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SUPREME COURT  
STATE OF WASHINGTON  
4/24/2025  
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No.

Case #: 1040890

SUPREME COURT  
OF THE STATE OF WASHINGTON

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SUSANNE TURNIPSEED,

Appellant,

v.

DAYTON CAMPBELL HARRIS,

Respondent

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Washington Court of Appeals Opinion, No. 56551-0-II

On Appeal from Pierce County Superior Court

No. 15-2-12396-9

The Hon. Judge Thomas Quinlan

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PETITION FOR DISCRETIONARY REVIEW  
OF APPELLANT SUSANNE TURNIPSEED

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I. **IDENTITY OF PETITIONER**

Suzanne Turnipseed, plaintiff at the trial court, appellant at the court of appeals, makes this Petition for Discretionary Review.

II. **CITATION TO COURT OF APPEALS  
DECISION**

Petitioner seeks review of the opinion of the court of appeals in its case number, issued March 25, 2025. That opinion affirmed the decision of the trial court.

### III. ISSUES PRESENTED FOR REVIEW

1. Should this court grant review where the trial court abuse its discretion when, despite Ms. Turnipseed's disability, which included cognitive deficits, it denied an extension of the motion for reconsideration in order for her to obtain counsel? Yes.
2. Should this court grant review where the trial court abuse its discretion when it denied the motion for reconsideration without allowing for her disability? Yes.

#### **IV. STATEMENT OF THE CASE**

##### **A. Procedural Posture**

In 2012 Plaintiff Susan Turnipseed was rear-ended by Defendant Dayton Campbell Harris in a automobile crash that occurred on Pacific Avenue in Tacoma, Wahington across the street from the federal courthouse, and in front of the University of Washington, Tacoma. 5VRP 447:6-21. In 2013 Susanne Turnipseed was rear-ended in another crash that is not part of this case and was filed separately, but that relates to the issues in this case with regard to causation of injuries and apportionment of damages. 5VRP 473:1 to 474:7.

A complaint was filed in this case on September 28, 2015. CP 323-26. The case was continued a number of times and did not get to trial prior to the COVID epidemic and lockdown. Trial was ultimately set for September 27, 2021. CP 327.

On August 31, 2021, less than 30 days before trial, Plaintiff's counsel filed a notice of intent to withdraw. CP 148-150. On September 9, 2021 Plaintiff's counsel reversed course and filed a notice of continued representation. CP151-53. The case proceeded to trial on September 27, 2021. CP 272-86.

The testimony of a number of witnesses was presented by playing preservation deposition video along with publishing deposition transcripts. See CP 254-270; 1VRP 26:12-22. The court made a number of evidentiary rulings that are addressed in specific detail below. The jury returned a verdict in favor of the defense on October 6, 2021. CP123-125.

On October 25, 2021 Ms. Turnipseed filed a declaration that she was removing trial counsel from representation because he was suffering from health



problems.<sup>1</sup> CP 292-93. Ms. Turnipseed was now pro se. Judgment was entered on October 29, 2021. CP 126-27. Ms. Turnipseed filed a motion for reconsideration on November 8, 2021. 128-134. Ten days later, Ms. Turnipseed filed a motion for extension of time on the reconsideration motion in order to enable her to obtain counsel. CP 135-36.

At the time this was going on, Ms. Turnipseed suffered from Postural Orthostatic Tachycardia Syndrome (POTS); dysautonomia; brain stem damage; damaged vertebral artery with two aneurisms; central brain apnea; hearing disability and aphasia and speech issues; cognitive impairment; and deficient motor and ineffective balance skills. See, e.g., 3 VRP 241:1 to 247:5; 266:12 to 267:8; 270:10 to 271:10; 272:13-17; 276:14-18.

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<sup>1</sup> Apparently Plaintiff Counsel's health problems arose prior to the start of trial and related to the August motion to withdraw.

Ms. Turnipseed's disabilities made it difficult for her analyze and process the legal and factual issues, and even to hear and understand the court and communicate back to the court.

On December 3, 2021 the court denied the motion for extension of reconsideration and denied the motion for reconsideration in an order issued off the record. CP 137-38.

Ms. Turnipseed timely filed a notice of appeal on January 3, 2022. CP 311-19.

Ms. Turnipseed tried to purse the appeal pro se, but had difficulty doing so due to her cognitive deficits, which have also constrained her finances. On November 22, 2023 counsel appeared on behalf of Ms. Turnipseed and submitted a Brief of Appellant.

On March 25, 2025 the court issued its opinion denying the appeal. Ms. Turnipseed now timely files this Petition for Discretionary Review.

## **B. Relevant Facts**

Susanne Turnipseed was in her car in Tacoma when she was rear-ended by another in a car crash that occurred on October 29, 2012. 5VRP 447:9-11. She was on Pacific Avenue in front of the federal courthouse, heading toward Puyallup where she was going to meet with a marketing person. 5VRP 447:14-16; CP618:9. She was stopped on the University of Washington Tacoma side of the street at the light. 5VRP 447:17-18. Traffic gets backed up in that area during the daytime and she was the last person in the line of cars stopped behind the light. 5VRP 447:17-21.

The lights there can last a while. 5VRP 447:22-23. She was stopped at the light when she saw a car whizzing up from behind and it seemed like it was approaching fast. 5VRP 447:22-25. It wasn't slowing down and Susanne was worried that she would be propelled into the car ahead of her if the car coming up

from behind hit her. 5VRP 448:1-2. It was tight and there wasn't a lot of room to maneuver, but she moved her car to the right toward the curb as much as she could. 5VRP 448:2-7.

She kept watching the approaching car through her rearview mirror, hoping that it would slow down, but it did not. 5VRP 44:8-9 The driver finally looked up and hit the brakes. 5VRP 44:9-10. The tires of the car behind her screeched and the car rear-ended Susanne's. 5VRP 448:10-11. It was very distressing for Susanne, being stuck in a spot she couldn't move out of, watching the car approach, and knowing there was nothing she could do to get away from the crash. 5VRP 448:13-15.

After the impact, Susanne had pain in her neck, pain in the side of her face, and her shoulder, and it hurt across her chest where the seatbelt was. 5VRP 448:16-19. She also had a headache. 5VRP 44:20-25. It took her a minute or so to get out of the car. 5VRP 449:1-2.

