No. 39973-7-III

COURT OF APPEALS, DIVISION III,
OF THE STATE OF WASHINGTON

ESTATE OF EMIL ROBERT ZLATICH, JR., by and through its personal representative, Danielle Zlatich, individually, and on behalf of EMIL ROBERT ZLATICH III, CHARLES BRADEN ZLATICH, BRIAN EUGENE ZLATICH, BRENT ALLEN ZLATICH, and EMIL ROBERT ZLATICH IV,

Petitioners,

v.

ESTATE OF VICKIE KAUFMAN, through its personal representative, HEIDI ZANOTELLI; and ESTATE OF DANIEL KAUFMAN, through its personal representative, HEIDI ZANOTELLI,

Respondents.

PETITION FOR REVIEW

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A. INTRODUCTION

Washington's common law has long imposed a duty on parents to prevent their children from harming other people. But until this case, no Washington appellate court had decided whether such a duty can arise during an offspring's adulthood. Division III decided that no such duty arose under Washington's "take charge" duty doctrine, and that public policy forecloses a parent from assuming tort liability for the acts of a mentally ill adult child. This decision is deeply at odds with this Court's precedents.

The parents in this case knew about their son's psychotic behavior and his threats to harm his neighbors, whom he delusionally believed to be poisoning him. But the parents continued their financial support, and elected not to exercise their ability to control his whereabouts and mental health treatment. Their actions enabled their son to continue to refuse badly needed treatment—and to maintain a stockpile of firearms and tactical gear at the property that his parents funded. Their son's killing

of one of those neighbors was foreseeable. None of that swayed Division III.

Division III's erroneous decision also creates a *de facto* new code pleading standard for complaints alleging negligence. Over a dissent, the majority refused to consider *Restatement (Second) of Torts* bases for negligence not specifically pleaded in the complaint. Nothing in our civil appellate rule requires allegations of legal conclusions, let alone a specific identification of *Restatement* bases for negligence. In conflict with this Court's notice pleading precedents, this new pleading rule will spur longer complaints, will result in premature dismissals of cases before their merits can be determined, and may invite more litigation as defendants see this decision as an invitation to file early motions to dismiss.

These broadly important issues—a substantive question about parents' common law duties, and a procedural question about the pleading standard for negligence—warrant this Court's review. RAP 13.4(b).

B. IDENTITY OF PETITIONERS

The petitioners are Danielle Zlatich, personal representative of the Estate of Emili Zlatich, Jr., Emile Zlatich III, Charles Zlatich, Brian Zlatich, Brent Zlatich, and Emil Zlatich IV ("the Estate").

C. COURT OF APPEALS DECISION

Division III issued its decision terminating review on January 14, 2025. The Estate timely moved for reconsideration or alternatively to publish the opinion. Division III denied the motion on March 28, 2025. The decision and the order are in the Appendix.

D. ISSUES PRESENTED FOR REVIEW

1. Does Washington recognize that parents have a duty to use reasonable care, including the giving of warnings, to protect third persons from harm by an adult mentally ill child the parents know is foreseeably dangerous as to those persons and the parents provided material support enabling that child to carry out an attack?

2. Do Washington's civil or appellate rules require a plaintiff who alleges negligence to specially plead every *Restatement* section or other legal basis supporting a common law duty of care in negligence?

E. STATEMENT OF THE CASE

As Division III acknowledged, this case's facts "are nothing short of horrendous." Op. at 2.[1]

Emil Zlatich, Jr., a widower and the long-time owner and operator of a popular Zip's restaurant in Kennewick, lived with his son, Emil III, and his grandson, Emil IV ("Bo"). CP 3-4. Daniel and Vickie Kaufman's son, Ryan, resided in the neighboring home. CP 41, 61, 104, 132. A shared driveway linked the two houses. CP 132.

Ryan's parents knew for a decade that he suffered from

[1] Because this case comes on review of a CR 12(b)(6) dismissal order, the facts derive from the original and amended complaints; discovery has not yet occurred. This Court "presume[s] that the plaintiff's factual allegations are true and draw[s] all reasonable inferences from the factual allegations in the plaintiff's favor." *Trujillo v. Nw. Tr. Servs., Inc.*, 183 Wn.2d 820, 830, 355 P.3d 1100 (2015) (citation omitted). This petition also cites declarations submitted with the Estate's motions to amend the complaint and for reconsideration. While not a summary judgment motion, this Court also "may consider hypothetical facts supporting the plaintiff's claims." *Kinney v. Cook*, 159 Wn.2d 837, 842, 154 P.3d 206 (2007) (citation omitted). The facts stated in the declarations are such "hypothetical facts."

grave mental illness. Ryan was involuntarily hospitalized in 2012, and he was treated successfully with anti-psychotic drugs. CP 39-40. But he eventually ceased treatment. CP 39-40, 54.

Ryan's parents knew he exhibited psychotic and violent behavior once he stopped taking medication. CP 105. Ryan believed the Zlatiches were entering his home at night and poisoning his food, leading Ryan to booby trap his front door with a shotgun. Ryan also believed he had a twin sister whom his parents had "sold to the government to support their lavish lifestyle." CP 41, 44, 53-54, 105. Ryan displayed violent outbursts, and sheriff deputies visited Ryan's home several times for "welfare checks." CP 40, 59, 61. In the final months of his life, Ryan started to look "crazed." CP 65.

All the while, Ryan's parents knew he possessed firearms and kept ammunition loading equipment in his basement. CP 41, 106, 133. They even had keys to Ryan's indoor firing range on his property—a facility they kept secret from the Zlatiches. CP 106, 133.

Ryan's parents supervised him and gave him money. CP 52, 105. They consulted with an attorney about his involuntary commitment or a guardianship. CP 105, 108, 117. They located a new private psychiatrist to get Ryan back on medication. CP 39, 105. Ryan regularly reported to his mother Vickie about his psychotic delusions. *Id.* They took Ryan from his house for overnight stays more than once, and Ryan's brother often could not reach his parents because they were so busy helping Ryan. CP 104-105. They paid for his mortgage, CP 38, 52, 105, 144, and that financial support likely enabled him to keep his firing range and to grow his cache of shotguns and handguns.

Ryan's parents did nothing to control Ryan's behavior or to warn the Zlatiches of the danger, passing on many chances do so. Despite visiting Ryan on a weekly basis during the last 3-6 months of his life, neither parent warned the Zlatiches that they might be a target of their son's psychotic wrath. CP 65, 106. The Zlatiches had no clue; they did not even recognize Ryan during his home invasion. CP 61, 106.

