No. 79696-8-I

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

ROSE DAVIS, as the Personal Representative of the Estate of Renee L. Davis, deceased,

Plaintiff/Appellant,

v.

KING COUNTY, et al.,

Defendants/Appellees.

APPELLEES'/DEFENDANTS' RESPONSE TO APPELLANT'S/PLAINTIFF'S MOTION TO PUBLISH AND RECONSIDER THIS COURT'S AUGUST 31, 2020 OPINION

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I. INTRODUCTION

Ms. Davis' death is tragic. It impacted her family, her community, and the law enforcement agency that serves her community, including the two officers that faced the unfortunate decision of discharging their weapons after Ms. Davis pointed her gun at them. Law enforcement personnel are not perfect and, especially under the view of hindsight, it is easy to scrutinize their decisions and their tactics. However, RCW 4.24.420 is clear – we do not reward parties that engage in felonious and deadly conduct, as it places law enforcement and others in peril. Here, it is undisputed, indeed admitted, that Ms. Davis pointed her firearm at two King County sheriff deputies. Plaintiff's summary judgment briefing to the trial court stated: "Renee was indeed armed, suicidal, and engaged in behavior with the intent to provoke law enforcement to kill her by brandishing a firearm."[1] CP 526-57. Plaintiff's own police practices expert admitted the officers' actions in shooting Ms. Davis were justified. CP 86.

Dissatisfied with this Court's decision affirming the trial court's summary judgment dismissal, the plaintiff now resorts to a perversion of case law and impermissible argument. The reconsideration request should be rejected for the following reasons:

First, plaintiff's reconsideration is based on a new argument not raised at the trial court or in her original appellate briefing.

[1] Plaintiff continues to ignore that she asked the trial court to infer that she acted with intent to create apprehension of harm.

Second, none of the precedent plaintiff cites supports her position. Plaintiff's motion mischaracterizes and misrepresents the law. Indeed, her motion suggests her counsel did not read any of the cited cases and instead cites to single sentences identified on the first page of a legal research tool.

Last, this Court did not overlook any facts or law that would render its original decision erroneous.

Further, there was nothing incorrect about this Court's decision to not publish the ruling. The Court should deny plaintiff's request to publish the opinion as she only supports one of the publication factors – that she is a party.

II. ARGUMENT

A. Plaintiff's reconsideration request is improper and unsupported.

1. Plaintiff's reconsideration is improper as it is based entirely on new argument.

Plaintiff's reconsideration is based on her contention that this "Court overlooked and misapprehended the law." However, she does not identify a single case that she presented to this Court in her opening or reply briefs that was "overlooked" or "misapprehended." Nor does she identify facts this Court allegedly overlooked. *See* RAP 12.4(c) ("The motion should *state with particularity the points of law or fact which the moving party contends the court has overlooked or misapprehended*[.]"). Indeed, her reconsideration motion does not cite to a single case contained in this Court's opinion or cited by plaintiff in her opening or reply appellate briefs. Instead, she presents a brand-new argument – that criminal intent is always

a question of fact. She supports this new theory with cases never previously cited or argued to this Court. Plaintiff's motion should be rejected as it does not meet the requirements of RAP 12.4.

Moreover, as explained below, her argument is frivolous. While legal counsel may, on a basis of good faith, argue a novel interpretation of the law to serve his or her client's position – in effect attempting to "bend" the law – here plaintiff's counsel has snapped it over his knee. This was either done knowingly or through unacceptably torpid legal research. Either way, plaintiff's argument is unsupported, and her reconsideration request should be denied.

2. The precedent Plaintiff cites does not support her contention that this Court erred in affirming the trial court's summary judgment dismissal.

Plaintiff cites to U.S. Supreme Court, Washington Supreme Court, Washington appellate, and out of jurisdiction cases as support for her proposition that intent is always a question of fact for the jury. The cases she cites do not assist her position – not even close. Plaintiff counsel's mischaracterization and outright fabrication of the law oversteps the line of zealous advocacy. The effort must be rejected.

a. United States Supreme Court precedent does not establish intent can never be ruled on as a matter of law as plaintiff suggests.

Plaintiff relies on language from *Morrissette v. United States,* 342 U.S. 246, 274 (1952) for the prospect intent can only be determined by a

jury, and never as a matter of law. Plaintiff misrepresents the language from *Morrissette*. The case does not support plaintiff's argument.