The other driver was a young man, Dayton Campbell-Harris. He said, "I'm sorry, I was texting." 5VRP 449:25. Susanne called 911. 5VRP 450:3-4. The fire department arrived first as she and the other driver were in the process of trying to exchange information. 5VRP 450:6-8. Mr. Campbell-Harris was from Canada and was looking through the glove compartment trying to determine what he needed to give her. 5VRP 450:8-11.

The fire department told her she needed to go with them right away, but she said she couldn't do anything until the police arrived, so the fire department left. 5VRP 450:18-22. They were almost finished with the paperwork exchange at that point, so the police said it looked like the drivers had it covered, and left. 5VRP 450:22-25.

Susanne didn't feel right after the crash, so she went home and went to bed. 5VRP 451:3-8. She ended up canceling her appointments and staying home a day or two because she wasn't feeling well. 5VRP 451:9-11.

Ten days to two weeks after the crash she went to urgent care because was afraid she could be suffering from something more serious than a concussion. 5VRP 454:2-9. Susanne requested an MRI of her head. 5VRP 454:10-12. She was suffering from neck and body pain, but she was also having a problem seeing out of her left eye, could see in the center, but not to the left.<sup>2</sup> 5VRP 454:13-18. She was also dizzier and spaced out a lot, and had been sleeping a lot. 5VRP 454:14-20. They didn't want to do an MRI of her though, so she left. 5VRP 454:24-25.

Right after the accident, Susanne didn't come back out of it a day or two later, and it was pretty clear there was more then. 5VRP 471:12-14. She was still having dizziness. 5VRP 471:16. It was hard to get around. 5VRP 471:16-17. She was in a lot of pain. 5VRP 471:17.

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<sup>2</sup> This was likely because urgent care generally doesn't have MRI machines and can't perform them.

This was all with regard to her head and brain. 5VRP 471:18. She also had vision problems for her left eye, almost like blindness. 5VRP 471:19. And she had speech trouble. 5VRP 471:20. Sometimes when she would speak the wrong words would come out. 5VRP 471:20-21. When she would get really tired, she would have a hard time talking and it was almost like she couldn't find the words – she was too tired. 5VRP 471:23-25.

Prior to the collision Susanne was really healthy and didn't really have a primary care doctor. 5VRP 455:6. She had also lived an active lifestyle. 5VRP 442:4; 484:21. Susanne did have a chiropractor in Portland she would see sometimes, and otherwise she went to the naturopath once a year. 5VRP 455:3-10. She went to see a naturopath at Bastyr to request an MRI, but was unsuccessful in getting them to perform one, which left her feeling frustrated. 5VRP 455:11-18. After that she

went to Portland to see her Chiropractor. 5VRP 455:21-23.

Susanne next saw her chiropractor, Dr. Khalsa, in Oregon, in November after the crash. 5VRP 468:8-10. He had known her before and it was clear to him Susanne was having significant trouble. 5VRP 472:-7. Dr. Khalsa realized how injured she was and tried to help her by locating some providers in Portland for her to see. 5VRP 468:14-19. He was concerned about an area up above her neck, in between the brain, that chiropractors refer to as the atlas. 5VRP 468:21-23. At the time she didn't know what that meant, but she later learned that it was the area between the brainstem and the brain where she was subsequently identified as having damage. 5VRP 468:23-25. He identified a neurologist for her to go to, and because she was also complaining about hearing and vision, a hearing specialist and ophthalmologist as well. 5VRP 469:4-9. He wasn't successful in getting her



into an ophthalmologist. 5VRP 469:8-9. About a year later, she was able to get into OHSU in Portland to see an ENT and a visual specialist. 5VRP 469:10-12.

The neurologist in Portland told her she had a concussion and that it should go away after about six months. 5VRP 472:15-16. But it didn't. 5VRP 472:16.

Prior to the crash Susanne Turnipseed had been a successful real estate agent. 5VRP 442:8-11. She was very highly qualified, very conscientious and had a very good drive. 5VRP 460:12-14. Her style was always top line and she was a very quality, good, experienced agent. 5VRP 460:14-18. From 2014 to 2020 she would have been able to earn between \$250,000 and \$500,000 a year in gross commissions. 5VRP 461:20-25. The market from 2014 to 2021 had been increasing in value. 5VRP 462:6-9.

In 2013 Susanne was on I-5 in Lacey. 5VRP 473:11-12. She drove in the slow lane most of the time.

5VRP 473:12-13. There was a man who was in a black car was driving aggressively that was alongside of her, swerving through the cars. 5VRP 473:16-17. She moved over another lane and he continued to go on. 5VRP 473:18-19. She had made it through Olympia and was getting off to go to Evergreen State College when she felt a nudge from behind and saw the guy in the same black car pushing the back of her car. 5VRP 473:21-25. She couldn't steer because he was pushing her car. 5VRP 474:1-4. She couldn't get away from him to get over to the side of the road. 5VRP 474:3-4. When he realized that he was on the back of her car, he slowed down a little bit and the two cars separated. 5VRP 474:5-7. She called for help and the fire department and state patrol arrived. 5VRP 475:5-9.

The left side of her back hurt. 5VRP 475:16-17. Her friend came and got her and took her to the emergency room in Gig Harbor. 5VRP 476:13-15. They

did a CT scan of Susanne's head. 5VRP 476:19-22. They gave her some pain pills for her back pain. 5VRP 477:1-3.

Plaintiff's expert Dr. Chan was prepared to testify that Susanne's brain injuries were caused by the first accident. See 2VRP 169:24 to 170:9. The court granted a defense objection to Dr. Chan testifying whether Susanne Turnipseed actually did or did not sustain an injury to her brain stem and left vertebral artery. 2VRP 170:1-9. The objection was based on the fact that Dr. Chan was not a medical doctor. 2VRP 169:6-7. This is despite the fact that Dr. Chan was a chiropractor, certified accident reconstructionist, and had training in injury biomechanics for spinal and brain injuries. 2VRP 138:6 and 138:23 to 139:1.