In the darkness of one early morning, in a psychotic stupor, Ryan set fire to his own home, outbuildings, and equipment. CP 107. Then, in full tactical gear, with a "SWAT-like" helmet covering his face, Ryan broke into the Zlatiches' home. CP 61. He used a 12-gauge shotgun with a laser sight to shoot and kill Emil Jr.; he shot Emil III in the back; and he wounded Bo. CP 62, 107. He doused the house's walls with gasoline and set it ablaze. *Id*.

Ryan then went to his parents' home and killed them. He later died in a fire fight with police in West Richland. CP 107.

The Estate sued the Kaufmans' estate for wrongful death. CP 1-8. Separately, the two Zlatich survivors sued the Kaufmans' estate for personal injuries.[2] Before discovery began, the Kaufmans' estate sought dismissal under CR 12(b)(6). CP 9-20. The Estate moved to amend the complaint, adding more detail, and provided declarations that the trial court refused to

[2] Those actions remain pending.

consider. CP 21-67. Although it granted the motion to amend, CP 75-76, the court also entered a dismissal order the same day. CP 78-79, 123-24.

In a partially divided opinion, Division III affirmed. Op. at 1-12. The majority and dissent agreed that the Kaufmans owed no duty of care to the Estate under the "take charge" doctrine of *Restatement (Second) of Torts* §§ 315, 319 discussed in *Taggart v. State*, 118 Wn.2d 195, 822 P.2d 243 (1992). Both also invoked public policy to justify that holding. The majority and dissent parted ways, however, on the other duty-related arguments under various tenets of the *Restatement* advanced by the Zlatiches. Op. at 10-12. The majority refused to consider those other *Restatement* sections because the Estate's complaints did not plead them, mentioning only §§ 315, 319 and *Taggart*. CP 1-8, 116-17.

F. ARGUMENT WHY REVIEW SHOULD BE GRANTED

(1) Division III's Decision on a Matter of First Impression Clashes with Bedrock Common Law Principles and Raises an Important Question About Parents' Legal Responsibility for Dangerous Adult Children

The dissent framed the duty question in this case as whether "parents of an adult child living separately" may "be liable for their child's criminal acts." Dissent at 3. The majority's decision on this issue conflicts with this Court's precedents and raises an important question about common law liability. RAP 13.4(b)(1), (4).

Parents must use reasonable care to prevent their minor children from intentionally harming others when the parents know or should know of their children's dangerous proclivities. *Norton v. Payne*, 154 Wash. 241, 245, 281 P. 991 (1929); *Restatement (Second) of Torts* § 316. But until Division III's decision, no Washington appellate court had decided whether circumstances could bring about such a duty when the child had reached adulthood.

Division III erroneously focused on the parent-child relationship when, in fact, the issue for a "take charge" duty is one of control, without regard for whether the Kaufmans were Ryan's parents.[3] The Kaufmans exercised sufficient control over Ryan for a "take charge" duty to be present. In its discussion of that duty, Division III largely focused on the criminal justice system or therapist-patient controls. Op. at 6-8. But a "take charge" duty does not require custodial control. Indeed, in *Volk v. Demeerleer*, 187 Wn.2d 241, 386 P.3d 254 (2016), this Court specified that a therapist may have a duty arising out of a treatment in an out-patient setting where physical control is not present.

Rather than physical or custodial control, this Court's precedents establish that a supervisory role over another constitutes the requisite control for a "take charge" duty. For

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[3] *Coffman v. McFadden*, 68 Wn.2d 954, 958, 416 P.2d 99 (1966) made clear that the parent-child relationship alone is not enough to establish parental liability for a child's acts.

example, in *C.J.C. v. Corp. of the Catholic Bishop of Yakima*, 138 Wn.2d 699, 985 P.2d 262 (1999), this Court held a church had a take charge duty as to a church deacon that abused children. The church did not have "custody" over the deacon, but rather only had supervisory responsibility over him. This is consistent with this Court's rejection of physical custody as the basis for a special relationship in *H.B.H. v. State*, 192 Wn.2d 154, 429 P.3d 484 (2018), where the Court concluded that supervision by, or "entrustment" to, another was central to the necessary relationship. *Id.* at 173.

The Kaufmans had the requisite supervisory relationship with Ryan, without regard to their status as his parents, given their extensive supervisory role as to his health care, his finances, and his firearms, to name just a few aspects of their supervision. *Restatement (Second) of Torts* § 319 makes clear that the "take charge" duty occurs as to supervision of another, as here the duty arises as to "[o]ne who takes charge of a third person 'whom he

knows, or should know to be likely to cause bodily harm to others if not controlled." *See also,* cmt. a to § 319.[4]

Both the majority and dissent faulted the Zlatiches for not citing a precedent for recognizing a parent having a duty to use reasonable care to warn third persons or otherwise to protect them from danger from their adult child. *See, e.g.*, Op. at 9; Dissent at 3. But, as discussed *infra*, the existence of a duty never turns solely on precedent. *See, e.g.*, *Hartley v. State,* 103 Wn.2d 768, 779, 698 P.2d 77 (1985) ("[W]hether a particular class of defendants owes a duty to a particular class of plaintiffs is a question of law and depends on mixed considerations of 'logic, common sense, justice, policy, *and precedent*.'" (emphasis

[4] Because the Kaufmans *knew* the unsuspecting Zlatiches were the targets of Ryan's delusional wrath, a special protective duty of care was owed by them to the Zlatiches under *Restatement (Second) of Torts* § 320. *See Drammeh v. Uber Technologies, Inc.*, 2024 WL 4003548 (9th Cir. 2024) (a special relationship existed between Uber and its drivers); *Barlow v. State*, 2 Wn.3d 583, 540 P.3d 783 (2024) (a special relationship existed between higher education institutions and their students); *McKown v. Simon Property Group, Inc.*, 182 Wn.2d 752, 344 P.3d 661 (2015) (special relationship between mall and invitees).

added). When a duty question is an issue of first impression, the analysis thus considers precedent, but that does not end the requisite analysis. *H.B.H.*, 192 Wn.2d at 168-81.[5]

This Court has frequently found a duty to exist as a matter of first impression. *See, e.g.*, *H.B.H.*, 192 Wn.2d at 168-181 (relying on general principles and policy considerations, rather than a specific precedent controlling the same circumstances, to hold for the first time that the State owes a protective duty to children in foster care); *Washburn v. City of Fed. Way*, 178 Wn.2d 732, 757-59, 310 P.3d 1275 (2013) (relying on general negligence principles to hold for the first time that a police officer serving a protective order has a duty to use reasonable care to the intended protectee of the order). In short, while an absence of precedent in a matter of first impression might justify

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[5] Were it otherwise, the common law of torts would have never emerged, and no duties of care would have ever been recognized. After all, for each occasion that an appellate court has held a duty of care exists, at some point the matter was one of first impression with no prior precedent establishing a duty of care in like circumstances.

a court treading carefully, a common law court goes too far if refuses to weigh the general principles and other considerations that support the common law analysis of whether a duty exists.

In sum, Division III's analysis of a "take charge" duty here is contrary to this Court's precedents. RAP 13.4(b)(1).

The Division III majority declined to reach the Estate's other arguments showing that the Kaufmans owed a duty of reasonable care. Op. at 10-12. Had the majority reached those arguments, as it should have, the majority would have erred in holding no duty existed.

Everyone owes a duty of reasonable care to not create or increase the risk that their conduct will expose other people to unreasonable risks of harm. *Beltran-Serrano v. City of Tacoma*, 193 Wn.2d 537, 550, 442 P.3d 608 (2019); *Washburn*, 178 Wn.2d at 757. This duty of reasonable care may encompass the risk to a plaintiff of harm by a third party. *Washburn*, 178 Wn.2d at 757; *Restatement (Second) of Torts* § 302B; *Parrilla v. King County*, 138 Wn. App. 427, 157 P.3d 879 (2007).

The Kaufmans' own affirmative conduct created or increased the risk to the Zlatiches that Ryan would harm them. Viewing the facts in the light most favorable to the Estate, the Kaufmans enabled Ryan to retain access to—and likely to grow—his arms cache, his firing range, and his other materiel, and to stay in his house. They knew the danger he posed to himself and to others including the Zlatiches in specific, and yet they provided the financial support that allowed him to stay on that property. Their enablement also meant that Ryan was far less likely to return to medicated treatment or to submit to hospitalization. As a result, Ryan's danger to the Zlatiches persisted, worsened, and then became a nightmarish reality. The Kaufmans also failed to warn the Zlatiches or do anything else—simple steps that would have enabled the Zlatiches to protect themselves, whether that would been by guard dogs, locks and warning devices, or firearms.

If Ryan received the firearms—or the money to pay for them—from the Kaufmans, then *Restatement (Second) of Torts*

§ 390 further supports a duty of care. Under § 390, adopted by this Court in *Bernethy v. Walt Failor's, Inc.*, 97 Wn.2d 929, 933-34, 653 P.2d 280 (1982), a defendant owes a duty to protect others when he directly or indirectly supplies a "chattel," including a firearm, to an intoxicated or mentally incompetent person. Negligently entrusting dangerous instrumentalities to persons incompetent by youth or other circumstances has long been actionable in Washington. *Smith v. Nealey*, 162 Wash. 160, 298 P. 345 (1931) (parents entrusted car with shotgun in it to 13-year-old son).

The existence of a tort duty in these circumstances raises broadly important questions about parents' tort liability. RAP 13.4(b)(4). The majority suggested that a duty of care here "would discourage parents, who are likely most motivated and best situated to assist a child floundering with mental health issues, from having any type of relationship with their struggling children." Op. at 9. The dissent seemed to agree, with the narrow exception of a duty if the Kaufmans directly supplied firearms to

Ryan. Dissent at 4. The opinions thus cast serious doubts ever whether a duty can *ever* arise when parents know about a severely mentally ill adult child's dangerousness and have material involvement in their lives. Such a *de facto* parental immunity raises important questions of policy that only this Court, as the ultimate arbiter of Washington common law, should decide.

(2) The Decision Is Deeply at Odds with Washington's Notice Pleading Rule and with the State's Common Law Duty Analysis, and It Threatens to Worsen the Costs of Litigation

This Court should review the Division III majority's refusal to consider whether legal authorities other than *Restatement* § 319 and *Taggart* established a duty of care here. When the majority declined to consider the Estate's additional authorities, the majority did not suggest the additional *Restatement* provisions argued on appeal by the Zlatiches were inapplicable. Rather, it believed only that they were not properly before it because the trial court did not have "the ability to apply

the proffered law and the opportunity to correct any error." Op. at 10. That view conflicts with this Court's precedents on notice pleading. As the dissent realized, "our Supreme Court has determined that the policy against dismissing lawsuits at their inception is stronger than the policy favoring issue preservation, as embodied in RAP 2.5(a)." Dissent at 2. Review is warranted to resolve this apparent conflict between the majority opinion and this Court's precedents, and to clarify whether plaintiffs claiming negligence must specially plead every legal basis for a duty of care. RAP 13.4(b)(1), (4).

(a) Division III's *De Facto* Special Pleading Rule Collides with Washington's Notice Pleading Standard and the Related Policy Against Early Dismissals Before a Claim's Merits Can Be Tested

The civil rules require only "a short and plain statement of the claim showing that the pleader is entitled to relief." CR 8(a). This notice pleading standard is "one of the primary components of our justice system." *Putman v. Wenatchee Valley Med. Ctr., P.S.*, 166 Wn.2d 974, 983, 216 P.3d 374 (2009). A complaint

needs only to put the defendant on notice of the plaintiff's "possible" entitlement to relief. *McCurry v. Chevy Chase Bank, FSB,* 169 Wn.2d 96, 101, 233 P.3d 861 (2010). Thus, the rules do not "require parties to state all of the facts supporting their claims in their initial complaint." *Bryant v. Joseph Tree, Inc.*, 119 Wn.2d 210, 222, 829 P.2d 1099 (1992).

If plaintiffs need not give notice of every fact that might support their claims, it follows that their complaints do not have to plead all legal bases for defendants' liability for negligence. Washington's notice pleading rule cannot be lenient for factual allegations but strict for the legal bases sustaining a claim of negligence. Division III demanded that a complaint for negligence plead every legal basis for concluding that the defendant owed a duty of care to a plaintiff. Op. at 10-12. This abrogation of Washington's notice pleading rule calls for review. RAP 13.4(b)(1).

