SUPREME COURT NO. 1044984
COURT OF APPEALS NO. 862057

SUPREME COURT OF THE STATE OF WASHINGTON

MICHAEL J. LANG, individually, and as Personal Representative of the ESTATE OF FRANK E. COSTA, on behalf of the Estate and all statutory beneficiaries,

Respondent,

v.

PLATINUM NINE HOLDINGS, LLC, a Washington Limited Liability Corporation, doing business as NORTHWEST AMBULANCE, a company, NORTHWEST AMBULANCE CRITICAL CARE TRANSPORT, a company,

Petitioner.

COSTA FAMILY'S ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

Petitioner Platinum Nine Holdings doing business as Northwest Ambulance ("NWA") drove an ambulance 53 miles an hour into a highway divider, killing Frank Costa. NWA admitted its negligence in driving and failing to use all available restraints while transporting, and that both were a proximate cause of Mr. Costa's death.

NWA claimed it was immune from liability under RCW 18.71.210 for negligent driving and negligently failing to use all available straps that its EMT was not trained to use. NWA's claimed immunity was appropriately rejected by both the Trial Court and Court of Appeals. The Court of Appeals' correct application of established principles of statutory interpretation is not an issue of substantial importance meriting review by this Court. The petition should be denied.

II. IDENTITY OF RESPONDING PARTY

Michael Lang, individually and as the representative of the Estate of Frank Costa (collectively, "the Costa Family")

was the respondent and cross appellant below. The Costa Family does not seek review of any issues decided in the cross appeal.

III. COUNTERSTATEMENT OF ISSUES

1. Does the Court of Appeals following the normal rules of statutory construction by giving meaning to all the words in RCW 18.71.210 and harmonizing it with related statutes an issue of substantial public importance? (No)
2. Has NWA preserved any error to review when NWA failed to appeal or assign error to a separate trial court ruling concluding that NWA was not immune? (No)
3. Does any reading of the statute or the Court of Appeals opinion support a distinction between physical or mental conditions, as NWA's issue presented claims? (No)

IV. COUNTER STATEMENT OF THE CASE

A. NWA Drives an Ambulance Into a Highway Divider, Killing Frank Costa

On November 18, 2020, NWA's ambulance picked up

Frank Costa to transport him to the hospital to for lab testing. CP 53, 58, 100. NWA did not use shoulder straps to secure Mr. Costa to the ambulance's gurney. CP 113. EMT Henry Shaw drove the ambulance, while EMT Jack Wilson was in the back of the ambulance training a new hire; Mr. Shaw and Mr. Wilson were employees of NWA. CP 99, 179.

During the drive Wilson observed an abnormal heart rate and asked to go code – meaning to turn on the ambulance's lights and sirens. CP 154. While driving the ambulance on the highway with lights and sirens, Shaw saw a garbage truck. CP 71. Shaw began to accelerate to pass the truck but realized he would be unable to avoid hitting the truck. CP 73-74. Shaw swerved to the right of the garbage truck to "get around him just to be able to … have more room to slow down." CP 74. Due to the truck's positioning, Shaw did not see the highway divider to the right of the truck. *Id.*

NWA crashed into this highway divider traveling 53 miles per hour, head-on:

CP 81, 419.

The crash caused Mr. Costa to fly off the gurney and smash into the back of the ambulance wall (separating the patient area from the driver area), leaving Mr. Costa mortally wounded. Wilson found Mr. Costa wedged against the wall of the ambulance between the bench seat and gurney, moaning in pain. CP 83, 101, 113, 154. Mr. Costa suffered severe injuries to his head and neck. CP 101-102.

Mr. Costa asked if he was going to die. *Id.* The driver, Shaw, concluded Mr. Costa was "code red," or about to die. CP 82-83. Mr. Costa ultimately died at the hospital later the same day due to his catastrophic injuries. CP 114.

NWA fired Shaw for driving the ambulance too fast, and

a lack of defensive driving that caused a preventable collision. CP 132.

Wilson later testified that he had never seen anyone at NWA use shoulder restraints except for a couple of times, and that he was never told that he needed to use shoulder restraints. CP 185. Wilson believed shoulder restraints were for patients that couldn't control their upper body. CP 187. Similarly, Shaw later explained he was unable to recall being trained to put on shoulder straps. CP 61; *see also id.* ("There's no protocol or procedure with how to buckle someone up, as far as I know and as far as my training.").

The Costa Family sued NWA. CP 17. In its Answer, NWA claimed it was immune from liability under RCW 18.71.210. CP 12.

B. Summary Judgment Proceedings

Both parties filed summary judgment motions on NWA's claimed immunity. CP 35, 138.

The Costa Family argued that negligent driving and

failing to properly secure Frank Costa were not the performance of actual emergency medical procedures, and that driving and restraining passengers were not within the field of medical expertise. CP 36; CP 197-201; *see also* VRP 44 ("How is that medical expertise when they don't train them and they don't have any certification on it?"). The Costa Family also submitted deposition testimony from the EMTs who explained there was no protocol on how to buckle a person to the gurney in the ambulance. CP 61.

The Costa Family also pointed out that the definition of "emergency medical services" from RCW 18.73.030(11) made transportation distinct from medical treatment and care. CP 199, 305.

The Trial Court ruled Mr. Costa's death did not result from the provision of health care, and that NWA was not immune from suit under RCW 18.73.210. CP 310-13, 317-19.

C. NWA Admits Negligence

NWA admitted it failed to exercise ordinary care by not

securing Frank Costa with all available straps and by crashing the ambulance, along with proximately causing Mr. Costa's death.[1] CP 337, 341, 344.

D. NWA Files a Motion for Revision of the Summary Judgment Order, Again Seeking Summary Judgment

NWA filed a "motion for revision," again asking for summary judgment on its immunity claim. *See* CP 657 ("the Court should grant [NWA's] motion for summary judgment…"); CP 668 ("the Court should grant [NWA] summary judgment"). NWA filed a declaration in support of the motion stating that transcripts were being filed to "support [NWA's] pending motion to revise ... the Court's summary-judgment rulings on qualified immunity." CP 680. The motion was not heard until after trial. *Compare* CP 1097 (noting oral

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[1] NWA claims that the undisputed facts in this case was "an ambulance crew that [did] its best to stabilize a patient who suffers from cancer while rushing to the hospital." Pet. for Rev. at 8-9. It is unclear how driving 53 miles an hour into a highway divider with an unrestrained patient has anything to do with "stabilizing" a patient.

arguments heard on February 22, 2024) *with* CP 1093 (jury verdict dated February 21, 2024).

E. The Jury Returns a $2,300,000 Verdict, Trial Court Denies Motion for Revision and Enters Judgment

The Trial Court used NWA's proposed verdict form. CP 1093. NWA did not request the jury apportion damages between its negligent driving and its negligent failure to use shoulder restraints. *See* CP 1089.

The jury ultimately found that the Costa Family suffered $2,300,000 in noneconomic damages. CP 1093.

On February 22, 2024, the Court heard NWA's motion for revision regarding its immunity claim. CP 1097. The Trial Court decided to hear the motion to make sure the revision motion was decided before entering the judgment on the jury verdict. CP 1098. *Id.*[2]

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[2] The motion for revision was filed on February 6, 2024, one week before trial started on February 12. CP 652. The Trial

After hearing oral argument, the Trial Court denied NWA's motion for revision, incorporating by reference both its oral ruling from that day and the previous summary judgment ruling. *Id.*

NWA's notice of appeal specified that it was appealing the Judgment "and all matters encompassed therein." In its Opening Brief at the Court of Appeals, NWA did not assign error to or present any argument regarding the Trial Court's ruling on NWA's motion for revision, seeking summary judgment on the immunity claim. *See generally* App. 28-29 (NWA's assignments of error from its Opening Brief).

The Court of Appeals affirmed the Trial Court. App. 3.

Court denied NWA's request to hear the revision motion on shortened time. CP 672. Because it was a motion seeking summary judgment, under CR 56(c) the earliest the motion could have been heard was March 5, or 28 calendar days after February 6, 2024. This means that the earliest the response would have been due was February 26, 11 calendar days prior to March 5, 2024. The Costa Family only presented oral argument in response to the motion for revision at the February 22 hearing. CP 1097.

V. REVIEW IS NOT WARRANTED

NWA fails to establish an issue of substantial public interest under RAP 13.4(b)(4).

First, the Court of Appeals adhered to basic principles of statutory interpretation in analyzing the statute and rejecting NWA's claimed immunity.

Second, NWA failed to preserve its claimed error by not appealing the trial court's post-trial revision ruling concluding NWA was not immune.

Third, NWA's issue presented rests on the idea that the statute and Court of Appeals distinguished between mental and physical injuries. No reasonable reading of the statute or opinion supports this proposition.

The petition for review should be denied.

F. The Court of Appeals Following Normal Rules of Statutory Interpretation is not an Issue of Substantial Public Interest

Statutory interpretation intends to discern and implement the legislature's intent. *Thurman v. Cowles Co.*, 4 Wn.3d 291,

296, 562 P.3d 777 (2025). In interpreting a statute, this Court looks to the statute's plain language. *Id.* To determine the legislature's intent, the Court examines the plain language of the language of the statutory provision in question and considers the meaning of that language in the context of the whole statute and related statutes. *Id.* This Court gives meaning to every word in a statute. *In re Recall of Pearsall-Stipek*, 141 Wn.2d 756, 767, 10 P.3d 1034 (2000).

The Court of Appeals followed these rules in interpreting RCW 18.71.210, consistent with the prior published decisions interpreting the statute. NWA simply does not like the outcome the plain language of the statute requires. A litigant's disagreement with the legislature's policy choices is not an issue of substantial public interest warranting review.

RCW 18.71.210(1)(f) provides that no act or omission of any EMT "while rendering emergency medical service" to a person who has suffered illness or bodily injury shall impose any liability upon any licensed ambulance service. "Emergency

medical service" is defined in RCW 18.73.030(11) as "medical treatment and care which may be rendered at the scene of any medical emergency or while transporting any patient in an ambulance to an appropriate medical facility, including ambulance transportation between facilities."

RCW 18.71.210(2) further provides "[t]his section shall apply to an act or omission committed or omitted in the performance of the actual emergency medical procedures and not in the commission or omission of an act which is not within the field of medical expertise of the [EMT]." NWA asks this Court to ignore this language limiting the reach of the immunity under RCW 18.71.210(1).

The plain language of (2) limits the reach of immunity of (1) to "the performance of the actual emergency medical procedures" and ensures that immunity does not apply to "acts not within the field of medical expertise" of the EMTs.

RCW 18.71.210(4) finally provides "[t]his section shall apply also as to [licensed ambulance services] to any act or

omission committed or omitted in good faith by such [licensed ambulance services] involved in the transport of patients to mental health facilities or chemical dependency programs …"

The Court of Appeals read the plain language of these statutes together, and correctly rejected NWA's claimed immunity.

1. Ambulance Transportation Alone is not Subject to Immunity

NWA seeks to be immune for driving an ambulance 53 miles per hour into a highway divider. RCW 18.71.210(1) provides immunity for acts or omissions while rendering "emergency medical services to a person who has suffered illness or bodily injury."

"Emergency medical services" is defined at RCW 18.73.030(11) as "medical treatment and care which may be rendered at the scene of any medical emergency or **while transporting** any patient in an ambulance to an appropriate medical facility ..." (Emphasis added.) As the Court of Appeals

correctly found, the phrase "while transporting" modifies "medical treatment and care" and therefore means something different than the "medical treatment and care" that is subject to immunity. Ct. App. Op. at 12.

NWA asserts that "while" means "during the time that," but just because two activities can be done at the same time does not mean they are the same activity. Using NWA's example of "using a cellphone while driving is dangerous," the phrase does not mean any driving is dangerous. Instead, it means that a specific activity (using a cell phone) done at a certain time (while driving) is dangerous.

Similarly, RCW 18.71.210(1) does not immunize all transportation; instead, it immunizes medical treatment and care that can occur either at the scene of an emergency or while transporting the patient to an appropriate facility.

NWA's misreading of RCW 18.71.210(4) also fails. That statute immunizes qualified entities for acts and omissions "involved in the transport of patients to mental health facilities

or chemical dependency programs." Mental health facilities and chemical dependency programs are "appropriate medical facilities" under the definition of emergency medical service. *See* RCW 18.73.030(11).

RCW 18.71.210(4) is meaningless if the phrase "rendering emergency medical services" in RCW 18.71.210(1) already includes transportation. There would have been no need to extend the immunity to the transport of patients to mental health facilities or chemical dependency facilities if transportation was already immune.

NWA's citation to statutes involving other aspects of emergency care, but these support the Court of Appeals' analysis. The legislature including ambulance transportation in the definitions of "trauma care system," "emergency medical services and trauma care system plan," "emergency medical services and trauma care system," and "EMS provider" does not alter the definition of "emergency medical services," a different phrase.

Instead, those definitions show the legislature knew it could have defined "emergency medical services" to include transportation. The legislature chose not to do so. RCW 18.71.210(1) provides immunity for acts and omissions arising out of "emergency medical services," not out of emergency medical systems and trauma care systems, plans, or providers.