Dr. Chan, was qualified to diagnose brain injuries, he just wasn't licensed to treat them. 2VRP 178:20-25. Dr. Chan had studied under Dr. Arthur Kroft, one of the

formative researchers on whiplash injuries. 2VRP 140:18-24. Dr. Chan had also reviewed published academic literature on the effect of whiplash in causing this kind of injury to the vertebral artery. 2VRP 165:20 to 166:8.

Dr. Chan stated that he reviewed the evidence from the first, 2012 collision for the forces he concluded were involved with the neck and brain stem. 2VRP 161:10-17. Dr. Chan opined that the g-forces involved in the 2012 Harris collision showed that there was a mechanism of injury in that collision for the vertebral artery as well as the compression of the brain stem. 2VRP 166:6-16. Dr. Chan opined that in the 2012 Harris collision there was a link to those injuries for which Ms. Turnipseed was diagnosed with regard to the vertebral artery and compression of the brain stem. 2VRP 160:14-16. Dr. Chan further opined that the second 2013 collision, didn't

have any effect on Ms. Turnipseed's brainstem or vertebral artery. 2VRP 171:5-6.

Plaintiff expert neurologist Dr. Young opined that Susanne's brain injuries were a consequence of the 2012 crash and not the 2013 crash. CP 454-568 (Deposition of Rosabel Young 16:8-13; 17:11-13; 55:3-8; 46:5-9).

## **V. ARGUMENT**

### **A. A Trial Court's Exercise Of Discretion As To Disabled Parties Is A Substantial Public Interest That Should Be Determined By The Supreme Court**

The Washington Legislature has made it clear that persons with disabilities are to be treated with fairness. This includes a declaration of civil rights for freedom from discrimination as provided by RCW 49.60.030 as well as provisions for disabled persons under the Washington Constitution, Art. XIII, sec. 1. The legislature has also established a policy to encourage that disabled people shall be able to participate fully in the social and economic life of the state. RCW 70.84.010.

Ms. Turnipseed's life was profoundly altered by the collision that was the basis of this case. She was a successful real estate agent who had a significant income and assets. As a result of this collision she was unable to perform her job and had to withdraw at a loss from a long-term real estate development project she had pursued because she was no longer able to complete it due to her injuries. She went from being competent and financially successful to being ruined. See, e.g., 4 VRP 396-416; 5 VRP 496 to 518.

Since her injuries, she had the Washington State Council for Brain Injury, and volunteered on behalf of other individuals with brain injury, including as a liason to the court on their behalf. She is well aware of how the court system regularly fails to recognize or accommodate the need sof those with traumatic brain injury, and the low rate of positive legal outcomes that many suffer as a result. See, e.g., the Washington State Traumatic Brain

Injury Strategic Partnership Advisory Council Report to  
the Legislature.

<https://www.dshs.wa.gov/sites/default/files/AL TSA/tbi/documents/TBI%20Comprehensive%20Plan%202025.pdf>

Here, at the conclusion of trial, Ms. Turnipseed was forced to terminate the services of her attorney because he was suffering from health issues that rendered him physically and cognitively unable to further represent her interests.

Ms. Turnipseed had a number of concerns about the conduct of the trial. These included concerns that the court was more focused on removing an older case from its docket rather than ensuring a fair trial opportunity where her attorney had experienced the death of his wife and was suffering from health issues that had caused him to recognize his limitations and attempt to withdraw from the case before trial, before ultimately returning to try the case. It also included several concerns about the conduct

of the trial during COVID. She was limited in her ability to attend trial, other than on the day she testified, due to health concerns from to a possible COVID exposure. 3 VRP 237-38. The court was also faced with a reduced jury pool, which as a practical matter, a limited ability to strike jurors lest a venire be lost. Ms. Turnipseed had several other concerns that she believed undermined the fairness of the process. Most of these issues were not fully developed on the record, and instead inhabited its penumbra.

However, at the conclusion of trial, after the jury's verdict, Ms. Turnipseed suddenly found herself without counsel. She brought a pro se motion for reconsideration, and then asked the court for an extension of time to obtain counsel. The motion for reconsideration was particularly important because, unlike an appeal, it would afford her an opportunity to further develop those issues that were not adequately reflected



in the record. She also understood that the issues were legally complex and subtle and that she would need the guidance of counsel to properly develop them.

All of this was compounded by Ms. Turnipseed's cognitive disabilities, as had been amply presented at trial. Those disabilities included problems both with memory and with reasoning.

Ms. Turnipseed's request for an extension in order to obtain counsel and properly prepare her motion was essential to a just disposition of the case.

Instead, in a hearing on a malpractice case related to her second accident, the court snapped at her brusquely denied her motion for an extension of the reconsideration. She felt belittled and demeaned by this. Though at the time that happened, due to her hearing impairment, she did also not understand what the court was indicating. The court stated that it would rule on the reconsideration shortly. The court indicated that she

could have an appeal instead. Of course, an appeal would not permit her to pursue most of her concerns because they were not yet adequately developed in the record.

In the time left, Ms. Turnipseed attempted to supplement the motion, but was limited by her disability. She then learned that the court issued its ruling denying reconsideration off the record and without argument.

In this context, in light of her cognitive disabilities, the court's denial of the extension and denial of her motion for reconsideration were manifest errors and an abuse of discretion.

The role of the courts, both under rule, and by common law, is the pursuit of just outcomes. That includes for the disabled as well. Where a party has a known disability, justice must require reasonable consideration of the needs of the disabled and

accommodation of the reasonable requests of the disabled.

That did not happen here. This court should grant review under RAP 13.4(b)(4) as an issue of substantial public interest that should be determined by this Court.

**B. Motion for Reconsideration and a New Trial**

1. Where Susan Turnipseed Was Cognitively Disabled The Trial Court Abused Its Discretion When It Denied Her Motion For Extension Of Reconsideration To Obtain Counsel

The trial court committed a manifest error and abused its discretion when it denied Susan Turnipseed's motion for an extension of the motion for reconsideration.

The CR 59 motion for reconsideration and a new trial was filed on November 8, 2021. CP 128-34. Susan Turnipseed recognized that she was neither cognitively or physically equipped to effectively pursue the motion. The motion for an extension was filed only ten days later, on

November 18, 2024. CP 135-36. The basis for the motion for an extension of the reconsideration was that Ms. Turnipseed needed time to obtain counsel to represent her. CP 135-36.

