motion, [Petitioners] have waived any error as to the trial court’s granting of that motion”; and
4. Petitioners only state they provided new facts and evidence in support of their motion for reconsideration which “is not sufficient to warrant review” of the trial court’s denial of Petitioners’ motion for reconsideration.

Appendix A at pp. 27–29.

In the Court of Appeals’ opinion, the proper standard for a CR 12(b)(6) motion was applied. (See *Id.*). That standard is that dismissal may only be granted if the court concludes that “the plaintiff cannot prove ‘any set of facts which would justify recovery.’ *Tenore v. AT&T Wireless Servs.*, 136 Wn.2d 322, 329–30, 962 P.2d 104 (1998). The court presumes all facts alleged in the plaintiff’s complaint are true and may consider hypothetical facts to support the plaintiff’s claims. *Id.*”

IV. ARGUMENT

A. The Petition Does Not Meet the Standard for Accepting Review.

Review should not be granted because Petitioners fail to meet any considerations permitting review under the Rules of

Appellate Procedure. Petitioners failed to identify any basis for consideration under in RAP 13.4(b), or any other Rule of Appellate Procedure.

RAP 13.4(b) states that a petition for review will only be accepted by the Supreme Court if one of four conditions are met.

(1) If the decision of the Court of Appeals is in conflict with a published 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.

First, Petitioners fail to identify any Supreme Court decision which is in conflict with the Court of Appeals' ruling regarding the dismissal of HOSA. Second, Petitioners fail to identify any published Court of Appeals decision which is in conflict with the Court of Appeals' decision regarding the dismissal of HOSA. Third, Petitioners fail to identify a significant question of law under the U.S. or Washington Constitution that is at issue in the

dismissal of HOSA. Fourth, and finally, Petitioners failed to identify any substantial public interest that should be determined by this Court. The Petition for Review is woefully deficient. Not only does it fail to make any arguments regarding why review is proper under the rules, it fails to reference the rule in its entirety. Since none of the considerations governing acceptance of review are met, review should be denied.

Petitioners' arguments do reference the Washington State Constitution and *stare decisis*, but those arguments relate to RCW 4.105. See Petition for Review at pp. 13–19. Arguments related to RCW 4.105 are unrelated to any of the rulings the lower courts made regarding Petitioners' alleged claims against HOSA. Those arguments relate to the Defendants Wilson and Bradshaw's Motion for Expedited Relief Pursuant to RCW 4.105.120, Et Seq. (See CP 486–94).

To any extent Petitioners attempt to remedy this deficiency in a reply, such arguments should not be considered. Without reference to and application of the rule under which Petitioners

seek review, Petitioners are improperly requiring this Court and HOSA to read their minds and guess as to the basis under which they are seeking review.

B. Petitioners Fail to Put Forward Any Analysis Regarding Why Their Claims Should Not Have Been Dismissed.

Petitioners only dedicate two pages of their brief to addressing the CR12(b)(6) dismissal of claims against HOSA. (See Petition for Review at pp. 19–21). Included in the short section regarding HOSA, is a recitation of the standard for granting dismissals under CR 12(b)(6), a statement regarding demurrers, and a statement that Judge Forbes was improperly bias. Petitioners state case law regarding the standard for granting CR 12(b)(6) motions. (Petition for Review at p. 19–20). Thereafter, Petitioners simply state that “COA decision did not apply the ‘sparingly and with case’ standard because facts were ignored” including HOSA’s officers targeting M.G. with false, defamatory and malicious statements and actions of Ms. Moore. (*Id.* at p. 20).

Petitioners do not make any arguments as to why these alleged facts support claims based on violation of WLAD, negligence, cyberstalking, defamation, fraud, conspiracy, and loss of consortium against HOSA. At both the trial court and court of appeals, HOSA provided detailed briefing as to why the facts as stated in the Complaint do not give rise to any of the claims Petitioners brought against HOSA. (CP 1217–1230; CP 1307–13). None of the alleged actions of sexual harassment were performed by an employee or agent of HOSA while acting within the scope of his or her employment. (CP 1218–21). Therefore, Petitioners failed to state a claim against HOSA under WLAD. HOSA did not breach any duty owed to Petitioners and there is no proximate cause between HOSA's actions or inactions and Petitioners' alleged injuries. (CP 1221–24). Therefore, Petitioners failed to state a claim for negligence against HOSA. Petitioners' Amended Complaint failed to state a claim for defamation because it did not contain any facts to support vicarious liability for student statements, that the communication

between Moore and M.G.'s parents and school administration was privileged, and that the HOSA made any defamatory statements. (CP 1224–26).

