IN THE SUPREME COURT OF THE STATE OF WASHINGTON

THE ESTATE OF ASHLIE BUNCH, by and through its Personal Representative, STEVEN BUNCH; and STEVEN BUNCH, individually, Plaintiffs, v. MCGRAW RESIDENTIAL CENTER, a d/b/a of SEATTLE CHILDREN'S HOME, a Washington nonprofit corporation, Respondent, and ALEXANDER CHUN, individually; EDRENE PATTERSON and ANTHONY PATTERSON, husband and wife; SUSAN RILEY and ROY RILEY, JR., husband and wife; and JOHN AND JANE DOES 1-10, Defendants, and AMY KOZEL, Petitioner-Intervenor.	)	No. 85679-6 En Banc Filed May 3, 2012

OWENS, J. -- This case arises out of the tragic death of a teenage girl, Ashlie Bunch. Ashlie's adoptive father, Steven Bunch (Bunch) brought an action under RCW 4.24.010, a statute creating a right of action for the injury or death of a child, against the treatment center where Ashlie committed suicide, McGraw Residential Center. Ashley's adoptive mother, Amy Kozel, sought to join the lawsuit as a necessary party under CR 19(a). The superior court denied Kozel's motion and the Court of Appeals affirmed. Finding that Kozel satisfied statutory standing requirements and CR 19(a), we reverse the Court of Appeals and remand for further proceedings.

Facts

This case involves both disputed and undisputed facts. There is no dispute about the facts prior to 2003. In 1998, Kozel and Bunch, then married and living in Florida, adopted two biological sisters: Ashlie and Emily. Ashlie was two years older than Emily. In 2001, Kozel and Bunch divorced. Ashlie and Emily remained with Kozel in Florida while Bunch moved to Washington State. Kozel provided all parental functions while Bunch visited his daughters twice and regularly contributed child support. This arrangement lasted until 2003.

In 2003, Kozel and Bunch arranged for Ashlie to move to Washington and live with Bunch. Kozel decided that this was necessary because Ashlie, who was at some point diagnosed with, among other things, a fetal alcohol spectrum disorder,

oppositional defiant disorder, posttraumatic stress disorder, and attention deficit hyperactivity disorder, began assaulting her younger sister Emily.

Kozel and Bunch give conflicting accounts of Kozel's involvement in Ashlie's life following Ashlie's move to Washington. Kozel claims that she "spoke with [Ashlie] regularly by phone, at least once a week, until she was admitted to inpatient facilities," sent her Christmas presents, and hoped that Ashlie would be able to live with Emily and Kozel again in the future. Clerk's Papers at 57. Bunch, on the other hand, claims that Kozel "did not have a relationship of any kind with Ashlie," only once sent a Christmas present to Ashlie, and called Ashlie only once. *Id*. at 69-70.

Around 2006, Ashlie's mental health issues appear to have worsened. In 2006, Ashlie was hospitalized at three different children's hospitals because of her mental health problems. On March 13, 2007, Ashlie was involuntarily committed to Kitsap Mental Health Hospital due to her statements that she intended to kill herself. In May 2007, she was transferred to the McGraw Residential Center. While under the care of the McGraw Residential Center, Ashlie committed suicide on January 29, 2008.

In May 2009, Bunch, on behalf of himself and Ashlie's estate, filed a complaint in King County Superior Court against McGraw Residential Center and several of its employees. He alleged the tort of outrage, medical malpractice, negligent hiring, training, and supervision, and wrongful death of a child. Bunch provided Kozel with

notice of the action in accordance with RCW 4.24.010. In June 2009, Kozel filed a timely motion to intervene pursuant to CR 19(a). McGraw Residential Center and Bunch both opposed Kozel's motion to intervene. The trial court denied Kozel's motion to intervene without stating its basis for doing so. Kozel filed a timely notice of appeal on July 14, 2009. On September 21, 2009, while the appeal remained pending, the trial court dismissed the case pursuant to a stipulation between Bunch and McGraw Residential Center that followed a settlement between the two parties.

On February 7, 2011, a divided panel of the Court of Appeals affirmed the trial court's order denying Kozel's motion to intervene. *Estate of Bunch v. McGraw Residential Ctr.*, 159 Wn. App. 852, 855, 248 P.3d 565 (2011). We granted Kozel's petition for review. *Estate of Bunch v. McGraw Residential Ctr.*, 171 Wn.2d 1021, 257 P.3d 662 (2011).

issue

Did the trial court err in denying Kozel's motion to intervene?

Analysis

I. *Standard of Review*

"The trial court's decision on whether a party is necessary under CR 19(a) is reviewed for an abuse of discretion." *Freestone Capital Partners, LP v. MKA Real Estate Opportunity Fund I, LLC*, 155 Wn. App. 643, 669, 230 P.3d 625 (2010) (citing

Gildon v. Simon Prop. Grp., Inc., 158 Wn.2d 483, 493, 145 P.3d 1196 (2006)). Legal conclusions, including the proper interpretations of statutes, are reviewed de novo. *Gildon*, 158 Wn.2d at 493; *Dowler v. Clover Park Sch. Dist. No. 400*, 172 Wn.2d 471, 481, 258 P.3d 676 (2011).

II. *The Trial Court Erred in Denying Kozel's Motion To Intervene*

The trial court erred in denying Kozel's motion to intervene pursuant to CR 19(a).[1] CR 19(a) provides, in relevant part, as follows:

> A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if . . . (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (A) as a practical matter impair or impede his ability to protect that interest.

A party satisfying the requirements of CR 19(a) is a "necessary party." *Burt v. Dep't of Corr.*, 168 Wn.2d 828, 833, 231 P.3d 191 (2010) (plurality opinion); *id*. at 839 (Sanders, J., concurring). There appears to be no dispute that if Kozel has standing under RCW 4.24.010, she would be a necessary party under CR 19(a). Kozel was clearly subject to service of process, and her joinder would not deprive the court of jurisdiction. Kozel also satisfies the second requirement of CR 19(a) by claiming an interest in participating in the wrongful death action arising out of her adopted

[1] Before the trial court, Kozel relied exclusively on CR 19 to justify her participation in the action. Amicus curiae Washington State Association for Justice urges us to hold that joinder under RCW 4.24.010 is a matter of right. This argument was not presented to the trial court, and we decline to consider it. *See* RAP 2.5(a).

daughter's tragic and untimely death. Further, RCW 4.24.010 "creates only one cause of action," and failure of the parent not named as a plaintiff to join "shall bar such parent's action to recover any part of an award made to the party instituting the suit." Failure to join Kozel therefore effectively denies her the opportunity to recover for the wrongful death of her daughter. Thus, Kozel satisfies the final CR 19(a) requirement.

The fundamental point of contention in this case is whether Kozel has standing to proceed under RCW 4.24.010. This requires that we interpret the statute. Interpretation of a statute is guided by well-established principles. A court's "fundamental objective" when interpreting a statute "is 'to discern and implement the intent of the legislature.'" *Flight Options, LLC v. Dep't of Revenue*, 172 Wn.2d 487, 500, 259 P.3d 234 (2011) (quoting *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003)). Legislative intent is implemented "by giving effect to the plain meaning of a statute," and the plain meaning "may be gleaned 'from all that the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in question.'" *Id*. (quoting *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 11, 43 P.3d 4 (2002)). If a "statute is 'susceptible to two or more reasonable interpretations,' the statute is ambiguous." *Id*. (quoting *Burton v Lehman*, 153 Wn.2d 416, 423, 103 P.3d 1230 (2005)). "However, a statute is not ambiguous merely because two or more interpretations are conceivable." *Id*. If a statute is ambiguous,

we "may look to the legislative history of the statute and the circumstances surrounding its enactment to determine legislative intent." *Rest. Dev., Inc. v. Cananwill, Inc.*, 150 Wn.2d 674, 682, 80 P.3d 598 (2003).

We must pause to address whether this statute is to be liberally or strictly construed. The Court of Appeals strictly construed the statue because it is in derogation of the common law. *Bunch*, 159 Wn. App. at 865. Amicus curiae Washington State Association for Justice argues that the wrongful death statutes should instead be given a liberal construction because they are remedial in nature. The distinction between "liberal construction" and "strict construction" is easily overstated. Neither a liberal construction nor a strict construction may be employed to defeat the intent of the legislature, as discerned through traditional processes of statutory interpretation. *See Armijo v. Wesselius*, 73 Wn.2d 716, 720, 440 P.2d 471 (1968) ("Whether done liberally or strictly, judicial interpretation is necessary."). Strict construction is simply a requirement that, where two interpretations are equally consistent with legislative intent, the court opts for the narrower interpretation of the statute.[2] *See State v. Johnson*, 119 Wn.2d 167, 172, 829 P.2d 1082 (1992); *cf. State v. Ervin*, 169 Wn.2d 815, 823 n.1, 239 P.3d 354 (2010) ("[T]he rule of lenity . . . is

[2] More rigorous application of the doctrine of strict construction of statutes in derogation of the common law has been rightly decried as resulting "in artificial, gratuitous, judicially fabricated obstacles to progress through legislation" having "no justification in principle." 3 Norman J. Singer, Sutherland Statutory Construction § 58.03, at 75 (5th ed. 1992).

applicable only *after* employing tools of statutory construction." (citation omitted)); *Wichert v. Cardwell*, 117 Wn.2d 148, 154-55, 812 P.2d 858 (1991) (discussing, in dicta, the "proper use of strict construction"). In any event, in the context of wrongful death statutes the modern trend of this court has been away from strict construction. *See, e.g., Beggs v. Dep't of Social & Health Servs.*, 171 Wn.2d 69, 82, 247 P.3d 421 (2011); *Klossner v. San Juan County*, 93 Wn.2d 42, 47-48, 605 P.2d 330 (1980); *Armijo*, 73 Wn.2d at 720-21. In line with this modern trend, we hold that RCW 4.24.010 should be given a fair reading, one that is neither strict nor liberal, to effectuate the legislature's intent.

We now turn to the language of RCW 4.24.010 that forms the basis of the disagreement in this case:

> *A mother or father, or both, who has regularly contributed to the support of his or her minor child*, and the mother or father, or both, of a child on whom either, or both, are dependent for support *may* maintain or *join as a party an action as plaintiff for the* injury or *death of the child*.

(Emphasis added.) In particular, the key question is whether the term "has regularly contributed" requires that the support be continuing at the time of the child's death. The context of the statute, together with our duty to avoid absurd results, *see State v. Hall*, 168 Wn.2d 726, 737, 230 P.3d 1048 (2010), compels us to conclude that it does not.

The term "has regularly contributed" is in the present perfect tense. *See* The

Chicago Manual of Style 5.126, at 237 (16th ed. 2010). This tense "denotes an act, state, or condition that is now completed or continues up to the present." *Id*. The dual meaning of this construction is apparent: it may either indicate a completed action that took place at "a time in the indefinite past" or "a past action that comes up to and touches the present." *Id*. Several courts have noted the potential for ambiguity. *See Padilla-Romero v. Holder*, 611 F.3d 1011, 1013 (9th Cir. 2010); *In re Interest of A.H.B.*, 791 N.W.2d 687, 689 (Iowa 2010). However, the term is not necessarily ambiguous• the plain meaning of "has regularly contributed" may simply include both temporal definitions (i.e., both completed and ongoing actions). Absent contrary legislative intent discerned from the context, this is the plain meaning of the statute.

The use of the word "regularly" does not call into question the plain meaning of the statute. We may accept the dictionary definitions offered by the Court of Appeals of "'[o]ccurring at fixed intervals; periodic: regular payments,'" "'[o]ccurring with normal or healthy frequency,'" and "'[n]ot varying; constant.'" *Bunch*, 159 Wn. App. at 862 (quoting The American Heritage Dictionary 1521 (3d ed. 1992)). Even so defined, the term "regularly" does not contradict or alter the present perfect tense. Rather, it specifies that *within* the designated period beginning in the past, whether completed or ongoing as of the date of injury or death, the contribution of support must not have been merely sporadic, but must have occurred "with normal or healthy

frequency." American Heritage Dictionary, *supra*, at 1521.

Context confirms that the legislature did not intend to exclude a parent who "has regularly contributed to the support" of his or her child in the past from participation as a plaintiff in a lawsuit under RCW 4.24.010. Two aspects of the statute make this a reasonable inference. First, in the same sentence, the legislature uses the present tense "are dependent" to refer to parents that may recover for the injury or death of a child without respect to the child's minority. RCW 4.24.010. As the Court of Appeals has recognized, this statute requires that the relevant determinations be made "at the time of the accident." *Blumenshein v. Voelker*, 124 Wn. App. 129, 135, 100 P.3d 344 (2004). Thus, under the statute, the determinations the legislature has called for are whether parents "are dependent for support" on their children as of the time of the accident and whether a parent "has regularly contributed to the support of his or her minor child" as of the time of the accident.[3] RCW 4.24.010. This suggests that the legislature deliberately chose not to employ the present tense with respect to contribution of support, either alone or as a requirement in addition to the present perfect tense. *See Koenig v. City of Des Moines*, 158 Wn.2d 173, 182, 142 P.3d 162 (2006) ("When the legislature employs different terms in a

[3] The import of the latter requirement is well illustrated by *Blumenshein*, in which the court held that a parent who "did not have significant involvement in [the child's] life until one and a half years after the accident" did not have standing to sue under RCW 4.24.010. 124 Wn. App. at 135.

statute, we presume a different meaning for each term."). Second, the statute plainly contemplates participation by parents with differing involvement in the child's life and provides for damages to be awarded accordingly. RCW 4.24.010 ("[D]amages may be awarded to each plaintiff separately, as the trier of fact finds just and equitable."). This context certainly suggests that the legislature did not intend for the parent's regular support to have necessarily continued through the time of the child's injury or death to participate in an action pursuant to RCW 4.24.010.

An interpretation of the statute requiring that the parent's support be ongoing at the time of the child's injury or death would also lead to absurd results. For example, if a child is kidnapped and, years later, the child suffers injury or death, under the interpretation adopted by the Court of Appeals, the child's parents would be unable to bring an action under RCW 4.24.010 because, at the time of the injury or death, the parents were not contributing support. As another example, the Court of Appeals interpretation would leave a child's parent who had been in a coma for a period of months unable to recover if the child were injured or killed during those months. These results would be manifestly absurd; the legislature could not have intended them. Consequently, we are compelled to reject an interpretation that would allow for these results.

In sum, we hold that a parent "who has regularly contributed to the support of

his or her minor child," RCW 4.24.010, may bring or join an action for injury or death of the child, even if, at the time of death, the parent is not presently providing support.[4] The undisputed record in this case clearly establishes that Kozel met this standard. The term "support" in RCW 4.24.010 encompasses emotional, psychological, and financial contributions; any one type of support is sufficient. *See Postema v. Postema Enters., Inc.*, 118 Wn. App. 185, 197-99, 72 P.3d 1122 (2003) (interpreting "support" in light of legislature's statement of intent). From 1998 until 2003, Kozel lived with and directly supported Ashlie. This is sufficient to give Kozel standing. Insofar as the trial court concluded otherwise, it abused its discretion.

III. *The Settlement Must Be Set Aside*

A court may overturn a judgment where the parties failed to join a necessary party. *Burt*, 168 Wn.2d at 834 (citing *Geroux v. Fleck*, 33 Wn. App. 424, 655 P.2d 254 (1982)). Similarly, we must set aside the settlement reached between Bunch and McGraw Residential Center following Kozel's appeal of the denial of her motion to intervene as a plaintiff. Because RCW 4.24.010 "creates only one cause of action," Kozel's alternative proposal that she be permitted to pursue a second action does not appear to be viable.[5]

[4] We disapprove any language in *Blumenshein* that is inconsistent with this opinion.
[5] The issue of the appropriate remedy has been insufficiently briefed by both parties. We do not foreclose the possibility that, given fuller briefing on the subject in another case, an alternative remedy may be determined to be appropriate.

Conclusion

We hold that a cause of action for the injury or death of a minor child is not limited to parents who provided support at the time of the injury or death; it is enough that the parent has, in the past, regularly contributed to the child's support. Because the undisputed facts demonstrate that Kozel has regularly contributed to the support of her adopted daughter Ashlie, we reverse the Court of Appeals and hold that the trial court erred in denying Kozel's motion to intervene as a necessary party under CR 19(a). We therefore remand the case to the superior court to vacate its order dismissing the case, set aside the settlement between Bunch and McGraw Residential Center, and conduct further proceedings consistent with this opinion.

AUTHOR:

Justice Susan Owens

WE CONCUR:

Chief Justice Barbara A. Madsen

Justice Charles W. Johnson	Justice Debra L. Stephens
Justice Tom Chambers	Justice Charles K. Wiggins
	Gerry L. Alexander, Justice Pro Tem.
Justice Mary E. Fairhurst	