Susan Turnipseed's need for representation by counsel was particularly acute due to her cognitive deficits and disabilities. The whole point of the trial was whether Ms. Turnipseed's cognitive deficits were caused by the 2012 crash. There was no serious dispute that she suffered from cognitive or physical deficits. Moreover, her attorney at trial had informed the court that her problems were ongoing. She was only able to do things in limited spurts because extended effort undermined her cognitive functioning. See 1VRP 55:8-10; 3VRP 237:16ff to 240:24. He further explained that Susanne Turnipseed had a hard time with paperwork, and was slow at the time of trial. 5VRP 470:16-20. It took her a long time to write things down and get spelling correct, so, e.g. when it was

time for appointments, she might only have a small portion of the information down. 5VRP 470:17-20.

In denying the motion for an extension of reconsideration, the court failed to consider Ms. Turnipseed's disabilities or accommodate them. It put her in an impossible position and made it impossible for her to effectively pursue her motion. The court ruled on the reconsideration motion just 32 days after it was filed without argument and never afforded her the opportunity to obtain counsel to represent her.

Under the circumstances, this was clear error. The court should have accommodated Ms. Turnipseed with a continuance of the motion for reconsideration.

2. The Trial Court's Denial Of The Motion For Reconsideration Was Manifestly Unreasonable

The court reviews a trial court's denial of a motion for reconsideration to determine if the trial court's decision is manifestly unreasonable or based on untenable

grounds. *Weyerhaeuser Co. v. Commercial Union Ins. Co.*, 142 Wash.2d 654, 683, 15 P.3d 115 (2000); *Chen v. State*, 86 Wash.App. 183, 192, 937 P.2d 612 (1997).

Despite her deficits and disability, Susanne Turnipseed's hand written, pro se motion for reconsideration, she identified three basis under CR 59 for her motion: CR59(a)(5) Damages so inadequate as to unmistakably indicate the verdict must be the result of passion or prejudice; CR59(a)(9) that substantial justice had not been done; and CR59(a)(4) newly discovered evidence.

In her motion Ms. Turnipseed correctly asserted the basis under CR59(a)(9) that is the issue now raised on appeal: the court's evidentiary rulings destroyed her ability to meet her burden of proof and resulted in a verdict that was the result of prejudice. Ms. Turnipseed also recognized that evidence late discovered just prior to trial undermined her case. That evidence was the recantation

of the admission of Dayton Campbell Harris in his deposition. See CP 134.

Finally, Ms. Turnipseed asserted that the problems in the case deprived her of substantial justice.

Here, the court's evidentiary rulings were error and prejudiced Susan Turnipseed. They cumulatively deprived her of her ability to present her case effectively in a manner that permitted her to overcome her burden of proof. This is particularly so where Susan Turnipseed had the burden of proving by a preponderance of the evidence that the injuries that caused her disability arose from the 2012 crash and not the 2013 crash.

The court's evidentiary rulings that have been challenged on appeal shifted the weight of the evidence in the case and undermined Susan Turnipseed's ability to meet her burden of proof persuasively on the crucial issue of which collision caused her injuries. Because the court's evidentiary rulings undermined the presentation of

Susan Turnispseed's case the court should have granted the motion for reconsideration. It was a manifest error and abuse of discretion when it denied the motion for reconsideration.

## **VI. CONCLUSION**

This court should grant the petition for review where justice requires that court's ensure that disabled persons are afforded a full and fair opportunity to develop and present their issues. The trial court abused its discretion when it denied an extension of the reconsideration motion to Ms. Turnipseed, a person it knew was suffering from cognitive and physical disabilities and thereby prevented her from obtaining the assistance of counsel. The court also abused its discretion when it denied her motion for reconsideration.

Because justice for the disabled and fairness to the disabled by the courts is an issue of substantial public interest, this court should grant review.



This document contains 3,995 words, excluding the parts of the document exempted from the word count by RAP 18.17.

Respectfully submitted, this 23rd day of April, 2025.

/s/ Stephen Trinen

Stephen Trinen  
Attorney for Appellant  
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# HERRMANN LAW GROUP

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## Transmittal Information

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**Appellate Court Case Title:** Susanne Turnipseed, Appellant v. Dayton Campbell Harris, Respondent  
**Superior Court Case Number:** 15-2-12396-9

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**PLTF-0001**

March 25, 2025

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

SUSANNE TURNIPSEED, individually,

Appellant,

v.

DAYTON CAMPBELL HARRIS and JANE  
DOE HARRIS, individually, and the marital  
community composed thereof,

Respondent.

No. 56551-0-II

UNPUBLISHED OPINION

MAXA, P.J. – Susan Turnipseed appeals the trial court’s evidentiary rulings and the trial court’s order denying her CR 59 motion for reconsideration and her motion for an extension of time for consideration of the CR 59 motion.

Turnipseed and Dayton Campbell Harris were involved in a car accident. Turnipseed sued Campbell Harris for damages, and at trial she alleged that the accident caused an injury to her left vertebral artery and brain stem. The jury returned a special verdict finding that the accident with Campbell Harris did not cause Turnipseed’s claimed injuries, and the trial court entered judgment on the verdict in favor of Campbell Harris.

We hold that (1) the trial court did not abuse its discretion in precluding Turnipseed’s biomechanical expert from testifying about whether she suffered an injury to her vertebral artery or brain stem in the accident, (2) the trial court did not abuse its discretion when it denied

Turnipseed's motion to strike the defense medical expert's testimony, (3) the trial court committed harmless error when it excluded a late-disclosed witness without considering the *Burnet*<sup>1</sup> factors because his testimony would have been cumulative of other evidence, and (4) the trial court did not abuse its discretion when it denied Turnipseed's CR 59 motion for reconsideration and motion for an extension of time.

Accordingly, we affirm the trial court's judgment on the jury verdict dismissing Turnipseed's claims against Campbell Harris.

### FACTS

In 2012, Turnipseed was involved in a car accident in Tacoma in which she was rear ended by Campbell Harris. Turnipseed was involved another car accident in 2013.

