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No. 59601-6-II

SUPREME COURT OF THE STATE OF WASHINGTON

MONEESHA KAMANI

Plaintiff-Appellant,

v.

MICHAEL A. STONE, DVM, and his marital community/domestic partnership; NVA AETC VETERINARY MANAGEMENT, LLC dba ANIMAL EMERGENCY AND SPECIALTY CENTER, a foreign limited liability company,

Defendants-Respondents

CORRECTED PETITION FOR REVIEW

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I. IDENTITY OF PETITIONER

Pursuant to Washington Rule of Appellate Procedure (RAP) 13.4, Plaintiff-Appellant Moneesha Kamani ("Kamani") respectfully requests review of the decision of the Washington State Court of Appeals, Division II, identified below.

II. DECISION

On April 22, 2025, Division II issued its unpublished opinion in *Kamani v. Stone*, et al, Case No. 59601-6-II, affirming the trial court's grant of partial summary judgment to Defendants Stone and Animal Emergency & Specialty Center ("AES") on claims of outrage, fraud, and breach of contract. Kamani moved for a brief extension to engage new counsel to file a motion for reconsideration. The court denied this motion, leaving Kamani to file reconsideration pro se. On August 5, 2025, Division II issued a corrected opinion ("Opinion"), addressing only the first two errors identified and denied further reconsideration.

III. ISSUES PRESENTED FOR REVIEW

- 1. Did the Court of Appeals err by imposing a heightened requirement to establish outrageous conduct, requiring Kamani to show she was more susceptible to emotional harm than other pet owners?
- 2. Did Division II err in requiring pre-existing familiarity between the parties as a prerequisite for establishing intent in an outrage claim?
- 3. Did the Opinion depart from established summary judgment standards by resolving disputed facts in favor of Defendants, disregarding objective evidence supporting Kamani's claims for outrage and fraud, including auto-generated audit trails, contemporaneous videos, and undisputed testimony?
- 4. Did the Appeals Court fail to evaluate the clear and convincing standard under the summary judgment standard in its evaluation of fraud?

IV. STATEMENT OF THE CASE

This case arises from the death of Kamani's dog, Bella, following discharges by Michael Stone, DVM ("Stone"), at AES in Poulsbo, Washington. Bella passed on December 31, 2022, 90 minutes after being discharged three times in the same day despite worsening respiratory distress. Kamani, an Indian-born legal U.S. resident, adopted Bella in 2011, describing Bella as her child. CP 28; 486. For over ten years, Bella enjoyed excellent health, until May 2022 when she was diagnosed with pulmonary hypertension via echocardiography and treated with medications and oxygen for several days. CP 344-46.

After several months of stability, Bella collapsed on December 31, 2022, prompting Kamani to take her to AES. CP 348. Upon arrival, Kamani reported Bella's pulmonary hypertension, medications, and symptoms, including labored breathing and prolonged collapse. CP 349. Technician Kacey Veal, LVT ("Veal") confirmed Bella's elevated respiratory rate

and abnormal tongue color, and recommended examination by Stone. CP 302-05.

At 9:15 a.m., Kamani relayed Bella's history to Stone, who incompletely examined and discharged Bella shortly thereafter. CP 350. After leaving, Bella again showed distress, prompting Kamani to return at 11:20 a.m. CP 352–53. Veal observed Bella "stumbling" and took her to the ICU. CP 326; 302–06. After less than an hour in oxygen, Stone again discharged Bella, stating she was merely anxious, despite Kamani's request to perform an examination. CP 353, 529.

Minutes later, Bella collapsed, and Kamani rushed for a third admission. CP 353, 368, 529. No vitals or physical exams were recorded at triage. CP 617–19. At 3:00 p.m., AES staff asked Kamani to retrieve sildenafil from her car and Stone instructed her to administer it. CP 356. AES required a deposit for Bella to stay overnight, which Kamani paid at 4:40 p.m., signing digital paperwork for a 24-hour stay. CP 384–88, 356–57.

In AES's custody, Bella purportedly received sedatives, though audit trails revealed suspect timings and dosages. CP 520. The only and last set of full vitals at 2:00 p.m. showed Bella had a heart rate of 172 bpm, muddy mucous membranes, and increased respiratory effort. By 5:00 p.m., her heart rate rose to 191 bpm, around the time weaning from oxygen began without Kamani's knowledge or consent. CP 530–31, 491, 522. At 5:27 p.m., Veal charted that Bella was anxious and disoriented. A 6:50 p.m. note made days later by Veal stated that Bella had been "successfully weaned" from oxygen—admitting later this meant Bella was removed from the oxygen chamber despite unimproved vitals. CP 309, 614. Not a single test was run in eleven hours and the only test that was run, i.e., an electrocardiogram (EKG), had no comments by Stone. CP 207.

Around 6:30 p.m., Veal told Kamani and Ojus Mehta, that Bella was "doing great" and ready for discharge, surprising Kamani, who had not seen Bella since 3.00 p.m. and had already paid for 24-hour hospitalization. CO 359. Just before 7:00 p.m.,

to Kamani's shock, Stone carried Bella into the parking lot, wrapped in a shawl, disoriented, hyperventilating, and cyanotic. CP 370, 521. This was captured by video. CP USB Video 9. When Kamani asked what was wrong, Stone remarked, that Bella's appearance was "because we've swooped her up." CP 359. Stone said, "You know what's gonna happen," and "look she is doing so much better." *Id*. He nonetheless sent Bella home, without even proposing euthanasia. CP 360.

Bella quickly declined. CP 360-61, 398. Once home, believing Stone's anxiety theory, Kamani turned on fans, took Bella to the porch, administered Benadryl granules and attempted CPR, but Bella died, squeaking and gasping. CP 182, 359, 396-98. At 8:43 p.m., Kamani called AES for help but never received a call back. Instead, AES called 911 fifteen minutes after Bella passed, falsely reporting that she had threatened him. CP 233, 322. On January 1 and 2, 2023, Stone, Susan Hillard ("Hillard"), Alivia Wheaton, LVT ("Wheaton") and Veal spent

hours altering medical records. CP 615-21¹. Kamani was provided incomplete records on January 3, 2023. CP 22.

Discovery revealed that AES staff falsified and backdated Bella's medical records—upgrading heart murmur, adding diagnoses, and inserting numerous fabricated client communications stating Kamani had declined hospitalization through the day. CP 615-21. Payment records, Smartflow live monitoring, audit trails, and video evidence directly contradicted this. Thereafter, AES trespassed Kamani and sent a cease-and-desist letter threatening legal action. CP 425. On January 4, 2023, Kamani attempted and was hospitalized, with a second near-attempt on February 25, 2023. CP 342.

AES initially claimed there was no surveillance video, but months later produced a single 11-minute clip showing Stone carrying Bella out; other footage was overwritten by the time forensic access was permitted. CP 34, 452–53.

¹ App. A of Appellant's Brief contains a better resolution copy.

Expert testimony concluded that Stone acted with gross negligence and recklessness by failing to perform or recommend diagnostics, inadequately monitoring Bella, prematurely weaning her from oxygen, and misrepresenting her condition at discharge. Litigation also revealed that AES did not employ a single specialist, CP 248, and that "Bella needed a procedure that [AES and Stone] do not perform." CP 613. Combined with AES's post-mortem conduct, including fabricating records and contacting police, exacerbated Kamani's emotional trauma. She was temporarily placed on 6-month unpaid ADA leave by her employer and has remained in psychotherapy since January 2023. CP 628-29.

V. BASES FOR REVIEW

Review is appropriate under RAP 13.4(b)(1) and (2) and 13.4(4).

VII. ARGUMENT

A. Division II's Decision Conflicts with Published Washington Precedent.

This case presents a critical opportunity for the Supreme Court to address significant issues of Washington tort law and ensure doctrinal consistency in application. As it stands, the decision is in direct tension with prior appellate decisions, unduly restricting the scope of outrage and imposing arbitrary new legal standards, limiting a Plaintiff's ability to seek redress for emotional distress caused by egregious conduct.

1. The Opinion Improperly Imposed a Heightened Standard for Susceptibility.

In *Grimsby v. Samson*, 85 Wn.2d 52, 60, 530 P.2d 291 (1975), this Court formally adopted the definition of outrage from the Restatement (Second) of Torts § 46 (1965) (hereinafter Restatement), "One who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress...."

Id. The tort is grounded in fault and reflects society's

commitment to impose liability when a Defendant's conduct is so egregious that it cannot be countenanced. The law imposes "greater responsibility upon a Defendant whose conduct was intended to do harm or was morally wrong." *Klopfel v. Bokor*, 149 Wn.2d 192, 200, 66 P.3d 1269 (2003) (quoting Prosser & Keeton on Torts).

The elements of outrage are well-settled: (1) extreme and outrageous conduct; (2) intentional or reckless infliction of emotional distress; and (3) resulting severe emotional distress. *Birklid v. Boeing Co.*, 127 Wn.2d 853, 867, 904 P.2d 278 (1995). The touchstone is whether the conduct "go[es] beyond all possible bounds of decency" and is "atrocious, and utterly intolerable in a civilized community." Restatement § 46 cmt. d.

The court of appeals faulted Kamani for "fail[ing] to demonstrate she was any more susceptible to emotional distress than any other pet owner . . ." This is a new burden, eliminating a plaintiff's ability to demonstrate heightened vulnerability within her specific circumstances. Moreover, this position also

ignores the evidence, documenting Stone and AES's awareness of Kamani's emotive state. When queried about anxiety, Stone blamed Kamani, stating,

... I believe that Bella was incredibly anxious when she was around her owner and I believe they were both feeding off each other with anxiety...

CP 468.

Wheaton testified,

... that she was upset because this was a really personal -- more so than a personal pet. This would have been her mother's dog. So there was an extra attachment there.

CP 230. (Appendix).

Washington law is clear that a plaintiff's particular susceptibility arise from the circumstances themselves. Where a defendant intentionally or recklessly targets that vulnerability, the conduct may be deemed outrageous, providing nexus between the conduct and intent elements, consistent with Restatement § 46 cmt. f.

Grimsby is also illustrative. There, the plaintiff sued for outrage after his dying wife's physician abandoned her, forcing

him to watch her endure "terrifying agony and explicit pain and suffering" until her death. 85 Wn.2d at 54. This Court reversed dismissal of the complaint and identified the plaintiff's helpless position and the defendants' knowledge of his circumstances as factors relevant to whether conduct was outrageous. *Id.* Crucially, this Court treated the circumstance of being forced to watch a spouse's preventable death as itself sufficient to establish peculiar susceptibility, without requiring the plaintiff to prove that he was more emotionally vulnerable than other similarly situated spouses. *Id.*

The same principle guided this Court's decision in Contreras v. Crown Zellerbach Corp., 88 Wn.2d 735, 565 P.2d 1173 (1977), wherein plaintiffs were subjected to a continuous barrage of racial slurs and false accusations of theft that destroyed their reputations and lifestyle. The Court concluded that "[p]laintiff's own susceptibility to racial slurs and other discriminatory conduct is a question for the trier of fact, and cannot be determined on demurrer." *Id.* at 742.

This understanding of susceptibility was echoed again by Jackson v. Peoples Federal Credit Union, 25 Wn. App. 81, 604 P.2d 1025 (1979), which explained that outrageousness may turn on "the actor's knowledge that the other is peculiarly susceptible to emotional distress, and that it is highly probable the conduct will cause severe distress." Id. at 89, The Court referenced Grimsby and Contreras, absent any need to show heightened vulnerability compared to other plaintiffs in the same position.

Division II's departure from well-established law will require plaintiffs to show they are more vulnerable than others in the same circumstance—an almost impossible burden that would likely require expert testimony comparing reactions across a class of similarly situated individuals.

2. Division II Rewrote the Intent Element by Introducing a Prior Relationship Requirement, Disregarding Recklessness and Substantial Certainty.

Under Washington law, a plaintiff may satisfy the intent requirement by showing either that the defendant intentionally or

recklessly caused severe emotional distress. Sutton v. Tacoma Sch. Dist. No. 10, 180 Wn. App. 859, 871, 324 P.3d 763 (2014). Nothing in Washington law conditions the intent element of outrage on the duration of the parties' acquaintance. The analysis involves foreseeability, not familiarity. By holding. "[i]ntent element absent" thus "[claims] fail as a matter of law" (Op. 23), because Kamani had just met Stone that day, Division II imposed an additional requirement found nowhere in Washington law. The *Grimsby* complaint alleged only that a patient–physician and patient-hospital relationship existed, not whether the parties knew each other prior. Similarly, conflicting with other published Washington appellate court decisions, under 13.4(b)(2), in Phillips v. Hardwick, 29 Wn. App. 382, 388, 628 P.2d 506, (1981), no prior relationship was required between buyers and sellers. *Id.* at 509.

(i) Antemortem Culpability

Equally problematic, the Opinion entirely disregarded recklessness as an alternative basis for establishing intent. Paired

with recklessness is the substantial risk of harm, which needn't be evident to the actor himself, but evident to a third-person.

Restatement § 46 cmt. c. Both Stone and Veal recognized Bella's aggravated condition as evident from their testimonies:

Q. Based on the information that you received from client history and in the vet records from West Vet and the Bend cardiology group, didn't you suspect that she had an underlying illness that could be associated with an increased risk for pulmonary thromboembolism?

A. It's possible. She had an increased risk for it, sure.

Stone believed that Bella had tachycardia and respiratory dysfunction,

- Q. And tachycardia would also be a sign of PTE?
- A. Yes, along with a host of other things.
- Q. Would you agree that circulatory embarrassment or respiratory dysfunction would be a sign of PTE?
- A. Yes, it could be, along with a host of other things.

CP 63.

Veal observed 8.00 a.m. admission:

- A. A normal healthy dog will have a resting respiratory rate under 50.
- Q. So you believed hers was over 50?
- A. It was.
- Q. Was it substantially over?

A. I believe it was.

CP 302.

- Q. Okay. Color of her tongue?
- A. It was a shade of pink on initial presentation.
- Q. Was it normal, bright pink?
- A. I would not call it normal.

CP 303.

At 11.25 a.m., second admission Veal testified,

There was a moment when she had re-presented. She was in the car again, and I had watched her again in the front seat so that I could compare what I had seen before. She appeared to stumble. In my opinion, I was concerned that she was having a syncopal episode.

- Q. -- and rate? Okay. Did you -- were you able to assess gum color?
- A. I know that her tongue color had changed.
- Q. To what?
- A. It was no longer pink.
- Q. What was it?
- A. More of a muddy color.

CP 304-06.

Despite the above, Stone discharged Bella a second time at 12.18 pm by removing her from oxygen. CP 388.

Veal testified about the 7.00 p.m. final discharge,

I don't remember the exact word that he used, but her condition was very serious, and I do remember that.

CP 310.

In real time, Stone reported only anxiety, barking, and defecation to Kamani during the three discharges. CP 353, 355, 393.

A dog dithering, showing muddy mucous membranes, tachycardia, and syncope is at substantial risk of death—causing Kamani significant emotional distress was compounded by conflicting reports that Bella was "doing great" despite her critical condition. Hillard's deletion of the term "critical," CP 447, further evidences Defendants' awareness of the substantial risk of harm to Bella and, by extension, to Kamani.

(ii) Postmortem Culpability

Garratt v. Dailey, 46 Wn.2d 197, 279 P.2d 1091 (1955), is Washington's seminal case exemplifying substantial certainty. This Court held that a five-year-old defendant acted with

substantial certainty by removing a chair, knowing that the plaintiff would sit in the location from where it had been removed. *Id.* Thus, per *Garratt*, intent did not require a desire to cause harm and could be established if the defendant knew with substantial certainty that their actions would cause harm, here, exacerbated emotional distress.

Referencing animal cases, *i.e.*, *Repin* (a veterinarian bungling a euthanasia), and *Womack* (a group of miscreants maliciously burned a cat), where outrageous conduct was assessed within the conduct defendant(s) exhibited towards the animal, the Opinion sidestepped weeks of defendants' postmortem conduct aimed at Kamani – the human, and misapplied the position-of-defendant factor. *Repin v. State*, 198 Wn. App. 243, 392 P.3d 117 (2017); *Womack v. Von Rardon*, 133 Wn. App. 254, 135 P.3d 542 (2006). It ignored Stone and AES's conduct despite knowledge, that, at a minimum, Kamani's

postmortem emotional distress would be severe.² The Opinion discounted Stone selectively emailing the police on January 3rd, 2023, blaming Kamani for Bella's "decline" by inventing a fictional conversation about Kamani's alleged improper sildenafil administration (that he later recanted at deposition). CP 411, CP 322.

Eleven days after Bella died, AES's cease-and-desist letter threatened Kamani under repealed Washington law, falsely claiming "harassing phone calls" and "we will take all necessary and appropriate steps . . . include seeking a restraining order against you, pursuing a criminal action against you" CP 425.