NWA makes no mention of the other relevant statute involving emergency driving, RCW 46.61.035, which provides that the driver of an authorized emergency vehicle may violate traffic laws while acting in due regard for the safety of all persons. The Court of Appeals correctly noted that emergency driving expertise is not medical expertise, as it is shared with police officers and firefighters. App. 13. Under RCW 18.71.210(2), acts not within the field of medical expertise of the EMT are not immune; the Court of Appeals appropriately heeded the legislature's plain language in RCW 18.71.210(2).

Finally, NWA's resort to the legislative history of RCW 18.71.210(4) is irrelevant. NWA does not argue the statute is

ambiguous, a prerequisite for referencing legislative history. NWA argued to the Court of Appeals that RCW 18.71.210 was unambiguous. *See* App. 81 (NWA arguing unambiguous statutes like RCW 18.71.210 must be interpreted as written). NWA fails to establish the statute is ambiguous, which is a prerequisite for considering the legislative history.

Even if considered, the Bill Report states that the legislature wanted to extend immunity to transportation of a patient to a mental health facility or chemical dependency treatment program by enacting RCW 18.71.210(4). NWA offers no explanation as to why this bill needed to exist if all transportation was already immune under RCW 18.71.210(1) as NWA claims.

2. Failing to Use Restraints That Mr. Wilson (the EMT in the Back of the Ambulance With Mr. Costa) was not Trained to Use is not Subject to Immunity

NWA fails to show that the use or nonuse of shoulder straps was an "emergency medical service" in this case, because the failure to use the straps did not occur while "rendering

medical treatment or care." There is no evidence there was any medical need to use the shoulder straps as part of rendering medical care or treatment to Mr. Costa.

While NWA is correct that one of its EMTs said to "go code," that was because of a possible abnormal heart rhythm. CP 154. There is no evidence in the record to connect the observation of the possible abnormal heart rhythm with the failure to use all the available restraints while transporting Mr. Costa. Indeed, NWA failed to appeal the Trial Court's ruling that NWA was not providing health care at the time of the crash. CP 310-311. The non-use of the shoulder restraints had nothing to do with any medical treatment or care. Therefore, the failure to use the shoulder restraint did not constitute an omission while rendering emergency medical service subject to immunity.

NWA's claimed immunity fails under RCW 18.71.210(2) as well. RCW 18.71.210(2) provides that immunity does not apply in the commission of an act which is not within the field

of medical expertise of "the" EMT. The statute does not use the article "a" or "an" to modify EMT, but "the." This means it is the specific NWA EMTs' medical expertise that is at issue. NWA's claims about how EMTs are trained generally is irrelevant.

NWA's EMTs both stated they had no recollection of being trained to put on shoulder straps or seat belts. CP 61, 230. This means that the field of medical expertise of NWA's EMTs did not include straps. In a footnote, NWA cites the CR 30(b)(6) designee's testimony that Mr. Shaw, the driver of the ambulance, was trained in the shoulder straps. This does not matter, because there is no testimony that the other EMT, Mr. Wilson, was trained to put on shoulder straps. The only evidence NWA cites is that Mr. Shaw was trained on loading stretchers in and out of ambulances. Pet. for Rev. at 19, n. 3 (citing CP 280). Even assuming that loading stretches in and out of ambulances includes using shoulder straps, this cannot overcome Mr. Wilson's unambiguous deposition testimony that

he did not know he needed to use the shoulder restraints:

> Throughout my time at [NWA] I had ridden with other EMTs, FTOs, and MSOs, and I had never – and I'd never seem them use those shoulder restraints but a couple of times with very kind of specific patients. And I'd never specifically been told by any of my co-workers or MSOs that I was riding with that I needed to use those patient restraints.
> …
> [Using shoulder straps] wasn't standard practice … my whole career at NWA I believe I'd only ever used the shoulder belts twice and they were … for patients that weren't able to control their upper body, so it was more kind of a restraint for the patient's upper body than it was a seat belt.

CP 185, 187. Because using the shoulder restraints was outside of the medical expertise of "the" EMT, the Court of Appeals properly concluded the immunity did not apply.

NWA points to the fact that gurneys and straps are ambulance equipment generally, but this does not matter under the immunity statute. RCW 18.71.210(2) states that the "section," i.e. all of RCW 18.71.210, does not apply to acts outside the field of medical expertise of the EMT. *See* Laws of 2015, ch. 157, § 5 (section modifying the entirety of RCW

18.71.210). It does not matter what equipment is in the ambulance for immunity; what matters is what is within the field of medical expertise of the individual EMT.[3]

The Court of Appeals did not reach an absurd result in applying the basic principles of statutory interpretation.

G. Review is not Warranted; NWA is not Immune Under the Ruling NWA Failed to Appeal

Aside from the Court of Appeals' correct application of statutory interpretation principles, this is not a matter of substantial public interest for a separate reason. The law of the case is that NWA is not immune.

A conclusion of law that is not appealed becomes the law of the case. *See Detonics .45 Assocs. v. Bank of California,* 97 Wn.2d 351, 353, 644 P.2d 1170 (1982).

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[3] Notably, the jury verdict form was submitted by NWA, and did not differentiate between negligent driving and the failure to use all available restraints. Thus, to be entitled to relief, NWA had to establish both were immune. The Court of Appeals correctly concluded that NWA could not establish either was immune.

The Trial Court made multiple rulings on immunity, both on summary judgment and again on NWA's motion for revision. *See* CP 310-13 and CP 317-19 (summary judgment rulings); *see also* CP 1097-98 (motion for revision ruling). The Court of Appeals acknowledged that NWA lost its revision motion seeking immunity under RCW 18.71.210. App. 5, 7. The Court of Appeals framed its analysis of the immunity issue solely with regard to the summary judgment proceedings. App. 9 ("NWA asserts that the trial court erred in granting Lang's motion for summary judgment and denying NWA's motion for summary judgment ... we conclude that the trial court acted appropriately in granting [the Costa Family's] motion and denying NWA's motion").

NWA's appeal did not assign error to or present any argument regarding the revision ruling. This makes the revision ruling, that NWA is not immune under RCW 18.71.210, the law of the case.

Any discussion of whether the Court of Appeals erred in

affirming the Trial Court's summary judgment immunity rulings is unnecessary to resolve the case. The Trial Court's revision immunity ruling is the law of the case; no matter what happens to the summary judgment ruling on review, NWA is still not immune.

This Court's discussion of things not necessary to resolve the issue before the court is *dicta*. *Gilmour v. Longmire,* 10 Wn.2d 511, 516, 117 P.2d 187 (1941). *Dicta* need not be followed. *In re Pers. Restraint of Domingo*, 155 Wn.2d 356, 366, 119 P.3d 816 (2005). Any analysis of RCW 18.71.210 would not need to be followed, which defeats the purpose of this Court issuing a decision.

This Court should not accept review to determine whether the Court of Appeals properly affirmed the Trial Court's summary judgment immunity rulings when NWA

failed to appeal the Trial Court's revision rulings on immunity.[4]

H. NWA's Issue Presented is Based on its Misreading of the Statute and the Court of Appeals' Opinion

NWA claims the issue for this Court's review is to decide whether immunity applies differently depending on whether the patient is receiving care for a mental as opposed to a physical health emergency. Pet. for Rev. at 1-2. Neither the statute nor the Court of Appeals' opinion makes such a distinction.

RCW 18.71.210(1) provides immunity to certain entities for "rendering emergency medical services … to a person who has suffered illness or bodily injury …" The statute does not define illness, but the dictionary defines it as defined as "an

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[4] Even if this Court wanted to review the revision ruling, NWA failed to provide an adequate record of the transcript of the hearing on revision. Given that the Costa Family only presented oral argument, and the Trial Court's order incorporates its oral remarks, CP 1098, this Court cannot properly review the revision order. This Court should follow its precedent and decline to reach the issue without adequate records of the proceedings below. *See, e.g., In re Det. of Halgren*, 156 Wn.2d 795, 804, 132 P.3d 714 (2006); *State v. Tracy*, 58 Wn.2d 683, 691, 147 P.3d 599 (2006).

unhealthy condition of body **or mind**." Merriam-Webster Online Dictionary, https://www.merriam-webster.com/dictionary/illness (last visited August 28, 2025) (emphasis added); *see also In re Det. of A.C.*, 1 Wn.3d 731, 744-745, 533 P.3d 81 (2023) (relying on Merriam-Webster Online dictionary to define undefined statutory terms). Immunity does not depend on whether the patient is suffering from a physical or mental injury, as NWA's issue presented implies.

The Court of Appeals' opinion also makes no such distinction. The Opinion below did not make any sweeping rulings regarding the applicability of immunity with respect to patients suffering emergency physical versus mental illnesses. Instead, the Court of Appeals found driving an ambulance 53 miles an hour into a highway divider was not immune. App. 12-13. The Court of Appeals further concluded that the failure to use shoulder restraints by an EMT not trained to use shoulder restraints was not immune from liability. App. 14-15. No

reasonable reading of the Court of Appeals' opinion supports the physical/mental dichotomy NWA claims exists.

This Court's review is generally limited to the issue raised in the petition for review. RAP 13.7(b). NWA's presented issue for review rests on the false premise that the statute or Court of Appeals opinion make any distinction between physical or mental illness when applying immunity. They do not. NWA's strawman argument is not an issue of substantial public interest justifying review.

VI. CONCLUSION

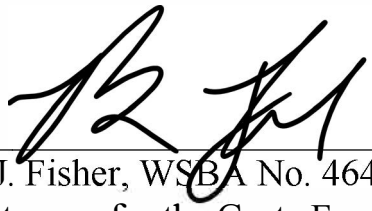
At bottom, NWA wants an ambulance company to be immune for anything related to ambulance transportation. The Court of Appeals correctly concluded that RCW 18.71.210 does not support NWA's desired result. NWA's dislike of the Court of Appeals' conclusion is not a basis for review.

The Court should deny NWA's petition.

This document contains 4,194 words, excluding the parts of the document exempted from the word count by RAP 18.17.

Dated this 23rd day of September, 2025 at Seattle, Washington.

Respectfully submitted,



Brian J. Fisher, WSBA No. 46495
Attorneysfor the Costa Family

CERTIFCATE OF SERVICE

I, Ashley Brogan, hereby declare as follows:

1. At all times hereinafter mentioned I am a citizen of the United States of America, a resident of the State of Washington, over the age of eighteen years, not a party to the above-entitled action, and competent to be a witness herein.

2. That on the 23rd day of September, 2025, I caused to be served a true and correct copy of Costa Family's Answer to Petition for Review to parties in the above title matter by causing it to be delivered to:

Rita Latsinova James Shore Seth Row Stoel Rives, LLP Rita.latsinova@stoel.com Jim.shore@stoel.com Seth.row@stoel.com	☐ U.S. First Class Mail Postage Paid ☐ Hand Delivery ☐ Legal Messenger ☒ Electronic-Email
Dirk J. Muse Carinne E. Bannan Wilson, Elser, Moskowitz, Edelman & Dicker LLP dirk.muse@wilsonelser.com carinne.bannan@wilsonelser.com	☐ U.S. First Class Mail Postage Paid ☐ Hand Delivery ☐ Legal Messenger ☒ Electronic-Email

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

DATED this 23rd day of September, 2025, at Arlington, Washington.

Ashley Brogan

Ashley Brogan
Paralegal
Wells Trumbull, PLLC

APPENDIX

FILED
7/28/2025
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

MICHAEL J. LANG, individually, and as Personal Representative of the ESTATE OF FRANK E. COSTA, on behalf of the Estate and all statutory beneficiaries,

Respondent/Cross-Petitioner,

v.

PLATINUM NINE HOLDINGS, LLC, a Washington Limited Liability Corporation, doing business as NORTHWEST AMBULANCE, a company; NORTHWEST AMBULANCE CRITICAL CARE TRANSPORT, a company, and XYZ, a fictitious entity or company,

Petitioners/Cross-Respondents,

and

RUBATINO REFUSE REMOVAL, INC.; RUBATINO REFUSE REMOVAL, LLC, a Washington Limited Liability Corporation; RUBATINO REFUSE, LLC, a Washington Limited Liability Corporation; RUBATINO REFUSE REMOVAL HOLDINGS, LLC, a Washington Limited Liability Corporation; RUBATINO LITTER SOLUTIONS, INC., a Washington Corporation; RUBATINO HOLDING COMPANY, INC., a Washington Corporation; and RUBATINO

No. 86205-7-I

DIVISION ONE

UNPUBLISHED OPINION

ENGINEERING, LLC, a Washington Limited Liability Corporation; and XYZ Corporation,

Defendants.

SMITH, J. — In 2020, an ambulance operated by Platinum Nine Holdings, LLC (NWA) crashed while transporting Frank Costa to the hospital. Costa died as a result. Costa's estate, through Michael Lang, sued NWA for negligence. NWA moved for summary judgment, claiming they were immune from liability under RCW 18.71.210. Lang also moved for summary judgment, contending RCW 18.71.210 was not relevant to the facts of the case and requesting dismissal. The court denied NWA's motion for summary judgment and granted Lang's motion in part.