In September 2015, Turnipseed sued Campbell Harris, alleging that Campbell Harris's negligence caused her special and general damages.

#### *Late Disclosure of Fact Witness*

Before trial, Campbell Harris filed a motion in limine to exclude Russell Wyman as a trial witness because he was disclosed long after the deadlines for disclosure of fact witnesses and rebuttal witnesses. The trial court granted Campbell Harris's motion and excluded Wyman from testifying because he was not disclosed in a timely manner. But the court did not consider the *Burnet* factors in making this ruling. The court left open the possibility that Wyman could testify as a rebuttal witness to rebut evidence in Campbell Harris's case.

As an offer of proof, Turnipseed explained that Wyman would testify that he observed the stereo coming out of the dashboard of Turnipseed's vehicle after the accident.

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<sup>1</sup> *Burnet v. Spokane Ambulance*, 131 Wn.2d 484, 494-97, 933 P.2d 1036 (1997).

*Jury Trial*

At trial, Turnipseed described the 2012 car accident. She stated that she was in her car stopped at a traffic signal. She testified that Campbell Harris hit the back of her car, and that she experienced pain in her neck and on the side of her face and had a headache after the accident. Turnipseed stated that her car was a total loss as a result of the accident. She also testified that she discovered that the panel stereo had popped off during the accident.

Turnipseed called Michael Chan, D.C., a chiropractor and accident reconstructionist with training in injury biomechanics for spinal and brain injuries. Dr. Chan testified about his expertise in biomechanics and he agreed to provide opinions based on “a reasonable degree of biomechanical certainty.” Report of Proceedings (RP) at 143. He stated that his qualifications as a chiropractor enabled him to review the medical records associated with the case to assist in his biomechanical analysis. However, Dr. Chan did not discuss whether as a chiropractor he was qualified to diagnose injuries to the vertebral artery or brain stem. And he acknowledged that he was not qualified to treat vascular injuries or brain stem injuries, and that he had never seen a vascular injury in his practice.

Turnipseed asked Dr. Chan his opinions as a biomechanical expert regarding the forces she experienced in the accident and Dr. Chan provided a detailed analysis of those forces. He concluded by expressing his opinion that the accident created a mechanism of injury for damage to the vertebral artery and compression of the brain stem.

Turnipseed then asked, “So with regard to mechanism – and you say that you have reviewed records. What is your opinion as to whether or not Ms. Turnipseed sustained injury to her neck and particularly her brainstem and left vertebral artery?” RP at 168-69. Campbell Harris objected on the basis that Dr. Chan could not testify as to whether or not Turnipseed did

or did not sustain an injury because he was not a medical doctor. The trial court sustained the objection, stating that Dr. Chan could “speak to the biomechanics.” RP at 169.

Turnipseed also called Dr. Alan Langman, an otolaryngologist specializing in the treatment of ear disease. He testified that Turnipseed suffered a central vestibular injury that was entirely caused by the forces from the 2012 accident. And Turnipseed presented the video deposition of Dr. Rosabel Young, a neurologist. She testified that the 2012 accident caused a compression of Turnipseed’s brain stem.

Campbell Harris admitted liability, but argued that the 2012 accident did not cause any vertebral artery or brain stem injury.

Campbell Harris called Dr. Mary Reif, a neurologist. She testified that Turnipseed did not exhibit the signs and symptoms that one would expect to see from someone who experienced a concussion or traumatic brain injury. Dr. Reif explained that some of Turnipseed’s symptoms after the 2012 accident could have been caused by things other than the accident. And she testified that in her 40-year career she had never seen injuries to the vertebral artery caused by a whiplash injury, and that such a causation was not recognized in medicine. She also testified that she disagreed with the opinions of Dr. Young. Finally, Dr. Reif stated that she did not believe that Turnipseed’s current problems related to the 2012 accident.

At no point during Dr. Reif’s direct examination did Turnipseed object. Turnipseed conducted a cross examination of Dr. Reif. Dr. Reif was excused and the defense rested its case.

At that point, Turnipseed moved to strike Dr. Reif’s testimony. Turnipseed argued that Dr. Reif gave no opinions based on more probably than not or a reasonable degree of medical certainty. The trial court denied the motion. The court stated, “She testified, you know, with some certainty. The answer was a definitive ‘no’ and a definitive ‘yes.’ In other words, were

these complaints associated with the accident. I think one can conclude a definitive ‘no’ is more than a probable than not basis that it is possible.” RP at 651.

*Jury Verdict and Motion for Reconsideration*

The jury found by special verdict that the 2012 car accident did not proximately cause the injury to Turnipseed’s left vertebral artery and brain stem. The trial court entered a judgment on the jury verdict, dismissing Turnipseed’s claims against Campbell Harris with prejudice.

Turnipseed subsequently dismissed her attorney from the case, expressing concern for his health. The attorney then filed a notice of withdrawal from the case.

Turnipseed, representing herself, filed a motion for reconsideration. She cited CR 59(4), (5), and (9) in her motion. Turnipseed emphasized that she had suffered permanent injuries to her vertebral artery and brain stem and that she continued to experience serious symptoms years after the accident. She also argued that Campbell Harris had minimized her injuries during the trial and incorrectly had told the jury that she was not disabled. In addition, Turnipseed stated that Campbell Harris apologized to her immediately after the accident and explained that he had been texting, but that he recanted that confession during his 2021 deposition.

Ten days later, Turnipseed filed a motion titled “Motion to request extension of Reconsideration.” She asked the court to extend her motion for reconsideration for four months to give her time to obtain legal representation. She provided no further explanation for her request.

The trial court entered an order denying Turnipseed’s motion for extension of time for reconsideration and her motion for reconsideration.

Turnipseed appeals several of the trial court’s evidentiary rulings and its order denying her motions for extension of time for reconsideration and for reconsideration.



