No. 85679-6

J.M. JOHNSON, J. (dissenting)—In the unfortunate event of the death of a child, the legislature has created a statutory right to sue for wrongful death only for a parent "who has regularly contributed to the support of his or her minor child." RCW 4.24.010. The plain language and remedial provisions of this statute demonstrate that a parent must fulfill an ongoing responsibility to support the minor child in order to recover. The claimant here, Amy Kozel, lived clear across the country in Florida for the five years preceding the death of her daughter, Ashlie Bunch. She had no relationship with Ashlie during this period, apart from a few brief encounters. Kozel did not even attend Ashlie's memorial service. As a result, it cannot be said that Kozel fulfilled her responsibility to "regularly contribute[] to [Ashlie's] support," entitling her to recover in a wrongful death action.

Furthermore, the statement of intent adopted by the legislature in RCW

4.24.010 broadly defines support to include any form of emotional, psychological, or financial support. This legislative intent requires each claiming parent to have maintained some significant connection with the child during his or her life. Of course, a parent would not be disqualified for failing to maintain this connection due to circumstances outside the parent's control, such as child abduction. The majority also fashions an inequitable remedy here in that it subjects McGraw Residential Center to an even greater amount of potential liability after settlement of a qualifying parent's claim. Thus, I would affirm the Court of Appeals in rejecting Kozel's motion to intervene as a necessary party and respectfully dissent.

Analysis

"'[C]auses of action for wrongful death are strictly a matter of legislative grace and are not recognized in the common law.'" *Philippides v. Bernard*, 151 Wn.2d 376, 390, 88 P.3d 939 (2004) (quoting *Tait v. Wahl*, 97 Wn. App. 765, 771 987 P.2d 127 (1999)). As a result, the wrongful death statute in RCW 4.24.010 should be strictly construed. *See McNeal v. Allen*, 95 Wn.2d 265, 269, 621 P.2d 1285 (1980) (statutes in derogation of the common law must be strictly construed). This dictates that no change in law

will be found by a court unless the legislature has expressed a clear intent to the contrary. *Id.* Even under a simple reading of legislative intent, RCW 4.24.010 requires a parent making a claim to maintain some kind of connection with the child until close to the time of death in order to recover for a wrongful death to the child.[1]

The plain language of RCW 4.24.010 specifies that "[a] mother or father . . . who has regularly contributed to the support of his or her minor child" may recover "as plaintiff for the injury or death of the child." Where the legislature has not defined a particular term in a statute, a standard dictionary definition controls. *See State v. Watson*, 146 Wn.2d 947, 954, 51 P.3d 66 (2002). After accepting the dictionary definition of "regular" from

[1] The majority opinion argues for a "fair" reading of the statute in order to effectuate the legislature's intent. Majority at 8. The rationale of this approach is that strict construction of statutes in derogation of the common law often impedes social progress without any justification in principle. *Id.* at 7 n.2. Basic canons of statutory interpretation, however, such as the derogation of common law principle, advance important goals of judicial decision making. First, these canons provide simple and straightforward methods of statutory interpretation that minimize judicial decision-making costs, litigation costs, and legal uncertainty. *See* Adrian Vermeule, *Interpretive Choice*, 75 N.Y.U. L. Rev. 74, 128-29 (2000). Second, the canons provide content-independent methods of deciding a case without injecting one's own personal views regarding optimal public policy in a given area. *See* Jonathan R. Macey & Geoffrey P. Miller, *The Canons of Statutory Construction and Judicial Preferences*, 45 Vand. L. Rev. 647, 663 (1992). Thus, RCW 4.24.010 should be strictly construed as a statute enacted in derogation of the common law, but a simple reading of legislative intent without application of the derogation of common law principle would produce the same result.

the Court of Appeals, the majority alters its meaning by relying on the present perfect tense, "has regularly contributed," to claim that the statute allows parents to recover even if they did not provide frequent support up to a time close to the child's death. This is directly contrary to legislative language and intent in the statute. Majority at 9-10. The new interpretation of the statute also ignores part of the dictionary definition of the word "regular," which requires the support to be unvarying and constant. Majority at 9. Thus, any support here that arguably occurred in the distant past cannot be considered "regular" because it fails to meet the unvarying and constant requirement.