After a trial, the jury ruled in Costa's favor and awarded Costa's estate 2.3 million dollars in noneconomic damages. After NWA submitted payment, they served Lang with notice of appeal. A dispute arose between the parties about NWA's ability to appeal. Lang moved to deny the appeal, contending an accord and satisfaction created a settlement agreement precluding either party's ability to appeal. The court denied the motion.

NWA appeals, asserting the trial court erred in granting Lang's summary judgment motion in part because the trial court misconstrued RCW 18.71.210. Lang cross-appeals, claiming the trial court erred in denying a motion to enforce the settlement agreement because the parties reached an accord and satisfaction.

Finding no error, we affirm.

FACTS

Background

In November 2020, Platinum Nine Holdings, LLC (NWA), picked up Frank Costa to transport him to the hospital for lab testing. NWA is a Washington limited liability company doing business as Northwest Ambulance. Costa was 78 years old and suffered from metastatic breast cancer. He resided at Genesis Care Center (Genesis) in Everett.

Genesis requested an ambulance transfer after concerning bloodwork. NWA employees Jack Wilson, Henry Shaw, and Kat Averill responded to the call.[1] The ambulance crew moved Costa from his bed to the ambulance stretcher and secured him with two lap belts and guardrails. NWA did not use shoulder straps to secure Costa to the gurney. Wilson later testified that shoulder straps were for "specific patients" who "weren't able to control their upper body;" that he had rarely seen anyone use shoulder straps; and that he could not recall being trained on how to use them.

During transport, Costa's condition deteriorated and Wilson called an emergency code. Shaw, driving the ambulance, turned on the lights and sirens. Driving in the left lane of Highway 526, the ambulance came up on a garbage truck. When the garbage truck started to move to the right, Shaw accelerated to pass on the left. But as the ambulance sped up, the garbage truck merged back

[1] Averill was in training at the time of this call.

left. Hitting the brakes, Shaw swerved to the right of the garbage truck, aiming for a shoulder to have more room to slow down. He did not see the highway divider to the right of the garbage truck. The ambulance hit the highway divider head-on at 53 miles per hour.

During the crash, Costa came off the gurney and hit the ambulance wall. He sustained injuries to his head and neck. Radioing for help, Shaw triaged Costa as "code red," meaning "you will die momentarily." Another ambulance transported Costa to the hospital and he died later that day of blunt force trauma.

Summary Judgment Proceedings

Michael Lang, as representative for Costa's estate, sued NWA for wrongful death. In his complaint, Lang alleged that NWA was negligent and that that negligence caused Costa's death. In its answer, NWA asserted that RCW 18.71.210 rendered it immune from liability. Both parties moved for summary judgment addressing NWA's claimed immunity.

NWA subsequently admitted negligence, stating that its employees failed to exercise ordinary care by not securing Costa to the gurney with all available straps and by not avoiding an accident. NWA further admitted that Costa suffered serious injuries as a result of that negligence, expressly stating that NWA's "negligence proximately caused Frank Costa's accident-related injuries and death." NWA maintained, however, that it was not grossly negligent and therefore still immune from liability under RCW 18.71.210.

NWA moved for summary judgment based on its claim that RCW 18.71.210 provides qualified immunity because NWA was a licensed ambulance service whose emergency medical technicians (EMTs) were performing emergency transport services at the time of the crash. NWA reiterated that it was not *grossly* negligent and that in operating the ambulance and stretcher, the EMTs were performing actual emergency medical procedures.

Lang's motion for partial summary judgment asserted that RCW 18.71.210 had no application to the facts at issue because NWA's failure to properly secure Costa was not part of any actual emergency medical procedure. Lang continued on to state that neither driving nor buckling seatbelts are medical procedures within any field of medical expertise. Lang also pointed out that the statute defined "emergency medical services" as distinct from transportation.

The trial court rejected NWA's interpretation of RCW 18.71.210 and ruled, as a matter of law, that "driving an ambulance is not emergency medical service." Determining that NWA was, thus, not immune from suit, the court granted Lang's motion for partial summary judgment and denied NWA's motion.

The issue of noneconomic damages continued to trial. And although NWA moved for revision, again asking for summary judgment on its immunity claim, the court did not hear the motion until after trial.

Motions in Limine

Lang moved *in limine* to exclude the testimony of Dr. Linda Ding from trial because NWA failed to disclose the nature and extent of its communications with Dr. Ding. Dr. Ding cared for Costa immediately following the crash.

When NWA provided a declaration stating that a paralegal at the firm representing NWA had repeatedly sent Dr. Ding copies of Costa's emergency room medical records, Lang argued that the behavior constituted impermissible *ex parte* communication. Lang further argued that the behavior resulted in prejudice because NWA gave Dr. Ding biased and incomplete information. The trial court denied Lang's motion.

Trial

At trial, NWA relied heavily on Dr. Ding's testimony. In opening arguments, NWA stated that Dr. Ding recommended a comfort-based approach to Costa's care based on illnesses and injuries unrelated to the crash. Dr. Ding then confirmed that she had no recollection of Costa outside the records NWA provided. Based on the records NWA provided, Dr. Ding testified to Costa's progressive decline. During closing statements, NWA claimed Dr. Ding essentially testified that "Costa was not likely to leave the hospital, even if he had arrived without incident."

Using NWA's proposed verdict form, the jury found the Costa estate suffered $2,300,000 in noneconomic damages. The NWA verdict form did not

differentiate between the negligent driving and the failure to use all available restraints.

Before entering judgment on the jury verdict, the trial court heard NWA's motion for revision concerning summary judgment. After oral argument, the court denied NWA's motion for revision. The trial court then entered judgment on the jury verdict.

Post Judgment Payment

Following the entry of judgment on the verdict, NWA provided Lang with a letter stating it included three checks, totaling $2,318,131.13, "in full satisfaction of the judgment entered on February 22, 2024." Signed by NWA's attorney, the letter also requested a satisfaction of judgment to be executed and filed.

Two of the three enclosed checks noted that they were for "full and final settlement for any and all claims." The third check stated it was for "Post Judgment Interest adjustment." And the proposed satisfaction of judgment form provided that the judgment had been fully satisfied.

In March 2022, Lang informed NWA that the checks sent did not cover all 27 days of interest owed on the judgment debt and therefore could not be deposited with the full and final settlement language. NWA responded that only 26 days were owed. Lang then deposited the checks that same day.

Once Lang deposited the checks, NWA served the estate with a notice of appeal. Lang contended that a settlement agreement, documented in the letter

and checks, did away with all potential appellate claims. NWA, expressing confusion, argued no such settlement agreement existed.

Lang contended that the language from the letter and checks, stating that they were in "full and final settlement of any and all claims" settled any appellate claim and pointed out that NWA's attorney signed the letter. Lang continued on to assert that the Costa estate gave up its right to the 27th day of interest in exchange for all parties giving up their appellate claims. NWA again disagreed, stating no such settlement agreement existed and that NWA only owed 26 days of interest. Lang then moved to enforce the settlement agreement.

The trial court refused to enforce a settlement agreement, concluding no meeting of the minds occurred and that the debt was undisputed. The trial court also ruled, however, that the judgment had not been satisfied because NWA owed Lang 27 days of interest.

Lang moved for reconsideration, noting the trial court found the judgment debt to be undisputed while simultaneously resolving a dispute over that debt. In the alternative, Lang requested that the court enter a direct entry of judgment on its decision denying enforcement of the settlement agreement. Requesting a response only on the latter issue, the trial court certified that its denial of the motion to enforce the settlement constituted a final order ripe for appeal.

ANALYSIS

Summary Judgment

NWA asserts that the trial court erred in granting Lang's motion for summary judgment and denying NWA's motion for summary judgment because the trial court misconstrued RCW 18.71.210. Because, under the facts of this case, RCW 18.71.210 does not extend qualified immunity to ambulance transportation or the use of gurney restraints, we conclude that the trial court acted appropriately in granting Lang's motion in part and denying NWA's motion.

We review a trial court's grant of summary judgment de novo, engaging in the same inquiry as the trial court. *Keck v. Collins*, 184 Wn.2d 358, 370, 357 P.3d 1080 (2015). We consider the evidence and all reasonable inferences therefrom in the light most favorable to the nonmoving party. *Keck*, 184 Wn.2d at 370. Summary judgment is appropriate when no genuine issue exists as to any material fact and the moving party is entitled to judgment as a matter of law. Civil Rule (CR) 56(c).

1. Qualified Immunity under RCW 18.71.210

NWA contends that the trial court misconstrued RCW 18.71.210 in denying its motion for summary judgment because ambulance transportation of patients receiving treatment and care to a medical facility is part of "emergency medical service" as a matter of law. Because the statute differentiates between emergency medical service and transportation, we disagree.

We review statutory interpretation de novo. *Thurman v. Cowles Co.*, 4 Wn.3d 291, 296, 562 P.3d 777 (2025). "The goal of statutory interpretation is to discern and implement the legislature's intent." *Thurman*, 4 Wn.3d at 296. In interpreting a statute, we look first to the plain language. *Thurman*, 4 Wn.3d at 296. This includes examining the plain language of the specific statutory provision, as well as the meaning of that language in the context of the whole statute and related statutes. *Thurman*, 4 Wn.3d at 296. We presume that the legislature did not intend absurd results. *Thurman*, 4 Wn.3d at 297.

To "promote the delivery of quality health care," the Washington legislature enacted Chapter 18.71 RCW to grant limited immunity for qualifying acts and omissions during emergency medical services. RCW 18.71.002.

RCW 18.71.210 provides:

> (1) No act or omission of any physician's trained advanced emergency medical technician and paramedic, as defined in RCW 18.71.200, or any emergency medical technician or first responder, as defined in RCW 18.73.030, done or omitted in good faith while rendering emergency medical service under the responsible supervision and control of a licensed physician or an approved medical program director or delegate(s) to a person who has suffered illness or bodily injury shall impose any liability upon:
>
> (a) [t]he physician's trained advanced emergency medical technician and paramedic, emergency medical technician, or first responder;
>
> . . . [or]
>
> (f) any licensed ambulance service.
>
> (2) This section shall apply to an act or omission committed or omitted in the performance of the actual emergency medical procedures and not in the commission or omission of an act which is not within the field of medical expertise of the physician's trained advanced emergency medical technician and paramedic,

> emergency medical technician, or first responder, as the case may be.
>
> (4) This section shall apply also, as to the entities and personnel described in subsection (1) of this section, to any act or omission committed or omitted in good faith by such entities or personnel involved in the transport of patients to mental health facilities or chemical dependency programs, in accordance with applicable alternative facility procedures adopted under RCW 70.168.100.

Chapter 18.71 RCW does not define "emergency medical service," but instead incorporates the definition in Chapter 18.73 RCW. RCW 18.71.010(2). RCW 18.73.030(11) defines emergency medical services as "medical treatment and care which may be rendered at the scene of any medical emergency or while transporting any patient in an ambulance to an appropriate medical facility."

RCW 18.71.210 also references "emergency medical procedures" as distinct from "emergency medical service." Under the Washington Administrative Code (WAC), "emergency medical procedures" include only skills performed within the scope of EMS personnel's practice. WAC 246-976-010(33). RCW 18.71.210 does not provide immunity "in the commission or omission of an act which is not within the field of medical expertise of the [EMT]."

Former WAC 246-976-182 (2011), in effect during the trial proceedings below, then defines the scope of practice. Former WAC 246-976-182(1)(c) states, "[c]ertified EMS personnel are only authorized to provide patient care. . . [w]ithin the scope of care that is: (i) [i]ncluded in the approved instructional guidelines/curriculum for the individual's level of certification; or (ii) [i]ncluded in approved specialized training; and (iii) [i]ncluded in state approved county [medical program director] codes."

RCW 46.61.035(1) describes emergency transportation, separate from emergency medical services or procedures, stating "the driver of an authorized emergency vehicle, when responding to an emergency call or when in the pursuit of an actual or suspected violator of the law or when responding to but not upon returning from a fire alarm, may exercise the privileges set forth in this section."

a. Ambulance Transportation

NWA alleges that the legislature intended ambulance transportation to be an essential element of emergency medical services rather than a distinct act. But the plain language of the statute and its surrounding context indicate otherwise. As stated, RCW 18.71.210 provides immunity for any act or omission done or omitted in good faith "while rendering emergency medical service." And as defined by RCW 18.73.030(11), emergency medical service means medical treatment and care provided at the scene of a medical emergency "or while transporting" a patient in an ambulance. Because emergency medical service is an act that can be done "while transporting" a patient, it is a distinct act from the transporting itself. As a result, transportation alone does not constitute an "emergency medical service."

NWA references an Illinois statute, maintaining that this court should interpret RCW 18.71.210 similarly to the applicable case law. But the Illinois statute immunizes both emergency and non-emergency services. And the statute's definition of non-emergency services explicitly includes "the provision of

. . . any and all acts necessary" taken "before, after, or during transportation."[2] Because driving an ambulance is an act necessary during transportation, it is necessarily a non-emergency medical service under the Illinois statute.

In contrast here, RCW 18.71.210 provides qualified immunity only to those "rendering emergency medical service." It does not grant immunity for non-emergency services. And because RCW 18.73.030 differentiates transportation from an emergency medical service, the Washington statute does not provide similar immunity to the non-binding Illinois statute.

Additionally, driving an emergency vehicle does not constitute medical expertise and is therefore not immune under the statute. As shown by the language of RCW 46.61.035(1), ambulance drivers share emergency vehicle driving expertise with law enforcement officers and firefighters. But law enforcement officers and firefighters do not necessarily have any medical training. Therefore, driving an emergency vehicle within the privileges outlined by RCW 46.61.035 does not constitute medical expertise within the field of expertise of an EMT. And RCW 18.71.210 does not provide immunity for an act not within the field of expertise of an EMT.

We conclude that RCW 18.71.210 does not provide qualified immunity for ambulance transportation.

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[2] 210 ILCS 50/3.10 (Illinois).

b. Use of Gurney Restraints

NWA next claims that EMTs' use of a gurney and gurney restraints is clearly an "emergency medical procedure" to which immunity applies. Lang asserts that we need not address this issue because NWA did not raise it below. We conclude that NWA did raise the issue but determine that NWA is not immune because, given the facts of this case, the use of shoulder straps does not fit into the scope of EMS practice.

Generally, a party may not raise an issue for the first time on appeal. RAP 2.5(a).

Here, Lang asserts that NWA did not argue below that the use of shoulder straps constitutes an emergency medical procedure as defined by RCW 18.71.210(2). Rather, NWA argued only that the failure to use all straps did not constitute gross negligence to overcome immunity. But both arguments, regardless of the specific wording, assert that NWA should be immune from liability in this case. As a result, NWA did raise the issue below and we continue on to address it.

NWA maintains, without authority, that licensed ambulance service crews are trained to use restraints and seat belts as part of their medical training. Because NWA provides no citation for this statement, we disregard this assertion; especially given NWA's EMT testimony. Wilson testified that he had no recollection of being trained to use the shoulder restraints and that he had rarely seen other EMTS use the shoulder restraints. RCW 18.71.210 (2)

provides that the statute shall not apply "in the commission or omission of an act which is not within the field of medical expertise of the. . . emergency medical technician or first responder," using "the" rather than "a" or "an" to modify the emergency provider. Thus, the plain language indicates that the specific EMT's training is at issue, not an EMT in general. Therefore, NWA's unsupported claim about how EMTs are usually trained is irrelevant. The EMT at issue testified that he was not trained on how to use shoulder straps. As a result, the use of shoulder straps under these facts is not an act within the field of medical expertise of the EMT. Accordingly, the statute does not extend immunity in the present case.

2. Gross Negligence

NWA then asserts that the court erred in granting Lang's motion in part because Lang failed to plead or offer evidence of gross negligence by the ambulance crew. But because the statute does not provide qualified immunity for the behavior at issue and NWA conceded negligence, Lang did not need to plead or offer evidence of gross negligence.

As noted above, RCW 18.71.210 does not provide qualified immunity for ambulance transportation or the use of gurney restraints. Therefore, no immunity to overcome exists and a party need only plead negligence. Because NWA conceded its negligence, the trial court acted appropriately in granting Lang's motion for summary judgment in part and denying NWA's motion.

CROSS APPEAL

Settlement Agreement

On cross-appeal, Lang alleges that the trial court erred in denying his motion to enforce the settlement agreement because the parties reached an accord and satisfaction as to that settlement agreement. Therefore, because the agreement precludes any further claims, this court should dismiss NWA's appeal. NWA maintains that the court did not err because no meeting of the minds occurred and the parties never signed or agreed to a binding settlement agreement as required by CR 2A. We agree with NWA.

We review a trial court's denial of a motion to enforce a settlement agreement de novo. *Lavigne v. Green*, 106 Wn. App. 12, 16, 23 P.3d 515 (2001).

An accord and satisfaction is a new contract, complete within itself. *Paopao v. Dep't of Soc. & Health Servs.*, 145 Wn. App 40, 46, 185 P.3d 640 (2008). The principle allows for parties to agree to "settle a claim by some performance different from that which is claimed due." *Pugh v. Evergreen Hosp. Med. Ctr.*, 177 Wn. App. 348, 358, 311 P.3d 1253 (2013). To do so, it requires "a bona fide dispute, an agreement to settle the dispute for a certain sum, and performance of the agreement." *Pugh*, 177 Wn. App. at 358. An accord and satisfaction also requires consideration. *Kibler v. Frank L. Garrett & Sons, Inc.*, 73 Wn.2d 523, 525, 439 P.2d 416 (1968).

When parties dispute the amount owed, a court may imply an accord and satisfaction from surrounding circumstances. *U.S. Bank Nat. Ass'n v. Whitney*, 119 Wn. App. 339, 351, 81 P.3d 135 (2003). For example, "if the amount of a debt is unliquidated or disputed, then the tender of a certain sum in full payment, followed by acceptance and retention of the amount tendered, establishes an accord and satisfaction." *Whitney*, 119 Wn. App. at 351. This does not apply, however, to amounts that are liquidated or certain and due. *Whitney*, 119 Wn. App. at 351. And "before the acceptance of a lesser sum than may be owed on a disputed account . . . will give rise to an accord and satisfaction, the party contending for that result must prove there was a meeting of the minds and that both parties understood that such would be the result." *Gleason v. Metropolitan Mortg. Co.*, 15 Wn. App. 481, 498, 551 P.2d 147 (1976).

CR 2A then further governs the enforcement of a settlement action. *Morris v. Maks*, 69 Wn. App. 865, 868, 850 P.2d 1357 (1993). CR 2A requires out of court agreements, such as an accord and satisfaction, to be both in writing and signed by the attorney for the party denying the agreement. As a result, CR 2A " 'precludes enforcement of a disputed settlement agreement not made in writing or put on the record, whether or not common law requirements are met.' " *In re Patterson*, 93 Wn. App. 579, 582-83, 969 P.2d 1106 (1999) (quoting *In re Marriage of Ferree*, 71 Wn. App. 35, 39-40, 856 P.2d 706 (1993)).

1. Accord and Satisfaction

Lang claims that the parties met all accord and satisfaction elements because the parties disputed the debt by disagreeing on the interest calculation, the release of all claims constituted additional consideration, there was a meeting of the minds between the parties, and Lang performed the agreement. NWA does not dispute the existence of a bona fide dispute or of Lang's performance. But NWA does maintain that no meeting of the minds occurred on the alleged "accord" to preclude any appeal. We conclude Lang fails to establish an accord and satisfaction because no "meeting of the minds" exists.

"An accord [and satisfaction] requires a 'meeting of the minds,' an intention on the part of both parties to create an accord and satisfaction as a matter of law." *Whitney*, 119 Wn. App. at 351 (quoting *Kibler*, 73 Wn.2d at 525). The creditor must understand that the money is tendered on the condition that its acceptance constitutes satisfaction. *Whitney*, 119 Wn. App. at 351. " 'The mere fact that the creditor receives less than the amount of [their] claim, with knowledge that the debtor claims to be indebted to [them] only to the extent of the payment made, does not necessarily establish an accord and satisfaction.' " *Whitney*, 119 Wn. App. at 351 (internal quotation marks omitted) (quoting *Kibler*, 73 Wn.2d at 527).

Here, Lang fails to establish a meeting of the minds that the money was offered only on condition of accord and satisfaction. In fact, the record is clear that NWA's intent in tendering the payments it made to Costa's estate was to

satisfy the judgment, rather than to propose a compromise. NWA and Lang did dispute the amount of interest owed. But as a result of that dispute, the letter included with the checks simply states NWA's intent to satisfy the judgment and stop post-judgment interest from accruing. The full and final satisfaction language that Lang references, both in the letter and on the checks, did not in and of itself create an agreement for Lang to accept less than the full amount of the judgment owed in exchange for NWA dismissing its right to appeal. And the mere fact that Lang received less than the amount he believed owed to him, knowing from NWA's correspondence that NWA believed it had paid the entirety owed, does not establish an accord and satisfaction.

NWA and Lang did not create an accord and satisfaction limiting NWA's ability to appeal.

2. CR 2A

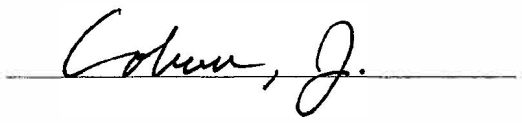
Lastly, Lang claims that the purported settlement agreement satisfied CR 2A's requirements. We disagree.

CR 2A precludes enforcement of an alleged settlement agreement that is genuinely disputed. *In re Patterson*, 93 Wn. App. 579, 582-83, 969 P.2d 1106 (1999). A party moving to enforce a settlement agreement must prove "there is no genuine dispute over the existence and material terms of the agreement." *Brinkerhoff v. Campbell*, 99 Wn. App. 692, 696-97, 994 P.2d 911 (2000). We consider the record "in the light most favorable to the nonmoving party." *Brinkerhoff*, 99 Wn. App. 692 at 697.

Here, as noted above, the parties clearly dispute the existence and material terms of the agreement. The parties did not agree to a binding settlement agreement under CR 2A limiting either party's ability to appeal.

We affirm.

WE CONCUR:



No. 862057
King County Superior Court Case No. 21-2-15364-6

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

MICHAEL J. LANG, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF FRANK E. COSTA, ON BEHALF OF THE ESTATE AND ALL STATUTORY beneficiaries,

Plaintiffs/Respondents,

v.

PLATINUM NINE HOLDINGS, LLC, DOING BUSINESS AS NORTHWEST AMBULANCE,

Defendant/Appellant.

APPELLANT'S OPENING BRIEF

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I. INTRODUCTION

This appeal presents a legal issue of first impression about the application of qualified immunity (RCW 18.71.210 ("Section 210")) to licensed ambulance services. Section 210 provides, in relevant part, that no acts or omissions by emergency medical technicians ("EMTs") or first responders "while rendering emergency medical ***service***" to a patient that has "suffered illness or bodily injury" shall impose any liability on the EMTs or the first responder absent gross negligence or willful misconduct. RCW 18.71.210(1) (emphasis added). "Emergency medical service" means "medical treatment and care which may be rendered at the scene … or while transporting any patient to an appropriate medical facility." RCW 18.73.030(11). In addition to EMTs, Section 210 extends immunity to several categories of persons involved in emergency medical services, including, specifically, "any licensed ambulance service." RCW 18.71.210(1)(f).

The trial court equated "emergency medical services" with "medical care" or "medical procedures." As a result, it interpreted "emergency medical services" – and thus the qualified immunity – too narrowly. This is not what the Legislature intended. It defined ambulance transportation as an "emergency medical ***service***" that is entitled to immunity. RCW 18.71.210. The trial court's erroneous interpretation of the statute should be reversed. Because Plaintiff never pleaded that the Defendant's ambulance crew acted with gross negligence, it is immune from liability in the lawsuit below. The judgment against it should be reversed.

II. ASSIGNMENTS OF ERROR

1. The trial court erred in partially granting Plaintiff's summary judgment motion and in dismissing the immunity defense. CP 309-315.
2. The trial court erred in denying the Defendant's summary judgment motion. CP 316-320.

3. The trial court erred in entering judgment against the Defendant. CP 347-349.

III. ISSUE RELATED TO ASSIGNMENT OF ERROR

Whether a licensed ambulance service that is transporting a patient to a hospital under the emergency "code" is immune from suit under RCW 18.71.210 when the ambulance driver's ordinary negligence causes a collision that injures the patient.

IV. STATEMENT OF THE CASE

This is a wrongful death and survival action. The Plaintiff, Michael J. Lang, is a Personal Representative of the Estate of Frank E. Costa. CP 1. Mr. Costa was 78 and suffered from metastatic breast cancer. CP 138. He resided at Genesis Care Center in Everett. *Id.*

The Defendant, Platinum Nine Holdings, LLC ("NWA"), is a Washington limited liability company doing business as Northwest Ambulance. CP 2. NWA is a licensed ambulance service provider in the State of Washington, under license number AMB.ES6147440. CP 2, 138, 150-151.

On November 18, 2020, Genesis Health Care Center requested an ambulance transfer for Mr. Costa to Providence Medical Center due to some concerning lab work. CP 22, CP 138. NWA employees Jack Wilson (an EMT), Henry Shaw (the ambulance driver), and Kat Averill (an EMT trainee) responded to the call. CP 138; CP 154 ("NW26 was dispatched non-code, normal speed to genesis Living Facility, for a 78y/o male pt with CC of abnormal [labs]."). The ambulance crew moved Mr. Costa from his bed to the ambulance stretcher and secured him with two lap belts and guardrails. *Id.* at 139, 154. No shoulder belt was used. Mr. Wilson testified that shoulder restraints were for "specific patients" who "weren't able to control their upper body." CP 139.