## ANALYSIS

### A. EVIDENTIARY CHALLENGES

We review a trial court's evidentiary rulings for an abuse of discretion. *Bengtsson v. Sunnyworld Int'l, Inc.*, 14 Wn. App. 2d 91, 99, 469 P.3d 339 (2020). We will overturn the trial court's ruling on the admissibility of evidence only if its decision was manifestly unreasonable, exercised on untenable grounds, or based on untenable reasons. *Id.*

If the trial court made an evidentiary error, reversal is required only if the error materially affected the outcome of the trial. *Id.*

#### 1. Sustaining Objection to Dr. Chan's Testimony

Turnipseed argues that the trial court abused its discretion when it prevented Dr. Chan from testifying that the 2012 accident caused an injury to her vertebral artery and brain stem. We disagree.

Biomechanical experts may be allowed to render opinions regarding the forces involved in car accidents. *See Johnston-Forbes v. Matsunaga*, 181 Wn.2d 346, 355-56, 333 P.3d 388 (2014). However, trial courts or the experts themselves have recognized that biomechanical experts are not qualified to give opinions regarding whether the accident actually caused a specific injury to the plaintiff. *See L.M. by and through Dussault v. Hamilton*, 193 Wn.2d 113, 127, 436 P.3d 803 (2019) (trial court barred a biomechanical expert from testifying regarding specific causation in the plaintiff's case); *Johnston-Forbes*, 181 Wn.2d at 354-55 (counsel assured the trial court that the biomechanical expert would not testify about the plaintiff's specific injuries, and the expert repeatedly confirmed that fact); *Stedman v. Cooper*, 172 Wn. App. 9, 20, 292 P.3d 764 (2012) (biomechanical expert disavowed any intention to give an opinion regarding whether the plaintiff was hurt in the accident); *Ma'ele v. Arrington*, 111 Wn.

App. 557, 564, 45 P.3d 557 (2002) (noting that the biomechanical expert did not testify about the plaintiff's symptoms or possible diagnosis).

Here, it is clear that Dr. Chan's expertise in biomechanics did not qualify him to testify whether the 2012 accident caused an injury to Turnipseed's vertebral artery and brain stem. This case is somewhat atypical in that Dr. Chan also was a chiropractor. However, he did not testify that his chiropractic training qualified him to diagnose injuries to the vertebral artery or brain stem. In fact, he admitted that he was not qualified to treat vascular injuries or brain stem injuries and that he had never seen a vascular injury in his practice.

We hold that the trial court did not abuse its discretion in excluding Dr. Chan's testimony about Turnipseed's specific injuries.

## 2. Denial of Motion to Strike Dr. Reif Testimony

Turnipseed argues that the trial court erred when it denied her motion to strike Dr. Reif's testimony because Dr. Reif failed to testify based on a reasonable degree of medical certainty. We disagree.

### a. Legal Principles

ER 702 provides that a court may permit a witness qualified as an expert to provide an opinion regarding scientific or specialized knowledge if such testimony may assist the trier of fact. "Admission is proper provided the expert is qualified and his or her testimony is helpful." *Volk v. DeMeerleer*, 187 Wn.2d 241, 277, 386 P.3d 254 (2016). The expert's opinion must be grounded on facts and cannot be conclusory or based on an assumption. *Id.* Expert medical testimony must be based on reasonable medical certainty or reasonable medical probability. *Anderson v. Akzo Nobel Coatings, Inc.*, 172 Wn.2d 593, 606-07, 260 P.3d 857 (2011); see also

*Desranleau v. Hyland's, Inc.*, 26 Wn. App. 2d 418, 438, 527 P.3d 1160, review denied, 1 Wn.3d 1030 (2023).

However, an expert is not necessarily required to expressly state the words “reasonable medical certainty” or “reasonable medical probability.” See *White v. Kent Med. Ctr., Inc.*, PS, 61 Wn. App. 163, 172, 810 P.2d 4 (1991) (in the context of standard of care testimony, “[t]o require experts to testify in a particular format would elevate form over substance”). “We look instead to . . . the substance of what the experts bring to the discussion.” *Leaverton v. Cascade Surgical Partners, PLLC*, 160 Wn. App. 512, 520, 248 P.3d 136 (2011).

“[T]rial courts are afforded wide discretion and trial court expert opinion decisions will not be disturbed on appeal absent an abuse of such discretion.” *Johnston-Forbes*, 181 Wn.2d at 352. An abuse of discretion occurs when the trial court’s ruling is “unsupported by the record or result[s] from applying the wrong legal standard.” *Gilmore v. Jefferson County Pub. Transp. Benefit Area*, 190 Wn.2d 483, 494, 415 P.3d 212 (2018).

b. Analysis

We conclude that the trial court did not abuse its discretion in denying Turnipseed’s motion to strike Dr. Reif’s testimony for three reasons.

First, Turnipseed did not object during Dr. Reif’s testimony. The general rule is that a failure to object waives an evidentiary challenge. See *Orris v. Lingley*, 172 Wn. App. 61, 67, 288 P.3d 1159 (2012). To the extent that a motion to strike at the end of an expert’s testimony is sufficient, Turnipseed’s motion to strike Dr. Reif’s entire testimony was overbroad. Certainly, the entirety of Dr. Reif’s testimony was not inadmissible. For example, she provided general background information about the expected symptoms for a concussion that clearly was based on her extensive experience and expertise. Turnipseed failed to identify which portions of the

testimony should be stricken. The trial court did not abuse its discretion in failing to strike Dr. Reif's *entire* testimony.

Second, Dr. Reif was a defense expert, not a plaintiff's expert. Because defendants generally have no burden of proof, their experts do not necessarily have to testify based on reasonable medical certainty. A commentator states,

The requirement of reasonable medical certainty does not apply to experts for the defense. The purpose of medical opinions by defense experts is to offer alternative explanations for the plaintiff's medical condition. As stated in a 2013 case, the opinions of defense experts are relevant so long as they "tend to deprive plaintiff's proof of the persuasive power necessary to cross the 50 percent threshold."

5B KARL B. TEGLAND, WASHINGTON PRACTICE: EVIDENCE LAW AND PRACTICE § 702.32 at 127 (6th ed. 2016) (quoting *Colley v. Peacehealth*, 177 Wn. App. 717, 732, 312 P.3d 989 (2013)).