Next, Petitioners failed to state a claim for fraud against HOSA because the Amended Complaint does not include any false representation made by HOSA regarding M.G., any representation that Petitioners themselves relied upon the truth of any of HOSA's statements, Petitioners' ignorance of the falsity of any HOSA statement, and that HOSA intended Petitioners act upon the statement.(CP 1126–28). None of the facts in the Amended Complaint support a claim for civil conspiracy against HOSA because there are no facts to support that HOSA and anyone else entered into an agreement to accomplish a conspiracy or that HOSA had an unlawful motive or used unlawful means. (CP 1228).

Petitioners failed to file any opposition to the dismissal of their alleged claims for cyberstalking, emotional distress, and loss of consortium. (See CP 1389–90 for no reference to the

filing of a Response). Therefore, they have waived any basis for appealing their dismissal. RAP 2.5(a); *Wingert v. Yellow Freight Systems, Inc.*, 146 Wn.2d 841, 853, 50 P.3d 256 (2002) (quoting *State v. Riley*, 121 Wn.2d 22, 31, 846 P.2d 1365 (1993)).

Petitioners' argument also ignored the Court of Appeals' actual ruling. The Court of Appeals ruled that Petitioners did not present sufficient argument to warrant review as to the trial court's granting of HOSA's Second CR 12(b)(6) Motion, Petitioners waived any argument as to error on HOSA's Third CR 12(b)(6) Motion because they did not file a response, and Petitioners did not present argument to warrant review of the Motion for Reconsideration. Appendix A at pp. 28–29. The Petition for Review does not explain which facts and arguments Petitioners included in their appeal to the Court of Appeals. Nor does the Petition for Review address why Petitioners are entitled to review of an order related to a motion to which Petitioners never responded.

C. HOSA's CR 12(b)(6) Motions Were Not Improper Demurrers.

Petitioners now, for the first time, argue that HOSA's CR 12(b)(6) Motions were actually CR 7(c) motions. Petitioners waive the right to raise this argument as it was not raised before the trial court. See *City of Seattle v. Long*, 198 Wn.2d 136, 155, 493 P.3 94 (2021). To the extent this Court considers this new argument, Petitioners fail to put forward any analysis or explanation as to why HOSA's CR 12(b)(6) Motions qualify as demurrers. The paragraph that addresses this argument focuses on Judge Forbes instead of analyzing Petitioners' claims regarding demurrers. Petition for Review at pp. 20–21.

The citations to the record that Petitioners included in the paragraph that addressed the demurrer argument do not relate to HOSA. For example, Petitioners cite to the 22nd page of Appendix A, the Court of Appeals' order in this matter. (Petition for Review at p. 28). This page includes a ruling from the Court of Appeals that Petitioners "simply do not present a prima facie

case of defamation” as to the claims Petitioners brought against Defendants Bradshaw and Wilson. (See p. 16 for title of the section, “UPEPA”). Petitioners similarly cite to their opposition to Defendants Bradshaw and Wilson’s Motion Pursuant to RCW 4.105.010. (Petition for Review at p. 28, citing CP 303–04). The other citations to the record in the paragraph regarding demurrer and the following paragraph similarly do not relate to any claims Petitioners alleged against HOSA. (See Petition for Review at p. 28 (CP 341–61 relates evidence submitted in support of Petitioners’ Opposition to Defendants Wilson’s and Bradshaw’s Anti-Slapp Motion; CP 617 relates to Findings of Fact and Conclusions of Law and Orders on Defendant Wilson’s Motion for CR 11 Sanctions; CP 398 relates to Petitioners’ Opposition to Defendants Wilson and Bradshaw’s Praecipe/Brief and Request to Strike Untimely and Improperly Filed Supplemental Memorandum).

V. CONCLUSION

For the foregoing reasons, HOSA requests this Court deny Petitioners' request for review.

DATED this 27th day of May, 2025.

NORTHCRAFT BIGBY DANIELS PC

/s/ Aaron D. Bigby

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Attorney for Respondent

Washington State HOSA

I certify that this brief contains 2,440 words, in compliance with RAP 18.17(c)(10).

CERTIFICATE OF SERVICE

I hereby certify that on May 27, 2025, I electronically filed the foregoing with the Clerk of the Court using the E-Filing system which will send notification of such filing to the registered email address(es) for the following parties:

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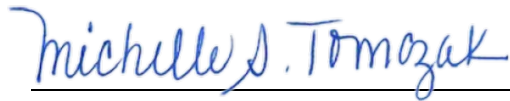
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