Wheaton testified police calls were made because AES believed Kamani would "religious[ly] retaliate[e], CP 232;

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² Pets have become an indispensable part of many American families. See e.g. Anna Brown, About half of U.S. pet owners say their pets are as much a part of their family as a human member, PEW RESEARCH CENTER (July 7, 2023), https://www.pewresearch.org/short-reads/2023/07/07/about-half-us-of-pet-owners-say-their-pets-are-as-much-a-part-of-their-family-as-a-human-member/.

multiple false entries in the report that had no connection to safety, were conduct aimed at Kamani. After all, Kamani, not Bella, would review the records to understand her dog's death. Defendants knew Kamani would bear the false blame—accused of causing Bella anxiety, maladministering sildenafil, refusing diagnostics, and electing to leave—untrue claims advanced by them. The onus would shift to her, amidst her grief, to disprove AES's narrative, persuade attorneys, experts, and judicial officers reviewing AES's falsified records, CP 197 – 205, to believe her over Stone. Such conduct transcends negligence.

Furthermore, the court of appeals' reliance on *Womack* is misplaced. *Womack* makes no prerequisite of a prior relationship. By reading *Womack* to require such relationship, Division II narrowed the tort beyond what *Grimsby* and Restatement § 46 allow and excludes cases where outrageous conduct on a first encounter inflicts severe emotional distress. Uncorrected, this will confuse lower courts, and deprive juries of their right to resolve fact-intensive issues.

3. The Opinion Altered Summary Judgment Standards by Construing Disputed Material Facts in Light Favorable to the Defendants.

Summary judgment is appropriate only when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Cornwell v. Microsoft Corp.*, 192 Wn.2d 403, 410, 430 P.3d 229 (2018). Plaintiffs maintain the burden of presenting a prima facie case for their claims, which Kamani presented at appeal.

The court erroneously recast Kamani's fraud and outrage claims as "misdiagnosis," improperly faulting her for not presenting expert testimony to refute Stone's diagnosis. The interlocutory appeal did not challenge the correctness of Stone's opinion. By adopting Defendants' versions in multiple disputed factual issues, the court improperly imposed a heightened burden on Kamani. While listing contradictory facts, e.g., "Stone stating he did not want to keep sedating Bella and her going into syncope" (Op. 9), and "Stone recalled that Bella had improved, calmed down, and was pink when she left" (Op. 8) (reflecting

Bella's condition at discharge, a material fact), the court erroneously adopted the latter version in its analysis, effectively declining to treat Kamani as any other similarly situated Plaintiff at summary judgment. Material facts favoring Kamani (e.g., absence of echocardiograms) were either ignored or incorrectly reclassified as non-material. Noticeably absent were circumstances surrounding Kamani's suicide attempts. Op. 11. This deviation is serious error and warrants review.

Mischaracterizing Kamani's theory of the case and repeatedly resolving genuine factual disputes in Defendants' favor compounded errors requiring Kamani to disprove the Defendants' narrative at summary judgment, rather than simply raise a triable issue of fact.

B. Falsification of Medical Records is an Issue of Substantial Public Interest.

Washington ranks as the 11th worst state, recording 1,828 adverse actions³ against providers in 2022-2023. 2019-2023 data rank Washington among the top 15 states facing serious medical malpractice concerns.⁴ Payouts average \$1.4 million and attorney's fees averaged \$507,722 per settlement.⁵ Ordinary negligence claims seldom proceed to trial. Veterinary negligence, similarly, gives rise to claims submitted to liability insurers without litigation, *e.g.*, within a 5-month period, AES/NVA claims, including a complaint by Coquito's owner against Stone, were resolved through insurance. CP 070, CP 238. Apart from *Hawkins v. EmpRes Healthcare Mgmt.*, *LLC*, 193 Wn. App. 84,

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³ Claire Wallace, *Malpractice Reports by State 2023*, Becker's ASC (July 27, 2023), https://www.beckersasc.com/asc-news/malpractice-reports-by-state-2023/, accessed, 08.08.25.

⁴ EMS1 Staff, *List: States with Highest Medical Malpractice Cases*, EMS1 (Sept. 20, 2024), https://www.ems1.com/legal/list-states-with-highest-medical-malpractice-cases, accessed 08.08.25.

⁵ Office of the Insurance Commissioner, Washington State 2023 Medical Malpractice Annual Report: Claims Closed January 2018 through December 2022 (Oct. 2023).

https://www.insurance.wa.gov/sites/default/files/2024-09/2023-med-mal-report.pdf, accessed 08.08.25.

371 P.3d 84 (2016), (holding that settlement of a medical negligence claim did not bar fraud claims of falsified record), Washington courts seldom witness post-decedent fabricated medical records. This Court is unlikely to confront this issue again as a matter of law.

Other jurisdictions have not condoned falsified records or insulated similar conduct from liability, recognizing it as qualitatively different from negligence. In *Thomas v. Hospital Board of Directors*, 41 So. 3d 246, 256 (Fla. Dist. Ct. App. 2010), the court noted,

We believe that in a situation where a person's loved one has died, it would be apparent to anyone that the person would be susceptible to emotional distress and, therefore, that the action of providing false information concerning the loved one's cause of death meets the standard for a claim of outrage (intentional infliction of emotional distress).

Id. at 256.

Likewise, in *Szymanski v. Hartford Hospital*, Case No. 363831, 3 Conn. L. Rptr. 747 (Conn. Sup. Ct. Jan. 2, 1990), the court held that false claims that the nurse monitored the decedent

on dialysis and that the decedent died of natural causes, is conduct that *indicates a reckless disregard of the just rights of others*. Defendants claims that these were merely an extension of the malpractice were rejected; the court held that cover-ups and falsehoods were based solely on post-death conduct, distinct from medical malpractice. *Id.*, at *1, *6.

In Gomez v. Cabatic, 159 A.D.3d 62, 70 N.Y.S.3d 19 (N.Y. App. Div. 2018), the defendant admitted discarding handwritten records upon typing the record. The typewritten record conflicted with the appointment card, showing a 4-week follow-up recommendation versus a 9-week gap, significant for a diabetic child. The jury awarded punitive damages. While Washington precludes punitive damages, *Gomez* employed language mirroring the standard for outrage:

While the availability of punitive damages is often discussed in terms of conduct that is intentional, malicious, and done in bad faith, courts have recognized that those who, without specifically intending to cause harm, nevertheless engage in grossly negligent or reckless conduct showing an utter disregard for the safety or rights of others, may

also be deserving of the imposition of punitive damages..... The fact that the plaintiff was able to prove the medical malpractice cause of action against the medical professional despite the alteration or destruction of the medical records should not insulate the medical professional from liability for punitive damages, since medical professionals fearing malpractice liability might feel emboldened to alter or destroy medical records knowing that they will face no added liability in tort.

Id. at 70.

These authorities confirm that falsification of records after a death presents a question for the jury.

Citing to WAC 246-933-320, the Opinion incorrectly stated that Kamani received "records well within the 10-working days." Op. 27. Kamani testified that she received only partial records on January 3, 2023, did not receive Smartflow records until January 20, 2023, did not receive the document showing 24-hour admission until February 10, 2023. CP 343, 490, 518. These records revealed elevated vital signs, confirming that Bella was decompensating at discharge.

Audit trails revealed Defendants altered the records fifty times, with at least thirty substantive changes including conversations that never occurred, altered timings, and fabricated notations suggesting that Kamani repeatedly asked that Bella be taken off oxygen, despite contemporaneous receipts proving otherwise. CP 615—21. Stone emailed the police implying that Kamani was to blame for Bella's death. The records made no mention of the pacemaker, AES's lack of it, or that Stone suspected drug misadministration.⁶ A jury could reasonably conclude that these edits were not routine updates but were calculated to shield AES from liability and shift moral blame onto Kamani, thereby deepening her grief.

Kamani testified:

Q. Was there anything that precipitated this decision that you wanted to die on January 4th as opposed to December 31st, January 1st, January 2nd, or January 3rd?

A. You know, Ms. Moniz, I don't know if people know or can look back and say, you know, this -this is exactly why I committed suicide, why I was trying to commit suicide. So I don't have a short answer. What I will say, that there were lots of conversations with the police one of the two days, I

 6 This theory is unsupported by expert testimony and video evidence. CP 516-519; CP 524-550.

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think 2nd or 3rd, and then there were -- and then the reports came in on the third morning, which was -- which was a shock. A shock.

Q. What reports are you referring to?

A. Reports from AES came on the third morning." CP 343.

Q. So in hindsight, you connect your taking this ten to twelve pills with having read the reports on the previous day?

A. You asked if there was an event that precipitated this action. If there was an event, this was it.

Q. And what were the comments that were shocking to read?

A. That I asked to take my dog out. CP 345.

This pattern of post-death alterations goes to recklessness and malice—conduct that Washington courts recognize as sufficient to satisfy the intent element. This Court recognized the non-arms-length relationship between contractor providers and patients in an emergency in *Estate of Essex v. Grant County Public Hospital District No. 1*, 3 Wn.3d 1, 546 P.3d 407 (2023). As purported "Emergency & Specialty Center" director, Stone withheld truthfulness of Bella's health real-time, preventing her

guardians from making informed choices to reduce her pain and suffering.

Families rely on accurate records to process the final hours of a loved one's life; fabrication causes foreseeable and profound harm. The evidence raises a genuine issue for the jury as to whether Defendants engaged in extreme and outrageous conduct, and whether their intents met substantial certainty or reckless thresholds for causing severe emotional distress. Summary judgment is therefore improper.

C. The Clear and Convincing Standard Is Not a Panacea and Must Be Tempered by Summary Judgment Principles.

Washington courts have long defined that the applicable evidentiary standard for fraud requires clear, cogent, and convincing proof.

The phrase "clear, cogent, and convincing" evidence denotes a quantum or degree of proof greater than a mere preponderance of the evidence. It does not connote proof beyond a reasonable doubt. ... Whether the evidence in a given case

meets the standard of persuasion, designated as clear, cogent, and convincing, necessarily requires a process of weighing, comparing, testing, and evaluating, a function best performed by the trier of the fact, who usually has the advantage of actually hearing and seeing the parties and the witnesses, and whose right and duty it is to observe their attitude and demeanor.

Bland v. Mentor, 63 Wn.2d 150, 151, 385 P.2d 727 (1963).

This higher evidentiary standard reflects a high probability but not near certitude, and must be tempered by summary judgment standards, i.e., viewing facts and inferences in light favorable to Kamani. Thus, if opposing facts exist (even if they originate from AES's contrasting clinical records, or from Stone's changing versions), then ones favoring Kamani must be awarded evidentiary recognition.

The court's error in its treatment of Kamani's outrage claim carried through to its dismissal of her fraud claim, noting "the record is devoid... that Stone's statements were false, that he knew his statements were false." Op. 29. The court's demand that Kamani produce a smoking gun of Stone's knowledge is unrealistic and deviates from Washington law that recognizes

suppression of a material fact as grounds for fraud. In correcting the impression that only affirmative representation constituted fraud, in *Stiley v. Block*, 130 Wn.2d 486, 515-16, 924 P.2d 920 (1996), this Court noted that silence is equivalent to a falsehood when there was a duty to disclose, as failure implies nonexistence of that fact.

Thus, each of Defendants' misrepresentations must pass through both prisms, noting that a defendant who has defrauded a plaintiff pre-litigation is unlikely to ever directly admit they have done so at any stage of litigation. If a defendant tells a plaintiff her dog needs a pacemaker but conceals that their hospital lacks echocardiograms and specialists, despite simultaneously acknowledging this to staff, they have suppressed a material fact (that AES could not perform the required procedure). Here, Stone's knowledge is clear from his contemporaneous conversation with Veal. Kamani plainly relied on the misunderstanding created by material omission as she returned to the same "specialty" hospital three times that day.

The court of appeals faulted Kamani for failing to prove that Stone knew his discharge-related misrepresentation was false. However, a speaker may be liable for misrepresentation of material facts "susceptible of knowledge," regardless of actual knowledge or belief in their truth. *Holland Furnace Co. v. Korth*, 43 Wn.2d 618, 623, 263 P.2d 797 (1953). Given the expert testimony confirming Bella did not die from anxiety. Stone's knowledge of alleged drug administration (however misplaced) is material. His antemortem notation to the contrary (full 20 mg) is an affirmative misrepresentation. CP 520.

At summary judgment, the court was required to balance the clear, cogent, and convincing standard with facts and inferences favoring fraudulent suppression and misrepresentation. Dismissal of fraud without such an analysis was improper.

VII. CONCLUSION

For the foregoing reasons, Kamani requests this Court accept review of this matter.

CERTIFICATE OF COMPLIANCE

I certify that the foregoing Petition contains 5000 words as permitted by RAP 18.17.

Dated this 5th day of September 2025.

Asti Gallina, WSBA #53361 Granite Point Law Group 522 W. Riverside Ave, Ste 7153 Spokane, WA 99201-1099 (509) 592 0108

DanaMarie Pannella, OSBA ••9•221, *Pro Hac Vice* Pending Holland & Muirden, Attorneys at Law 1343 Sharon-Copley Road, P.O. Box 345 Sharon Center, Ohio 44274 (33•) 239 448•

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the state of Washington that on September 5, 2025, I caused plaintiff's Corrected Petition for Review to be served in the above captioned matter upon the parties herein via this Court's E-portal:

Kate V. Craddock Johnson Graffe Keay Moniz & Wick 2115 N. 30th St., Ste. 101 Tacoma, WA 98403 katec@jgkmw.com

Division II Court of Appeals Clerk 909 A Street, Ste. 200 Tacoma, WA 98402

Asti Gallina

APPENDIX

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August 5, 2025

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

MONEESHA KAMANI,

No. 59601-6-II

Appellant,

v.

MICHAEL A. STONE, DVM, and his marital community/domestic partnership; NVA AETC VETERINARY MANAGEMENT, LLC dba ANIMAL EMERGENCY AND SPECIALTY CENTER, a foreign limited liability company,

ORDER CORRECTING OPINION AND DENYING REMAINDER OF MOTION FOR RECONSIDERATION

Respondent.

Appellant, Moneesha Kamani, filed a motion for reconsideration of this court's unpublished opinion filed on April 22, 2025. After consideration, it is hereby

ORDERED that the opinion is corrected as follows:

On page 3 of the opinion, the sentence that states: "Bella's syncopal episodes began in June." is corrected to read: "Bella's syncopal episodes began in May."

It is hereby further

ORDERED that the opinion is corrected as follows:

On page 3 of the opinion, the sentence that states: "In a note, Hidden Springs prescribed sildenafil 20mg PO every 12 hours for pulmonary hypertension." is corrected to read: "In its

record, Hidden Springs noted that WestVet prescribed sildenafil 20mg PO every 12 hours for pulmonary hypertension."

It is hereby further

ORDERED that the remainder of the motion for reconsideration is denied.

<u>J</u>,J

FOR THE COURT: Jj. Lee, Cruser, Che

We concur:

Che. J.

April 22, 2025

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

MONEESHA KAMANI,

No. 59601-6-II

Appellant,

v.

MICHAEL A. STONE, DVM, and his marital community/domestic partnership; NVA AETC VETERINARY MANAGEMENT, LLC dba ANIMAL EMERGENCY AND SPECIALTY CENTER, a foreign limited liability company,

UNPUBLISHED OPINION

Respondents.

LEE, J. — Plaintiff Moneesha Kamani appeals from the trial court's grant of partial summary judgment in favor of defendants Michael Stone and Animal Emergency and Specialty Center (AESC). Kamani argues the trial court erred by dismissing her outrage claims, fraud claims, and breach of contract claim. Kamani further argues that since the trial court erred in dismissing her claims of outrage and claims of fraud, it also erred when it found Kamani may not recover noneconomic damages or wage loss damages. Lastly, Kamani argues that the trial court erred in denying her motion for reconsideration.

We affirm the trial court's dismissal of Kamani's outrage claims, fraud claims, and the breach of contract claim. Accordingly, we also affirm the trial court's ruling that Kamani may not recover noneconomic and economic damages arising from those claims. Finally, because Kamani

fails to present any argument with regard to the motion for reconsideration, we affirm the trial court's denial of Kamani's motion for reconsideration.

FACTS

This case arises from the passing of Kamani's 14-year-old Pekingese, Bella. Bella was treated on December 31, 2022, by Michael Stone, DVM,¹ at AESC in Poulsbo, Washington. Following Bella's passing, Kamani sued Stone, alleging veterinary negligence, outrage, and fraud. Kamani also sued AESC, alleging veterinary negligence, outrage, fraud, and breach of contract. The trial court dismissed all but the veterinary negligence claims on summary judgment.

A. BELLA'S MEDICAL HISTORY

In May 2022, when Kamani was living in Idaho, a veterinarian told Kamani that Bella might be suffering from congestive heart failure. The veterinarian prescribed medications intended to treat congestive heart failure.

On May 9, when Bella did not improve, Kamani took her to WestVet. WestVet noted possible congestive heart failure or pulmonary hypertension and recommended hospitalization, oxygen, a cardiology consult, and an echocardiogram with an electrocardiogram to confirm a diagnosis.² Kamani was initially hesitant to move forward with the consult and the procedure, but she later approved both.

¹ DVM is doctor of veterinary medicine. *Veterinarian Credentials and What They Signify*, Belle Mead Animal Hospital, (Jan. 15, 2022), https://www.bellemeadanimalhospital.com/blog/veterinarian-credentials-and-what-they-signify/, (last visited Apr. 14, 2025).

² In the record, electrocardiogram is noted as ECG. An ECG is used to record electrical signals from the heart. *Electrocardiogram (ECG or EKG)*, MAYO CLINIC, (Apr. 2, 2024), https://www.mayoclinic.org/tests-procedures/ekg/about/pac-20384983, (last visited Apr. 8, 2025).

WestVet admitted Bella and treated Bella with oxygen that same day. The echocardiogram and electrocardiogram confirmed that Bella had mild mitral valve disease/tricuspid valve displasia (MVD/TVD)³ and mild/moderate pulmonary hypertension.⁴ Bella continued to receive oxygen treatment and stayed at WestVet until discharge on May 12.

Bella's syncopal⁵ episodes began in June. On June 1, Kamani called Hidden Springs Animal Hospital, requesting a house call to check Bella and confirm that Bella was doing ok. In a note, Hidden Springs prescribed sildenafil 20mg PO⁶ every 12 hours for pulmonary hypertension.

An echocardiogram is a diagnostic test that takes detailed pictures of the heart. *Echocardiogram*, MAYO CLINIC, (Nov. 12, 2024),

https://www.mayoclinic.org/tests-procedures/echocardiogram/about/pac-20393856, (last visited Apr. 14, 2025).

The echocardiogram and ECG would have determined if Bella had congestive heart failure or pulmonary hypertension.

³ MVD refers to the degeneration, thickening, and subsequent leaking of the valve separating the left atrium and left ventricle of the dog's heart and is common in older dogs, often detected through a heart murmur. *Mitral Valve Disease in Dogs*, PETMD, (Jun. 21, 2023), https://www.petmd.com/dog/conditions/cardiovascular/mitral-valve-disease-dogs, (last visited Apr. 9, 2025).

TVD is a congenital malformation of the tricuspid valve allowing backwards blood flow which causes volume overload to the right heart. *Tricuspid Valve Dysplasia in Dogs*, CVCA, https://www.cvcavets.com/tricuspid-valve-dysplasia/, (last visited Apr. 14, 2025).

⁴ Pulmonary hypertension is an elevated blood pressure within the vasculature of the lungs. It can lead to decreased blood flow to the left side of the heart for release and can cause decreased oxygenation of blood.

⁵ Syncope refers to fainting or passing out, typically caused by a temporary loss of oxygen to the brain. It is usually an indication of structural heart disease or arrhythmias. Bella's syncope was likely due to Bella's pulmonary hypertension.

⁶ Sildenafil is medication to treat clinical signs of pulmonary hypertension, like syncope. *Sildenafil for Dogs and Cats*, PET MD, (Jan. 23, 2023),

From September to December, Bella experienced 10 to 13 syncope episodes that lasted four-to-five seconds.

On November 23, after relocating to Washington, Kamani e-mailed Olympic Veterinary Cardiology, requesting a consult for Bella's cough and syncope.

On December 19, Kamani visited the Veterinary Referral Center of Central Oregon (VRCCO) for Bella's syncopal episodes. VRCCO completed diagnostic testing, and of the several problems identified, it found: (1) mildly elevated red blood cell count, likely secondary to chronic hypoxia (decreased oxygen from upper airway disease); (2) mildly elevated liver enzymes, which could be suggestive of several diagnoses, notably of cardiac disease or chronic upper airway disease; and (3) progressive pulmonary hypotension based on progressive changes in Bella's echocardiogram. VRCCO recommended following up with a cardiologist in Portland.

On December 22, Cascade Veterinary diagnosed Bella with progressive pulmonary hypertension and noted a concern that Bella could develop "more fulminant^[7] symptoms." Clerk's Papers (CP) at 193.

https://www.petmd.com/pet-medication/sildenafil-dogs-and-

cats#:~:text=Sildenafil%20is%20used%20in%20dogs%20and%20cats%20to,megaesophagus%20and%20myxomatous%20mitral%20valve%20disease%20in%20dogs, (last visited Apr. 14, 2025).

PO stands for "Per Os" which means medication to be taken by mouth or orally. *PO Medical Abbreviation*, ALL ACRONYMS, https://www.allacronyms.com/PO/medical, (last visited Apr. 14, 2025).

⁷ "Fulminant" describes something coming on suddenly and with great severity. WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY, 920 (2002).

B. TREATMENT AT AESC

1. First Admission

On the morning of December 31, Bella experienced a five-to-six second syncopal episode. This prompted Kamani to call several veterinary facilities. Kamani called VRCCO first, who recommended Kamani look for an emergency and specialty veterinarian. Kamani called a veterinarian in Gig Harbor, but did not go there because they did not have oxygen. Kamani then looked up "emergency and specialty care" online and found AESC. CP at 349. When Kamani looked up AESC and saw they offered oxygen and echocardiograms, she decided to drive to AESC.

Kamani drove about 45-minutes to an hour to AESC. When Kamani took Bella to AESC, she provided employees with Bella's medical records.

Bella was admitted to AESC and was charted to present with respiratory distress. Stone reviewed Bella's medical history and charted a history of pulmonary hypertension and syncopal episodes. Stone also noted a heart murmur and noted that Bella was anxious. Bella was unable to settle, was hyperactive, and appeared anxious. Stone recommended that Kamani continue with Bella's medication for congestive heart failure and to follow up with cardiology as planned. Stone also informed Kamani that putting a pacemaker in Bella could address Bella's syncopal episodes. No cardiologist had ever informed Kamani of this, and Kamani intended to bring it up at the next cardiology appointment. Kamani also recalled Stone told her that they did not have sildenafil—the medication used to treat Bella's pulmonary hypertension and syncope—on site. After the exam, Stone discharged Bella, and Kamani recalled Stone stating that Bella was fit to go home.

Kamani stayed in the AESC parking lot for a while after Bella was discharged to make sure Bella was fine. As Kamani began driving home, Bella began hyperventilating—which Kamani describes as "fish mouth breathing." CP at 352. Kamani returned to AESC.

2. Second Admission

Kamani returned to AESC with Bella around 11:25 a.m.; Bella presented with respiratory distress. AESC admitted Bella, sedated her, and treated her with oxygen.

Stone noted that while Bella was anxious in the kennel, she appeared "nice and pink." CP at 201. Stone recommended weaning Bella from oxygen and sedating her as needed.

According to Stone, if Bella appeared stable on room air, Bella could be discharged.⁸ Kamani requested Stone to go back and check Bella, and that if Bella was fine, Kamani would take her. Stone went to check on Bella. After several minutes, Kamani recalled an AESC staff member bringing Bella out. Bella was discharged a second time. After the second discharge, Bella "was wobbling and shaking," so Kamani decided to go back into AESC. CP at 354.

3. Third Admission

At some point, between the second and third admission, Ojus Mehta, Kamani's exhusband, showed up at AESC to meet Kamani.

Kamani recalled that during the third admission, Stone was willing to keep Bella on oxygen for a couple hours. Also, Stone gave Bella midazolam to calm her down.

Kamani recounted having a discussion with Susan Hillard, an AESC employee, about sildenafil. At Hillard's request, Kamani handed the sildenafil to Hillard who took the bottle to the

⁸ The medical records show that these discussions and observations occurred on December 31, but were not entered into Bella's medical records until January 1.

back. At some point, Hillard approached Kamani and asked Kamani about sildenafil doses.

During this conversation, Kamani recalled Hillard informing her that Stone would allow her to see

Bella.

Hillard brought Kamani to the ICU to see Bella. While there, Kamani was allowed to administer the sildenafil to Bella.

After the ICU encounter, Kamani discussed admitting Bella for 12-hours with Jason Descombaz, a veterinary technician at AESC. Then, Kamani changed her mind and requested that Bella's admission be changed from 12- to 24-hours.

During this interaction, Descombaz asked Kamani to sign a form on a tablet, and Kamani signed the form without reading it. Apparently, this form was the "Admission Summary" which showed an option for 24-hour admission. CP at 509. Also, during this interaction, Kamani gave a Shiva statue⁹ (Shivling) to Descombaz to put with Bella.

After signing on the tablet, Kamani asked Descombaz to confirm that the 24-hour option was what she signed for and that signature was there. Descombaz stated, "I've checked. It is 24-hours and your signature is there now." CP at 358. Kamani then paid for the admission. Kamani requested that Descombaz follow up with Stone about Bella's recent diagnostic testing to confirm what additional tests were needed. Kamani recounted there were no discussions about diagnostic testing after that.

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⁹ The Shiva statue, or Shivling, is religious statue.

During Bella's third admission, Stone noted that Bella appeared stable, pink, and anxious. Stone also noted that Bella was placed in an oxygenated kennel, and that he discussed readmitting Bella with Kamani, as well as potential diagnostics that AESC could run.

Stone charted serial discussions with Kamani about the option to hospitalize with support and diagnostics as needed. Stone also noted that Kamani declined to admit Bella overnight and agreed to a shorter block of time. Stone recommended an overnight stay to observe Bella, but Kamani declined. According to Stone, if an owner elects to take a pet home, that he—and AESC staff—have to follow the owner's request.

In an e-mail by Stone to an AESC employee on January 3, 2023 labeled "Addendum," Stone stated that Kamani asked to administer the sildenafil herself. CP at 339. Stone opined that Kamani did not properly administer the sildenafil, and that "[t]his lack of compliance likely . . . had a negative impact on Bella." CP at 339.

4. Discharge

AESC chart notes stated that Bella was successfully weaned to room air, that Bella began to settle, and that Bella's respiration rate was less frantic. According to AESC staff, Bella had improved since Bella's third presentation. While Bella was still panting, her tongue color had improved and was "more pink." CP at 313. At the time of the third discharge, Bella's respiration was a little increased but not alarming or troublesome.

According to Stone, there "[was] always a risk" Bella would pass after discharge that night. CP at 217. Despite this, at the time, he still expected Bella to be fine at discharge. Stone recalled that Bella had improved, calmed down, and was pink when she left. Moreover, while Bella was

still anxious, Bella was comfortable. Also, while Bella had multiple comorbidities, Stone believed Bella's comorbidities were stable.

Stone entered a discharge summary note stating Bella was in an oxygen-rich environment for a few hours, was treated with light sedation, and weaned off oxygen supplementation. He also noted that Bella would be sleepy. Additionally, Stone noted a discussion prior to discharge where Kamani understood that Bella was free to return at any time.

Kamani recalled being told that AESC was weaning Bella from oxygen, and that Bella was doing great and ready for discharge. Kamani recounted being happy.

At discharge, Kamani recalled having a conversation with Stone in the parking lot and generally recalled Stone stating he did not want to keep sedating Bella and her going into syncope. Kamani also recalled Stone asking Kamani when the cardiologist appointment was and Kamani confirmed it was on January 10, 2023. Kamani recounted Stone putting Bella in the car and stating, "[S]he's doing so much better now." CP at 359. She also recounted Stone informing her, "[I]t's 50/50," "you know what's going to happen." CP at 360.

While outside, Kamani recalled Bella appeared to be gasping and that Bella's face was grey. Kamani asked if Bella was fine and recounted being told yes. Kamani remembered that Stone said Bella was stable for discharge.

During the drive home, Mehta sat in the backseat and could not recall hearing Bella hyperventilate. Mehta stated that if there had been something wrong, Kamani would have stopped and made a U-turn.

5. Bella's Death

When Kamani, Mehta, and Bella arrived home, Bella began hyperventilating. Mehta stated that it appeared as if Bella was gasping and suffocating for air. Kamani and Mehta turned on a fan and grabbed water for Bella, thinking it would calm Bella down. Mehta recounted turning on a fan, and getting chicken and water for Bella. He also recounted Kamani giving Bella something—maybe Benadryl.

Mehta further recalled that Kamani called Bella's primary care veterinarian¹⁰ and administered CPR. However, about an hour and a half after being discharged from AESC, Bella passed away at home.

C. POST-DEATH EVENTS

1. Police Involvement

After Bella passed, Kamani called AESC. A receptionist answered the phone and recounted the interaction as follows:

I received another call that caller id listed as "anonymous." After I greeted the female caller, she yelled "I'm going to kill your (profanity) medical director." She continued that Dr. Stone had sent her pet home and she had died. She stated she would report him to the AVMA. The caller was a bit hard to understand as she explained that we should have kept him [sic] on oxygen and they (the owners) would have been happy to stay longer. She said the pet was distressed at home and started "gasping and gasping and gasping," and then passed. She proceeded to use many expletives and abrasive language. She then demanded to speak to Dr. Stone. Up to this point I had been unable to say anything. I informed her that Dr. Stone had gone home for the day and would not be able to speak with her. She hung up.

CP at 226.

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¹⁰ The primary care veterinarian is in Baltimore, Maryland and not affiliated with AESC or Stone.

The receptionist subsequently called the police and reported the death threat. Police then called Kamani, who asked that police to stop calling her because they were going through a tough time.

When Stone was alerted to Kamani's threat, he was not worried and did not seem to take the threat too seriously because Kamani was probably just venting. Stone declined to press charges.

Kamani denied threatening to kill Stone.

Kamani sent AESC several e-mails between January 3 and January 7, 2023. An e-mail on January 6 stated that Stone harmed a creature of God and promised Stone will be brought to justice. On January 7, AESC became concerned for AESC staff's safety after receiving several of Kamani's e-mails.

AESC subsequently trespassed Kamani from the clinic.

Around the same time, Kamani e-mailed the Poulsbo police "ask[ing] for a harassment complaint against the animal clinic for making false claims to the police." CP at 410. Police found that this claim was unfounded.

Kamani also requested that AESC staff be trespassed from her home. However, the police had not received "any reports of any [AESC] staff trying to contact [Kamani] in person at her home or any other way other than email." CP at 410.

On January 10, AESC sent Kamani a cease and desist letter.

2. Bella's Medical Records

On December 31, 2022, at 11:34 p.m., Kamani e-mailed AESC requesting records for Bella's treatment.

AESC staff first attempted to send Bella's medical records to Kamani by e-mail on January 2, 2023. However, it was sent to the wrong e-mail address due to a typographical error.

Then, AESC sent and Kamani received the requested records on January 3. On the same day that Kamani received the records, Kamani immediately pointed out several perceived inaccuracies about what was relayed and what was written. Kamani continued to send e-mails to AESC asking questions and requesting information about how Bella was treated.

Kamani also e-mailed her primary care veterinarian, who reviewed Bella's records from AESC. The primary care veterinarian opined that Bella could have had an acute respiratory system collapse due to the constant stress on her system from the pulmonary hypertension. He also stated that Bella's death could happen in spite of the correct symptomatic and appropriate treatments.

D. PROCEDURAL HISTORY

1. Lawsuit

Kamani filed suit against Stone and AESC on March 30, 2023. Kamani sued Stone for outrage, fraud, and negligence. Kamani sued AESC for outrage, fraud, breach of veterinary services contract, and professional negligence. Kamani sought noneconomic and economic related damages.

Stone and AESC filed an answer on May 8. Stone and AESC pleaded the following affirmative defenses: (1) that the alleged injuries and damages may have resulted from Kamani's comparative negligence or failure to mitigate; (2) that intervening or superseding events caused Bella's alleged injuries and damages; and (3) that Bella's alleged injuries and damages may have resulted from pre-existing injuries, physical conditions, or psychological conditions unrelated to Kamani's claims against Stone and AESC.

An audit trail of the medical chart notes conducted during discovery shows that there were some entries on December 31, 2022 that were edited and that there were later entries inputted into the system on January 1 and 2, 2023, and backdated to December 31.¹¹ Since AESC staff sees multiple patients in a day, it is common for AESC staff to write up medical records the next day. It is also common for staff to remember something and during the next shift add the missing information.

2. Motion for Summary Judgment

Stone and AESC moved for summary judgment. They requested that the trial court dismiss (1) the negligence claims because Bella's cause of death was unknown and expert testimony failed to establish each element of the claim, (2) the outrage claims because Kamani failed to state a cause of action, (3) the fraud claims because such a claim is not recognized in veterinary medicine and Kamani could not meet her burden of proof as to each element, (4) the breach of contract claim because Kamani's suit is barred by the exculpatory clause in the contract and because such a claim

¹¹ Kamani submitted a twelve-page appendix document with her appeal. Appendix A appears to be snipped and expanded versions spotlighting sections of the seven-page audit trail per RAP 10.4(c). Appendix B appears to be a legible copy of a section of the records that Stone and AESC submitted with their motion for summary judgment.

In the record, Kamani submitted a seven-page audit trail of AESC's records, as Exhibit H, in her response to Stone/AESC's motion for summary judgment. That document is illegible. Kamani resubmits this same seven-page document in her motion for reconsideration. This document, while it has some legible words, for the most part it is illegible.

The section of the records that Stone and AESC submitted with their motion for summary judgment has illegible highlighted entries.

Since the parties do not appear to dispute the content of the entries, and only dispute what should be inferred from the entries, we will refer to Appendix A and Appendix B for legibility.

is duplicative of the veterinary negligence claim, and (5) any other implied causes of action that were not pled.

Kamani opposed the motion for summary judgment in its entirety. Kamani supported her opposition with the declaration of Danielle Babski, DVM. Babski provided several possibilities for Bella's death. A few examples being: failing to offer or perform chest radiographs; failing to provide, at a minimum, overnight hospitalization with supplemental oxygen and continued administration of previously prescribed medications; failing to consider referral to a more equipped and capable specialty hospital; discharging Bella three times; failing to actually treat the presumed anxiety; and abandoning and neglecting Bella. Babski concluded that these possibilities proximately resulted in Bella's death.

Kamani later filed a second declaration by Babksi. In that declaration, Babski stated she is unable to provide a more precise cause of the condition ailing Bella on December 31, 2022. Babski then listed several potential conditions and provided further discussion about the various possibilities for Bella's death.

On April 3, 2024, the trial court partially granted the motion for summary judgment. Specifically, the trial court dismissed all claims against Stone and AESC except for the negligence claims. The trial court's order also stated that having dismissed the outrage and fraud claims, Kamani could not recover noneconomic emotional distress damages or wage loss damages.

Kamani filed a motion for reconsideration. The trial court denied Kamani's motion for reconsideration on April 22.

Kamani moved for the trial court to certify the partial summary judgment order and order denying reconsideration as final under CR 54(b). The trial court granted the motion.

Kamani appeals based on the trial court's CR 54(b) certification.

ANALYSIS

Kamani argues that the trial court erred when it granted Stone and AESC's motion for summary judgment and dismissed Kamani's outrage, fraud, and breach of contract claims against Stone and AESC. Kamani also argues that because the trial court erred in dismissing the outrage and fraud claims, the trial court erred when it prohibited Kamani from recovering noneconomic or emotional distress damages, or wage loss. Lastly, Kamani alleges that the trial court erred when it denied Kamani's motion for reconsideration. We address each claim in turn.

A. SUMMARY JUDGEMENT

We review a trial court's order on summary judgment de novo. *Spohn v. Dep't of Lab. & Indus.*, 20 Wn. App. 2d 373, 378, 499 P.3d 989 (2021). Summary judgment is appropriate if, when viewing the facts in the light most favorable to the nonmoving party, there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *Young v. Key Pharm., Inc.*, 112 Wn.2d 216, 226, 770 P.2d 182 (1989); CR 56(c). Genuine issues of material fact exist when reasonable minds could reach different conclusions as to the fact at issue. *Michael v. Mosquera-Lacy*, 165 Wn.2d 595, 601, 200 P.3d 695 (2009).

When the moving party meets the initial burden of showing absence of an issue of material fact, then the burden shifts to the nonmoving party to make a showing sufficient to establish the existence of an essential element of the case. *Young*, 112 Wn.2d at 225-26. The purpose of summary judgment is to avoid unnecessary trials where insufficient evidence exists. *Pelton v. Tri-State Mem'l Hosp.*, *Inc.*, 66 Wn. App. 350, 355, 831 P.2d 1147 (1992).

Although we review the evidence in the light most favorable to the nonmoving party, mere allegations or conclusory statements of fact, unsupported by evidence, are not sufficient to create a genuine issue of material fact. *Discover Bank v. Bridges*, 154 Wn. App. 722, 727, 226 P.3d 191 (2010). The nonmoving party "may not rely on speculation, argumentative assertions that unresolved factual issues remain, or in having its affidavits considered at face value." *Id.* (quoting *Seven Gables Corp. v. MGM/UA Ent. Co.*, 106 Wn.2d 1, 13, 721 P.2d 1 (1986)). "[A] party's declaration is enough to create a question of fact where [the plaintiff's] deposition testimony was based on [their] personal observations of the defendant's conduct." *Reagan v. Newton*, 7 Wn. App. 2d 781, 806, 436 P.3d 411 (2019), *review denied*, 193 Wn.2d 1030 (2019).

B. Outrage¹²

Kamani argues that Stone's acts and omissions on December 31, and the days after, were outrageous and caused her extreme emotional harm. Specifically, Kamani alleges that Stone acted outrageously when Stone (1) misdiagnosed Bella, (2) withheld treatment, (3) improperly backdated clinical notes in Bella's medical records after Bella died, and (4) weaned Bella from oxygen and discharged Bella contrary to Kamani's wishes and knowing that Bella would pass shortly thereafter. We disagree.

1. Legal Principles

To prevail on a claim of outrage, the plaintiff must produce evidence showing (1) extreme and outrageous conduct, (2) intentional or reckless infliction of emotional distress, and (3) that

¹² The tort of outrage is synonymous with a claim for intentional infliction of emotional distress. *Repin v. State*, 198 Wn. App. 243, 265, 392 P.3d 1174, *review denied*, 188 Wn.2d 1023 (2017).

plaintiff actually suffered severe emotional distress. *Lyons v. U.S. Bank Nat'l Ass'n.*, 181 Wn.2d 775, 792, 336 P.3d 1142 (2014).

Extreme and outrageous conduct is that which is "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." *Grange Ins. Ass'n v. Roberts*, 179 Wn. App. 739, 754, 320 P.3d 77 (2013) (internal quotation marks omitted) (quoting *Reid v. Pierce County*, 136 Wn.2d 195, 202, 961 P.2d 333 (1998)), *review denied*, 180 Wn.2d 1026 (2014). Such conduct must be so extreme and outrageous that its recitation to "an average member of the community would arouse . . . resentment against the actor" and cause the listener to exclaim "Outrageous!" *Kloepfel v. Bokor*, 149 Wn.2d 192, 196, 66 P.3d 630 (2003) (internal quotation marks omitted) (quoting *Reid*, 136 Wn.2d at 201-02).

While generally an outrage claim presents questions of fact, Washington courts "consider[] themselves gatekeepers for purposes of allowing a jury to decide" an outrage claim. *Repin v. State*, 198 Wn. App. 243, 266, 392 P.3d 1174 (2017), *review denied*, 188 Wn.2d 1023 (2017); *see also*, *Lyons*, 181 Wn.2d at 792. Thus, on summary judgment, a trial court must initially determine whether the alleged conduct may "reasonably be regarded as so extreme and outrageous as to warrant a factual determination by the jury." *Repin*, 198 Wn. App. at 266. The level of outrageousness required is extremely high and is not an easy requirement to meet. *Id.* at 267; *Christian v. Tohmeh*, 191 Wn. App. 709, 736, 366 P.3d 16 (2015), *review denied*, 185 Wn.2d 1035 (2016).

When reviewing conduct to determine if it is sufficient to support an outrage claim, courts may consider a number of factors:

(1) the position the defendant occupied, (2) whether the plaintiff was particularly susceptible to emotional distress and the defendant was aware of the susceptibility, (3) whether the defendant's conduct was privileged, (4) whether the degree of emotional distress was severe as opposed to merely annoying, inconvenient or embarrassing, and (5) whether the defendant was aware of a high probability that his or her conduct would cause severe emotional distress, and consciously disregarded that probability.

Sutton v. Tacoma Sch. Dist. No. 10, 180 Wn. App 859, 870, 324 P.3d 763 (2014).

2. Outrage Claims Against Stone

For the outrage claims against Stone, Kamani was required to show that Stone's actions were so extreme and outrageous that Kamani suffered severe emotional distress, and that Stone intentionally or recklessly, rather than negligently, brought about that distress. *Womack v. Von Rardon*, 133 Wn. App. 254, 261, 135 P.3d 542 (2006).

a. Stone's Conduct Not Outrageous

As a preliminary matter, we acknowledge Stone's position in relation to Kamani. Stone is a licensed veterinarian with the Washington Department of Health and has worked in the profession for over 24 years. A veterinarian's practice must be conducted on the highest plane of honesty, integrity, and fair dealing. WAC 246-933-080. Thus, Stone was in a position where it was reasonable for Kamani to entrust the care of Bella to Stone. However, even in this context and even when the evidence is viewed in a light most favorable to Kamani, Kamani's outrage claims fail.

Kamani claims a plethora of alleged outrageous acts and omissions by Stone which can be put into three categories, and each category will be addressed in turn.

i. Misdiagnosis of Bella

Kamani argues that Stone's conduct was outrageous when he misdiagnosed Bella and relayed different diagnoses to various individuals. Kamani contends that Stone misdiagnosed Bella when Stone claimed Bella was anxious, said Bella needed a pacemaker, and said after Bella's death that Kamani's improper administering of medication to Bella while Bella was hospitalized "was to Bella's detriment." Br. of Appellant at 54.

A "diagnosis" is the "act of identifying a disease from its signs and symptoms." Webster's Third New International Dictionary at 622. While the record shows Stone stated Bella was anxious, there is no record that Stone diagnosed Bella with anxiety. The record also shows that Stone charted in the "Neuro" section "anxious," that Bella presented with "respiratory distress," and stated that Bella was anxious in the oxygenated kennel. CP at 197, 199. The record further shows that Stone charted a medical history of "pulmonary hypertension, known hx of syncope, heart murmur, suspected chronic upper airway disease, likely blind, marked dental disease, and marked anxiety." Br. of Appellant, App. A¹³ at 6. And the record shows that Stone discussed with Kamani about medication that could calm Bella down and treated Bella with that medication. The record also shows that Stone discussed the possibility of a pacemaker surgery with Kamani. Kamani's claims of misdiagnoses are not supported by the record. In fact, there is

¹³ Kamani submitted Appendix A with her opening brief, which appears to be snipped and expanded entries spotlighting sections of a seven-page audit trail per RAP 10.4(c). Kamani also submitted a seven-page audit trail of AESC's records, as Exhibit H, in her response to Stone/AESC's motion for summary judgment. Exhibit H is illegible. Kamani resubmitted this same seven-page document in her motion for reconsideration. This document, while it has some legible words, for the most part also is illegible. Because the parties do not appear to dispute the time or content of the entries, only what should be inferred from the entries, we will refer to Appendix A of Kamani's opening brief due to its legibility.

no evidence that Stone made any diagnoses. To the extent Stone did make a diagnosis, a misdiagnosis is not outrageous conduct, especially in the context of Bella's medical history.

Kamani also argues it was outrageous that Stone relayed different diagnoses to various AESC individuals. As discussed above, the record does not show that Stone made any diagnoses. Moreover, even if Stone had relayed different diagnoses to various individuals as Kamani claims, Kamani does not explain how sharing Bella's presentation of alleged diagnoses with AESC staff, even if they were different than what was relayed to Kamani, was extreme and outrageous conduct.

Kamani further argues that Stone misdiagnosed Bella by blaming Kamani for Bella's death. However, Stone's e-mail after Bella's death about improper administration of sildenafil is not a diagnosis. To the extent this is a diagnosis, Stone did not state that the improper administration of medication caused Bella's death. Rather, Stone stated that improper administration of the medication "likely . . . had a negative impact on Bella." CP at 411. Indicating something likely had a negative impact is not a diagnosis. And even if it was, such a misdiagnosis is not extreme and outrageous conduct.

Moreover, the record does not provide a cause of death for Bella; rather, the record only provides several possibilities for a cause of death. The record also shows that Bella's primary veterinarian believed Bella would have died anyway. Given the record, and without a definitive cause of death, it is speculative to claim that Stone's misdiagnosis was so extreme or outrageous that it caused Bella's death, which led to Kamani's emotional distress.

In sum, the record does not show Stone misdiagnosed Bella, and even if he did, such conduct, in the context of the record, cannot be considered extreme or outrageous as a matter of law.

ii. Withholding treatment

Kamani argues that Stone's conduct was outrageous when Stone withheld treatment by removing Bella from oxygen, failing to treat Bella's anxiety, failing to house Bella in a room with an oxygen tank, and failing to provide treatment for each of his purported diagnoses. Kamani also argues that Stone abandoned Bella per WAC 246-933-060 when he discharged Bella.

Once a veterinarian accepts an animal for treatment, "the veterinarian shall not neglect the patient, as long as the person presenting the patient requests and authorizes the veterinarian's services for the particular problem." WAC 246-933-060. Here, there is no evidence supporting Kamani's claim that Stone withheld treatment from or abandoned Bella.

Instead, the undisputed record shows that Stone treated Bella each time Bella was admitted. The record also shows that Kamani authorized Bella's final discharge, that Kamani was "happy" when Bella was removed from oxygen, and Kamani accepted Bella at discharge. CP at 359. While Kamani claimed in her deposition that she did not authorize the discharge, her agreement or disagreement with Bella's discharge fails to create a genuine issue of material fact as to whether Stone abandoned Bella or withheld treatment. There is no evidence to show that Bella medically required oxygen at the time she was removed from oxygen, what treatment Bella required for anxiety that Stone refused to give, or that keeping Bella in a room with an oxygen tank was a required treatment that Stone withheld. Also, Kamani fails to identify what treatment was required for each purported diagnosis she alleges Stone withheld. Thus, Kamani's outrage claim that Stone failed to treat or abandoned Bella fails as a matter of law.

Kamani also appears to argue that Stone's withholding of information regarding AESC's lack of specialty services was outrageous. However, regardless of any representations Stone may

have made to Kamani about specialty services available or not available at AESC, such conduct, in light of the record before us, is not outrageous as a matter of law.

iii. Routine medical record edits

Kamani argues that Stone's conduct was outrageous when Stone added notes to Bella's chart on January 1, then backdating them to December 31, and when Stone revised Stone's December 31 notes. Kamani asserts that this manipulation of the record shows an elaborate, timepoint-curated, contradictory attempt to blame Kamani for Bella's death. However, the record shows that this practice of piecemeal notations is common.

The undisputed evidence in the record shows that it is common for AESC staff to write up some medical records on the day of services and then write up the rest of their medical records the next day. Thus, Stone's adding to and revising of medical notes the day after he provided emergency treatment to Bella does not make an average member of the community resent Stone and exclaim "Outrageous!" *Kloepfel*, 149 Wn.2d at 196 (internal quotation marks omitted) (quoting *Reid*, 136 Wn.2d at 202). This claim fails as a matter of law.

b. Kamani's susceptibility to emotional distress

Kamani also argues that because Stone knew she was highly susceptible to severe emotional distress, his actions were extreme and outrageous. We disagree.

There is no evidence in the record that Stone was aware Kamani was highly susceptible to severe emotional distress. And there is no evidence that Stone had met or had any experiences with Kamani prior to the day he provided emergency services to Bella, or that Stone was told Kamani was highly susceptible to emotional distress.

Moreover, Kamani fails to demonstrate she was any more susceptible to emotional distress than any other pet owner who seeks emergency veterinary care. There is evidence in the record that while Kamani was visibly upset and emotional at the clinic, "a lot of people are emotional and concerned when they come to the emergency with their pets." CP at 304. Thus. Kamani fails to show, let alone create a genuine issue of material fact, that Stone knew Kamani was highly susceptible to emotional distress. This claim fails as a matter of law.

c. Intent element absent

Kamani argues that when Stone misdiagnosed Bella, failed to treat Bella, and discharged Bella, he did so with the intent to cause Kamani severe emotional distress. However, Kamani fails to create a genuine issue of material fact showing Stone had the requisite intent to cause Kamani severe emotional distress.

There is no evidence in the record showing that Stone intended for Bella to die based on his treatment or that Stone intended to cause Kamani emotional distress. Even in a case where the facts are shocking, if intent is not established, the outrage claim fails. *See Womack*, 133 Wn. App. at 261 ("What [defendants did to plaintiff's cat] was deplorable, but the record does not sufficiently establish the required intent or the necessary severity.").

Kamani asserts that in *Womack*, the court found a lack of intent because the defendants did not know the plaintiff. That reasoning applies here as well because Stone did not know Kamani. The undisputed record shows that it was Kamani's first time at AESC and her first time meeting Stone; thus, it would be a stretch to argue that Stone knew Kamani or that Stone knew Kamani was susceptible to emotional distress. Like in *Womack*, there is no evidence of the requisite intent for an outrage claim. Therefore, Kamani's outrage claims against Stone fail as a matter of law.

3. Outrage Claims against AESC

a. AESC's conduct not outrageous

Kamani argues that AESC's acts and omissions on December 31, and the days after, were extreme and outrageous and caused her severe emotional harm. Specifically, Kamani alleges that AESC acted outrageously when AESC staff (1) failed to monitor Bella, (2) delayed the transmission of Bella's records to Kamani, and (3) contacted the police and sent Kamani a cease and desist letter.¹⁴

We affirm the trial court's dismissal of Kamani's outrage claim against AESC because even when the evidence is viewed in a light most favorable to Kamani, the record does not raise a genuine issue of material fact as to whether AESC's conduct was extreme and outrageous, or whether AESC intended to cause Kamani severe emotional distress.

i. Notes indicating limited monitoring

Kamani argues that AESC intentionally inflicted emotional distress when they stopped monitoring Bella's vitals and heartrate after 5:00 p.m. and continued weaning Bella from oxygen despite Bella's elevated heart rate. However, the record is devoid of any evidence that AESC, even if they did stop monitoring Bella and weaned Bella from oxygen, did so with the intent to inflict emotional distress on Kamani. This claim fails as a matter of law.

AESC.

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¹⁴ Kamani also argues that Stone's alleged conduct imputes to AESC because he was the medical director and had an executive role in AESC's alleged outrage. However, since Stone's acts and omissions are not outrageous, we need not evaluate this alleged theory of vicarious liability on

ii. Delayed records

Kamani argues AESC acted outrageously when it delayed sending Bella's records to Kamani. We disagree.

Here, AESC initially sent the records to the wrong e-mail because of a typographical error. But even considering this delay, Kamani received Bella's records well within the 10-working days window referenced in WAC 246-933-320(9), which states that an animal's medical records shall be "made available as promptly as required by medical necessity or public health circumstances, but no later than ten working days" after the request is made. Kamani requested Bella's records on December 31, 2022, and received the requested records on January 3, 2023. Thus, Kamani's outrage claim based on AESC's provision of Bella's medical records three days after she requested them fails as a matter of law.

iii. Contacting police and sending cease and desist letter

Kamani argues that AESC's contacting the police was outrageous conduct. We note that in her complaint, Kamani stated that "no part of any claim made pertains to or arises from [AESC], Stone, or any employee of [AESC] communicating with 911, Poulsbo Police Department, or any government agency." CP at 15 n.3. Regardless, we disagree with Kamani.

The record shows AESC called the police after Kamani called AESC and threatened to kill Stone. AESC then trespassed Kamani from the clinic on or around January 7 and sent her a cease and desist letter on January 10, after Kamani sent seven e-mails between January 3 and January 7 to AESC, which prompted concerns for the safety of AESC staff. In Kamani's e-mail to AESC on January 6, she stated that "[w]e have made multiple requests via email, phone, and in person to get information about how you treated our dog." CP at 178. In that same e-mail, Kamani

"promise[d]" that Stone would be brought to justice for harming a "creature of God," that "God is watching," that Stone was "evil" and "got away with murder." CP at 178. In two of Kamani's emails, Kamani mentioned phone calls to AESC. In Kamani's January 7 e-mail, she documented that Mehta visited AESC.

Kamani cites to *Burgess v. Taylor*, 44 S.W.3d 806 (Ky. App. 2001), to support her argument that outrage should be found here because despite AESC's knowledge of Bella's death, AESC still contacted the police, trespassed Kamani, and sent a cease and desist letter. In *Burgess*, a court in Kentucky found outrage viable where a distraught and frightened plaintiff begged the defendant to find out where their horses were to save them from being sent to a known slaughter-buyer. *Id.* at 811-12.

Here, unlike the plaintiff in *Burgess*, Kamani was not merely seeking information about her pet; instead, the undisputed evidence shows that Kamani's contacts with AESC staff left them concerned for their safety. We are not bound by another jurisdiction's case law, and we decline to follow *Burgess*. Instead, we hold that Kamani's outrage claims based on AESC calling the police, trespassing Kamani from AESC, and sending Kamani a cease and desist letter fail as a matter of law.

b. Kamani's susceptibility to emotional distress

Kamani argues that Stone's knowledge of her susceptibility to emotional distress should be attributed to AESC. Kamani asserts that because she was particularly vulnerable to emotional distress, and AESC knew as much, AESC's actions were particularly extreme and outrageous. *Sutton*, 180 Wn. App. at 870. However, as discussed above, there is no evidence that Stone had any knowledge of Kamani's susceptibility to emotional distress. Also, there is no evidence to

show that AESC had any knowledge that Kamani was particularly susceptible to emotional distress.

Kamani argues that showing up three times in a day, giving a Shivling statue to AESC staff for Bella, and seeking video updates of Bella from staff should have informed AESC of Kamani's particular susceptibility to emotional distress. However, while these acts show Kamani's deep love for Bella, they do not show that Kamani was particularly susceptible to emotional distress. Kamani's outrage claim based on AESC's alleged knowledge of her susceptibility to emotional distress fails as a matter of law.

c. AESC's intent

Kamani argues that AESC acted with knowledge of Bella's inevitable death and acted with the intent to inflict emotional distress onto Kamani. However, the record is devoid of any evidence showing such knowledge and intent.

There is no evidence in the record that shows AESC knew Bella would die an hour and a half after discharge or that AESC intended to cause Kamani severe emotional distress. Kamani admitted that she does not know whether AESC staff believed Bella would die 90-minutes after discharge. Thus, even when the evidence is viewed in the light most favorable to Kamani, there is no evidence that AESC knew Bella would die an hour and a half after discharge or that AESC acted with intent to inflict emotion distress onto Kamani. AESC's conduct was not outrageous as a matter of law, and we affirm the trial court's dismissal of Kamani's outrage claim against AESC.

Kamani fails to create a genuine issue of material fact as to whether Stone and AESC's actions were extreme and outrageous, or whether Stone and AESC intentionally caused Kamani emotional distress. Therefore, we hold that Kamani's outrage claims fail as a matter of law and

affirm the trial court's summary judgment dismissal of Kamani's outrage claims against Stone and AESC.¹⁵

C. FRAUD

Kamani argues that all of the facts, taken together as a whole, support her argument of fraud. 16 Kamani contends that Stone conveyed untruthful material information and expected Kamani to rely on this information. We disagree.

1. Legal Principles

The nine elements of fraud are: (1) representation of an existing fact, (2) materiality, (3) falsity, (4) the speaker's knowledge of the fact's falsity, (5) intent of the speaker that it should be acted upon by the plaintiff, (6) plaintiff's ignorance of its falsity, (7) plaintiff's reliance on the truth of the representation, (8) plaintiff's right to rely upon it, and (9) damages suffered by the plaintiff. *Stiley v. Block*, 130 Wn.2d 486, 505, 925 P.2d 194 (1996). Each element of fraud must be established by clear, cogent, and convincing evidence. *Id.* Clear, cogent, and convincing evidence exists when the ultimate fact at issue is highly probable and is supported by substantial evidence. *In re Dependency of K.S.C.*, 137 Wn.2d 918, 925, 976 P.2d 113 (1999); *In re Det. of B.M.*, 7 Wn. App. 2d 70, 85, 432 P.3d 459, *review denied*, 193 Wn.2d 1017 (2019). Lastly, when a duty to disclose exists, the suppression of a material fact is tantamount to an affirmative

¹⁵ Accordingly, Kamani is not entitled to any related noneconomic or economic damages recoverable for the tort of outrage.

Kamani argues that fraud is seldom proved by direct evidence, and that the circumstances here, taken as a whole, has potent persuasive force. Kamani also argues that circumstantial evidence provides the brick and mortar of a fraud claim. But Kamani fails to cite to any authority or case law to support her arguments. RAP 10.3(a)(6) requires that all arguments be made with citations to legal authority. Kamani did not do so.

representation. Alexander v. Sanford, 181 Wn. App. 135, 177, 325 P.3d 341 (2014), review granted, 181 Wn.2d 1022 (2014), appeal dismissed per stipulation (May 8, 2015).

2. Fraud Claims Against Stone

Kamani alleges Stone engaged in various acts and omissions that constituted fraud. The various alleged acts and omissions can be categorized into several categories: (1) that Stone's misdiagnoses, or purported diagnoses, were fraud, (2) that Stone withheld key information about Bella's health and withheld information about services offered by AESC, (3) that Stone made additional notes and edited Bella's records after December 31.

a. Misdiagnoses

Kamani appears to argue that Stone committed fraud when Stone relayed different diagnoses to different individuals, demonstrating that Stone himself doubted whether "Bella's symptoms were anxiety-driven." Br. of Appellant at 54. Kamani appears to contend that it was a fraudulent misrepresentation when Stone portrayed anxiety symptoms to Kamani while portraying the need for pacemaker surgery for Bella's syncope to an AESC staff member, but then portrayed to the police that Kamani improperly administrated sildenafil to Bella's detriment. Specifically, Kamani argues Stone "lied, stating it was anxiety, while not treating anxiety, and verbalizing to othersr [sic] concerns he believed ailed her, thus proving his inherent belief that Bella's symptoms were *not* a result of anxiety." Br. of Appellant at 79 (emphasis in original).

Kamani bears the burden on summary judgment to present clear, cogent, and convincing evidence that creates a genuine issue of material fact that Stone committed fraud when he relayed to Kamani that Bella was anxious, but conveyed to AESC staff that a pacemaker could address Bella's syncopal episodes. Kamani fails in her burden because the record is devoid of any evidence

that Stone's statements were false, that he knew his statements were false, or that he fraudulently conveyed something different to AESC staff.

The undisputed record shows that Stone noted Bella was anxious and treated Bella's anxiety. The undisputed record also shows that Stone recommended a pacemaker to address Bella's syncope and that Stone discussed with Kamani the possibility of a pacemaker surgery for Bella's syncope. There is nothing in the record that shows Stone's statements were false, that Stone knew they were false, or that Stone conveyed something different to AESC staff. Kamani's fraud claim fails as a matter of law.

b. Stone did not withhold information from Kamani

Kamani argues it was fraud for Stone to not inform her that AESC lacked sildenafil and specialty services. Additionally, Kamani argues it was fraud when Stone withheld information about Bella's health, stating it was anxiety, when Stone believed something else ailed Bella. Kamani contends Stone stood firm to the false view that the sooner Bella was home, the better.

With regard to Kamani's claim of fraud based on not relaying information to her about not having medication on site, Kamani contends that Stone withheld AESC's lack of sildenafil. However, the record shows that Kamani admitted Stone informed her that AESC did not have any sildenafil. Kamani's fraud claim fails as a matter of law.

With regard to Kamani's claim that Stone committed fraud by not relaying to her the lack of specialty services offered by AESC, Kamani asserts that Stone had a duty to disclose that AESC could not provide pacemaker surgery or other specialty services. However, there is nothing in the record that shows Kamani requested a pacemaker surgery or that Stone told Kamani that AESC had the ability to perform the pacemaker surgery. Since there was no request for such surgery by

Kamani nor any representation by Stone that AESC could perform a pacemaker surgery, Kamani's fraud claim fails as a matter of law because Stone did not falsely represent an existing fact.

Also, Kamani failed to create a genuine issue of material fact that Stone believed something else ailed Bella and withheld that information from Kamani. The undisputed evidence shows that Stone believed and represented to Kamani that Bella was anxious, that Bella's comorbidities were stable, and discussed both Bella's anxiety and Bella's comorbidities with Kamani—specifically, the syncope and the recommended pacemaker surgery.

The undisputed evidence in the record also shows that Stone disclosed and treated Bella for both anxiety and Bella's comorbidities. Stone informed Kamani a pacemaker was one way to address the syncope issue and in response, Kamani said she would bring it up at Bella's next cardiologist appointment. Stone informed Kamani that Bella was unable to calm down and discussed medications with Kamani. Upon final discharge, Stone confirmed the cardiologist appointment with Kamani. Stone provided oxygen to Bella and medication to calm Bella down. Each condition that Stone believed ailed Bella, he treated for or addressed with Kamani.

Kamani fails to create a genuine issue of material fact that Stone believed something else ailed Bella. Because there is no evidence in the record that Stone believed something else ailed Bella, Stone could not have falsely represented a material fact, and Kamani's fraud claim against Stone fails as a matter of law.

3. Fraud Claims Against AESC

a. AESC's namesake as a specialty center is not fraud

Kamani argues that AESC committed fraud because it named itself a "specialty" center despite not having someone on site to interpret echocardiograms or implant a pacemaker. Br. of Appellant at 81-82.

However, the record is devoid of any evidence showing that having "specialty" in a name requires a veterinarian to employ someone to interpret echocardiograms or implant a pacemaker. Also, there is no evidence that on December 31, Kamani asked for an echocardiogram interpretation or a pacemaker surgery; nor is there any evidence that AESC represented to Kamani that they had someone on site to interpret an echocardiogram and implant a pacemaker. Instead, the undisputed evidence shows that in the discussion of the pacemaker between Stone and Kamani, Kamani stated that she would follow up at Bella's next cardiologist appointment. Furthermore, there is nothing in the record showing that on December 31, Kamani requested an echocardiogram.

Kamani also asserts that AESC committed fraud by failing to inform Kamani that they did not have sildenafil. However, the undisputed record clearly shows that Stone told Kamani that AESC did not have sildenafil. Thus, Kamani fails to show a false representation of an existing fact.

b. AESC did not withhold information from Kamani

Kamani argues that AESC committed fraud when AESC repeatedly disregarded Kamani and Bella and withheld necessary veterinary care for hours by discharging Bella three times, withholding information about Bella's health, and by withholding the fact that AESC did not have a pacemaker surgeon on site.

However, as discussed above, there is no evidence in the record to create a genuine issue of material fact on Kamani's fraud claims. On the contrary, the undisputed record shows that during each admission at AESC, AESC collectively admitted and treated Bella's anxiety and comorbidities, or discussed the same with Kamani. Kamani fails to identity what information was falsely conveyed to her to support her claim that AESC fraudulently disregarded Kamani and Bella, withheld necessary care, or withheld the fact that AESC did not have a pacemaker surgeon on site. Also, with regard to the fraud claim relating to withholding care to Bella, that is a negligence claim, not a fraud claim.

In each category of acts and omission that Kamani alleges were fraudulent, there is no evidence to create a genuine issue of material fact for all the elements of fraud against AESC. As such, the trial court properly dismissed Kamani's fraud claims against AESC.

4. Stone and AESC's Backdating of Records and Editing Records is not Fraud

Kamani argues that Stone and AESC materially altered Bella's medical records, fabricating conversations and actions that never occurred. However, even if we were to assume that Stone and AESC materially altered Bella's medical records and fabricated conversations and actions that never occurred, Kamani fails to show, or even create a genuine issue of material fact, that she was ignorant of the falsities in the altered medical records or that she relied on the truth of the representations in the backdated or edited records.¹⁷ While Kamani may disagree with what was

¹⁷ The undisputed facts in the records show that it is common practice for piecemeal notations because AESC, as an emergency care center, sees multiple patients in a day. AESC staff may not write up medical records on the day of and the staff may write up the rest of their medical records the next day, which explains why pieces of information may be added after the initial visit and why prior notes may have been edited.

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recorded in the altered medical records, there is no evidence that Stone and AESC made the alterations with knowledge of its falsity, that Kamani was unaware of the contents of the altered medical records, or that Kamani relied on the altered records. Thus, Kamani's fraud claim fails as a matter of law.

In each claim of fraud against Stone and AESC, Kamani is unable to show a genuine issue of material fact as to all elements of fraud. As such, the trial court properly dismissed all fraud claims. 18

C. Breach of Contract

Kamani argues the trial court erred by dismissing her breach of contract claim. AESC responds that the trial court did not err because the prohibition on double recovery precludes Kamani from maintaining both a veterinary negligence and a breach of contract claim. We agree with AESC.

1. Legal Principles

Washington courts have consistently avoided double recovery. *See Lange v. Town of Woodway*, 79 Wn.2d 45, 49, 483 P.2d 116 (1971) (adopting the election of remedies doctrine for "the sole purpose of preventing double redress for a single wrong"); *Rice v. Janovich*, 109 Wn.2d 48, 61–62, 742 P.2d 1230 (1987) (holding that the trial court erred by giving jury instructions for both assault and outrage for the same conduct because it allowed for the possibility of double recovery); *Sherry v. Fin. Indem. Co.*, 160 Wn.2d 611, 621–22, 160 P.3d 31 (2007) (discussing rules designed to prevent double recovery in the context of an underinsured motorist). "It is a

¹⁸ As a result, Kamani is not entitled to any alleged noneconomic or economic damages relating to the fraud claims.

basic principle of damages, both tort and contract, that there shall be no double recovery for the same injury." *Eagle Point Condo. Owners Ass'n v. Coy*, 102 Wn. App. 697, 702, 9 P.3d 898 (2000).

The rule of double recovery, known as one satisfaction, is a legal doctrine that establishes there shall be no double recovery for the same injury. *Larson v. Hodge*, 100 Wash. 419, 424, 171 P. 251 (1918); *Eagle Point*, 102 Wn. App. at 702. Furthermore, while a plaintiff is entitled to allege their respective theories of recovery alternatively, or in separate claims, they are not entitled to recover twice for damage growing out of the same occurrence or event. *Brink v. Griffith*, 65 Wn.2d 253, 259, 396 P.2d 793 (1964).

On summary judgment, the trial court may either dismiss a case entirely or narrow the issues for trial. CR 56(a), (b); *Babcock v. State*, 116 Wn.2d 596, 599, 809 P.2d 143 (1991).

2. Breach of Contract Claim Impermissibly Duplicates Negligence Claim

Kamani concedes that her breach of veterinary contract claim duplicates the veterinary negligence claim because "the same evidence supporting her negligence claim also promoted the contact breach claim, since, after all, negligent performance of a service contract causing harm is a material breach thereof." Br. of Appellant at 87-88. The record also shows that in Kamani's opposition to the motion for summary judgment, Kamani asserted that she hired AESC to competently, humanely, and prudently provide veterinary services to Bella. Thus, Kamani improperly seeks to recover damages in tort and in contract for the same actions.

Kamani appears to argue that double recovery is not an excuse to dismiss a cause of action pled in the alternative. But Kamani misinterprets the case law. Generally, Kamani is entitled to allege alternate theories of recovery on separate claims. *Brink*, 65 Wn.2d at 259. Per *Brink*,

however, Kamani is not entitled to recover twice for the same elements of damage growing out of the same occurrence or event. *Brink*, 65 Wn.2d at 259. Thus, because Kamani's contract and negligence claims are premised on the same acts and allegations, she cannot plead them in the alternative, and we affirm the trial court's dismissal of the breach of contract claim.

D. DENIAL OF MOTION FOR RECONSIDERATION

Kamani assigns error to the trial court's denial of her motion for reconsideration. However, because Kamani does not include any argument as to why the trial court erred in its denial of Kamani's motion to reconsider, she has waived her argument.

RAP 10.3 outlines the requirements for the contents of an appellant's brief, specifically requiring an argument section. RAP 10.3(a)(6). Assignments of error not argued in the brief are deemed to have been abandoned. *Spino v. Dep't of Lab. & Indus.*, 1 Wn. App. 730, 732, 463 P.2d 256 (1969) (court did not consider the assignment of error because the assignment of error was not argued in the brief and was thus abandoned), *review denied*, 77 Wn.2d 962 (1970). Additionally, assignments of error neither supported by argument nor by citation to authority are not properly before this court. *Id.* We do not review errors alleged but not supported with citation to authority. *Repin*, 198 Wn. App. at 269.

Here, Kamani does not provide any argument nor make any citations to authority in support of her argument regarding her motion for reconsideration. Without any arguments, citations to authority, or any indication on how the trial court erred in its decision, the issue is not properly before this court, and this argument is waived. RAP 10.3(a)(6); *Spino*, 1 Wn. App. at 732.

No. 59601-6-II

CONCLUSION

We hold that the trial court properly dismissed on summary judgment Kamani's outrage and fraud claims against Stone and AESC. Because the trial court properly dismissed the outrage and fraud claims, Kamani is not entitled to noneconomic and economic damages related to those claims. Moreover, the trial court properly dismissed the breach of contract claim because it was duplicative of Kamani's negligence claim. Finally, Kamani waived any argument regarding the trial court's denial of her motion for reconsideration. We affirm.

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

We concur:

Cruser, C.J.

Che I

IN THE COURT OF APPEALS, DIVISION II STATE OF WASHINGTON

MONEESHA KAMANI,

Plaintiff.

VS.

MICHAEL A. STONE, DVM, and his marital community/domestic partnership; NVA AETC VETERINARY MANAGEMENT, LLC dba ANIMAL EMERGENCY AND SPECIALTY CENTER ("AES"), a foreign limited liability company,

Defendants.

Court of Appeals No.: 596016

Superior Court Case No.: 23-2-00589-18

KAMANI DECLARATION

I, MONEESHA KAMANI, declare under penalty of perjury under the laws of the State of Washington that the following is true and correct to the best of my knowledge:

- 1. While I miss Bella every day, I have been careful to separate my grief from the treachery by Michael Stone, DVM ("Stone") and AES. This lawsuit was filed not only because Bella passed, but because of the deceit and terror that accompanied her death. Accordingly, I spent in excess of \$75,000, including attorney's fees, depositions, expert testimonies, court fees, etc. in the pursuit of justice. The Court overlooked the evidence.
- 2. I spent a number of years as a clinical supervisor in embryology, assisting with providing the gift of life to nearly 800 patient families, and prepared hundreds of patient reports in a

DECLARATION - 1

A 40

high volume, high pressure reproductive facility with fast turnaround time. Not once did I alter a medical report to reflect false information. While there is camaraderie and trust in the clinical profession among colleagues, there is no place for lies.

3. Pages 20 – 25 of the 05.12.25 Reconsideration contain genuine snapshots of the audit trail, medical records, Smartflow, and AES invoicing, evident directly and only from the Clerk's Papers (1- 635) previously provided to this Court, designated accordingly, sharpened to enhance viewability.

Respectfully Executed on 05.12.25 in Allyn, WA,

Moneesha Kamani, MS. MPH J.D. 26-27

(Bella's mom) 160 E Lakeland Way Allyn, WA 98524

Kamanm01@nyu.edu

CERTIFICATE OF SERVICE

I certify that the foregoing was served on KATE V. CRADDOCK on 05.12.25 via the ACORDS portal.

M. d. t

Moneesha Kamani, MS. MPH J.D. 26-27 (Bella's mom) 160 E Lakeland Way Allyn, WA 98524 Kamanm01@nyu.edu

DECLARATION - 3

IN THE COURT OF APPEALS, DIVISION II

MONEESHA KAMANI,

Plaintiff,

VS.

MICHAEL A. STONE, DVM, and his marital community/domestic partnership; NVA AETC VETERINARY MANAGEMENT, LLC dba ANIMAL EMERGENCY AND SPECIALTY CENTER ("AES"), a foreign limited liability company,

Defendants.

Court of Appeals No.: 59601-6

Supr. Court Case No.: 23-2-00589-18

MOTION FOR RECONSIDERATION

Clerk's Action Required

1. IDENTITY OF MOVING PARTY

Plaintiff Moneesha Kamani ("Appellant") seeks the relief designated in Part 2.

2. STATEMENT OF RELIEF SOUGHT

Ms. Kamani ("Kamani") respectfully requests reconsideration of this Court's 04.22.25 opinion affirming the trial court's decision granting partial summary judgment in favor of Defendants, Michael Stone, DVM ("Stone") and AES on

claims for outrage, fraud, and breach of contract. This Motion is brought pursuant to RAP 12.4 and timely filed within 20 days of the Court's opinion.

3. FACTS RELEVANT TO MOTION

This case of first impression arises from the passing of Kamani's 14-year-old Pekignese, Bella, on 12.31.22, following discharges by Stone and AES in Poulsbo, Washington. Kamani filed suit on 03.30.23, for outrage, fraud, breach of veterinary services contract, and professional negligence.

Stone and AES moved for summary judgment. On 04.03.24, the trial court partially granted the motion, dismissing all except for negligence claims. Post the trial court certifying partial summary judgment under CR 54(b), a timely appeal was filed

4. GROUNDS FOR RELIEF AND ARGUMENT

A. The Court Misstated Facts Not Supported by Evidence on Either Side, Eroding Confidence in the Appellate Procedure.

Summary judgment is appropriate where there is no genuine issue as to any material fact, so the moving party is entitled to judgment as a matter of law. It will view the facts and reasonable

inferences in the light most favorable to the nonmoving party. Meyers v. Ferndale Sch. Dist., 481 P.3d 1084, 1086 (2021). While a court may disfavor reconsidering its own opinion, notwithstanding factual and legal inferences drawn in favor of the *movant*, the opinion is peppered with errors, not supported by the record. The opinion mainly echoed the Defendant's brief, notated, "indisputable" to fail Plaintiff's claims by overlooking disputes of genuine issue of the same material fact, and discounted the irrefutable evidence by Plaintiff's expert criticalist, Danielle Babski DVM, DACVEC ("Babski"). Coupled with declination of oral argument and declination of Plaintiff's 2-week extension to engage new counsel, the opinion exudes impartiality and disinterest, and hints that the Court may have arrived at a decision before considering all the evidence.

FACT ERRORS

- 1. "Hidden Springs prescribed sildenafil 20 mg PO..." (Op. 3) is inaccurate. Hidden Springs prescribed Trazadone. **CP 155.**
- 2. "Bella's syncopal episodes began in June" (Op. 2-3) is erroneous. Bella had 2 syncopal episodes on •5.•9.22, for

which she was treated at a local Idaho vet and driven to specialty West Vet on the same day. She had no syncopal episodes until September 2022 (when she had one). **CP 152-160; CP 344 – 347.**

- 3. ""VRCCO completed ..."of the several problems"...hypotension... echocardiogram"" is misstated. (Op. 4). Internist, Matt Vaughn, DVM, DACVIM, noted, "my strong suspicion is that the pulmonary hypertension is not due to underlying heart disease" and "[t]hese elevations are mild and I suspect that most likely are related to her airway and cardiac disease. If they are progressive, an ultrasound of the liver/abdomen could be considered" (emphasis added) CP 187.
- 4. Stone noted... "nice and pink" is inaccurately noted under Second Admission. (Op. 6). Bella was discharged at 12.18 pm without assessment. **CP 388; CP 517; CP 206.**
- 5. "Stone gave midazolam..." (Op. 6) is misstated. Stone *said* that to Kamani. Audit trail and Smartflow reveal anti-anxiety midazolam first given at 3.57 pm (~8 hours after admission). **CP 207; CP 516-523.**

- 6. Op. 8 adopts Defendant's claims that Bella was pink at discharge, yet discounts from its analysis Op. 9, noting that Kamani testified that Bella looked gray.
- 7. "[T]he record does not provide a cause of death" Op. 20. It does pulmonary thromboembolism (PTE)¹. CP 542-545.
 Aside, causation is not in front of the Court.
- 8. "[T]he undisputed record shows that Stone treated Bella each time Bella was admitted" (Op. 21), is inaccurate, since Stone ran no tests at 11.25 am when Bella was admitted a second time, *according to his own charting*. Joanna Coffey, LVT, administered butorphanol. **CP 206**. Stone removed Bella from oxygen in 45 min. **CP 388**.
- 9. Op. 25 states, "Kamani received Bella's records well within

https://my.clevelandclinic.org/health/diagnostics/22327differential-diagnosis , accessed 05.08.25.

Differential diagnoses are noted for a patient presenting respiratory distress at triage; tests like EKG/ECG, echocardiogram rule in/out a cardiogenic/ non-cardiogenic condition. Op. 2-3.

Anxiety is ruled out by 2 pm parameters showing elevated heart and respiratory rates while sedate. CP 207.

Smartflow was not shown to Kamani on 12.31.22 or 01.03.23. CP 518.

¹ The opinion confuses "differential diagnoses" with "several possibilities for a cause of death". Op. 20.

the 10-working days ... requested Bella's records on December 31, 2022, and received the requested records on January 3, 2023." This is inaccurate. Kamani testified," the partial medical record", referring to 01.03.24 (CP 343), referring to 24-hour Admissions Summary "... which I received only on February 10, 2023... and 41 days after discharge" (CP 490), and referring to Smartflow, "[t]he reads (on records that would only be provided on Jan 20, 2023), show respiratory rates are in the 100s and panting". CP 518. Withholding the records that showed Bella decompensating and Kamani's intended 24 hour stay violates WAC 246-933-320, and adds to outrageous conduct.

10. Op. 32 notes, " ... nor is there any evidence that AESC represented to Kamani that they had someone on site to interpret an echocardiogram", disputes Op. 5, which notes, " [w]hen Kamani looked up AESC and saw they offered oxygen and echocardiograms, she decided to drive to AESC."
CP 075 (Int. 17 confirming no specialists or cardiologists as of 12.31.22). See AES's website, advertising a "complete inventory of pharmaceuticals" and "echocardiography" on

12.08.22;

https://web.archive.org/web/20230205044119/https://aescca res.com/services/ ².

- 11. Op. 25 eliminated the word "allegedly" before "threatened"... Aside from refuted (**CP 149**), the receptionist herself stated that the "caller was a bit hard to understand". **CP 226**.
- 12. Op. 12 mentions, "Kamani continued to send e-mails to AESC asking questions and requesting information about how Bella was treated", but Op. 26 states, "the undisputed evidence...concerned for their safety" (emphasis added). The Court omitted evidence that mitigated this belief.

Alivia Wheaton ("Wheaton") testified:

Q: So ... You had a direct conversation with her two days before you sent that email. ... So why was there still an urgency to send out this email to everyone warning them and advising them to call 911?

• • •

A: Ms. Kamani was being very diligent about repeating the questions she wanted answered,

² The wayback machine holds live web page archives.

wanting to speak with staff on the floor which, quite frankly, would have taken away from patient care and been extremely counterproductive to what they were trying to do while they were here at work. So we made it very clear, we thought, that we weren't going to be able to do that type of communication with her" (emphasis added).

. .

I answered the phone and she was asking me many of the questions she had already been asking through email, which I was not allowed -- not able to answer for her. I told her I was not able to answer those questions for her. She was trying to convince me that I could and to have some humanity or sympathy or something along those lines, at which point I did tell her that anything further, she would have to contact legal (emphasis added). CP 233-234.

About safety, Wheaton testified,

"Q. Did you sense any threat from her toward you or anyone else when you talked to her?

A: Personal threat, no, not at all." CP 233.

Stone also told the police that Kamani was probably just venting and did not seem to take the threat too serious. **CP 405**. The presence of an alternate, non-safety-related reason, i.e., "productivity", *for contacting the police*, creates a dispute of fact, where a reasonable fact-finder may find in favor of Kamani.

13. Op. 21 states, "there is no evidence that Bella medically required oxygen." This is inaccurate per expert, Babski's testimony:

The tachycardia and tachypnea likely represents a physiological response to hypoxemia³, as Kacey Veal documented tachycardia and panting with increased effort prior to and during the time period when "she was waking up," which implies a time period where Bella did appear sedate. At no time after being admitted do her recorded vitals ever show changes consistent with improvement in her condition...[Bella] has the appearance of being orthopneic⁴, or assuming a posture of head and neck

³ Hypoxemia is low oxygen, accessed 04.28.25 https://my.clevelandclinic.org/health/diseases/17727-hypoxemia.

Orthopneic is a position assumed when breathing is compromised https://my.clevelandclinic.org/health/symptoms/orthopnea,

extension, that is seen in pets with severe respiratory distress...Further, I note that weaning an oxygen-dependent patient should take at least half a day, and, as observed at West Vet with Bella, can take several days. Here, weaning apparently occurred in fewer than two hours, after Ms. Kamani paid to keep her there for 24 hours. It is also imperative that vitals be monitored closely during the weaning period and after the weaning period to make sure the patient is not decompensating without supplemental oxygen. Such decisionmaking lacks logical consistency, was irresponsibly hasty, and medically unnecessary...On the video obtained while Dr. Stone was carrying Bella out to Ms. Kamani's car, Bella is clearly orthopneic and working hard to breathe – her head and neck are extended, and she appears disoriented. Her tongue appears blue-gray. She does not acknowledge Ms. Kamani's presence, as one would expect of a dog who has separation anxiety. This video is distressing to watch – it is clearly a dog in severe respiratory distress, gasping for breath, not an anxious dog.

CP 528 – 546; CP 564-565.

RECONSIDERATION - 10

B. The Court Misunderstood the Intentional Tort Claims Against Stone, and Recounted Facts and Inferences in Favor of the Movant.

(i) Stone's Removals

As an initial matter, the Court's analysis reflects a misapprehension of Kamani's position. The opinion focuses heavily on whether Stone "misdiagnosed" Bella, concluding that Stone did not make any diagnosis. Op. 19. However, the issue was not whether Stone misdiagnosed Bella —veterinary negligence is not in front of the Court. Rather, the central question is that Stone knew of other non-anxiety, physical conditions – whether pacemaker surgery (CP 613-614), alleged drug misadministration (CP 411), or pulmothromboembolism (PTE) CP 063; CP 542-546. Appellant's briefs state unequivocally that Stone advanced physical ailments to others, (except to Kamani), yet treated none of them. Stone repeatedly described Bella's condition as anxiety, treating her with butorphanol, a typical pain medication that he claimed was his "go-to" anti-anxiety drug. **CP 061**.

It is indeed undisputed that Stone told Kamani about a pacemaker. However, it is undisputed that for eleven hours, neither Stone nor Veal disclosed the true reason for Bella's discharge. This is critical: if a veterinarian suspects a cardiac condition and references echocardiograms as part of their "specialty," they have an obligation to clarify the true severity of the situation and their lack of remedy for it —especially when treatment for that cardiac condition requires a pacemaker – that AES lacked. An echocardiogram is a critical diagnostic – a candidate for this test in an emergency is a patient in cardiopulmonary distress. This concealment is material and prevented Kamani from seeking appropriate care elsewhere, leading to Bella's avoidable death.

Veal deposed,

Q. Okay. You said Bella needed a procedure...[w]hat procedure was that?

A. Based on what Dr. Stone read, the records, he communicated to me that Bella needed a pacemaker.

. . .

Q. Okay. Have you ever had a pacemaker surgery done at the Animal Emergency?

A. No. We do not have a cardiologist, and at that time we

did not have a surgeon that could perform that procedure (emphasis added). CP 613.

. . .

- Q. Okay. And do you believe that -- having observed her cage side for so many hours, do you believe that the oxygen was helping her?
- A. Initially, yes.
- Q. When did it stop helping her?
- A. I don't know the specific timeline when it may or may not have been making an effect, but I don't think that oxygenation was her primary problem.
- Q. What **d**o you think her primary problem was?
- A. That she needed a pacemaker and that we couldn't provide that (emphasis added). CP 614.

Bella was given oxygen and anti-anxiety medication. But Veal testified Stone did not believe these could treat Bella's primary problem, which was that "she needed a pacemaker and we couldn't provide that." **CP 614**. Veal's testimony aligns with Smartflow reads at 5 pm, which show an elevated heart rate (191) and respiratory effort – *after which Stone began weaning*. **CP 207**; **CP 522**. Despite this, Stone did not inform Kamani about Bella's critical condition at the time of her discharge. Instead, he engaged Kamani in a long discussion about purchasing oxygen

monitors from Amazon, withholding his belief that Bella needed additional care.

Further the Court overlooked Stone falsely accusing Kamani of contributing to Bella's death to the police – claiming she allegedly misadministrated sildenafil. On the day of, Stone simply charted that she would be sleepy and went out of his way chart the contrary medication doses – that a full 20 mg of sildenafil was administered. **CP 520**. Kamani relied on this representation too. None of his behaviors comport with the other ailments he later disclosed.

The undeniable discharges of a patient in respiratory distress—on three separate occasions in eleven hours—from medical care, twice from oxygen, regardless of the underlying cause, culminating in the patient's death approximately 90 minutes after final discharge, is, in and of itself, sufficient to support a claim of reckless conduct. For this reason alone, the Court should reverse the outrage claim against Stone.

- C. The Court Ignored Material Issues of Fact Supporting Stone and AES Improper Discharge.
 - (ii) Stone and AES's conduct final discharge

While the Court acknowledged Kamani's disagreement with discharge, it held there was no genuine issue of material fact because "[t]here is no evidence to show that Bella medically required oxygen at the time she was removed from oxygen... withheld." Op. 21. However, the evidence presented— Smartflow monitoring data, medical records, expert testimony, and video footage—creates a clear dispute of fact as to Bella's condition at discharge. The Court's decision to accept Stone and AES's narrative while ignoring Kamani's sworn testimony and objective video evidence is a misapplication of summary judgment standards. This is precisely the type of factual conflict that requires resolution at trial and remand on appeal. First, the Court entirely adopted Stone and AES's version of Bella's condition at discharge, despite significant evidence to the contrary. AES's own Smartflow live monitoring system showed that Bella's condition deteriorated at 5 pm. This directly conflicts with Stone and AES's statements that Bella appeared "pink" and stable at discharge. Moreover, there are no medical records to support such claims. Indeed, there is no doctor evaluation recorded after 1 pm, which further undermines Stone's narrative.

Notably, the court failed to apply the standard set forth in Scott v. Harris, where the Supreme Court held that video evidence can discredit a party's version if it contradicts testimony. In *Scott*, the plaintiff claimed he was driving responsibly, but video footage showed reckless swerving, fleeing from police, and running red lights, undermining his testimony. Citing *Scott v. Harris*, Division I recognized a narrow exception to the summary judgment standard, allowing courts to disregard a party's version of facts when contradicted by unimpeachable evidence. Halev v. Amazon.com Servs., LLC, 522 P.3d 80, 90 (Wash. Ct. App. 2022). Time-stamped videos and credit card records (reflecting three discharges) similarly are unimpeachable. Alternatively, should this Court discount *Scott*, in the least then, a trial-worthy dispute of fact exists, rendering summary judgment improper. Firsthand accounts of Babski, Kamani, and Ojus Mehta ("Mehta"), each independently testifying that Bella was gasping for air and her face was gray clear indicators of severe distress.

Mehta testified,

Q. (By Ms. Craddock) Okay. So your recollection is her tongue did not become pink at all once you returned home?

A. I don't remember seeing her tongue pink. I don't know.

Q. Do you remember seeing her tongue at all?

A. I think it was -- I think it was gray-ish or something. I remember some -- like it was white-ish/gray-ish kind of stuff. But it was not pink.

CP 398; CP 551 (recounting gray tongue at discharge).

Technician Veal too testified Bella's condition was "very serious" at discharge. **CP 310**. The Court ignored its own factual summary (Op. 9) - Stone stating that he did not want to keep sedating Bella and her going in to syncope. Adopting Stone's comments (Op. 8), where he allegedly recommended overnight stay, the Court discounted Kamani's testimony, stating,

Stone's chart note of 4:59 pm is absolutely untrue. What happened was that at 4:39 pm I spoke with Jason Descombaz in the lobby and paid for an overnight stay. I never saw Stone from 3 pm to 7 pm. **CP 518 (Exh. 7)**; **CP 516 – 522** (refuting all

his manufactured time points and conversations from 3 pm - 7 pm).

As demonstrated by the foregoing, the record is replete with evidence from which a reasonable juror could conclude that Bella was in respiratory distress at the time of discharge.

D. The Court Disregarded Material Falsities of the Medical Records.

The Court erred in concluding that AES's edits were merely "routine." The audit trail, contradictory testimony, and deletions of critical information prove otherwise. Stone, Veal, Susan Hillard ("Hillard"), and Wheaton's combined 30 alterations concealed Bella's true condition, misrepresented her stability at discharge, and erased evidence of criticality. Such manipulation is not just improper; it is outrageous, warranting jury review under Washington law.

The Court relied exclusively on Wheaton's testimony, concluding that it was common for AES staff to "write up the rest of their medical records the next day." Op. 22. This conclusion improperly draws inferences in favor of the

Defendants despite significant contradictory testimony. Stone claimed his notation was in real-time. **CP 60**. Wheaton claimed she only added communication, testifying, "[n]othing was edited or changed". **CP 584**. But the audit trail revealed changes to medication timing for Midazolam and Trazodone, deletion of portions of the record by Stone and Hillard, and the absence of any communication notes from Wheaton whatsoever. These contradictions impeach both Wheaton and Stone's testimonies.

The Court, moreover, focused solely on additions to the records and ignored the deletions and material falsities:

i. Time - Stone: testified, "...[w]e will often open records up so that we can get the time in there correct, but it usually is pretty close to the right time". CP 60.

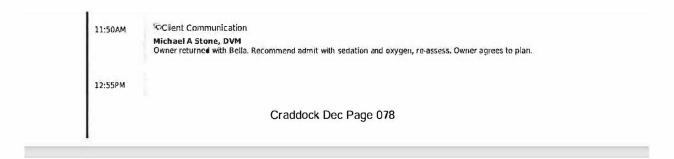
After Bella died, Stone claimed he offered oxygen and sedation at 11.50 am.

Audit trail

							exam room Spine: N	exam room Spine: N
01-01-2023 10:37:06	0	O Assessment	Michael A Stone, DVM		known hx of pulmonary hypertension, known hx of syncope, heart murmur,	-	suspected chronic upper airway disease. likely blind marked dental disease.	12-31-2022 - Michael A Stone, DVM - known hx of pulmonary hypertension, known hx of syncope, heart murmur, suspected chronic upper airway disease likely blind, marked dental disease, marked anxiety
01-01-2023 10:47:31	0	m Plan	Michael A Stone. DVM	ConsultPlan notes	discussion: recommend owner continue the pimobendan and follow up with cardiology as planned	٠	discussion: reviewed his and recommend owner continue the pimobendan and follow up with cardiology as planned, currently bella appears stable, home care planted.	d 12-31-2022 - Michael A Stone, DVM - discussion: reviewed hx and recommend owner continue the pimobendan and follow up with cardology as planned, currently bella appears stable, home care elected
01-01-2023 10:49:48	0	Client Communication	Michael A Stone, DVM	Added		_		Cirent Communication(12-31-2022 11:47:00)
	0	Client Communication	Michael A Stone, DVM	Added				Client Communication(12-31-2022 11:47:00)
01-01-2023 10:51:52	0	L Client Communication	Michael A Stone, DVM	Added		_		Client Communication(12-31-2022 11:50:00)
	0	L Client Communication	Michael A Stone, DVM	Added				Client Communication(12-31-2022 11:50:00)
01-01-2023 10:53:58	69	LI Client Communication	Michael A Stone, DVM	ClientCommunication Timestamp	01-01-2023 10:50:00		01-01-2023 11:50:00	Client Communication(12-31-2022 11:50:00)
	0	& Client Communication	Michael A Stone, DVM	VetCommunication Timestamp	ρ 01-01-2023 10:50:00	-		Client Communication(12-31-2022 11:50:00)
01-01-2023 10:56:19	0	LIK Client Communication	Michael A Stone, DVM	Added		_		Client Communication(12-31-2022 13:54:00)
	0	Client Communication	Michael A Stone, DVM	Added				Client Communication(12-31-2022 13:54:00)

CP 619 – 620.

Which appears as:



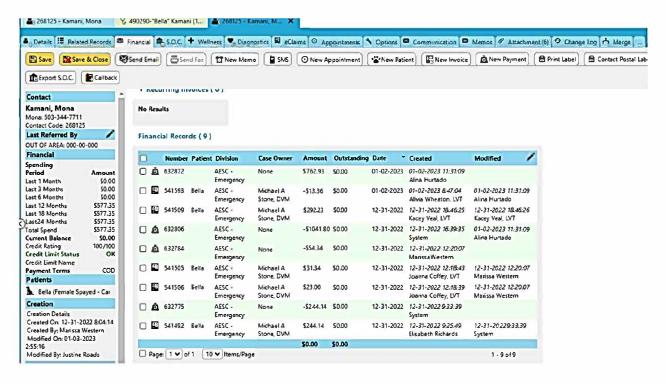
KAMANI: CP 201

03.01.23 Report to Kamani

CP 200-201.

But is contradicted by:

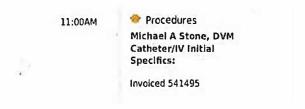
Time-stamped discharge credit card invoice at 12.18 pm:

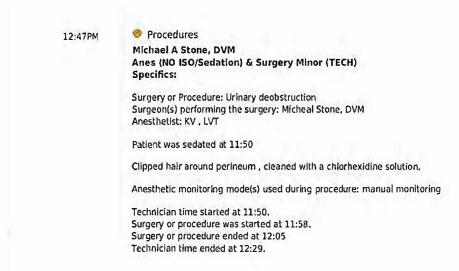


CP 388.

And by:

Stone's surgery on a cat on 12.31.22:

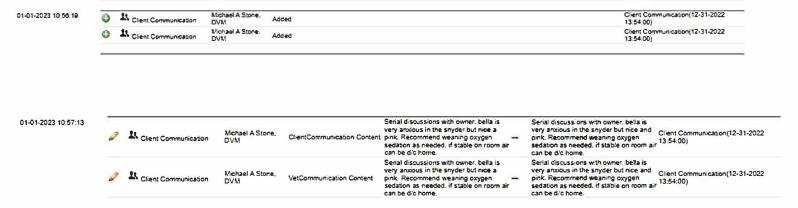




CP 315-316. Stone could not be operating and talking to Kamani at the same time.

- ii. **Deletion-Stone:** 01.01.23, 10.57 am, removal of client communication on 12.31.22.
- iii. Critical state Stone: "nice and pink" on 01.01.23, 1.54 pm:

Audit trail



CP 619 - 620.

Which appears as:

03.01.23 Report to Kamani

O1:54PM Client Communication

Michael A Stone, DVM

Serial discussions with owner, bella is very anxious in the snyder but nice and pink. Recommend weaning oxygen sedation as needed, if stable on room alr can be d/c home.

CP 200.

But is contradicted by:

Smartflow

GENER AL INFO DVM: Michael A Stone, DV Deposit: (Template: Default Patient File Number: 490290 Custom: *acey		PA	PATIENT Bella Canine - Pekingese - FS Age : 14Y Color: White Weight: 8 kg					CLIENT				PROBLEM LIST								B	1	4.		
		Ca Ag Co				Kamanm Moweesau Tel					Respiratory Distress													
Time	7	8	9	10	11	12	13	14	15	16	1 17	18	19	20	21	22	23	24	1	2	3	4	5	6
MONITOF NGS	-							1	TREA	TRIENT	PROTO	COL C	REATER	Úsny	G SMAF	IT FLOY	74		14	i I	127			
Weight			OJ-DAZAS				8.0		1624															
Resp. rate							pant	pant	pant	pant.	pant	pant												
Respiratory Effort	Y-0011001						Nor	Incr	Incr	Incr.	Incr	Incr												
Temperature								dno																
Heart Rate			77.71					172			191		,											
Pulse Quality								Fair																
MM								Muddy		1	1													
CRT								1-2					,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,									*******	univers.	
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ACTIVITIES	****		W/G		911				NVA-	AETC	IANIMA	LEMER	GENCY	& TR	UMA C	ENTER)			2.6					
<<<0xygen Therapy>>>	ability and A	CONTRACTOR OF THE PARTY OF THE	MANAGA	CHIVM-	-compa-vy-co	to the south		-	-	4444-mins	Englishment 1 1/1/10		*****					-	pinne	***********	a-r4-resb	a saturiaria, mara	and the second second	
FiO2 %		*******	******	***********	*******	*********	48.9	30	39	44	39	22						THUE !			Allenton		**********	

Showing the contrary: sedate (calm, non-anxious), elevated heart

rate, muddy⁵ mucus membranes, signaling hypoxia, and increased respiratory effort, corresponding with a low oxygen (30%) at 2 pm (compared to normal effort at 1 pm at 48.9% oxygen). **CP 206-207**. Stone testified (thrice) that Smartflow contained accurate timings. **CP 062**.

i. Medication - AES: Wheaton alterations to timing and doses:

Audit trail

1-02-2023 8:29:16	0	Nedication	Alivia Wheaton, LVT Medication Instructions	Administered #INPUT#[Route given?/IV/SQ/IM]	-	Administered IM	Medication - Midazolam 5mg/mL
	0	Medication	Alivia Wheaton, LVT Medication Start Date	12-31-2022 15:57:48	_	12-31-2022 0:00:00	Medication - Midazolam 5mg/mL
	0	Nedication .	Alivia Wheaton, LVT Medication Remaining	0.32	-	0	Medication - Midazolam 5mg/mL
	0	♦ Medication	Alivia Wheaton, LVT Medication Repeat Next Refill	12-31-2022 15:57:48	-	12-31-2022 0.00:00	Medication - Midazolam 5mg/mL
	0	♦ Medication	Alivia Wheaton, L'VT fitedication Current	NO	-	NO	Medication - Midazolam Smg/mL
01-02-2023 8:29:47	0	♦ Medication	Alivia Wheaton, LVT Medication Instructions	Give #INPUT# tablet(s) every #INPUT# hours. Give medication with a small amount of food.	-	Administered PO in hospital.	Medication - Tracodone Tablets 100mg
	0	Nedication .	Alivia Wheaton, LVT Medication Start Date	12-31-2022 12:56:44	_	12-31-2022 0:00:00	Medication - Trazodone Tablets 100mg
	0	♦ Medication	Alivia Wheaton, LIVT Medication Remaining	0.25	-	0	Aledication - Trazedene Tablets 100mg
	0	Medication	Alivia Wheaton, LVT Medication Repeat Next Refill	12-31-2022 18:46:27	-	12-31-2022 0:00:00	Medication - Trazodone Tablets 100mg
	. 2	Medication .	Alivia Wheaton, L'VT Medication Current	NO	_	CN	Medication - Trazodone Tablets 100m.

CP 620.

Stone and AES claimed they invited Kamani to return; the record

⁵ MM = muddy mucous membranes, "[g]rey or muddy mucous membranes usually indicate poor tissue perfusion and tissue hypoxia. Shock or hypoxemia should come to mind..." Vicki L. Campbell, DVM, DACVA, DACVECC, Critical Care Triage (Proceedings), DVM360 (Aug. 1, 2011), https://www.dvm360.com/view/critical-care-triage-proceedings, accessed 05.04.25.

needed to be completed immediately for the next shift, not change medication notations two days later.

ii. Deletion- AES: The Court discounted Hillard's deletionof Bella's critical state and opposing narrative.

Audit trail

01-01-2023 6:35:26	0	• Client Communication	Susan Hillard	ClientCommunication Content	SWO to clarify dosing on sidenafil 20mg tab. O reports although the bottle indicates to administer 12 tab by mouth every 8 hours. Bella's cardiologist changed the dose to 1 tab TID. O indicates that she administered around 20mg of medication this moming already and that Bella is due for another 20mg (1.5 tab)ets either given at once or broken up in quantities of 10mg and then 20mg). O requested to visit with Bella while on oxygen. Per Dr. Stone, a bnef visit was permitted. During the visit. O administered the silderafi and expressed interest in wanting to take Bella home later on in the evening. Or. Stone stressed the importance of monitoring Bella as her condition is critical and she will need time to rest, requested for O let Bella rest for the next few hours, continue with the oxygen therapy and medication regimen, and for Or return later on in the evening for an update. O stated that she would not like to keep Bella here overnight and feels she would to better at home, in a familiar area that would be less stressful, but agreed to leave for a few hours to see how Bella will respond to the oxygen therapy. Self.	SWO to clarify dosing on sildenafil 20mg tab. O reports although the bottle indicates to administer 1/2 tab by mouth every 8 hours. Bella's cardiologist changed the dose to 1 tab TID. O indicates that she administered around 30mg of medication this morning already and that Bella is due for another 30mg (1.5 tablets either given at once or broken up in quantities of 10mg and then 20mg). ~SH	Client Communication (12-31-2022 14:33:00)		
	3	23 Client Communication	Susan Hillard	VetCommunication Content	SWO to clarify dosing on sidenafit 20mg tab. O reports although the bottle indicates to administer 1/2 tab by mouth every 8 hours, Bella's cardiologist changed the dose to 1 tab 1/10. O indicates that she administered around 30mg of medication this moming already and that Bella is due for another 20mg (1.5 tables either given at once or broken up in quantities of 10mg and then 20mg). O requested to visit with Bella while on oxygen, Per Dr. Sone, a brief visit was permitted. During the visit. O administered the sildenafi and expressed interest in wanting to take Bella home later on in the evening. Or. Stone stressed the importance of monitoring Bella as her condition is critical and she will need time to rest, requested for O let Bella rest for the next fewhours, continue with the oxygen therapy and medication regimen, and for Or return later on in the evening for an update. O stated that she would not like to keep Bella here overnight and feels she would do better at home, in a familiar area that would be less stressful, but agreed to leave for a few hours to see how Bella will respond to the oxygen therapy.—SH	SWO to clarify dosing on sildenafil 20mg tab. O reports although the bottle indicates to administer 102 tab by mouth every 8 hours, Bella's cardiologist changed the dose to 1 tab TID. O indicates that she administered around 30mg of medication this morning already and that Bella is due for another 30mg (1.5 tablets eithergiven at once or broken up in quantities of 10mg and then 20mg). ~SH	Client Communication(12-31-2022 14:33:00)		

CP 618 - 619.

Critical-non-critical states are binary – one cannot be critical and not critical in an emergency hospital at the same time point.

Appellant's brief cited case law found that a *single edit* post-

decedent's death merited review by a jury for outrageous conduct. *Thomas v. Hospital Bd. Of Directors of Lee Cy.*, 41 So.3d 246 (Fla.App.2010); *Syzmanski v. Hartford Hospital*, 3 Conn.L.Rptr. 747 (Conn.Super.1991).

The written word carries weight. A judge would not permit manufactured evidence; a professor would not tolerate plagiarism. Given these myriad inconsistencies, the integrity of medical records should have been left to the fact finder. It was improper for the Court to conclude alterations merely routine. Indeed, if any inference is to be drawn, it must be in favor of Kamani.

E. The Standard for Emotional Susceptibility is Misapplied.

The Court's assertion that "Kamani fails to demonstrate she was any more susceptible to emotional distress than any other pet owner who seeks emergency veterinary care" (Op. 23) mischaracterizes the legal standard. In *Sutton v. Tacoma Sch. Dist. No. 10*, 324 P.3d 763 (Wash. 2014), the claim of outrage failed because there was no evidence of resulting severe emotional distress. Here, the Court wrongly imposed a

heightened standard, suggesting that Kamani needed to demonstrate *more than ordinary susceptibility* compared to other pet owners. The law does not require Kamani to prove she was highly susceptible; it only requires that Stone and AES were aware of her vulnerability.

- Stone testified that "Bella's owner is highly anxious." CP
 321.
- Stone's attorney told the DOH that Kamani was "highly, highly concerned" about Bella's well-being...CP 327.
- Stone recounted to police that "both animal and owner were very anxious." **CP 336**.
- Stone emailed police, "Ms. Kamani's extreme level of anxiety" as the reason he had her administer sildenafil. CP
 339.
- Wheaton and Veal confirmed Kamani's emotional state, testifying that Bella was perceived "as more than a personal pet" (CP 230), and Veal observing that Kamani was "visibly upset and emotional." CP 304.

Kamani's resulting mental health vulnerabilities are similarly well-documented, including: (1) two suicide attempts; (2) PTSD;

(3) anxiety; (4) depression, all verified by health provider Garcia's declaration. **CP 626–633**. The Court ignored these undisputed facts and incorrectly added a new qualifier—that Kamani be more susceptible than other pet owners. The correct inquiry is whether Stone and AES were aware of her emotional state. Their own testimony and communications confirm that they were.

F. The Court Discounted the Reckless and Substantial Certainty Variants of Intent.

The Court held that Kamani failed to create a genuine issue of material fact showing that Stone had the requisite intent to cause Kamani severe emotional distress. Op. 23. Specifically, reasoning that Stone did not intend to cause emotional distress because he "did not know Kamani." *Id.* This conclusion is legally flawed. *Familiarity* is not a prerequisite for establishing outrage under Washington law. In *Chambers-Castanes v. King County*, the Washington Supreme Court held that lack of familiarity did not bar a claim of outrage where law enforcement's delayed response to an assault supported a viable claim. *Chambers-Castanes v. King County* 669 P.2d 451 (1983). Likewise, in

Phillips v. Hardwick, the court found sufficient evidence to support a claim of outrage when sellers refused to vacate and demanded that buyers remove their furniture, noting that trier of fact could reasonably find these actions went beyond the acceptable standards of decency. 628 P.2d 506, 508 (Wash. Ct. App. 1981).

Here, Stone professed more than just a passing familiarity with Kamani—he correctly estimated her age range (Kamani was 44), he knew her religion (Hindu), and despite being a medical director in a busy emergency, when contacted at his residence, he even remembered that she lived in Allyn. **CP 405**. Second, the court opined, "[t]here is no evidence in the record showing that Stone intended for Bella to die based on his treatment or that Stone intended to cause Kamani emotional distress." Op. 23. However, the Court ignored recklessness and substantial certainty as forms of intent, contrary to Washington law.

Recklessness may consist of either of two different types of conduct. In one the actor knows, or has reason to know... of facts which create a high degree of risk of physical harm to another, and deliberately proceeds to act, or to fail to act, in

conscious disregard of, or indifference to, that risk. In the other the actor has such knowledge, or reason to know, of the facts, but does not realize or appreciate the high degree of risk involved, although a reasonable man in his position would do so. An objective standard is applied to him, and he is held to the realization of the aggravated risk which a reasonable man in his place would have, although he does not himself have it. Restatement (Second) of Torts § 500 (1965) (emphasis added).

Thus, recklessness is established through two distinct courses of conduct: (1) conscious disregard of a known risk, or (2) failure to appreciate a known risk. An objective standard is applied, holding the actor accountable for the awareness *a reasonable* person in their position would have possessed. Yet, Stone subjectively opined to Veal and Kamani that Bella required a pacemaker; however, he did not comment the EKG/ECG test by Veal, which could have confirmed or ruled out arrhythmia⁶. CP 308. Nor did he advise Kamani that AES had no

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⁶ Nishijima DK et al., ECG Predictors of Cardiac Arrhythmias in Older Adults With Syncope, 71 Annals of Emergency Med. 452 (2018),

https://doi.org/10.1016/j.annemergmed.2017.11.014.

echocardiograms. Stone then went out of his way to email the police and *subjectively* claim that Kamani had misadministered a medication at 3:00 p.m., attributing it as the cause of Bella's "decline"—despite doing nothing to save Bella on the day of and later admitting under oath this belief untrue. **CP 322**. This deliberate misrepresentation reflects malice, not mere negligence.

Post-death falsification stated that Kamani desired to remove her dog and lied that her dog was not critical, despite evidence to the contrary. Rather than simply noting at 7:00 p.m. that Kamani wished to leave (which would still be false), days later, Stone created multiple, day-long, untruthful entries using absurdly specific times, (e.g., 1:54 p.m., 2:03 p.m.), avoiding rounded time points like X05 and X10 to give a false impression. **App. A.** A juror could conclude these post-death alterations were deliberate attempts to cover up and shift blame to Kamani – certainty, accompanied specific intent, substantial recklessness. Likewise, a reasonable fact-finder could infer comparable culpability from Stone and AES's decision to contact law enforcement— in light of AES's own productivity

rather than safety concerns. Furthermore, Veal recognized the clinical importance of monitoring vital signs during periods of higher oxygen support, yet failed to document any such measurements during the critical weaning phase. Of vital reads, Veal testified, "[Stone] knew that I was taking them, yes. He knew that there was elevations, yes." **CP 308**.

G. The Court Ignored Evidence of Kamani and Mehta's Reliance on Stone and AES's Misrepresentations.

The steelman argument for Fraud, surmised from what the Court found wanting and Defendant's brief, is that Kamani did not rely on Stone's representations and that Stone himself did not know the falsity of his words. First, for Kamani to leave the hospital and not return, after three returns in eleven hours, and \$1041.80 – her third payment of the day, she would have to be assured that Bella was not in need of medical care and only anxious. Mehta testified,

...I remember turning on the fan. I remember getting the chicken. I remember opening the door when we got her home and then when I brought her inside...I don't remember medicine or anything like

that. **CP 398**.

These behaviors unequivocally demonstrate that Kamani and Mehta relied on Stone's anxiety theory at discharge – they would have otherwise gone elsewhere. Kamani testified,

... So I ask him, I say, "But, Doctor, she does not look right. She looks gray." And he says, "No, that's because we've swooped her up." And I said -- I didn't understand. So I looked at Ms. Veal and she said, "Yeah," and she said something to the effect of there was some kind of accident or incident, or something like that, and that's why she looks like that. **CP 359**.

As for Stone's awareness, the Court made a fatal error – by relying on Stone's varying narratives instead of Kamani's, umnoored from summary judgment principles. Stone's comments to the police of Kamani's alleged misadministration, lack of pacemaker, absent from Stone original and altered records, and false reporting that Kamani wanted to take Bella out, solidify his awareness of Bella's fragile state. Stone himself testified that Bella had an increased risk of pulmonary embolism, yet no anti-coagulants were administered. **CP 63**. Stone began

weaning Bella off oxygen despite believing her condition was cardiac-related, even as Smartflow showed severe deterioration.

"Kamani fails to show... that she was ignorant of the falsities in the altered medical records or that she relied on the truth of the representations in the backdated or edited records" (Op. 33) disregards Appellant's Reply Brief that parses falsifications that Kamani could refute and those that she believed as true. (Br. 32 – 38). For one, Kamani believed the "nice and pink" at 2.00 p.m. CP 182. Wheaton's manipulated Trazadone time at 12:56 p.m., showed administration twice, with Benadryl and Midazolam leading Kamani to believe Bella was oversedated. CP 174- 175; CP 201- 203, when it was the converse. CP 327; CP 541.

Further, the withholding of absence of both, cardiologic imaging and specialist consultation, constitute material facts that the court improperly disregarded. Stone claimed to Veal that he reviewed records from two authentic <u>specialty</u> hospitals, each of whom conducted an echocardiogram – West Vet and VRCCO. **CP 613-614**, yet omitted telling Kamani he lacked advertised diagnostics.

It is well settled that the suppression of a material fact which a party is bound in good faith to disclose is equivalent to a false representation. Where the law imposes a duty on one party to disclose all material facts known to him and not known to the other, silence or concealment in violation of this duty with intent to deceive will amount to fraud as being a deliberate suppression of the truth and equivalent to the assertion of a falsehood. The concealment of the fact which one is bound to disclose is an indirect representation that such fact does not exist, and constitutes fraud.

Stiley v. Block, 130 Wash. 2d 486, 925 P.2d 194, 209 (1996).

Additionally, the court unfairly imposes a legally erroneous burden on Kamani (Op. 30, 32) – that she ask for an echocardiogram and pacemaker surgery on site. Kamani is not a veterinarian and went to AES for echocardiograms, but was repeatedly told her dog was merely anxious. Stone, on the other hand, suspected a cardiac condition, and the reads at 5 pm show tachycardia (191).

H. The Court Viewed Defendant's Post-Mortem of Police Calling and Threatening Letter in Light Favorable to Them.

(i) Kamani emails

The opinion counted Kamani's emails as 7, classifying them as [that] "which prompted concerns" Op. 25 (while discounting > 30 post-death record falsifications as benign), but excluded the content of emails. 7 emails filled with questions about why Bella died should not pose "safety concerns" to anyone, except to the guilty, and a neutral inference, never mind one favoring Kamani, would reveal a shocked, frustrated, desperate person (signs of emotional distress). The only kind of emotions a person should feel after such loss is extreme sadness and grief, not terror from police calls and cease-and-desist letters. Three of the emails are produced below:

We have still not received responses to the questions. Bella's neck appeared stuck and immovable when she was brought out. Why was that? **CP 176**.

And

I hope you know all of this will be admitted to court. Your lack of responses, apart from your negligence, lies and cover up, and calling the police. We have been asking to speak with Kacey (sic) and Jason for a while now. If you had nothing to hide you would

give us the information. Your discharge summary and positioned signature are falsely presented. What did you do to Bella from 2 pm to 7 pm? We have photos from a sweet woman Elena and some videos but we want you to tell us what all did you do? **CP 176.**

There is nothing remotely unsafe or violent about this communication. Particularly, when one is told their dog will be "sleepy" after a third-time removal, and their dog dies 90 min later. CP 520. Kamani contacted AES with questions, who responded by calling the police.

(ii) "Bring you to Justice"

The dictionary definition of "bring you to Justice" reveals Respondents' regrettable ignorance of the meaning of the phrase. For the Court's convenience, definitions https://idioms.thefreedictionary.com/bring+(one)+to+justice; https://www.wordhippo.com/what-is/another-word-for/bring-to-justice.html from freely available websites are provided. It simply means, "I will take you to court". Here too, the Court abandoned a neutral dictionary interpretation, less one favoring Kamani.

The phrase "as in the past, when other evil men who think they got away with murder" is by Mahatma Gandhi – non-violent, world leader whose teachings of *Ahimsa* inspired the Rev. Martin Luther King, Jr. His full quote states: "Remember that all through history, there have been tyrants and murderers, and for a time, they seem invincible. But in the end, they always fall. Always." Kamani is not responsible for Stone and AES's lack of cultural competence and poor grasp of commonly used phrases. This Court inferred the quote in favor of Defendants.

But the Court also ignored dispute of fact - Kamani emailed, amidst police calls and suicidal ideation, explaining herself to AES:

We have contacted you several times to know what happened to our dog from 2 pm to 7 pm on 12/31, and you have been calling the police falsely claiming we have visited your facility and threatened you harm, when we have not (the one time I believe Mr. Mehta visited on his accord was when Poulsbo police was contacted prior and after getting a go-ahead - for records). We are incapable of causing physical harm to any human or animal or

creature of God, and though we do not wish well for you, would never desire to cause you bodily harm. We have not made any attempts to visit your facility either and have no desire to do so. Please do not add to your list of liabilities by making up falsehoods to the police. Should there be any concerns, let this email be a reflection and clarification of intentions conveyed in previous emails. Of course, we do hold you responsible for harming our dog and the justice we have mentioned are the proper channels available for such matters. We will just no longer email you and appeal to your conscience for the truth. Sincerely... **CP 178**.

(iii) Cease-and-Desist letter

Dissatisfied with the above email, AES's counsel still sent Kamani a Cease-and-Desist letter on 01.10.23 as she grappled with Bella's death. **CP 425**. The letter falsely accused Kamani of "harassing phone calls" – disputed by Wheaton's testimony, that this Court also ignored:

Q. Okay. All right. Was that the only time you had ever spoken to Ms. Kamani on the 5th of January?

A. That I recall, yes.

Q. As I read the email or I read the note, it sounds like she was very cordial with you?

A. Yes. **CP 233**.

The letter also stated, " ... we demand that you immediately cease and desist or refrain from posting any images or comments about or referring to Dr. Stone or AESC on any social media, website or other medium..." **CP 425**.

Noting, "pursuing a criminal action against you", the threat accompanied a repealed law citation, which would have terrified any lay person, let alone someone who was suicidal. **CP 425**. People often call on their Gods in moments of despair, but AES's xenophobia twisted expressions into harmful assumptions.

5. CONCLUSION

The Court's opinion cherrypicked and showcased facts entirely favoring movant, overlooking > 100 pages of Plaintiff's testimony (CP 341 – 375; CP 390 – 402; CP 486 – CP 523; CP 524 – CP 550; CP 551 – CP 552; CP 563 – CP 566).

CERTIFICATE OF COMPLIANCE

The foregoing document contains 5999 words in compliance with RAP 18.17(c)(8).

The foregoing is true and correct under penalty of perjury under the laws of the State of Washington.

Respectfully Submitted,

Moneesha Kamani, MS. MPH

J.D. 26-27

(Bella's mom)

160 E Lakeland Way

Allyn, WA 98524

Kamanm01@nyu.edu

CERTIFICATE OF SERVICE

I certify that the foregoing was served on KATE V.

CRADDOCK on 05.12.25 via the ACORDS portal.

Moneesha Kamani, MS. MPH J.D. 26-27 (Bella's mom) 160 E Lakeland Way Allyn, WA 98524 Kamanm01@nyu.edu

M. C. Lem

April 28, 2025

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

MONEESHA KAMANI,

No. 59601-6-II

Appellant,

v.

MICHAEL A. STONE, DVM, and his marital community/domestic partnership; NVA AETC VETERINARY MANAGEMENT, LLC dba ANIMAL EMERGENCY AND SPECIALTY CENTER, a foreign limited liability company,

ORDER DENYING MOTION
FOR EXTENSION OF TIME FOR FILING
MOTION FOR RECONSIDERATION

Respondents.

Appellant, Moneesha Kamani, filed a motion to extend the deadline for filing a motion for reconsideration of this court's unpublished opinion filed on April 22, 2025. After consideration, it is hereby

ORDERED that the motion to extend time to file motion for reconsideration is DENIED.

It is

SO ORDERED.

PANEL: Jj. Lee, Cruser, Che

FOR THE COURT:

JUDGE

GRANITE POINT LAW PLLC

September 05, 2025 - 8:30 AM

Filing Petition for Review

Transmittal Information

Filed with Court: Supreme Court **Appellate Court Case Number:** Case Initiation

Appellate Court Case Title: Moneesha Kamani, Appellant v. Michael Stone, et al. (596016)

The following documents have been uploaded:

• PRV Petition for Review 20250905082725SC412071 4690.pdf

This File Contains: Petition for Review

The Original File Name was 2025 09 05 Corrected Petition Full Submission.pdf

A copy of the uploaded files will be sent to:

- beth@demaineseeberger.com
- dpannella@hmlawohio.com
- kamanm01@nyu.edu
- kate@demaineseeberger.com

Comments:

The petition for review in this matter was filed on 9/4/2025. However, that petition contained an incorrect document in the appendix. Ms. Kamani advised me that she has spoken with the clerk of the court, who advised her to submit a corrected version of the petition through the e-filing portal.

Sender Name: Asti Gallina - Email: asti@granitepointlaw.com

Address:

522 W RIVERSIDE AVE STE 7153

SPOKANE, WA, 99201-1099

Phone: 509-592-0108

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