Third, although Dr. Reif did not use the words "reasonable medical certainty," the substance of her testimony shows that she actually met that standard. Dr. Reif outlined her extensive experience and expertise. She reviewed Turnipseed's medical records as well as deposition and trial testimony from Turnipseed's doctors and experts. To the extent she provided opinions regarding Turnipseed's condition, she gave unequivocal testimony that clearly was based on her expertise. We conclude that the court did not abuse its discretion in determining that Dr. Reif's definitive answers amounted to a sufficient degree of medical certainty.<sup>2</sup>

We hold that the trial court did not abuse its discretion when it denied Turnipseed's motion to strike Dr. Reif's entire testimony.

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<sup>2</sup> We recognize that the better course of action for defense counsel in the abundance of caution would have been to obtain Dr. Reif's agreement at the beginning of her testimony that all opinions would be given based on reasonable medical certainty or probability.

3. Exclusion of Wyman as Trial Witness

Turnipseed argues that the trial court erred when it ruled that Wyman could not testify because it failed to conduct the *Burnet* analysis required for the exclusion of late-disclosed witnesses. Campbell Harris concedes that the trial court erred by failing to conduct the *Burnet* analysis but argues that the error was harmless. We agree with Campbell Harris.

a. Legal Principles

Before excluding untimely evidence, the trial court must consider the factors set forth in *Burnet v. Spokane Ambulance*, 131 Wn.2d 484, 494-97, 933 P.2d 1036 (1997). *Keck v. Collins*, 184 Wn.2d 358, 368, 357 P.3d 1080 (2015). The *Burnet* factors include: (1) whether the violation was willful or deliberate, (2) whether the violation substantially prejudiced the opposing party's ability to prepare for trial, and (3) whether lesser sanctions probably would suffice. *Jones v. City of Seattle*, 179 Wn.2d 322, 338, 314 P.3d 380 (2013) (citing *Burnet*, 131 Wn.2d at 494). The trial court must make express findings regarding the *Burnet* factors on the record. *Teter v. Deck*, 174 Wn.2d 207, 217, 274 P.3d 336 (2012).

The exclusion of evidence without considering the *Burnet* factors is harmless if that evidence is cumulative. *Jones*, 179 Wn.2d at 360. “ ‘The evidence need not be identical to that which is admitted; instead, harmless error . . . results where evidence is excluded which is, in substance, the same as other evidence which is admitted.’ ” *Mut. of Enumclaw Ins. Co. v. Gregg Roofing, Inc.*, 178 Wn. App. 702, 731, 315 P.3d 1143 (quoting *Havens v. C&D Plastics, Inc.*, 124 Wn.2d 158, 170, 876 P.2d 435 (1994)).

b. Analysis

The trial court erred because it did not consider the *Burnet* factors on the record before excluding Wyman as a trial witness. The question is whether that error was harmless.

Turnipseed stated that Wyman would testify that he observed her stereo coming out of the front dashboard of her vehicle. But Turnipseed herself testified that she observed her stereo coming off of her front dashboard. Therefore, Wyman's testimony would have been cumulative of her testimony on that issue.

Turnipseed argues that Wyman's testimony would have demonstrated the force of the impact from the accident. But Turnipseed testified about the force of the accident when she testified that her car was a total loss. And Dr. Chan testified extensively about the forces involved in the accident and related those forces to the mechanism of Turnipseed's injury. So again, this testimony was cumulative.

Accordingly, we hold that the trial court's error in excluding Wyman as a witness without considering the *Burnet* factors was harmless.

C. DENIAL OF MOTION FOR RECONSIDERATION/MOTION FOR EXTENSION

Turnipseed argues that the trial court erred when it denied her CR 59 motion for reconsideration and her motion for an extension of time so she could obtain legal representation. We disagree.

1. Legal Principles

CR 59(a) sets forth several potential reasons for granting a motion for reconsideration:

(4) Newly discovered evidence, material for the party making the application, which the party could not with reasonable diligence have discovered and produced at the trial;

(5) Damages so excessive or inadequate as unmistakably to indicate that the verdict must have been the result of passion or prejudice;

(9) That substantial justice has not been done.

We review a trial court's order denying a motion for reconsideration for abuse of discretion. *Wilkem v. City of Camas*, 31 Wn. App. 2d 575, 593, 551 P.3d 1067 (2024), review denied, 4 Wn.3d 1002 (2025).

We also review a trial court's denial of a continuance motion for an abuse of discretion. *Wood v. Milionis Constr., Inc.*, 198 Wn.2d 105, 133, 492 P.3d 813 (2021). An abuse of discretion occurs for the denial of a continuance only if the trial court's decision is manifestly unreasonable or based on untenable grounds. *K.M.P. by & through Pinho v. Big Brother Big Sisters of Puget Sound*, 16 Wn. App. 2d 475, 484, 483 P.3d 119 (2021).

## 2. Analysis

In her CR 59 motion for reconsideration, Turnipseed cited CR 59(a)(4), (5), and (9) and requested a new trial. Turnipseed argued that the jury's verdict, which resulted in zero damages for her, was inadequate given her injuries. But the damages from the jury verdict stemmed from the jury's underlying finding that the 2012 accident was not the proximate cause of Turnipseed's injuries. Turnipseed also referenced the fact that Campbell Harris apologized and admitted to texting while driving before the car accident, but later recanted. But the trial was not about establishing fault – Campbell Harris admitted fault. The trial was about determining whether the 2012 accident caused Turnipseed's claimed injuries. Accordingly, we hold that the trial court did not abuse its discretion in denying the motion for reconsideration.

Regarding her motion for an extension, Turnipseed argues that she recognized that she was not cognitively capable of pursuing the motion for reconsideration herself. She emphasizes that she filed the motion for an extension because she needed time to obtain counsel to represent her, which was especially important given her cognitive deficits and disabilities. She briefly characterizes this as a need for accommodation for her disabilities.

However, Turnipseed did not make that argument in the trial court. Nor is there any indication in this record that she sought accommodation from the trial court under GR 33. She simply asked for more time so she could obtain representation without further explanation. But the court in its discretion determined that there was no basis for reconsideration regardless of whether Turnipseed had counsel. We hold that the trial court did not abuse its discretion in denying Turnipseed's motion for an extension.

### CONCLUSION

We affirm the trial court's judgment on the jury verdict dismissing Turnipseed's claims against Campbell Harris.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

  
MAXA, P.J.