As part of Washington's notice pleading doctrine, this Court has cautioned that "CR 12(b)(6) motions should be granted

sparingly and with care." *Orwick v. City of Seattle*, 103 Wn.2d 249, 254, 692 P.2d 793 (1984) (quotation omitted) (emphasis added). Washington's policy against premature dismissals is also reflected in the court rules themselves. CR 8 requires courts to construe pleadings so as to do "substantial justice." CR 8(f). CR 1 requires the rules to be "construed and administered" so that cases are determined "just[ly]." Division III's decision, however, treats a complaint and a CR 12(b)(6) motion to dismiss as procedural gauntlets that a plaintiff must traverse to survive.

The majority's pleading requirement also steamrolls over the pretrial process that the notice pleading rule is designed to serve. Pretrial discovery, not the complaint, is supposed to be when plaintiffs gather evidence to support their claims. *Putman*, 166 Wn.2d at 983; *see also*, *Bryant*, 119 Wn.2d at 222 ("The notice pleading rule contemplates that discovery will provide parties with the opportunity to learn more detailed information about the nature of a complaint."). Summary judgment motions are then the proper vehicle for testing whether a plaintiff has

uncovered enough evidence to justify a jury trial. CR 56.

This pretrial process advances the notice pleading rule's core purpose—"to facilitate a proper decision on the merits." *Stansfield v. Douglas Cnty.*, 146 Wn.2d 116, 123, 43 P.3d 498 (2002). Pleadings are not meant "to erect formal and burdensome impediments to the litigation process." *Caruso v. Loc. Union No. 690*, 100 Wn.2d 343, 349, 670 P.2d 240 (1983). But the majority's legal pleading requirement does exactly that.

The notice pleading standard in the civil rules interplays with the error preservation requirement of the RAPs. But, as the dissenting opinion correctly understood, RAP 2.5(a) does not override Washington's paramount policies in civil litigation—simplicity at the pleading stage and resolution of cases on their merits.

The majority's approach to error preservation cannot be reconciled with RAP 2.5(a) and decisions such as *Orwick*, as the dissent recognized. Dissent at 2-3. In *Orwick*, this Court considered a legal theory that the plaintiffs had not raised at any

stage. 103 Wn.2d at 256. The plaintiffs had not mentioned it even in this Court. *Id.* In fact, this Court considered an entirely new *claim* (malicious prosecution), not just a new *authority* such as a section of the *Restatement (Second) of Torts* relating to negligence. This Court insisted that the parties' appellate briefs should identify legal issues and cite legal authorities supporting their arguments, *id.* at 256, but CR 12(b)(6) motions "are very narrow in scope," and the civil rules do not require "the statement of legal theories and their elements." *Id. Orwick* reconciled CR 12(b)(6) and the RAPs: by the time that a case reaches the appellate courts, a plaintiff's legal briefing usually should articulate the authority that supports a complaint's legal claims. That's what happened here. The majority did not dispute that the Estate briefed several legal bases for its negligence claim. Op. at 10-12.

Besides clashing with *Orwick*, the majority's opinion is also contrary to *Turner v. Wash. State Dep't of Soc. & Health Servs.*, 198 Wn.2d 273, 493 P.3d 117 (2021). There, the

defendant in a negligence case argued that the Court should ignore the *Restatement* sections that the plaintiff did not raise earlier. *See id.* at 293 n.15. Nevertheless, this Court considered those new *Restatement* sections because they bore on the same duty question and because the record was well developed. *Id.* The same is true here: the additional *Restatement* sections relate to the same fundamental duty question, owed by the Kaufmans to the Estate, and the record would not change because this case comes on review of a complaint under CR 12(b)(6).

Turner is just one precedent in a long line of this Court's cases holding that RAP 2.5(a) does not stand in the way of this Court correctly deciding the law, especially when the issue to be decided concerns a threshold question about a plaintiff's cause of action. *See, e.g.*, *Ellis v. City of Seattle*, 142 Wn.2d 450, 460 n.3, 13 P.3d 1065, 1070 (2000). ("[A]ny court is entitled to consult the law in its review of an issue, whether or not a party has cited that law."); *Bennett v. Hardy*, 113 Wn.2d 912, 918, 784 P.2d 1258 (1990) (holding that a plaintiff may raise a new issue

on appeal when it "affects the right to maintain the action"). The majority failed to apply this line of cases.

Cases on appellate review of CR 12(b)(6) motions confirm that the dissent was correct. When an appellate court reviews a CR 12(b)(6) dismissal, the reviewing court considers *hypothetical facts* consistent with the complaint and raised for the first time on review. *E.g.*, *Bravo v. Dolsen Cos.*, 125 Wn.2d 745, 750, 888 P.2d 147 (1995). If a plaintiff can invoke made-up facts for the first time on appeal, then surely a plaintiff can raise new legal bases for a negligence claim, too.

Meanwhile, the Division III majority cited no precedent for grafting RAP 2.5(a) onto CR 8 and CR 12(b)(6) to create a whole new pleading requirement. Op. at 10-12.

In sum, the majority's new pleading requirement conflicts with bedrock principles of notice pleading, and creates tension between CR 12(b)(6) and RAP 2.5(a).

(b) Division III's Pleading Requirement Conflicts with the Broad Ranging Inquiry for Determining Whether a Defendant Has a Common Law Duty

The majority's new pleading requirement also conflicts with the wide-ranging inquiry required in negligence cases when a court determines whether a defendant had a duty of care. The majority conceived of each *Restatement* section as providing its own independent *cause of action*. *See* Op. at 10 ("[T]he … amended complaint does not plead a cause of action under any the above-listed sections."). That analysis misapplies Washington law.

A negligence claim is a negligence claim, and the elements are always the same: "(1) the existence of a duty owed to the complaining party; (2) a breach of that duty; (3) a resulting injury; and (4) that the claimed breach was the proximate cause of the injury." *Hansen v. Friend*, 118 Wn.2d 476, 479, 824 P.2d 483 (1992) (citation omitted). A *Restatement* section can, of course, supply a legal basis for deciding that the defendant owed

a duty in negligence and for determining the precise contours of that duty. For example, in *Washburn*, this Court applied section 302B to determine that a police officer owed a duty requiring him to avoid creating an unreasonable risk that a third person would harm another person. 178 Wn.2d at 757-58. But nowhere did this Court suggest that section 302B created its own "cause of action," to use the Division III majority's words here. Op. at 10. Rather, this Court held only that the officer's "duty to act reasonably" included, "under the facts of this case," "a duty to guard against the criminal conduct of [a third party]." *Id.* at 759.