During transport Mr. Costa's condition deteriorated and Mr. Wilson called an emergency code. Mr. Shaw turned on ambulance lights and sirens. CP 139-140, 154 ("Pt was transported CODE due to possible abnormal heart rhythm."). The ambulance was driving east on Highway 526, in the left

lane, towards the exit to I-5 north, on the left. CP 140. A garbage truck was in front of the ambulance. Mr. Shaw saw that the garbage truck began to move to the right to yield and began passing it on the left. Then the garbage truck moved back into the left lane and slowed down. Mr. Shaw hit the brakes to avoid a collision and swerved to the right, hitting a freeway exit divider on the right. CP 140, 154.

Mr. Costa slid out of the stretcher and hit the ambulance wall, sustaining injuries. *Id.* The EMT trainee was launched from the bench seat to a side wall and was slightly injured. Mr. Costa was transported to the hospital by another ambulance. He died later that day. CP 140.

The complaint stated that NWA was "negligent" and that its negligence proximately caused Mr. Costa's death. It did not plead that NWA was grossly negligent, failed to act in good faith, or acted willfully. CP 4, CP 18. In its answer, NWA asserted the defense of qualified immunity under RCW 18.71.210. CP 12.

NWA subsequently admitted that "its employees while operating an ambulance within the course and scope of their employment with Platinum Nine, failed to exercise ordinary care by not securing Frank Costa onto the gurney with all available straps and by not avoiding an accident with a freeway-exit divider." CP 338. NWA further admitted that "because of its negligence, Frank Costa suffered injuries including: closed nondisplaced fracture of the second cervical vertebra, laceration on the forehead, abrasion on the left upper extremity, closed fracture of multiple ribs, and closed fracture of thoracic vertebra," CP 341; and that NWA's "ordinary negligence proximately caused Frank Costa's accident-related injuries and death," CP 345. NWA denied gross negligence and reiterated its defense of qualified immunity under RCW 18.71.210. CP 341, 345. NWA also preserved its right to assert the affirmative defense of qualified immunity under RCW 18.71.210. *Id.*

The trial court addressed the defense in the orders on the parties' motions for summary judgment. CP 309-315, 316-320.

The Plaintiff's motion asserted that RCW 18.71.210 "has no application to the facts of this case" because "NW Ambulance employees' failure to properly secure Mr. Costa was not part of any 'actual emergency medical procedures' .... Neither driving nor buckling seatbelts are medical procedures nor within any 'field of medical expertise' .... *See* RCW 18.71.210(2)." CP 36.

NWA opposed the motion, arguing, *inter alia*, that "the statute provides immunity to EMTs and ambulance service providers for acts or omissions done or omitted in good faith while rendering **emergency medical service**. RCW 18.71.210," a concept distinct from "emergency medical procedures." CP 294 (emphasis in original). NWA further argued that operating an ambulance to transport patients to an appropriate medical facility in an emergency is an "integral part" of the emergency medical service "provide[d] to the public, something that its [crew] are specifically trained to do." *Id.* Similarly, "[a] stretcher, as specifically defined by statute, is an essential piece

of equipment used by EMTs. Just like operation of an ambulance, safely and appropriately operating a stretcher is a skill that is reserved for specially certified persons, such as WEMTs." *Id.*; *see also id.* at 249-250 (The NWA ambulance crew "were utilizing the skills and tools … that they were trained and authorized by the State to use when the accident occurred.… Driving an ambulance with the lights and sirens running and securing the patient to a stretcher are skills that are performed within the scope of EMS practice.").

The trial court rejected NWA's interpretation of Section 210. CP 311-312. It ruled, as a matter of law, that "driving an ambulance is not emergency medical service" and "thus Platinum Nine is not immune from suit." CP 312. The trial court reiterated its ruling in the order denying NWA's motion for summary judgment. CP 317-319.

The issue of noneconomic damages was tried to a jury. CP 347-348. The jury awarded $2,000,000 and $300,000,

respectively, to Mr. Costa and Ms. Marianne Long, his niece. *Id.* This appeal followed.

V. ARGUMENT

A. The trial court misconstrued RCW 18.71.210

1. This Court interprets statutes *de novo*

The trial court's interpretation of Section 210 presents a question of law reviewed de novo. When engaging in statutory interpretation, the court seeks to determine and give effect to the Legislature's intent. *Samuels v. MultiCare*, 10 Wn. App. 2d 1034, 2019 WL 4849288, at *4 (2019) (unpublished). To do so, the court first examines the statute's plain language and ordinary meaning. Legislative definitions included in the statute are controlling, but in the absence of a statutory definition, the term has its plain and ordinary meaning as defined in the dictionary. *Id.* "In addition, we consider the specific text of the relevant provision, the context of the entire statute, related provisions, and the statutory scheme as a whole when analyzing a statute's plain language." *Id.* "Related

statutory provisions are interpreted in relation to each other and all provisions harmonized." *C.J.C. v. Corp. of the Catholic Bishop of Yakima*, 138 Wn.2d 699, 708-09, 985 P.2d 262 (1999).

Applying these principles demonstrates that the trial court construed RCW 18.71.210(1) too narrowly and failed to harmonize RCW 18.71.210(2) with the rest of Section 210. The result is contrary to the Legislature's explicit intent to immunize good-faith acts or omissions by ambulance crews transporting patients who are receiving care to medical and other treatment facilities. The trial court's orders that stripped away NWA's immunity defense should be reversed.

2. Ambulance transportation of patients receiving treatment and care to a medical facility is part of "emergency medical service" as a matter of law

In order to "promote the delivery of quality health care," the Legislature granted limited immunity for qualifying acts and omissions during emergency medical services. RCW 18.71.002. The immunity "protects first responder from 'the

unduly inhibiting effect the fear of personal liability would have on the performance of their professional obligations.'"

Samuels, 2019 WL 4849288, at *4 (quoting *Marthaller v. King Cnty. Hosp. Dist. No. 2*, 94 Wn. App. 911, 915-16, 973 P.2d 1098, 1101 (1999)). "'Qualified immunity is immunity from suit, not simply from liability.'" *Marthaller*, 94 Wn. App. at 916 (citation omitted).

Section 210 provides:

> (1) No act or omission of any physician's trained advanced emergency medical technician and paramedic, as defined in RCW 18.71.200, or any emergency medical technician or first responder, as defined in RCW 18.73.030, done or omitted in good faith ***while rendering emergency medical service*** under the responsible supervision and control of a licensed physician or an approved medical program director or delegate(s) to a person who has suffered illness or bodily injury shall impose any liability upon:
>
> (a) The physician's trained advanced emergency medical technician and paramedic, emergency medical technician, or first responder;
>
> . . .
>
> ***(f) Any licensed ambulance service***;
>
> . . .

(2) This section shall apply to an act or omission committed or omitted in the performance of the actual emergency medical procedures and not in the commission or omission of an act which is not within the field of medical expertise of the physician's trained advanced emergency medical technician and paramedic, emergency medical technician, or first responder, as the case may be.

….

(4) This section shall apply ***also***, as to the entities and personnel described in subsection (1) of this section, to any act or omission committed or omitted in good faith by such entities or personnel involved in the transport of patients to mental health facilities or chemical dependency programs, in accordance with applicable alternative facility procedures adopted under RCW 70.168.100.

(Emphasis added.)

Chapter 18.71 RCW does not define "emergency medical service." Instead, it incorporates the definition in 18.73 RCW, a related chapter.[1] RCW 18.71.010(2) ("'Emergency medical

[1] Chapter 18.73 RCW addresses Emergency Medical Care and Transportation Services. *See* RCW 18.73.010 ("The legislature finds that a statewide program of emergency medical care is necessary to promote the health, safety, and welfare of the citizens of this state. The intent of the legislature is to assure minimum standards and training for first responders and emergency medical technicians, and minimum standards for ambulance services, ambulances, aid vehicles, aid services, and emergency medical equipment.").

service' … has the same meaning as in chapter 18.73 RCW."). Chapter 18.73 RCW defines "emergency medical services" as "***medical treatment and care*** which may be ***rendered at the scene*** of any medical emergency ***or while transporting any patient in an ambulance to an appropriate medical facility***, including ambulance transportation between medical facilities." RCW 18.73.030(11) (emphasis added). In addition to Chapters 18.71 and 18.73 RCW, Chapter 70.168 RCW, the Statewide Emergency Medical Services and Trauma[2] Care System Act, defines "emergency medical service" identically. RCW 70.168.015(6); RCW 70.168.900; RCW 18.71.010(2). All three Chapters (18.71, 18.73, and 70.168 RCW) are implemented in WAC chapter 246-976, the regulations that administer a "statewide system EMS/TC [emergency medical service and trauma care] system." WAC 246-976-001(1)(g).

[2] "'Trauma' means a major single or multisystem injury requiring immediate medical or surgical intervention or treatment to prevent death or permanent disability." RCW 70.168.015(30).

The consistent definitions in Chapters 18.71, 18.73, and 70.168 RCW demonstrate that the Legislature intended for EMS to have the same meaning whether the patient experiences trauma or any other health emergency. RCW 18.71.010(2), RCW 18.73.030(11), RCW 70.168.015(6). EMS includes – but is not limited to – "medical treatment and care … rendered at the scene of … [a] medical emergency" or "while[3] transporting" the patient to the medical facility or between medical facilities. RCW 18.73.030(11); RCW 70.168.015(6). NWA correctly argued below that in the latter case ambulance transportation is an ***integral part*** of EMS/TC, not something separate from it. CP 294-295 ("Transporting patients by ambulance is an integral part of the service EMTs provide to the public, and something that they are specifically trained to

[3] "While" means "during the time that." *While, Merriam Webster Online Dictionary*, merriam-webster.com (last visited 9/4/24); *see also Wright v. Commonwealth*, 685 S.E.2d 655, 657 (Va. 2009) ("While" is "[t]he temporal meaning of 'at the same time.'").

do.") (citing 2021 National Emergency Medical Services Education Standards and Department of Health EMS training course)[4]; *see Hernandez v. Lifeline Ambulance*, 181 N.E.3d 131, 137 (Ill. 2020) ("'[T]ransporting a patient to a hospital is an aspect of life support services.'" (citation omitted)).

In *Hernandez* the court applied the Illinois EMS Act,[5] which, similarly to Section 210, immunizes acts or omissions in

---

[4] National Highway Traffic Safety Administration, *National Emergency Medical Services Educational Standards"* (Nov. 2021), https://www.ems.gov/assets/EMS_Education-Standards_2021_FNL.pdf at 24 (listing principles of safely operating emergency response vehicles as required training); Washington State Dep't of Health, *EMS Course Schedule* (May 2021), https://doh.wa.gov/sites/default/files/legacy/Documents/Pubs/530019.doc (listing approved skills and procedures for certified EMS providers; course 14-1 includes Principles of Safely Operating a Ground Ambulance).

[5] The then-current Illinois statute provided, "Any person, agency or governmental body certified, licensed or authorized pursuant to this Act or rules thereunder, who in good faith provides emergency or non-emergency medical services … in the normal course of conducting their duties, or in an emergency, shall not be civilly liable as a result of their acts or omissions in providing such services unless such acts or omissions … constitute willful and wanton misconduct." 210 ILS 50/3.150(a) (2016).

providing emergency medical services unless those acts or omissions constitute willful and wanton misconduct. *Hernandez* clarified that the immunity applies to "preparatory conduct integral to providing emergency treatment," which begins when the ambulance arrives at the location of the patient pickup. 181 N.E.3d at 138 (cleaned up); *see also Wilkins v. Williams*, 991 N.E.2d 308 (Ill. 2013) (section 3.150 immunity applies to a suit against the ambulance company for an accident caused by the ambulance driver's negligence while a paramedic was medically monitoring the patient who was being transported to a medical facility). In *Wilkins*, on facts nearly identical to this case, under the Illinois EMS Act, which is similar to Section 210, ambulance transportation was held to be an integral part of the delivery of emergency medical services, which begins when an ambulance arrives for patient pickup.

The trial court below reached a different conclusion. It viewed ambulance transportation as something separate from EMS/TC rather than its essential element. Beyond its mistaken

reliance on "while," it identified nothing in Section 210 or related statutes that supports this narrow view of EMS/TC:

> "'[E]mergency medical service' means medical treatment and care which may be rendered at the scene of any medical emergency *or while transporting* any patient in an ambulance to an appropriate medical facility, including ambulance transportation between medical facilities." RCW 18.73.030(11). This language in RCW 73.030(11) reflects that "emergency medical service" is something done "while transporting" and therefore is distinct from the transporting itself. … The Court concludes that there are no genuine issues of material fact and that **driving an ambulance is not emergency medical service** and thus Platinum Nine is not immune from suit.

CP 311-312 (italicized emphasis in original; bold emphasis added).