In *Morissette*, the Supreme Court reversed a federal defendant's conviction of larceny where the defendant had gathered spent bomb casings on a United States Army practice range and then later sold them as scrap metal. *Id*. at 276. The defendant in *Morissette* testified he had not intended to steal because he thought the range and the shell casings were abandoned. *Id*. at 248-49. However, the district court refused to instruct the jury regarding the defendant's intention, finding that the defendant knew that he was on governmental land and had intentionally taken the spent casings from land belonging to government. *Id*. The Sixth Circuit affirmed, finding that the statute under which the defendant was convicted "requires no element of criminal intent." *Id*. at 250. The U.S. Supreme Court reversed. In doing so, the court recognized the existence of an expanding number of crimes with respect to which criminal intent was not an element, but it declined to "expand the doctrine of crimes without intent to include those charged" in that case. The court held that the "mere omission … of any mention of intent will not be construed as eliminating the element from" the particular statute in question. *Id*. at 263. The court further held that, "[w]here intent of the accused is an ingredient of the crime charged, its existence is a question of fact which must be submitted to the jury." *Id*. at 274.

As set forth above, *Morissette* involved a district court's failure to properly instruct a criminal jury on the elements of a crime, leaving out the requisite intent element. The case in no way holds or even suggests that a civil trial court cannot determine intent as a matter of law where no disputed issues of fact exist. *Morissette* provides plaintiff no relief.

Neither does *Chasson v. Ponte*, 459 U.S. 1162 (1983) support plaintiff's argument; indeed, it does the opposite. Here plaintiff cites to the *dissenting opinion* from a U.S. Supreme Court certiorari denial – a fact she did not identify in her motion. In other words, plaintiff has cited what even elementary scholarship would reveal to be bad authority for her argument. Plaintiff also failed to inform this Court that the underlying case at issue in *Chasson* is contrary to her new argument.

Chasson addressed the decision in *Rivera v. Coombe*, 683 F.2d 697, *review denied*, 459 U.S. 1162 (1983). There the petitioner, Rivera, stabbed a man in the back and was convicted by jury of first-degree manslaughter. *Id*. at 700. The U.S. District Court for the Southern District of New York granted Rivera's *habeas corpus* petition, holding the trial court's jury instruction on intent violated Rivera's right to due process. *Id*. The Second Circuit disagreed and reversed.

The relevant question before the Second Circuit was whether the trial court properly instructed the jury on the elements of second-degree murder. The instruction included the following relevant language:

> A person is presumed to intend the natural and probable consequences of his act. Criminal intent is an intent to do knowingly

> and willfully that which is condemned as wrong by the law. A criminal intent may be inferred from all the circumstances of the case. It need not be established by direct proof.
> …
> Under our law every person is presumed to intend the natural and inevitable consequences of his own voluntary acts and unless such acts were done under circumstances which would preclude the existence of such intent, the jury has a right to infer from the results produced, the intention to effect such result.

Id. at 699. Petitioner argued the trial court's instruction charged the jury to presume the intent element from other facts; he claimed it relieved the prosecution of its duty to prove all elements of the offense and shifted the burden of proof to the defense. *Id*. at 700. The Second Circuit rejected the argument, finding the language did not violate the petitioner's due process rights and was not error. *Id*. at 700-702. Petition for certiorari was requested and denied. *See Chasson*, *supra*.

While *Rivera*, like *Morissette*, addressed a criminal standard unlike the civil summary judgment standard at issue in this case, it confirms that intent may be inferred based on the circumstances of the case. And importantly, where facts are not in dispute, the factfinder (a judge on summary judgment) is fully authorized to infer said intent. *See Estate of Lee ex rel. Lee v. City of Spokane*, 101 Wn. App. 158, 2 P.3d 979 (2000); *see also State v. Bea*, 162 Wn. App. 570, 579, 254 P.3d 948 (2011) ("Where there is no direct evidence of the actor's intended objective or purpose, intent may be inferred from circumstantial evidence.").

b. The Washington Supreme Court has never stated that intent can never be ruled as a matter of law on summary judgment.

It is one thing to misread or mischaracterize a case as plaintiff did with *Morrissette* and *Chasson,* but it is something completely different to add words to a case's holding that completely changes its meaning. That is exactly what plaintiff has done in citing *Wingert v. Yellow Freight Sys., Inc*., 146 Wn.2d 841, 50 P.3d 256 (2002).