Washburn is consistent with this Court's broad approach to determining the existence and extent of a defendant's tort duty. As this Court has stressed, courts base that determination on mixed considerations of logic, common sense, justice, policy, and precedent. *Hartley,* 103 Wn.2d at 779. Because "[t]he concept of duty is a reflection of all those considerations of public policy which lead the law to conclude that a plaintiff's interests are entitled to legal protection against the defendant's

conduct," *Volk*, 187 Wn.2d at 263 (quotations omitted), formulistic recitations of *Restatement* sections do not control the duty analysis. Rather, a *Restatement* section is nothing more than a legal basis to support a negligence claim, not a *sui generis* cause of action. Nor do the *Restatement* sections operate as a type of code-pleading system where a plaintiff's complaint must identify individual *Restatement* sections and then allege facts satisfying each section's strictures. In saying otherwise, the majority erred.

(c) Division III's Code Pleading Type Rule Has Broad Consequences for Civil Litigants and the Court System

When early motions to dismiss rest on strict pleading standards, as in the federal court, the amount and expense of litigation increases. Plaintiffs' attorneys may have to bill their clients for more time to draft overly detailed complaints as a preemptory measure to guard against CR 12(b) motions to dismiss. Judges will be asked to decide added motions to dismiss. Meritorious cases may never proceed to discovery or a jury trial.

Technical skill and clairvoyance, rather than the merits of a plaintiff's overall negligence claim, become the standards by which a plaintiff's complaint are judged.

Our state's civil rules, which are designed to reduce costs, eliminate procural traps, and reach the merits of the parties' claims and defenses, will become weighed down by the need to plead each conceivable *Restatement* basis to support a negligence claim. Slowly, cases that strictly apply the rules will chip away at our state's efficient civil procedure.

This Court should grant review to consider the broad consequences of a pleading rule that requires plaintiffs to allege all the legal bases that conceivably support their claims. RAP 13.4(b)(4).

G. CONCLUSION

Before Division III's opinion, no Washington appellate court had decided whether parents may owe a tort law duty to guard against the foreseeable risk that their adult mentally ill child would harm another person. This case also creates a new

procedural requirement for pleading negligence claims that finds no support in this Court's cases or public policy. This Court should grant review and should reverse Division III, allowing the Estate its day in court.

This document contains 4,910 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED this 25th day of April 2025.

Respectfully submitted,

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APPENDIX

FILED
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In the Office of the Clerk of Court
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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

ESTATE OF EMIL ROBERT ZLATICH, JR., by and through its personal representative, DANIELLE ZLATICH, individually and on behalf of EMIL ROBERT ZLATICH III, CHARLES BRADEN ZLATICH, BRIAN EUGENE ZLATICH, BRENT ALLEN ZLATICH, AND EMIL ROBERT ZLATICH IV, Appellants, v. ESTATE OF VICKIE KAUFMAN, through its personal representative, HEIDI ZANOTELLI; and the ESTATE OF DANIEL KAUFMAN, through its personal representative, HEIDI ZANOTELLI, Respondents.	)	No. 39973-7-III UNPUBLISHED OPINION

C●●NEY, J. — The Estate of Emil Zlatich, Jr. (Estate of Zlatich) appeals the trial court's CR 12(b)(6) dismissal of its complaint against the Estate of Vickie Kaufman and

the Estate of Daniel Kaufman (collectively the "Estate of Kaufman"). The Estate of Zlatich argues because it alleged facts sufficient to establish Vickie and Daniel Kaufman (Kaufmans) had a duty to prevent their son, Ryan Kaufman, from harming Mr. Zlatich, the trial court erred in dismissing its claim. For the first time on appeal, the Estate of Zlatich also alleges other duties owed by the Kaufmans to Mr. Zlatich. We disagree with the Estate of Zlatich and affirm dismissal of its complaint.

BACKGROUND

The facts underlying this appeal are nothing short of horrendous.[1] Emil Zlatich, Jr., (Mr. Zlatich) and his son and grandson, Emil Zlatich III, and Emil Zlatich IV, respectively, resided together at Mr. Zlatich's home in Kennewick, Washington. Ryan Kaufman[2] was the adult son of the Kaufmans and resided independently. Ryan was Mr. Zlatich's neighbor, and his home shared a common driveway with Mr. Zlatich's home. Ryan and Mr. Zlatich had been neighbors since approximately 2002 and "never argu[ed] or feud[ed]." Clerk's Papers (CP) at 132.

According to Ryan's sister, Heidi Zanotelli, Ryan was diagnosed with depression and psychosis around 2010 or 2011. Ryan suffered from "paranoid delusions" such as

[1] These facts are gleaned primarily from the amended complaint.

[2] Because of the shared surname, the first names of the parties are used for clarity. No disrespect is intended.

believing his food was being poisoned by "the neighbors or whoever." CP at 114, 44. Ryan's brother, Logan Kaufman, stated that Ryan "booby trapped" his front door with a shotgun. CP at 54. Ryan also had delusions that he had a twin sister that his parents "'sold to the government.'" CP at 114.

The Kaufmans assisted Ryan with his mortgage payments and other expenses, helped him obtain mental health treatment, and were generally aware of Ryan's mental health struggles. They also had keys to "a secret indoor shooting range" Ryan maintained on his property. CP at 106.[3] Additionally, Emil III, mentioned he saw the Kaufmans "drive to their son's property, pick him and his dog up and leave, sometimes overnight, during the approximate 6 months prior to the rampage." CP at 114-15.

In the early morning hours of August 25, 2021, Ryan, then 43 years old, lit fire to his home and the outbuildings on his property. Then, outfitted in full tactical gear, Ryan entered Mr. Zlatich's home where he shot and killed Mr. Zlatich and seriously injured Emil III, and Emil IV. Ryan set Mr. Zlatich's home on fire before leaving the property.

After leaving Mr. Zlatich's home, Ryan went to his parent's home in Kennewick, Washington. There, he shot and killed his parents before attempting to set their home on fire. Ryan then ignited fires at the International Brotherhood of Electrical Workers

[3] This fact is not alleged in the Estate of Zlatich's complaint. Rather, this fact is alleged in the "Complaint for Personal Injuries" filed by Emil III, and Emil IV, against the Kaufman's estate. CP at 102-10.