This is not what the Legislature intended. It created an integrated EMS/TC statewide ***system*** administered as a whole. WAC 246-976-001, .010. The Legislature defined EMS/TC consistently throughout three RCW chapters and explicitly ***included*** ambulance transportation as an essential part of the emergency medical service the patient receives:

- "'Trauma care system' means an organized approach to providing care to trauma patients that provides personnel, facilities, and equipment for effective and coordinated trauma care.… [It] includes prevention, ***prehospital care***, hospital care, and rehabilitation." RCW 70.168.015(31) (emphasis added);

- "'Prehospital' means emergency medical care ***or transportation rendered to patients prior to hospital admission*** or during interfacility transfer." RCW 70.168.015(26) (emphasis added);

- "'Ambulance' means a ground or air vehicle designed and used to transport the ill and injured ***and to provide personnel, facilities, and equipment to treat patients before and during transportation.***" RCW 18.73.030(4) (emphasis added);

- "'Emergency medical services and trauma care system plan' means a statewide plan that identifies statewide emergency medical services and trauma care objectives and priorities and identifies equipment, facility, personnel, training, and other needs required to create and maintain a statewide emergency medical services and trauma care system." RCW 70.168.015(8);

- "'Emergency medical services and trauma care (EMS/TC) system' means an ***organized approach to providing personnel, facilities, and equipment*** for effective and coordinated medical treatment of patients with a medical emergency or injury

requiring immediate medical or surgical intervention to prevent death or disability." WAC 246-976-010(31) (emphasis added);

- "'EMS provider' means an individual certified by the secretary or the University of Washington School of Medicine under chapters 18.71 and 18.73 RCW to provide prehospital emergency response, patient care, ***and transport.***" WAC 246-976-010(35) (emphasis added); and

- "The following ***EMS services*** may be verified [by the Secretary of the Department of Health]: … (b) ***Ground ambulance service*** … ; (c) Air ambulance service." WAC 246-976-390(3).

These definitions are unambiguous and speak for themselves. An ambulance transporting the patient who is experiencing a health emergency or trauma provides more than a ride to the hospital separate from treatment and care. It provides "personnel, facilities, and equipment" to treat patients before and during transportation, RCW 18.73.030(4); as well as "prehospital care," RCW 70.168.015(27), (31). The ambulance crews are licensed and trained accordingly. *See* RCW 18.73.081(1)-(3); RCW 18.73.130 ("An ambulance service … may not operate in the state of Washington without holding a

license for such operation, issued by the secretary when such operation is consistent with the statewide and regional emergency medical services and trauma care plans established pursuant to chapter 70.168 RCW.").

The trial court's conclusion that "driving an ambulance is not emergency medical service" construes EMS/TC too narrowly and is not consistent with the Legislature's explicit definitions that ***include*** ambulance transportation in EMS/TC. This initial error caused the trial court to misconstrue the scope of immunity under Section 210. It reasoned that "'[e]mergency medical ***procedures***' means the skills that are performed within the scope of practice of EMS personnel," CP 312 (citing WAC 246-976-182(1)(c)[6] (emphasis added)). But the immunity in Section 210 is focused on "emergency medical services," not on "procedures." *See Samuels*, 2019 WL 4849288, at *4 ("RCW

[6] WAC chapter 246-976 nowhere limits "emergency medical service" to medical "procedures," nor does it exclude ambulance transportation from the definition of EMS/TC.

18.71.210 applies to emergency medical service personnel, allowing them immunity from liability for actions or omission done in good faith while rendering emergency medical ***service***." (emphasis added)); *Marthaller*, 94 Wn. App. at 915-16 ("RCW 18.71.210 provides paramedics with qualified immunity from liability for their acts or omissions in rendering emergency medical ***services***." (emphasis added)). The two terms are not synonymous. *Compare* RCW 18.73.030(11) *with* RCW 18.73.030(18) ("'Patient care procedures' means written operating guidelines adopted by the regional emergency medical services and trauma care council … in accordance with statewide minimum standards.").

The trial court's mistaken focus on "medical procedures" instead of "emergency medical services" effectively limits Section 210 immunity to personnel, such as EMTs, who directly perform medical procedures on patients. However, Section 210 immunity applies to several categories of entities and personnel who perform ***no*** medical procedures:

> (a) The physician's trained advanced emergency medical technician and paramedic, emergency medical technician, or first responder;
> (b) The medical program director;
> (c) The supervising physician(s);
> (d) Any hospital, the officers, members of the staff, nurses, or other employees of a hospital;
> (e) Any training agency or training physician(s);
> (f) Any licensed ambulance service; or
> (g) Any federal, state, county, city, or other local govermnental unit or employees of such a govermnental unit.

RCW 18.71.210(1); *see Poletti v. Overlake Hosp.*, 175 Wn. App. 828, 835, 303 P.3d 828 (2013) (interpreting the immunity under RCW 71.05.129 and holding that the Legislature intended to provide limited immunity for a range of decisions that a hospital can make when a patient arrives); *Ghodsee v. City of Kent*, 21 Wn. App. 2d 762, 779-80, 508 P.3d 193 (2022) (the limited immunity applies not only to the ultimate decision of whether or not to detain a patient for involuntary treatment, but "expressly includes a variety of other duties" which "encompass the acts taken to effectuate those decisions").

The trial court's reading of Section 210 nullifies the immunity extended to the entities and personnel in subsections

(b)-(g) above. The Legislature did not mean these subsections to be an empty letter. *See Sellen Constr. Co. v. Dep't of Revenue*, 87 Wn.2d 878, 883, 558 P.2d 1342 (1976) ("By interpretation we should not nullify any portion of the statute."). The trial court's interpretation is inconsistent with the legislative intent and should be rejected.

It is also in direct conflict with subsection 4, which explicitly "***also***" provides immunity for acts or omissions involved "***in the transport of patients to mental health facilities or chemical dependency programs***, in accordance with applicable alternative facility procedures adopted under RCW 70.168.100." RCW 18.71.210(4) (emphasis added); *see also* RCW 18.73.280 ("An ambulance service may transport patients to a nonmedical facility, such as a mental health facility or chemical dependency program as authorized in regional emergency medical services and trauma care plans under RCW 70.168.100."). It makes no sense for the Legislature to have extended immunity to the ambulance crew that transports a

patient suffering from a drug overdose to a chemical dependency program or a mental hospital – and at the same time to have denied immunity to the same crew that rushes a patient who suffers a health emergency due to a chronic (or even potentially fatal) illness, to a hospital.

The word "also" in subsection (4) shows that the Legislature did not intend to create such an irrational double standard. *See also Merriam Webster Online Dictionary*, merriam-webster.com (last visited 9/4/24) ("also" means "**likewise**" and "**in addition; besides**" (emphasis added)). Instead, it shows that the Legislature extended immunity to the licensed ambulance services in both scenarios. An ambulance crew transporting a patient receiving treatment and care to a medical facility is immune from suit unless it is grossly negligent; so is ("also") a crew that is transporting a patient to a mental health facility or a chemical dependency treatment program. RCW 18.71.210(1), (4). The trial court's erroneous reading of Section 210 creates an anomalous and unmanageable

result that would extend immunity only in the latter scenario. Unless corrected, it will deter the delivery of prompt emergency medical services in the State for fear of liability for good-faith acts or omission. It should be rejected and the proper scope of immunity under Section 210 restored.

3. The trial court's reading of RCW 18.71.210(2) would render the balance of the statute a nullity and should be rejected

The trial court's interpretation of RCW 18.71.210(2) is untenable for similar reasons. Subsection (2) provides that "[t]his section shall apply to an act or omission committed or omitted in the performance of the actual ***emergency medical procedure*** and not in the commission or omission of an act which is not within the field of medical expertise of the physician's trained advanced emergency medical technician and paramedic, emergency medical technician, or first responder, as the case may be." (Emphasis added.) "'Emergency medical procedures' means the skills that are performed within the scope of practice of EMS personnel certified by the secretary

under chapters 18.71 and 18.73 RCW." WAC 246-976-010(30). The trial court read subsection (2) to conclude that Section 210 extends qualified immunity ***only*** for the delivery of medical procedures by the EMS personnel.

As discussed, this reduces the majority of subsection (1), which extends immunity to several categories of entities and personnel who are not involved in the delivery of medical procedures, to a nullity. It also nullifies subsection (4) that "***also***" extends immunity to licensed ambulance services transporting patients to mental hospitals and drug treatment centers. RCW 18.71.210(4) (emphasis added). The entities and personnel granted immunity in RCW 18.71.210(1)(b)-(g) – including, specifically, licensed ambulance services identified in RCW 18.71.210(1)(f) – and RCW 18.71.210(4) were granted qualified immunity not because they perform medical procedures but because the Legislature recognized that they play an essential role in the statewide system of emergency and trauma care.

Subsection (2) cannot be read to strip away the immunity the Legislature extended to the entities and personnel in those categories and nullify the majority of Section 210. Instead, subsection (2) clarifies what actions by the EMTs, paramedics, and first responders are entitled to immunity. While the individuals in that category play a key role in delivering treatment and care and performing medical procedures on patients who experience health care emergencies or trauma, that is not all they may need to do in a specific case. Subsection (2) clarifies that the immunity does not extend any further than their medical competence and does not immunize any actions "not within the field of medical expertise" they may need to perform. *See, e.g., Hernandez*, 181 N.E.3d at 139 ("[T]he simple act of driving many miles before reaching the scene of a nonemergency transport cannot be integral preparatory conduct that triggers the immunity involved in rendering nonemergency medical care to a patient.").

The EMTs' use of a gurney and gurney restrains is plainly a "emergency medical procedure" to which the immunity under subsection (2) applies. A "litter [gurney], wheeled, collapsible, with a functional restraint system per the manufacturer" is mandatory equipment used by EMTs, paramedics, and first responders. WAC 246-976-300 (Table A). "Licensed and verified ground ambulance, aid services, and emergency services supervisory organizations (ESSO) must provide equipment listed in Table A of this section on each licensed vehicle or to their on-site EMS providers for the service levels they are approved by the department to provide when they are available for service." WAC 246-976-300(1); *see also* WAC 246-976-290(j) ("Restraints must be provided for all [stretchers, gurneys, etc.]…. These restraints must permit quick attachment and detachment for quick transfer of patient.").

The record below was undisputed that the ambulance that transported Mr. Costa was equipped with the gurney and

restraints and that the ambulance crew were trained to use them. CP 253-254, 280:14-24 ("I had two types of training… the specific kind of Monday through Friday … and then I also had … field training. … We had specific training on … loading stretchers in and out of ambulances, driving to hospitals."). (Jack Wilson deposition); CP 292:11-15 (Mr. Shaw was trained in the proper use of restraints "in the new hire class, proper restraining of a patient … was also covered in field training as well with the field training officers.") (deposition of Michael Kirkman, NWA's corporate designee).

The trial court misinterpreted RCW 18.71.210(2) as a matter of law. Subsection (2) does not strip away the immunity the Legislature specifically granted to licensed ambulance services and their personnel under RCW 18.71.210(1) and (4) when they transport patients who receive treatment and care to

medical and other facilities. NWA is immune from suit on the basis of Mr. Shaw's negligent driving as a matter of law.[7]

Independently, even under the trial court's narrow view of subsection (2), the use of the gurney and its restrains is an "emergency medical procedure" to which qualified immunity applies. The gurney and restraints are an essential piece of medical equipment that all licensed ambulances services are required to have and their crews are trained to use as part of their medical training. It follows that NWA was immune from

---

[7] In addition, driving the ambulance is an act "within the field of medical expertise" to which the immunity in RCW 18.71.210(2) applies. The Washington State Department of Health's list of "Approved Skills and Procedures for Certified EMS Providers" (Nov. 2023), https://doh.wa.gov/sites/default/files/2022-02/530173.pdf, is instructive. It provides that "EMS scope of practice includes ***environment of practice***," which presumably includes activities taking place in an ambulance, such as driving. The document includes a section on "Inter-Facility Specific Devices and Procedures" that outline circumstances under which paramedic personnel "may transport patients" with certain medical conditions. This necessarily assumes that (1) transporting the patient is a skill or procedure, and (2) transporting the patient requires a certain degree of medical knowledge and expertise.

suit on the basis of the negligent actions by Mr. Wilson, the EMT, and Ms. Averill, the EMT trainee, in using the gurney and restraints, as a matter of law.

The trial court's order granting Plaintiff's motion for summary judgment and dismissing NWA's immunity defense was based on an erroneous reading of Section 210 and should be reversed.

B. Plaintiffs never pleaded or offered evidence of gross negligence by the ambulance crew

The trial court's order denying NWA's motion for summary judgment was also erroneous and should be reversed. For the reasons discussed, NWA is immune as a matter of law from suit for the ordinary negligence by Mr. Shaw in the driving of the ambulance and for the negligent use of the gurney and restraints by Mr. Wilson and Ms. Averill, the EMTs.

However, the immunity from suit does not extend to "any act or omission which constitutes either gross negligence or willful or wanton misconduct." RCW 18.71.210(5). "Gross

negligence" is "'negligence substantially and appreciably greater than ordinary negligence,'" or "'failure to exercise slight care.'" *Samuels*, 2019 WL 4849288, at *4 (quoting *Nist v. Tudor*, 67 Wn.2d 322, 331, 407 P.2d 798 (1965)); *see also Nist*, 67 Wn.2d at 331 ("Gross negligence" does not mean the total absence of care, but care substantially or appreciably less than the quantum of care inhering in ordinary negligence.).

The Plaintiff never pleaded below that either Mr. Shaw or the EMTs, Mr. Wilson and Ms. Averill, were grossly negligent. CP 1-5, 14-19. Even when gross negligence is pleaded, "[t]o survive summary judgment in a gross negligence case, a plaintiff must provide substantial evidence of serious negligence." *Harper v. Dep't of Corrs.*, 192 Wn.2d 328, 345-46, 429 P.3d 1071 (2018). In the case below, Plaintiff offered neither evidence nor argument in support of the gross negligence, choosing instead to rely on the erroneous interpretation of Section 210. CP 195-202. Plaintiff cannot change course for the first time on appeal. *See Est. of Torres v.*

Kennewick Sch. Dist., No. 4:19-CV-05038-MKD, 2023 WL 3807017, at *11 (E.D. Wash. June 2, 2023) ("As Washington courts have consistently held, a plaintiff must demonstrate more than a breach of the applicable standard of care to survive summary judgment under RCW 18.71.210. If the degree of fault between negligence and gross negligence was always a jury question, statutory immunity would have little significance in the courts. To allow such claims to go to trial would obviate the purpose of the statute, which is to provide first responders with 'immunity from suit' and to shield them from the 'fear of personal liability[.]'" (quoting *Marthaller*, 94 Wn. App. at 916)).

The trial court erred in denying NWA's motion for summary judgment based on the immunity defense. It should be reversed and the case remanded with instructions to vacate the judgment for Plaintiff.

VI. CONCLUSION

For the reasons stated, NWA's appeal should be granted and adverse judgment against it reversed.

I certify that this document contains 5374 words, pursuant to RAP 18.17.

DATED this 26th day of September, 2024.

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the state of Washington that on this date I caused the foregoing document to be efiled with the Court of Appeals, Division I, which will send notification of this filing to all counsel of record.

DATED at Seattle, Washington, this 26th day of September, 2024.

/s/ Karrie Fielder
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IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

MICHAEL J. LANG, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF FRANK E. COSTA, ON BEHALF OF THE ESTATE AND ALL STATUTORY BEBEFICIARIES,

Plaintiffs/Respondents,

v.

PLATINUM NINE HOLDINGS, LLC, DOING BUSINESS AS NORTHWEST AMBULANCE,

Defendant/Appellant.

APPELLANT'S COMBINED BRIEF IN REPLY ON APPEAL AND RESPONSE TO CROSS APPEAL

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I. REPLY ON NWA'S APPEAL

A. Summary

Respondents' interpretation of RCW 18.71.210 is unreasonable. It runs contrary to the way the Legislature defined the statute's specific terms, ignores statutes in *pari materia* that share the same definitions, and reduces entire sections of RCW 18.71.210 to mere surplusage, or worse. As Respondents would have it, the Legislature immunized "entities and personnel" of the ambulance service that takes a patient to a mental health facility but ***in the same statute*** denied immunity to the ambulance team that rushes a stroke victim, with sirens on, to the nearest hospital. The Legislature did not intend this irrational distinction. It extended immunity for "[***a***]***ny*** licensed ambulance service" while "rendering emergency medical service," and repeatedly defined "ambulance service" to include ambulance transportation in both scenarios. RCW 18.71.210(1)(f) (emphasis added); RCW 18.71.210. The trial court's contrary ruling was erroneous and should be reversed.

B. The Trial Court Misinterpreted RCW 18.71.210

1. NWA is a "licensed ambulance service" provider within RCW 18.71.210(1)(f)

The Legislature extended qualified immunity to providers of "licensed ambulance service[s]" among other categories of trained personnel involved in delivering emergency medical services or trauma care (EMS/TC):

> No act or omission of any physician's trained advanced emergency medical technician and paramedic, as defined in RCW 18.71.200, or any emergency medical technician or first responde***r***, as defined in RCW 18.73.030,[1] done or omitted in good faith ***while rendering emergency medical service*** … ***to a person who has suffered illness or bodily injury*** shall impose any liability upon:
> ….
> (f) ***Any licensed ambulance service***.

RCW 18.71.210(1)(f) (emphasis added).

The underscored terms are defined in related statutes and regulations. "'Ambulance' means a ground or air vehicle designed and used to transport the ill and injured and to provide

[1] "'First responder' means a person who is authorized by the secretary to render emergency medical care as defined by RCW 18.73.081." RCW 18.73.030(15).

personnel, facilities, and equipment ***to treat patients before and during transportation***." RCW 18.73.030(4) (emphasis added); *see also* WAC 246-976-010(9) ("'Ambulance' or 'aid service activation' means the dispatch or other ***initiation of a response by an ambulance*** or aid service ***to provide prehospital care or interfacility transport***." (emphasis added)); *see also* RCW 70.168.015(26) ("'Prehospital' means emergency medical care or transportation rendered to patients prior to hospital admission or during interfacility transfer.")

In turn, "'[a]mbulance service' means an organization that operates one or more ambulances." RCW 18.73.030(5); *see also* WAC 246-976-010(10) ("'Ambulance service' means an EMS agency licensed by the secretary to operate one or more ground or air ambulances, consistent with regional and state plans."). "An ambulance service ***may*** transport patients to a nonmedical facility, such as a mental health facility or chemical dependency program as authorized in regional

emergency medical services and trauma care plans under RCW 70.168.100." RCW 18.73.280 (emphasis added).

The permissive "may" reflects that the Legislature's intended "ambulance service" (and related immunity) to apply to a range of facilities where patients may be transported in an emergency. Moreover, a related statute defines "ground ambulance services" similarly, as

> (a) The rendering of medical treatment and care at the scene of a medical emergency or while transporting a patient from the scene to an appropriate health care facility or behavioral health emergency services provider … ; and
>
> (b) Ground ambulance transport between hospitals or behavioral health emergency services providers, hospitals or behavioral health emergency services providers and other health care facilities or locations, and between health care facilities ….

RCW 48.43.005(27).

The definitions above are consistent. An "ambulance service" provides both medical care ***and*** patient transportation to an appropriate facility. Ambulance service providers are regulated accordingly. They operate "consistent with the

statewide and regional emergency medical services [EMS] and trauma care [TC] plan[]," RCW 18.73.130, are licensed to deliver both care and transportation, and must have personnel trained to perform both tasks, RCW 18.73.150.[2]

By specifically listing "licensed ambulance service[s]" in RCW 18.71.210(1)(f), the Legislature intended to immunize providers of ambulance services such as NWA that provide both patient care and transportation to an appropriate medical facility. The definition of "emergency medical service" in related statutes confirms this result, as discussed below.

[2] *See* RCW 18.73.150(1)(a) (an ambulance service "shall operate with sufficient personnel for adequate patient care," including at least one emergency medical technician "in command of the vehicle … in the patient compartment and in attendance to the patient"); *see also* RCW 18.73.150(1)(b) ("[T]he driver of the ambulance shall have at least a certificate of advance first aid qualification recognized by the secretary pursuant to RCW 18.73.120."). As such, the ambulance driver is a "first responder" for the purposes of RCW 18.71.210. *See* RCW 18.73.030(15).

2. Ambulance transportation is an integral part of "emergency medical service" under RCW 18.73.030(11)

The definition of "emergency medical service," as used in RCW 18.71.210, is found in RCW 18.73.030 and other statutes addressing the statewide EMS/TC system:

> "Emergency medical service" means medical treatment and care which ***may*** be rendered at the scene of ***any*** medical emergency or while transporting ***any*** patient in an ambulance to an appropriate medical facility, including ambulance transportation between medical facilities.

RCW 18.73.030(11) (emphasis added); *see also* RCW 70.168.015(6), .900 (statewide trauma care); RCW 18.71.010(2) (physicians).

The definition is intentionally broad and dynamic. The patient may receive "emergency medical service" in a variety of scenarios. The ambulance may be dispatched to assist "any patient" in a medical or other emergency ("any emergency") and deliver treatment and care without ever moving the patient to a hospital ("at the scene"). If the patient's condition deteriorates, the ambulance team may continue delivering

treatment and care "while transporting" the patient to the hospital or other "appropriate medical facility." Or, the ambulance team may find that the patient has severe injuries or other condition ("any patient") beyond the EMTs' training and expertise, *see* RCW 18.71.210(2), and determine that the best course is to rush the patient to the nearest ER or other "appropriate medical facility."

The permissive "may" shows that the ambulance team can – but does not have to – deliver treatment and care "while transporting" the patient to the hospital ER in order for the patient to receive "emergency medical service." And the broad terms "any patient," "any medical emergency," and the non-exclusive "an appropriate medical facility" demonstrate that ambulance transportation – and related immunity – is an integral part of "emergency medical care" across all EMC/TC scenarios and regardless of the nature of the patient's condition.

RCW 18.71.210(4) explicitly reiterates:

> This section ***shall apply also,*** as to the ***entities and personnel described in subsection (1) of this section***, to any act or omission committed or omitted in good faith by such entities or personnel ***involved in the transport of patients to mental health facilities or chemical dependency programs***, in accordance with applicable alternative facility procedures adopted under RCW 70.168.100.

RCW 18.71.210(4) (emphasis added).

The "entities and personnel" in subsection (4) of the statute include the EMTs and the driver of a licensed ambulance service. Their immunity for good-faith actions while transporting patients in medical emergencies is already covered in RCW 18.71.210(1). In subsection (4) the Legislature clarified that ambulance personnel transporting patients to mental health or chemical dependency programs are similarly immune. The legislative history of the 2015 Washington House Bill No. 1721, titled, "Concerning the transport of patients by ambulance to facilities other than hospitals," demonstrates that the Legislature did not find it necessary to explicitly extend immunity to ambulance crews transporting patients to hospitals because such immunity was

already provided within the broader statutory framework. *See* Final Bill Report, House Bill No. 1721 at 2 (2015) ("Immunity from liability that generally applies to emergency medical services providers is ***extended*** to acts or omissions by those providers when transporting a patient to a mental health facility or chemical dependency treatment program." (emphasis added)).

The trial court misconstrued RCW 18.71.210(1) and RCW 18.73.030(11). It ignored the statutes' broad terms ("***any*** patient," "***any*** medical emergency," "***may*** be rendered") and focused solely on the phrase "while transporting." But "while" simply means simultaneously, "during the time that." *While*, *Merriam-Webster's Online Dictionary, www.merriam-webster.com/dictionary/while* (last accessed 1/2/25). To illustrate, the phrase "using the cellphone while driving is dangerous" conveys the hazard of using the cellphone and driving ***simultaneously***. That talking on the phone is different from driving is not the point. CP 311–312 (stating that

"'emergency medical service' is something done 'while transporting' and therefore is distinct from transporting itself").

So misinterpreted, RCW 18.73.030(11) would produce the absurd conclusion that the patient who is rushed to the ER because his or her injuries exceed the medical expertise of the ambulance team receives no "emergency medical service." It would also mean that when the EMTs work to stabilize the patient onboard the ambulance while the driver rushes to get the patient to the ER, only the efforts of the EMTs count as "emergency medical service" that warrants immunity. The Legislature did not intend this result. It made explicitly clear in RCW 18.73.210(4), the legislative history, and throughout several statutes addressing the statewide EMS/TC system that transportation of patients to appropriate medical or other authorized facilities is an integral part of "emergency medical care" that qualifies for immunity.

Plaintiffs offer little to defend the trial court's erroneous misinterpretation on the merits. Cross-Appellant's Opening

Brief at 48-55. None of their procedural arguments work. To be sure, "statutory grants of immunity in derogation of common law are narrowly construed." *Michaels v. CH2M Hill, Inc.*, 171 Wn.2d 587, 616, 257 P.3d 532 (2011). But Plaintiffs have not shown that the immunity granted in RCW 18.71.210 is in derogation of common law as adopted by the Washington courts. Nor does the strict construction (even if applicable) override the fundamental canons that the primary purpose of statutory construction is to discern and follow the legislative intent expressed in the statute itself, that unambiguous statutes must be interpreted as written, that related EMS/TC statutes should be interpreted *in pari materia*, that all words in the statute ("any patient," "any … emergency," "may be rendered," "shall apply also") must be given meaning, and that illogical reading that reduces parts of the statute to mere surplusage should be avoided.

The trial court's interpretation is contrary to each of these principles. Having been raised below in opposition to

Plaintiffs' motion for summary judgment, CP 293-299, on NWA's motion for summary judgment, CP 137-149, 235-252, and assigned error on appeal and identified as ***the issue*** presented, *see* NWA's Opening Brief at 2–3, the issue is squarely before this Court's *de novo* review. *See Kinnan v. Jordan*, 131 Wn. App. 738, 754, 129 P.3d 807 (2006) (appellant preserved the issue for appeal by "directing the court to the correct statute"); *Zonnebloem, LLC v. Blue Bay Holdings, LLC*, 200 Wn. App. 178, 183 n.1, 401 P.3d 468 (2017) ("RAP 2.5(a) … does not prohibit parties from citing new authorities on appeal."); *Starr Indem. & Liab. Co. v. PC Collections, LLC*, 25 Wn. App.2d 382, 397, 523 P.3d 805 (2023) (appellant "is not raising new issues merely because it approaches its arguments in a different way")

3. Summary

Applying RCW 18.71.210(1), properly construed, to the undisputed facts below is straightforward. Mr. Costa was receiving emergency medical service (including the use of the

gurney and monitoring of vital symptoms, which deteriorated in route, causing the EMTs to call "code") while he was being transported to the hospital by a licensed ambulance service. The accident occurred when the ambulance driver was trying to pass a garbage truck to get Mr. Costa to the hospital as soon as possible. The driver of the garbage truck did not hear the sirens and was unaware that the ambulance was trying to pass him. Absent any allegation of gross negligence, the NWA team is immune from suit under RCW 18.71.210(1). The trial court's erroneous orders to the contrary and the adverse judgment against NWA should be reversed.

II. RESPONSE TO CROSS-APPEAL

A defendant that satisfies a money judgment "may still pursue an appeal and, if successful, obtain restitution." *LaRue v. Harris*, 128 Wn. App. 460, 463–64, 115 P.3d 1077 (2005). Plaintiffs' cross-appeal is an attempt to avoid this rule and prevent this Court from reaching the merits. They insist that the disagreement between the parties' trial counsel below about the exact amount of post-judgment interest – specifically, whether interest was due for 26 or 27 days, a difference of $661.64 – resulted in an accord and satisfaction or a CR 2A agreement that prevents NWA's appeal. The trial court correctly rejected this argument.

Like any contract, accord and satisfaction and CR 2A settlements require a meeting of the minds. *McDonald v. United States*, 13 Cl. Ct. 255, 260 (1987) (a meeting of the minds is "the critical element" of an accord and satisfaction); *Lavigne v. Green*, 106 Wn. App. 12, 20, 23 P.3d 515 (2001) (courts apply general principles of contract law to settlement

agreements); *Keystone Land & Dev. Co. v. Xerox Corp.*, 152 Wn.2d 171, 177, 94 P.3d 945 (2004) (an essential element to the valid formation of a contract is the parties' objective manifestation of mutual assent).

"The existence of … a meeting of the minds is a question of fact." *Sea-Vent Invs. Assocs. v. Hamilton*, 125 Wn.2d 120, 126, 881 P.2d 1035 (1994). The trial court found that the parties "clearly" never reached a meeting of the minds that could result in an agreement. CP 613–616, at 614:4–9; CP 645–648, at 646:3–12. This finding is supported by overwhelming evidence in the record and should not be disturbed.

A. Background

Soon after the judgment was entered, the parties disputed how to calculate post-judgment interest, which accrued at $661 per day. Plaintiffs' counsel claimed that interest accrued on the day the judgment was satisfied; NWA disagreed. CP 601–603. Twenty-seven days after the entry of judgment, NWA's

insurance carrier issued three checks totaling $2,318,131.13. CP 559. That amount included 26 days' worth of post-judgment interest. NWA paid these funds "in full satisfaction of the judgment" and asked Plaintiffs' counsel to file a satisfaction of judgment. CP 559. The checks were cashed the same day Plaintiffs' counsel received them (CP 573) and agreed to "file a satisfaction of judgment when the funds clear[ed]." CP 601.

The next day, evidently surprised that NWA filed a notice appeal, Plaintiffs' counsel claimed for the first time that the parties had reached a settlement agreement. They argued that Plaintiffs had agreed to forgo $661 in post-judgment interest in exchange for NWA waiving its right to challenge the $2.3 million judgment on appeal. The trial court rejected this argument. It found that there was "clearly" no meeting of the minds to support this alleged "bargain." CP 614. By having its carrier issue checks that totaled $2,318,131.13, NWA's counsel intended to satisfy the $2.3 million judgment, including 26 days

of post-judgment interest, which both counsel believed was calculated correctly – until Plaintiffs' counsel changed their mind. When the trial court found that an additional day of interest was due (CP 614), NWA's carrier issued another check for $661 that was deposited in the court registry, fully satisfying the judgment. *See* RAP 12.8 (permitting an appellate court to order restitution to a party that has "partially or wholly satisfied a trial court decision").

B. The Trial Court Correctly Found That There Was No Meeting of the Minds Required for Accord and Satisfaction or CR 2A Agreement

1. Plaintiffs failed to establish an accord and satisfaction as a matter of law

"An accord and satisfaction is a new contract – a contract complete in itself." *Paopao v. State, Dep't of Soc. & Health Servs.*, 145 Wn. App. 40, 46, 185 P.3d 640 (2008). By reaching accord and satisfaction, the parties agree "to settle a claim by some performance different from that which is claimed due." *Pugh v. Evergreen Hosp. Med. Ctr.*, 177 Wn. App. 348, 358, 311 P.3d 1253 (2013). "All the elements [of accord and

satisfaction] must be proved by the one asserting such an agreement. … [B]efore the acceptance of a lesser sum than may be owed … the party contending for that result must prove there was a meeting of the minds and that both parties understood that such would be the result." *Gleason v. Metro. Mortg. Co.*, 15 Wn. App. 481, 987–98, 551 P.2d 147 (1976); *see also U.S. Bank Nat'l Ass'n v. Whitney*, 119 Wn. App. 339, 351, 81 P.3d 135 (2003) ("An accord requires a 'meeting of minds'"; both parties must intend "to create an accord and satisfaction as a matter of law"; and "[t]he tender must be accompanied by ***conduct and declarations by the debtor*** from which the creditor cannot fail to understand that the money is tendered on the condition that its acceptance constitutes satisfaction." (emphasis added)).

On the record below, there was no meeting of the minds on the alleged "accord" to compromise NWA's right in exchange for $661. Ten days before NWA's carrier issued the three checks, its counsel informed Plaintiffs that NWA was

"going to satisfy the judgment." CP 599. To ensure that the correct amount was paid, on March 10, Plaintiffs' counsel was asked how much they believed "will be owed" for the "total amount (judgment, cost bill, interest)" as of March 14. CP 599. Plaintiffs' counsel calculated that amount, including "[i]nterest for 20 days at $661.64 per day." CP 598. Plaintiffs' own calculations did not include interest accrued on the day judgment was entered or on the day the judgment was satisfied.[3]

On March 20, NWA's counsel sent Plaintiffs' counsel a cover letter attaching three checks totaling $2,318,131.13 "***in full satisfaction of the judgment entered on February 22, 2024***." CP 591, 592–594 (emphasis added). The letter attached a "satisfaction of judgment form," and asked Plaintiffs to

[3] The judgment was entered on February 22, 2024. For Plaintiffs to believe that they were entitled to 20 days of post-judgment interest on a proposed judgment-payoff date of March 14, they must have assumed that no interest accrued on February 22 or March 14. Otherwise, the reference to "interest for 20 days" would make no sense.

"execute the satisfaction" and "file it with the court." CP 591, 595–596. On March 21, the day NWA filed the notice of appeal, CP 350-356, Plaintiffs' counsel agreed to "file a satisfaction of judgment when the funds clear," indicating that no dispute remained over the amount to satisfy the judgment. CP 601. Counsel then abruptly changed course, claiming for the first time that post-judgment interest accrued on both the day the judgment was entered and the day 602–603, resulting in a shortage of $661.64. NWA's counsel disagreed, citing Plaintiffs' own prior calculation. *Compare* CP 598–599 *with* CP 601–603.

Plaintiffs never filed the promised satisfaction of judgment. Less than an hour after agreeing to do so, Plaintiffs' counsel insisted that the parties had settled under CR 2A. CP 575. The sole "basis" for this theory was a notation in the "memo" line in two of the settlement checks, issued by the non-party insurance carrier's representative, of "full and final settlement of any and all claims." CP 592–593. But NWA's

insurance carrier is not its agent and cannot bind NWA to a settlement; only NWA or its attorney has that authority. *See* RCW 2.44.010; CR 2A.

NWA's "conduct and declarations" all confirm that it intended to satisfy the judgment, not to compromise its right to appeal, much less for $661. Only unequivocal conduct must show an intent to waive; waiver will not be inferred from doubtful or ambiguous conduct. *Jones v. Best*, 134 Wn.2d 232, 241–42, 950 P.2d 1 (1998); *Cent. Wash. Bank v. Mendelson-Zeller, Inc.*, 113 Wn.2d 346, 354, 779 P.2d 697 (1989). The party asserting waiver must prove that the other party clearly intended to voluntarily relinquish a known right, such as the right to appeal. *Rhodes v. Gould*, 19 Wn. App. 437, 441, 576 P.2d 914 (1978).

NWA counsel's conduct shows an intent to satisfy the judgment. CP 591, 599. Counsel's cover letter plainly stated that the enclosed checks were tendered "***in full satisfaction of the judgment entered on February 22, 2024***." CP 591, 592–

594 (emphasis added). NWA's notice of appeal from the final judgment was filed the same day. CP 350–351. This record amply supports the trial court's finding that the parties never reached a meeting of the minds required for accord and satisfaction and should not be disturbed.

2. The parties never signed or agreed to a binding settlement agreement under CR 2A

With no analysis, Plaintiffs claim that the parties' purported settlement satisfied CR 2A's requirements. They are wrong again. No agreement, including a settlement under CR 2A, can exist absent a showing by the party seeking to enforce it that "there is no genuine dispute over the existence and material terms of the agreement," with the record interpreted "in the light most favorable to the nonmoving party." *Brinkerhoff v. Campbell*, 99 Wn. App. 692, 696–97, 994 P.2d 911 (2000).

CR 2A does not supplant the common law of contracts. *See Lavigne*, 106 Wn. App. at 20. A settlement agreement may be enforced under CR 2A in only two scenarios: (1) the

agreement is "'made and assented to in open court on the record'" or (2) a writing reflecting the agreement's terms is signed by the party disputing the agreement. *Bryant v. Palmer Coking Coal Co.*, 67 Wn. App. 176, 178–79 & n.3, 858 P.2d 1110 (1992) (citation omitted) (holding that "the alleged settlement agreement is unenforceable because it was not stipulated to on the record in open court or memorialized by a writing signed by the party to be bound"). CR 2A precludes enforcement of an alleged settlement agreement that is genuinely disputed. *In re Patterson*, 93 Wn. App. 579, 582–83, 969 P.2d 1106 (1999) ("It precludes enforcement of a disputed settlement agreement not made in writing or put on the record, whether or not common law requirements are met.").

Plaintiffs can meet none of CR 2A's requirements. As evidence that the parties signed a written settlement agreement, they cite only the cover letter by NWA's counsel that attached (1) the three checks totaling $2,318,131.13 "in full satisfaction of the judgment" and (2) a "satisfaction of judgment form."

That letter was not, as Plaintiffs claim on appeal, an "offer of settlement." Cross-Appellant's Opening Brief at 34–35. ***It is not an offer at all***. The letter communicates no proposed bargain and simply states NWA's intent to satisfy the judgment to prevent post-judgment interest from accruing pending appeal. CP 559–564. The trial court correctly so found. CP 614 ("The court finds that there clearly was no meeting of the minds. The defendant's intention in tendering the payments it made to plaintiff was to satisfy the judgment, rather [than] to propose a compromise."). No writings exist to show that the parties or their attorneys agreed to any settlement or the material terms of that settlement.

C. Plaintiffs Chose Not to Cross Appeal from Any Alleged Errors in the Trial Court

Plaintiffs argue that their reliance on the imaginary "settlement agreement" prevented them from challenging the judgment on appeal. This is a baseless argument. They were free to cross appeal from the final judgment and challenge any

issue, including the "ruling allowing Dr. Ding to testify." Cross-Appellant's Opening Brief at 37. Nor did Plaintiffs "give up their own appeal rights" as part of the purported accord and satisfaction. *Id.* at 26. Nothing prevented them from challenging, conditionally or otherwise, any issue on cross-appeal. Having voluntarily chosen to challenge only the purported "settlement agreement," Plaintiffs can claim no prejudice.

In summary, the trial court did not "refuse[] to enforce" a settlement or accord and satisfaction the parties never made. Cross-Appellant's Opening Brief at 19. The court correctly found that "there clearly was no meeting of the minds. The defendant's intention in tendering the payments it made to plaintiff was to satisfy the judgment, rather [than] to propose a compromise." CP 614. The trial court also resolved the dispute over whether 26 or 27 days of post-judgment interest had accrued, resulting in an extra $661 deposited by NWA's insurance carrier into the court registry.

No more is required. Plaintiffs were free to cross appeal any issues they wished and must live with the issue they chose. They cannot destroy NWA's right to appeal by manufacturing a "settlement" or "accord" NWA never entered into and prevent this Court from addressing the legal issues presented by NWA's appeal on the merits.

III. CONCLUSION

For the reasons stated, NWA's appeal should be granted and the underlying trial court orders and adverse judgment reversed.

I certify that this document contains 4097 words, pursuant to RAP 18.17.

DATED this 7th day of January, 2025.

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/s/ Karrie Fielder
Karrie Fielder
Legal Practice Assistant

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