In *Wingert*, employees brought an action against their employer alleging they were denied 10-minute rest periods while working overtime, violating WAC 296-126-092(4). *Id*. at 846. The trial court granted summary judgment for the employer and the employees appealed. This Court reversed. *Id.* On petition for review our Supreme Court addressed (1) whether a private cause of action existed to pursue the claim, (2) whether the rest break standard is superseded by the parties' collective bargaining agreement, and (3) whether the regulation preempted federal law. *Id*. at 847-53. In addressing the cause of action question, the *Wingert* court addressed the employees claim that they were entitled to monetary damages pursuant to RCW 49.52.070 and, in what represents nothing more than dicta, it commented that "***the*** statute's requirement that the ***employer*** act willfully and with intent presents a question of fact." *Id*. at 849 (citing *Pope v. Univ. of Wash*., 121 Wn.2d 479, 490, 852 P.2d 1055 (1993). Plaintiff's brief, however, fundamentally changes the *Wingert* dicta in the following recitation:

> [A] statue's requirement that the [person] act willfully and with intent presents a question of fact….

Plaintiff inserted an "A" where the original language contains "The" and replaced "employer" with "person." Plaintiff has in effect falsified *Wingert* to create authority where none exists. This not advocacy, it is deception. *Wingert* does not hold or even imply that all statues that contain an intent element present a question of fact that can only be decided by a jury.

Likewise, *Matter of Estate of Little*, 106 Wn.2d 269, 721 P.2d 590 (1986), does not stand for the proposition plaintiff suggests – plaintiff instead operates on the actual case language to transform its result. Plaintiff ascribes the following to *Little*:

> The existence or absence of …intent is a factual issue to be resolved by the trier of fact.

However, the actual language reads: "The existence or absence of ***donative intent*** is a factual issue to be resolved by the trier of fact." *Id*. at 288. Our Supreme court did not hold the existence or lack of intent is always a factual issue as plaintiff argues. Its statement about donative intent was very specific to the facts and circumstances of the particular case.

In *Little* factual questions precluded summary judgment in a will contest between full and half-blood relatives, necessitating the donative intent issue be presented to a jury. As it relates to this case, *Little* stands for nothing more than the fact that summary judgment may not be granted where disputed issues of fact remain. Like *Wingert*, it does not stand for the idea

that the question of intent can never be decided at summary judgment, especially where issues of fact are absent.

c. Washington precedent does not support the argument that intent is always a question of fact even where no disputed issues of fact exist.

Plaintiff cites two cases, *Kitsap County. v. Kitsap Rifle & Revolver Club*, 184 Wn. App. 252, 337 P.3d 328 (2014) and *Bersos v. Cape George Colony Club*, 4 Wn. App. 663, 484 P.2d 485 (1971), in support of her contention that this Court's holding affirming summary judgment creates a split in decisions between Division One and Division Two on the issue of whether intent is always a question of fact for the jury. When read in context, however, the claimed controversy evaporates – the cases do not support plaintiff's contention.

In *Kitsap County*, the Kitsap Rifle and Revolver Club (Club) had operated a shooting range on a 72-acre parcel leased from the Washington Department of Natural Resources (DNR). 184 Wn. App. at 262. In 2009, Kitsap County negotiated a land swap that included the 72 acres the Club leased. That same year the county board approved the sale of the 72-acre parcel to the Club. DNR thereafter conveyed the land to the county and it immediately conveyed the land to the Club through an agreed deed with restrictive covenants. *Id*. at 264-65. In 2011, the county brought an action against the Club for an injunction, declaratory judgment, and nuisance abatement, alleging the club impermissibly expanded a nonconforming use. The trial court issued a permanent injunction prohibiting use of the property

as a shooting range absent the issuance of a conditional use permit. It also prohibited the use of fully automatic firearms, certain targets, and limited the hours the range could be open. The Club appealed. *Id*. at 265-66.

One of the issues on appeal was whether the deed precluded enforcement of county development regulations for improvements on property. Division Two identified the standard of review for deeds as follows:

> Interpretation of a deed is a mixed question of fact and law. Our goal is to discover and give effect to the parties' intent as expressed in the deed. The parties' **intent is a question of fact** and the legal consequence of that intent is a question of law. We defer to the trial court's factual findings if they are supported by substantial evidence and review questions of law and conclusions of law de novo.