Additionally, our proposed reading of RCW 4.24.010 is consistent with the remedial provisions specified by the legislature. "Statutory provisions must be read in their entirety and construed together, not piecemeal." *ITT Rayonier, Inc. v. Dalman*, 122 Wn.2d 801, 807, 863 P.2d 64 (1993). Here, RCW 4.24.010 provides that damages may be recovered for "medical, hospital, medication expenses, and loss of services and support," and also for "the loss of love and companionship of the child and for injury to or destruction of the parent-child relationship." RCW 4.24.010.

If a parent is no longer in contact and has not "regularly contributed" to

the support of a child, it is difficult to measure any loss of services, support, love, companionship, or relationship. Furthermore, the injury or death would not have caused the loss of love, companionship, or relationship because the parent had long ago voluntarily decided to stop supporting the child before the occurrence of death. As a result, a parent who provided support in the distant past has not "regularly contributed" under RCW 4.24.010 if the frequent support did not continue until a time close to the time of death.

The legislature's statement of intent further confirms this reading of the plain language of the statute. In its statement of intent, the legislature defined support to include any type of emotional, psychological, and financial support. With the broad definition of "support" provided by the legislature in its statement of intent, it is not burdensome to require a claiming parent to maintain a meaningful connection to the child over the course of the child's lifetime.

Lastly, the majority claims that requiring ongoing parental support would lead to absurd results in situations where the child is kidnapped or the parent falls into a coma. The hypothetical of absurd results, however, does not take other conventions of law into account in determining the effect of the

statute. *See* John F. Manning, *The Absurdity Doctrine*, 116 Harv. L. Rev. 2387, 2465-76 (2003) (explaining that modern textual interpretation often relies on background legal conventions to avoid seeming absurdities). Under RCW 4.24.010, a parent is unlikely to be penalized for failure to fulfill an ongoing responsibility due to circumstances outside his or her control. There are well-established defenses in contract law in circumstances of impossibility and incapacity. Under RCW 4.24.010, courts would likely recognize that an abducted child or incapacitated parent suspends the requirement of maintaining some connection to the child until a time close to the time of death.

Here, Steven Bunch claims that Kozel did not provide any financial support and had no relationship with Ashlie from the time Ashlie moved to live with him in 2003 and her death in 2008. Kozel lived clear across the country in Florida for the five years preceding Ashlie's death. Bunch asserts that Kozel had only brief contact with Ashlie on four separate occasions during this period. Bunch claims that Kozel sent Ashlie a Christmas present in December 2004, and Kozel had one, five-minute phone conversation with Ashlie in December 2007. Ashlie also called Florida to speak with her sister

on two occasions, and Kozel refused Ashlie's requests. As can be seen, these anecdotal interactions do not amount to frequent emotional, psychological, or financial support. Apart from these brief encounters, Kozel did not send any birthday cards, holiday cards, or presents to Ashlie. Furthermore, Kozel never called Ashlie, even on holidays.

Bunch also asserts that Kozel had made it clear to him that she did not want Ashlie in Florida. When Bunch called Kozel to update her on Ashlie's condition, she reportedly replied, "[W]ell, good luck with that." Clerk's Papers (CP) at 71. Kozel also chose not to attend the memorial service for Ashlie. In response, Kozel only rebutted Bunch's specific claims with general statements alleging she kept in touch with Ashlie and "spoke with her regularly by phone, at least once a week, until she was admitted to inpatient facilities." CP at 57. Considering that Ashlie was admitted to inpatient facilities as early as 2003, these general statements from Kozel are not sufficient to rebut the more specific statements by Bunch for purposes of a CR 19(a) motion. Thus, I would affirm the Court of Appeals and deny Kozel's motion to intervene as a necessary party.

## Conclusion

I would hold that RCW 4.24.010 requires a parent to fulfill an ongoing rule and responsibility to support a minor child in order to recover in a wrongful death or personal injury action. Under RCW 4.24.010, a parent must provide frequent support to the child until a time close to the time of injury or death. Of course, a parent would not be penalized for failing to provide this support due to circumstances outside the parent's control. Here, Kozel failed to show that she provided frequent support to Ashlie up to a time in close proximity to the time of Ashlie's death. Thus, I would affirm the Court of Appeals and deny Kozel's motion to intervene under CR 19(a).

AUTHOR:

Justice James M. Johnson

WE CONCUR: