IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

LESLIE SHERRI "JANE" RINGE, a single woman,	)	DIVISION ONE
	)	
Appellant,	)	No. 62239-1-I
	)	
v.	)	
	)	UNPUBLISHED OPINION
HENRY J. VASQUEZ and JANE DOE VASQUEZ, husband and wife, and the marital community composed thereof; and HENRY J. VASQUEZ, DDS.,	)	
	)	
Respondents.	)	FILED: November 22, 2010

Dwyer, C.J. — Where a claim is dismissed for failure to comply with statutory pre-filing requirements, but those pre-filing requirements are held unconstitutional while the case is on appeal, the order dismissing the case must be reversed. Because our Supreme Court deemed unconstitutional the pre-filing requirements for health care malpractice claims that were the basis for dismissal herein, we reverse and remand for further proceedings.

I

Jane Ringe sent a notification letter, dated March 8, 2007, to Henry Vasquez, her dentist, indicating her intention to file suit against him. On May 1, 2007, Ringe sued Vasquez on grounds of "professional negligence." At the time of Ringe's filing, Washington statutory law imposed two pre-filing requirements

in health care malpractice cases—a 90-day notice of intention to file suit, RCW 7.70.100(1), and the filing of a certificate of merit, RCW 7.70.150. Ringe filed suit fewer than 90 days after notifying Vasquez of her intention to do so. She did not file a certificate of merit until seven months after commencing the action.

Vasquez brought a summary judgment motion seeking dismissal of Ringe's claim based on noncompliance with the pre-filing requirements set forth in RCW 7.70.100(1) and RCW 7.70.150. The trial court granted the motion and dismissed the complaint. Ringe's motion for reconsideration was subsequently denied.

Following Ringe's timely filing of a notice of appeal, our Supreme Court held unconstitutional both statutory provisions pursuant to which Ringe's claim was dismissed. See Waples v. Yi, 169 Wn.2d 152, 234 P.3d 187 (2010); Putnam v. Wenatchee Valley Med. Ctr., 166 Wn.2d 974, 216 P.3d 374 (2009).

II

The 90-day notice requirement set forth in former RCW 7.70.100(1) states that "[n]o action based upon a health care provider's professional negligence may be commenced unless the defendant has been given at least ninety days' notice of the intention to commence the action." The certificate of merit requirement of former RCW 7.70.150 requires the plaintiff in a health care malpractice action to file a "certificate of merit . . . executed by a health care provider who meets the qualifications of an expert in the action." RCW

7.70.150(2). The certificate must "contain a statement that the person executing the certificate of merit believes . . . that there is a reasonable probability that the defendant's conduct did not follow the accepted standard of care required to be exercised by the defendant." RCW 7.70.150(3).

Subsequent to the parties' filing of briefs with this court, our Supreme Court held both provisions unconstitutional. The court first struck down the certificate of merit requirement, Putnam, 166 Wn.2d at 985, holding that the requirement "is unconstitutional because it unduly burdens the right of access to courts and violates the separation of powers." 166 Wn.2d at 977-978. Several months later, the court held that the 90-day notice requirement "irreconcilably conflicts with the commencement requirements of CR 3(a) and is unconstitutional because it conflicts with the judiciary's power to set court procedures." Waples, 169 Wn.2d at 161.

Because the statutory pre-filing requirements pursuant to which Ringe's claim was dismissed have since been held unconstitutional, the order of dismissal must be reversed.

Reverse and remand for further proceedings.

Dwyer, C. J.

We concur:

Cox, J.

Becker, J.