Id. at 289-90. Plaintiff cites the emphasized language for her contention that Division Two holds intent is a question of fact that can only be decided by a jury. Clearly that is not the case. *Kitsap County* focuses on contract interpretation, not whether a court can rule on *mens rea* as a matter of law on summary judgment where facts are not in dispute. *See Go2Net, Inc. v. C I Host, Inc*., 115 Wn. App. 73, 87-88, 60 P.3d 1245 (2003) (affirming grant of internet company's summary judgment request where no disputed issues of fact existed and intent was properly inferred through parties' objective manifestations to contract)

Bersos is similarly unavailing. There landowners in a real estate development sought declaratory judgment against the development to adjudicate rights under certain restrictive covenants. 4 Wn. App. at 664-65. The trial court dismissed the action on summary judgment and plaintiffs

appealed. *Id*. Division Two held plaintiffs' pleadings and affidavits raised material issues of fact about the development building committee's authority, precluding summary judgment. *Id*. at 665-68. Specifically, Division Two recognized numerous factual disputes surrounding the restrictions and the intent of the parties to the development. In doing so, it stated:

> Next, the intent of the parties to a covenant is the key factor in determination of the effect to be given restrictions. When meaning is doubtful, surrounding circumstances must be considered to determine proper meaning. Doubts must be resolved in favor of free use of land, but intended necessary implications from the writing may be enforced. **Intent is preeminently a question of fact**. Without fact finding about the context in which the words of the restriction were written, the intended legal effect thereof cannot be ascertained. What the building committee has done in this case is not specifically provided for on the face of the restrictions we have as part of the record on appeal. Whether such a power must necessarily be implied is a factual matter that requires evidence and a factual determination.

Id. at 665-66. The language in bold is what plaintiff cites to support her intent can only be decided by a jury argument. *Bersos* holds nothing of the sort, does not assist plaintiff's position, and has no application in this case.

3. This Court did not overlook an issue of fact.

Paragraph "B" to plaintiff's reconsideration motion is titled "The Court's Decision Overlooked an Issue of Fact." However, the recitation following the title does not identify any fact this Court allegedly overlooked. Instead, it cites to media articles outside the record in this case identifying statistics of police shootings. Plaintiff then asks this Court to "do the same" as some federal courts that denied summary judgment in

excessive force cases where they found the existence of disputed issues of material fact.

Again, plaintiff ignores the fact that no evidence contradicts the deputies' testimony that Ms. Davis pointed a gun at them. Indeed, not only did plaintiff not contradict that testimony, but she argued to the trial court that she pointed the gun at the officers to create an apprehension of harm: "Renee was indeed armed, suicidal, and engaged in behavior with the intent to provoke law enforcement to kill her by brandishing a firearm." CP 526-27.

The federal district court cases plaintiff cites are inapposite. In each case the plaintiff presented facts that contradicted the officer's testimony, creating disputed issues of fact. *See Briscoe v. City of Seattle*, C18-262 TSZ, 2020 WL 5203588, *9 (W.D. Wash. Sep. 1, 2020) (reasonable inferences from the evidence provided support for the proposition that the suspect was neither armed nor reaching for a weapon when shot by officers); *Wallisa v. City of Hesparia*, 369 F.Sup.3d 990 (C.D. Cal. 2019) (considerable circumstantial evidence contradicted the defendants' testimony that the suspect reached for his waistband and was actively resisting officers); *Risher v. City of Los Angeles*, No. 17-995, 2020 WL 5377306, (C.D. Cal. July 29, 2020) (unpublished) (officer's testimony that Risher was pointing gun at officer contradicted by circumstantial evidence (e.g., Risher's gun was found away from Risher's body)).

This Court correctly rejected this same argument when it analyzed *J.J.D. v. City of Torrance*, No. CV 14-07463-BRO, 2016 WL 6674996, at * 5 (C.D. Cal. Mar. 22, 2016) (court order), another case cited by plaintiff for this same argument.[2] This Court held:

> In that case, however, the officers had not provided an account of the shooting that matched the physical evidence. This created a dispute of material fact, from which a reasonable juror could conclude the officers had lied. Here, there is no physical evidence to suggest that Davis did not raise her gun or that the deputies lied. The estate points to small inconsistencies in the deputies' version of events, including how Davis was holding the gun, and how the gun was handled after the shooting. These inconsistencies are insufficient to create a dispute of material fact on the issue of whether Davis raised her gun. There is no evidence the gun was planted or not in Davis's immediate possession at the time of the shooting. Thus, the trial court did not err when it granted summary judgment because there was no genuine issue of material fact.

This Court did not overlook any fact and plaintiff has not identified one. Not only did plaintiff not contradict the officers' testimony, she told the trial court to accept it as true.

B. Plaintiff's publication request is unsupported as evidenced through her own request for reconsideration.

Plaintiff fails to support her request for publication and this Court was correct when it elected not to publish its decision. Plaintiff meets only one of the criteria necessary to justify publication.

1. If not a party, the applicant's interest.

This is the only element plaintiff meets.

[2] *Davis v. King County*, 14 Wn. App.2d 1026, 2020 WL 5117968, at *4 (2020) (unpublished).

2. Plaintiff's belief that publication is necessary is based on a false view of this Court's holding.

Plaintiff contends this Court's opinion should be published because it holds RCW 4.24.420 is a complete bar to recovery "when the victim is deceased and therefore cannot rebut assertions" made by officers and "where intent is an element of the underlying alleged felony." However, that is neither the law nor what this Court held. The fact a victim is deceased does not prevent her from relying on and utilizing evidence to rebut an officer's testimony. As this Court's opinion correctly stated:

> An issue of credibility is present only if the party opposing the summary judgment motion comes forward with evidence which contradicts or impeaches the movant's evidence on a material issue. A party may not preclude summary judgment by merely raising argument and inference on collateral matters.
> …
> There is not evidence suggesting Davis did not point her gun at the deputies.
> …
> There is no evidence the gun was planted or not in Davis's immediate possession at the time of the shooting. Thus, the trial court did not err when it granted summary judgment because there was no genuine issue of material fact.

Davis, 2020 WL 5117968 at *4-5 (internal quotations and citations omitted). Contrary to plaintiff's assertion, RCW 4.24.420 is not invoked to foreclose fact finding when the victim is deceased. In each of the cases plaintiff cites plaintiff was given a full opportunity to conduct discovery and rebut the officer's recitation of events. Indeed, the case of *Briscoe v. City of Seattle*, C18-262 TSZ, 2020 WL 5203588, (W.D. Wash. Sep. 1, 2020) she cites refutes her argument. There, although the suspect plaintiff was shot and killed by officers, his estate, after conducting discovery, presented

evidence contradicting the officer's recitation of events, creating material issues of fact that barred summary judgment under RCW 4.24.420.

3. Whether the decision determines an unsettled or new question of law or constitutional principle.

Plaintiff contends "[t]he decision determines a new question of law." Again, however, plaintiff's argument is plainly rebuffed. Plaintiff's "new law" argument claims "RCW 4.24.420 has never been invoked at the summary judgment stage when the underlying alleged felony has a specific element of intent and the Plaintiff has not admitted to or been convicted of the alleged felony." The case of *Estate of Lee ex. Rel. Lee v. City of Spokane*, 101 Wn. App. 158, 2 P.3d 979 (2000), *review denied*, 101 Wn.2d 1014 (2000) says otherwise. Even a cursory examination of *Lee* belies plaintiff's claim.

In *Lee* the defendant officers had probable cause to arrest the decedent for domestic violence. The officers and decedent's wife went to the door of the decedent's residence. Decedent's wife attempted to unlock the door to the residence, but decedent held the lock closed. The decedent's wife asked him several times to let her in and he responded, "get the f*** out of here … or two people are going to die tonight." 101 Wn. App. at 164. The decedent's wife backed away. Shortly thereafter, decedent opened the front door holding a rifle pointed down. *Id*. When officers commanded the decedent to drop the gun, he refused, instead raising it and pointing it at one of the officers. *Id*. Both officers drew their guns and one officer fired a single shot at the decedent, killing him. After the trial court denied the

officer's summary judgment on certain state law claims, the appellate court reversed, holding RCW 4.24.420 barred plaintiff's state law claims because he was committing a felony when he pointed a gun at the officers and his wife. Id. at 177.

The *Lee* court invoked RCW 4.24.420 at the summary judgment stage where the underlying felony had a specific intent element and the decedent had neither admitted to nor been convicted of a felony. Plaintiff's statement that no court has ever ruled as this Court did is simply false.

4. Whether the decision modifies, clarifies, or reverses an established principle of law.

As explained above, this Court's decision does not reverse *Morrissette* or any of the other cases plaintiff mischaracterizes as applicable to this case. This Court's decision is consistent with both that precedent and *Lee.*

5. Whether the decision is of general public interest or importance.

Plaintiff suggests this "Court's interpretation of RCW 4.24.420 will enable persons entrusted with the state's greatest power to avoid accountability simply by giving a completely unverifiable, after-the-fact, self-serving, exculpatory statement of events." That statement is belied by the very cases plaintiff cites where a plaintiff presents disputed material facts, precluding summary judgment. *See, e.g., Briscoe, supra*. It is further belied by the plain language of the statue that reads in relevant part:

> However, nothing in this section shall affect a right of action under 42 U.S.C. Sec. 1983.

RCW 4.24.420. Plaintiff made the tactical decision to forgo § 1983 claims and her claim that this Court has used RCW 4.24.420 as a shield against accountability ignores the record, the statute's language, and the precedent she asks this Court to address.

6. Whether the decision is in conflict with a prior opinion of the court of appeals.

When considered with their actual verbiage intact and in proper context this Court's decision is not in conflict with a single case cited by plaintiff. No conflict exists because, as set forth herein, the cases cited by plaintiff are not even remotely applicable to this Court's ruling. Plaintiff suggests this Court's opinion in *Mitchell Int'l Enterprises v. Daly*, 33 Wn. App. 562, 656 P.2d 1113 (1983) conflicts with its ruling in this case, supporting factor six when determining whether to publish this Court's opinion. Once again, nothing could be farther from the truth.

In *Mitchell*, the employer (Mitchell) discharged its employee (Daly) and later served him with a complaint alleging misappropriation of $72,000 in company funds. 33 Wn. App. at 564. In response, Daly sent a letter to Mitchell offering to reimburse the company $36,000. The parties entered into a compromise agreement settling the dispute. As part of the agreement, Daly admitted allegations in the company's complaint and signed a promissory note containing repayment terms for the $36,000. *Id.*

Mitchell later filed suit against Daly declaring he was in default under the note and sought payment of the $72,000 claimed in its initial

complaint. *Id*. at 564. Daly denied he was in default, contending he made monetary payments, endorsed pension checks totaling $5,000 and that Mitchell retained personal property worth $5,000 belonging to him. The trial court granted partial summary judgment to Mitchell concluding the only material issue of fact that remained was whether the pension checks and personal property should be deducted from the amount prayed for in Mitchell's complaint. *Id*. At trial, the jury found that Mitchell had converted Daly's personal property worth $10,562.30. *Id*. After dismissing the jury, the trial court modified the partial summary judgment, and found the amount determined by the jury should be deducted from the balance outstanding under the compromise agreement. The result was a remainder balance of $23.64. Mitchell appealed. *Id*. at 564-55.

On appeal, Mitchell argued the trial court erred when it deducted the jury award from the amount due under the compromise agreement. Mitchell claimed the trial court treated the award as a "payment" under the compromise agreement, deciding the issue as a matter of law, instead of a question of fact. *Id*. at 566. This Court agreed stating:

> A transfer cannot constitute a payment unless there is mutual intent that it be a payment. The existence of intent is a question of fact for the jury.

Id. (citations omitted). Plaintiff contends this Court's ruling affirming summary judgment dismissal pursuant to RCW 4.24.420 conflicts with this language. For some reason, as outlined throughout this response, plaintiff's counsel believes precedent is established through a single sentence and that

context and facts do not matter. This is obviously incorrect. *Mitchell*, similar to the other cases cited by plaintiff, is inapplicable as it addresses a completely different and unique factual and legal situation. Plaintiff fails to recognize that cases must cross paths (factually and legally) before they can be in conflict.

III. CONCLUSION

This Court should deny plaintiff's reconsideration request and admonish plaintiff's counsel for knowingly presenting false information to this Court or failing to undertake the required research expected of members of the Washington State Bar. This Court correctly affirmed the trial court and plaintiff's reconsideration request presents nothing that contradicts this Court's holding.

RESPECTFULLY SUBMITTED this 7th day of December, 2020.

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The undersigned certifies under penalty of perjury according to the laws of the United States and the State of Washington that on this date I caused to be served in the manner noted below a copy of this document entitled APPELLEES'/DEFENDANTS' RESPONSE TO APPELLANT'S/PLAINTIFF'S MOTION TO PUBLISH AND RECONSIDER THIS COURT'S AUGUST 31, 2020 OPINION on the following individuals:

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Dated this 7th day of December, 2020, at Seattle, Washington.

/s/ Lisa Smith
Lisa Smith

FREY BUCK, P.S.

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Comments:

Appellees' Response to Appellant's Motion to Publish and Reconsider this Court's August 31, 2020 Opinion

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