(IBEW) building and an IBEW training facility. He also set random brush fires by releasing flares from his moving vehicle. Ryan was killed at about 6:30 a.m. "in a firefight with police in West Richland." CP at 116.

In 2023, the Estate of Zlatich filed suit against the Estate of Kaufman through its personal representative, Danielle Zlatich. The complaint alleged the Kaufmans were aware of Ryan's mental health problems, "assumed the role of supervising decedent Ryan's medications and activities," and failed to warn Mr. Zlatich of Ryan's condition. CP at 6. The complaint therefore alleged that the Estate of Kaufman was liable to the Estate of Zlatich for negligently supervising Ryan under sections 315 and 319 of the *Restatement (Second) of Torts* (Am. L. Inst. 1965).

The Estate of Kaufman promptly filed a motion to dismiss the complaint under CR 12(b)(6). In response, the Estate of Zlatich filed a motion to amend the complaint. The trial court granted the Estate of Zlatich's motion to amend the complaint. The same day, the court granted the Estate of Kaufman's motion to dismiss.

The Estate of Zlatich timely appeals.[4]

[4] After filing its appeal, the Estate of Zlatich filed motions to set aside the order of dismissal and for reconsideration. It does not appear the trial court has decided either motion.

ANALYSIS

RESTATEMENT (SECOND) OF TORTS § 315 and § 319

The Estate of Zlatich argues the Kaufmans took charge of Ryan, and therefore had a duty to exercise reasonable care to control him under section 319 of the *Restatement*. Thus, the Estate of Zlatich argues dismissal of its claim pursuant to CR 12(b)(6) was erroneous. The Estate of Kaufman responds that the Kaufmans did not have a special relationship with Ryan sufficient to impose a "take charge" duty on them. We agree with the Estate of Kaufman.

We review a CR 12(b)(6) dismissal de novo. *Kinney v. Cook*, 159 Wn.2d 837, 842, 154 P.3d 206 (2007). "Dismissal is warranted only if the court concludes, beyond a reasonable doubt, the plaintiff cannot prove 'any set of facts which would justify recovery.'" *Id.* (quoting *Tenore v. AT&T Wireless Servs.*, 136 Wn.2d 322, 329-30, 962 P.2d 104 (1998)). "All of the facts alleged in the complaint are taken as true," and this court "may consider hypothetical facts supporting the plaintiff's claim." *FutureSelect Portfolio Mgmt., Inc. v. Tremont Grp. Holdings, Inc.*, 180 Wn.2d 954, 962, 331 P.3d 29 (2014). Thus, a complaint will survive a CR 12(b)(6) motion to dismiss if there is any set of facts that would justify recovery. *Hoffer v. State*, 110 Wn.2d 415, 421, 755 P.2d 781 (1988). However, if the plaintiff's claims remain legally insufficient, even under their proffered hypothetical facts, dismissal under CR 12(b)(6) is appropriate. *Gorman v. Garlock, Inc.*, 155 Wn.2d 198, 215, 118 P.3d 311 (2005).

The Estate of Zlatich argues the Kaufmans' alleged financial support and "caregiving role" of Ryan gave rise to a special relationship sufficient to impose on the Kaufmans a "take charge" duty to exercise reasonable care to control Ryan's behavior. Br. of Appellants at 27; RESTATEMENT § 319. The Estate of Kaufman responds that the Kaufmans did not have a special relationship with Ryan because Ryan was an adult and was not subject to a guardianship; therefore, they did not have the right or ability to control his conduct.

The *Restatement* subsection 315, which has been explicitly adopted by our Supreme Court, states:

> There is no duty so to control the conduct of a third person as to prevent him from causing physical harm to another unless
>
> (a) a special relation exists between the actor and the third person which imposes a duty upon the actor to control the third person's conduct, or
>
> (b) a special relation exists between the actor and the other which gives to the other a right to protection.

Petersen v. State, 100 Wn.2d 421, 426, 671 P.2d 230 (1983).

Our Supreme Court has also adopted the *Restatement*'s rule for "take charge" special relationships. *Taggart v. State*, 118 Wn.2d 195, 219-20, 822 P.2d 243 (1992); RESTATEMENT § 319. "One who takes charge of a third person whom he knows or should know to be likely to cause bodily harm to others if not controlled is under a duty to exercise reasonable care to control the third person to prevent him from doing such harm." RESTATEMENT § 319. "This duty arises when there is a 'definite, established and

continuing relationship between the defendant and the third party.'" *Bishop v. Miche*, 137 Wn.2d 518, 524, 973 P.2d 465 (1999) (quoting *Taggart*, 118 Wn.2d at 219). A custodial relationship is not required for the duty to attach. *Taggart*, 118 Wn.2d at 222-23. "[T]he take charge duty is fundamentally about control." *Binschus v. State*, 186 Wn.2d 573, 578, 380 P.3d 468 (2016).

Our Supreme Court has applied the "take charge" duty in a variety of contexts. *See, e.g.*, *Taggart*, 118 Wn.2d at 195 (parole officer/parolee); *Hertog, et rel. S.A.H. v. City of Seattle*, 138 Wn.2d 265, 979 P.2d 400 (1999) (probation officers/probationers); *Joyce v. Dep't of Corr.*, 155 Wn.2d 306, 119 P.3d 825 (2005) (community corrections officers/offenders); *see also Volk v. DeMeerLeer*, 187 Wn.2d 241, 386 P.3d 254 (2016) (duty akin to "take charge" duty found in psychiatrist/outpatient client context). However, no court in Washington has applied the "take charge" duty to parents of an adult child.

In *Taggart*, our Supreme Court held a "take charge" duty existed between parole officers and parolees where there was a "'definite, established and continuing relationship'" in which the State regulated the parolee's movements within the state, required the parolee to report to their parole officer, imposed special conditions such as prohibiting the use of alcohol, and ordered the parolee not to possess firearms. *Taggart*, 118 Wn.2d at 219-20 (quoting *Honcoop v. State*, 111 Wn.2d 182, 193, 759 P.2d 1188 (1988)). Because the parole officers enforced these requirements and had statutory

authority to supervise parolees, our Supreme Court concluded that parole officers had taken charge of parolees. *Id.* at 220. The *Hertog* court followed *Taggart* and concluded that a city and its probation officers had a "take charge" duty to control the probationers they oversaw. *Hertog*, 138 Wn.2d at 280.

In *Joyce*, the Supreme Court concluded a "take charge" duty applied between a community corrections officer and an offender. 155 Wn.2d at 320. This was because the offender was required to remain in King County, to obtain permission from a community corrections officer before leaving Washington or changing their residence, work for Department of Corrections approved employment, pay legal financial obligations, report to their community corrections officer, refrain from controlled substances, do community service, not possess firearms, and abide by court-imposed conditions. *Id.*

The Estate of Zlatich argues the Kaufmans took charge of Ryan by generally supervising and caring for him, including regularly picking him up and driving him away from his property, possessing keys to his house and outbuildings, and controlling his financial welfare by paying his mortgage. However, even these hypothetical facts are insufficient to impose a "take charge" duty to control Ryan on the Kaufmans. Indeed, unlike the cases discussed above, the Kaufmans did not have the right, ability, or authority to control Ryan. Ryan was not subject to a guardianship or conservatorship and, despite the Kaufmans' efforts, if any, to keep Ryan on the right path, Ryan maintained the autonomy to do as he chose.

Further, as articulated in the dissenting opinion, there are policy reasons that dissuade us from imposing a "take charge" duty on parents who have adult offspring with mental health infirmities. Imposing such a duty would discourage parents, who are likely most motivated and best situated to assist a child floundering with mental health issues, from having any type of relationship with their struggling children.

Additionally, the Estate of Zlatich attempts to impose a parent's duty to exercise reasonable care to control their ***minor*** children on parents of *adult* children. RESTATEMENT § 316. However, the Estate of Zlatich does not explain why such a duty would apply to the parents of adult children. The Estate of Zlatich simply argues, without citation to any authority, that "[t]his well-established special relationship applicable to parents of minor children applies with equal vigor to the parents of adult children with mental disabilities." Br. of Appellants at 31. When a party cites no authority supporting its argument, we can assume that counsel, after a diligent search, found none. *DeHeer v. Seattle Post-Intelligencer*, 60 Wn.2d 122, 126, 372 P.2d 193 (1962).

The Kaufmans did not have the right, ability, or authority to control Ryan. Thus, they did not have a special relationship with him sufficient to impose a duty on them to prevent Ryan from harming Mr. Zlatich. The Estate of Zlatich's claim for "negligent supervision" grounded in sections 315 and 319 of the *Restatement* was therefore properly dismissed.

DUTIES NOT PRESENTED TO TRIAL COURT

For the first time on appeal, the Estate of Zlatich argues the Kaufmans owed Mr. Zlatich a duty under *Restatement* sections 281, 302B, 328E, 343, and 390. However, the Estate of Zlatich's amended complaint does not plead a cause of action under any the above-listed sections. The only cause of action the Estate of Zlatich pleaded is one for "Negligent Supervision" pursuant to sections 315 and 319 of the *Restatement*, discussed above. CP at 111-19.

Generally, if a party fails to raise an issue before the trial court, the party is precluded from raising the issue on appeal. *Smith v. Shannon*, 100 Wn.2d 26, 37, 666 P.2d 351 (1983); RAP 2.5. Consequently, we may decline to consider an issue that was not presented to the trial court. *Int'l Ass'n of Fire Fighters, Local 46 v. City of Everett*, 146 Wn.2d 29, 37, 42 P.3d 1265 (2002). The purpose of the rule is to afford the trial court the ability to apply the proffered law and the opportunity to correct any error. *Smith*, 100 Wn.2d at 37. Nevertheless, if the new issue is arguably related to issues raised in the trial court, an appellate court may exercise its discretion to consider the new theories. *Lunsford v. Saberhagen Holdings, Inc.*, 139 Wn. App. 334, 338, 160 P.3d 1089 (2007).

In its opening brief, the Estate of Zlatich mentions in passing that "[t]he Estate is not limited in its argument on duty to those duty theories presented to the trial court where CR 12(b)(6) is at issue, i.e., whether the Estate has the right to maintain an action

against the Kaufmans at all." Br. of Appellants at 17. The Estate of Zlatich cites *New Meadows Holding Company v. Washington Water Power Company*[5] and *Bennett v. Hardy*[6] for this proposition. In those cases, the court found that a narrow exception to the general rule that we will not address issues for the first time on appeal exists "'when the question raised affects the right to maintain the action.'" *Hardy*, 113 Wn.2d at 918 (quoting *Maynard Inv. Co. v. McCann*, 77 Wn.2d 616, 621, 465 P.2d 657 (1970)).

In *New Meadows*, our Supreme Court used this narrow exception where one plaintiff raised and argued the applicability of a statute in its briefing for summary judgment, but another plaintiff failed to appear to contest the summary judgment motion. 102 Wn.2d at 497. The court stated waiver would not apply to prohibit the absent plaintiff from raising the issue on appeal because the statute affected that plaintiff's right to maintain the action and because the plaintiffs had "identical interests." *Id.* at 499. The court also reasoned that the trial court was not deprived of an opportunity to rule on the applicability of the statute because the issue was adequately briefed and argued by one of the plaintiffs. *Id.* at 498-99.

However, here, the situation is inapposite. The Estate of Zlatich asserts completely new legal theories not raised below. As such, the trial court was never given

[5] 102 Wn.2d 495, 687 P.2d 212 (1984).

[6] 113 Wn.2d 912, 784 P.2d 1258 (1990).

the opportunity to apply the law nor to correct any potential error. Consequently, we decline to address the new theories of liability raised by the Estate of Zlatich on appeal.

ATTORNEY FEES

The Estate of Zlatich makes a passing request for costs in its reply brief. Reply Br. of Appellants at 26 ("Costs on appeal should be awarded to the Estate."). Because the Estate of Zlatich is not the prevailing party, it is not entitled to an award of attorney fees. Further, even if the Estate of Zlatich did prevail on appeal, its request lacks compliance with RAP 18.1. RAP 18.1(b) states the party requesting attorney fees and expenses "must devote a section of its opening brief to the request for the fees or expenses." The Estate of Zlatich failed to do so. Thus, the Estate of Zlatich is not entitled to its attorney fees nor costs incurred to bring this appeal.

Affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Cooney, J.

I CONCUR:

Staab, J.

No. 39973-7-III

LAWRENCE-BERREY, C.J. (dissenting) — In my view, the majority errs by restricting the Estate of Emil Zlatich's legal theories to those argued below. For this reason, I write separately.