We concur:

  
GLASGOW, J.

  
CHE, J.



## **Appendix B**

**SECTION 1. EDUCATIONAL, REFORMATORY, AND PENAL INSTITUTIONS**

Educational, reformatory, and penal institutions; those for the benefit of youth who are blind or deaf or otherwise disabled; for persons who are mentally ill or developmentally disabled; and such other institutions as the public good may require, shall be fostered and supported by the state, subject to such regulations as may be provided by law. The regents, trustees, or commissioners of all such institutions existing at the time of the adoption of this Constitution, and of such as shall thereafter be established by law, shall be appointed by the governor, by and with the advice and consent of the senate; and upon all nominations made by the governor, the question shall be taken by ayes and noes, and entered upon the journal. **[AMENDMENT 83, 1988 House Joint Resolution No. 4231, p 1553. Approved November 8, 1988.]**

## **Appendix C**

**RCW 49.60.030 Freedom from discrimination—Declaration of civil rights.** (1) The right to be free from discrimination because of race, creed, color, national origin, citizenship or immigration status, sex, honorably discharged veteran or military status, sexual orientation, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability is recognized as and declared to be a civil right. This right shall include, but not be limited to:

(a) The right to obtain and hold employment without discrimination;

(b) The right to the full enjoyment of any of the accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement;

(c) The right to engage in real estate transactions without discrimination, including discrimination against families with children;

(d) The right to engage in credit transactions without discrimination;

(e) The right to engage in insurance transactions or transactions with health maintenance organizations without discrimination: PROVIDED, That a practice which is not unlawful under RCW 48.30.300, 48.44.220, or 48.46.370 does not constitute an unfair practice for the purposes of this subparagraph;

(f) The right to engage in commerce free from any discriminatory boycotts or blacklists. Discriminatory boycotts or blacklists for purposes of this section shall be defined as the formation or execution of any express or implied agreement, understanding, policy or contractual arrangement for economic benefit between any persons which is not specifically authorized by the laws of the United States and which is required or imposed, either directly or indirectly, overtly or covertly, by a foreign government or foreign person in order to restrict, condition, prohibit, or interfere with or in order to exclude any person or persons from any business relationship on the basis of race, color, creed, religion, sex, honorably discharged veteran or military status, sexual orientation, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a person with a disability, or national origin, citizenship or immigration status, or lawful business relationship: PROVIDED HOWEVER, That nothing herein contained shall prohibit the use of boycotts as authorized by law pertaining to labor disputes and unfair labor practices; and

(g) The right of a mother to breastfeed her child in any place of public resort, accommodation, assemblage, or amusement.

(2) Any person deeming himself or herself injured by any act in violation of this chapter shall have a civil action in a court of competent jurisdiction to enjoin further violations, or to recover the actual damages sustained by the person, or both, together with the cost of suit including reasonable attorneys' fees or any other appropriate remedy authorized by this chapter or the United States Civil Rights Act of 1964 as amended, or the Federal Fair Housing Amendments Act of 1988 (42 U.S.C. Sec. 3601 et seq.).

(3) Except for any unfair practice committed by an employer against an employee or a prospective employee, or any unfair practice in a real estate transaction which is the basis for relief specified in the amendments to RCW 49.60.225 contained in chapter 69, Laws of 1993, any unfair practice prohibited by this chapter which is

committed in the course of trade or commerce as defined in the Consumer Protection Act, chapter 19.86 RCW, is, for the purpose of applying that chapter, a matter affecting the public interest, is not reasonable in relation to the development and preservation of business, and is an unfair or deceptive act in trade or commerce. [2020 c 52 s 4; 2009 c 164 s 1; 2007 c 187 s 3; 2006 c 4 s 3; 1997 c 271 s 2; 1995 c 135 s 3. Prior: 1993 c 510 s 3; 1993 c 69 s 1; 1984 c 32 s 2; 1979 c 127 s 2; 1977 ex.s. c 192 s 1; 1974 ex.s. c 32 s 1; 1973 1st ex.s. c 214 s 3; 1973 c 141 s 3; 1969 ex.s. c 167 s 2; 1957 c 37 s 3; 1949 c 183 s 2; Rem. Supp. 1949 s 7614-21.]

**Intent—1995 c 135:** See note following RCW 29A.08.760.

**Severability—1993 c 510:** See note following RCW 49.60.010.

**Severability—1993 c 69:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1993 c 69 s 17.]

**Severability—1969 ex.s. c 167:** See note following RCW 49.60.010.

**Severability—1957 c 37:** See note following RCW 49.60.010.

**Severability—1949 c 183:** See note following RCW 49.60.010.

## **Appendix D**

**RCW 70.84.010 Declaration—Policy.** The legislature declares:

(1) It is the policy of this state to encourage and enable the blind, persons with [visual] disabilities, the hearing impaired, and other persons with disabilities to participate fully in the social and economic life of the state, and to engage in remunerative employment.

(2) As citizens, the blind, persons with visual disabilities, the hearing impaired, and other persons with disabilities have the same rights as the able-bodied to the full and free use of the streets, highways, walkways, public buildings, public facilities, and other public places.

(3) The blind, persons with visual disabilities, the hearing impaired, and other persons with disabilities are entitled to full and equal accommodations, advantages, facilities, and privileges on common carriers, airplanes, motor vehicles, railroad trains, motor buses, streetcars, boats, and all other public conveyances, as well as in hotels, lodging places, places of public resort, accommodation, assemblage or amusement, and all other places to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons. [2020 c 274 s 48; 1980 c 109 s 1; 1969 c 141 s 1.]

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SUPREME COURT  
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**SUSANNE (TURNIPSEED)  
CLARK**, an individual,  
  
Appellant,  
  
vs.  
  
**DAYTON CAMPBELL HARRIS**,  
  
Respondent.

NO.  
  
**CERTIFICATE OF SERVICE**

I hereby certify under penalty of perjury under the laws of the Washington State, that on 23rd day of April 2025, I served a true and correct copy of the *PETITION FOR DISCRETIONARY REVIEW OF APPELLANT SUSANNE TURNIPSEED and APPENDIX*, delivering the same to the following attorneys of record, by the method indicated below, addressed as follows:

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Paralegal

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