Appellate courts have discretion to permit new legal theories to be argued on appeal

CR 12(b)(6) requires a party seeking to dismiss a lawsuit for failure to state a claim to file the motion before filing a responsive pleading. Thus, such motions are filed at the inception of lawsuits, before discovery even commences. For this reason, CR 12(b)(6) motions should be granted "only 'sparingly and with care.'" *Bravo v. Dolsen Cos.*, 125 Wn.2d 745, 750, 888 P.2d 147 (1995) (quoting *Haberman v. Wash. Pub. Power Supply Sys.*, 109 Wn.2d 107, 120, 744 P.2d 1032 (1987)).

Parties opposing CR 12(b)(6) motions may argue hypothetical facts to assist the court in establishing the conceptional backdrop. *Bravo*, 125 Wn.2d at 750; *Brown v. MacPherson's, Inc.*, 86 Wn.2d 293, 298 n.2, 545 P.2d 13 (1975). "We have held that in determining [the legal sufficiency of the claim], a court may consider a hypothetical situation asserted by the complaining party, not part of the formal record, *including facts alleged for the first time on appellate review* of a dismissal under the rule." *Bravo*, 125 Wn.2d at 750 (citing *Halvorson v. Dahl*, 89 Wn.2d 673, 675, 574 P.2d 1190 (1978)).

"Neither prejudice nor unfairness is deemed to flow from this rule, because the inquiry on a CR 12(b)(6) motion is whether any facts which would support a valid claim can be conceived." *Id.*

Permitting new hypothetical facts to be argued for the first time on review conflicts with RAP 2.5(a), which generally prohibits parties from raising arguments not raised below. Thus, as shown by the above authorities, our Supreme Court has determined that the policy against dismissing lawsuits at their inception is stronger than the policy favoring issue preservation, as embodied in RAP 2.5(a).

In *Orwick v. City of Seattle*, 103 Wn.2d 249, 255-56, 692 P.2d 793 (1984), the Supreme Court discussed whether a party appealing a CR 12(b)(6) dismissal may introduce new legal theories on appeal. The *Orwick* petitioners did not articulate any clear legal theory to the trial court, appellate court, or Supreme Court. *Id.* at 251, 254-56. Nevertheless, the *Orwick* court, exercising its discretion, reversed the trial court by considering a legal theory not articulated by the petitioners—malicious prosecution. *Id.* at 256-57. For this reason, *Orwick* stands for the proposition that appellate courts, when reviewing CR 12(b)(6) motions to dismiss, may exercise discretion when considering new legal theories. Considering all viable legal theories raised by an appellant is consistent with the notion that CR 12(b)(6) motions should be granted sparingly, so that a case with potential merit is not improvidently dismissed.

May parents of an adult child living separately be liable for their child's criminal acts?

The Estate of Zlatich argues that parents of an adult child living separately may be liable for their child's criminal acts. It cites no less than 19 separate sections of the *Restatement (Second) of Torts* (AM. L. INST. 1965) and *Restatement (Third) of Torts* (AM. L. INST. 1965) to support its argument. Rather than fixating on any one particular section, I would consider the argument head on: "May parents of an adult child living separately be liable for their child's criminal acts?"

The general rule is that a person is not liable for the criminal acts of a third person. *Petersen v. State*, 100 Wn.2d 421, 426, 671 P.2d 230 (1983). The cases cited by the Estate of Zlatich as exceptions to this rule share two commonalities: (1) the defendant had a "special relationship" with the third person, which typically involved the legal right to control that person, and (2) the defendant had reason to know that the third person posed a danger to others. In essence, the legal right to control a dangerous person comes with the legal duty to exercise reasonable control.

The Estate of Zlatich fails to cite one case where a court has held parents liable for the criminal acts of their adult child living separately. This is unsurprising. Even in those situations where the parents know their child is dangerous, they have no legal right to control their adult child.

Policy reasons support this result. The law should not discourage parents from assisting their adult child when the child is facing a mental health crisis. By assisting

their child, the parents reduce the risk of harm the child poses to themselves and to others. Were we to impose liability against parents simply because they were sufficiently involved to know that that their adult child posed a danger to others, we would be discouraging the important parent-child bond that helps protect the adult child and others.

Narrow remand

In its opening brief, the Estate of Zlatich's final argument is that Ryan Kaufman's parents may have supplied their son with the firearms in his possession. Br. of Appellants at 44-46. If true, the new legal theory raised in that final section would defray a CR 12(b)(6) dismissal. I would remand for the narrow purpose of permitting discovery into this new theory, and perhaps the question of proximate cause, if discovery established that Ryan had deadly weapons apart from those supplied by his parents.

Lawrence-Berrey, C.J.

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In the Office of the Clerk of Court
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COURT OF APPEALS, DIVISION III, STATE OF WASHINGTON

ESTATE OF EMIL ROBERT ZLATICH, JR., by and through its personal representative, DANIELLE ZLATICH, individually and on behalf of EMIL ROBERT ZLATICH III, CHARLES BRADEN ZLATICH, BRIAN EUGENE ZLATICH, BRENT ALLEN ZLATICH, AND EMIL ROBERT ZLATICH IV, Appellants, v. ESTATE OF VICKIE KAUFMAN, through its personal representative, HEIDI ZANOTELLI; and the ESTATE OF DANIEL KAUFMAN, through its personal representative, HEIDI ZANOTELLI, Respondents.	No. 39973-7-III ORDER DENYING MOTION FOR RECONSIDERATION OR, IN THE ALTERNATIVE, MOTION TO PUBLISH OPINION

THE COURT has considered Appellants' motion for reconsideration or, in the alternative, motion to publish this court's opinion dated January 14, 2025, the answer thereto and the appellants' reply, and is of the opinion the motion and alternative motion

should be denied.

Therefore, IT IS ORDERED, the motion for reconsideration and alternative motion to publish are hereby denied.

PANEL: Cooney, Lawrence-Berrey, and Staab.

FOR THE COURT:

ROBERT E. LAWRENCE-BERREY
Chief Judge

DECLARATION OF SERVICE

On said day below, I electronically served a true and accurate copy of the ***Petition for Review*** in Court of Appeals, Division III Cause No. 39973-7-III to the following parties:

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Original electronically delivered by appellate portal to:
Court of Appeals, Division III
Clerk's Office

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

DATED: April 25, 2025 at Seattle, Washington.

/s/ Matt J. Albers
Matt J. Albers, Paralegal
Talmadge/Fitzpatrick

TALMADGE/FITZPATRICK

April 25, 2025 - 10:51 AM

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