

Supreme Court No. 78421-3

SUPREME COURT OF THE STATE OF WASHINGTON

RAMONA DANNY, Appellant,

v.

LIDLAW TRANSPORTATION SERVICES, INC., Respondent,

BRIEF OF APPELLANT

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I. CERTIFIED QUESTION

Has the State of Washington established a clear mandate of public policy prohibiting an employer from discharging an at-will employee because she experienced domestic violence and took leave from work to take actions to protect herself, her family, and to hold her abuser accountable? (Order at 1)¹

II. STATEMENT OF CASE

Plaintiff Ramona Danny brought this suit in the Superior Court for King County, Washington alleging, *inter alia*, that she suffered wrongful termination in violation of public policy of the State of Washington. (Ex. 1) She alleged that Defendant Laidlaw Transit Services, Inc. (“Laidlaw”) “discharged [her] from employment because she experienced domestic violence and took actions to protect herself, her family and to hold her abuser accountable, in violation of the State of Washington’s public policy protecting persons who suffer domestic violence.” (Ex. 1 ¶ 30; Stmt. at 4). Laidlaw removed the case to the District Court for the Western District of

¹ The Order of the District Court for the Western District of Washington certifying this question is referenced herein as “Order” with citation to the appropriate page number. That order contains the statement of the record for purposes of the certification (Order at 3); the statement of facts, referenced as “Stmt.” and several exhibits, referenced as “Ex.” with the appropriate number.

Washington. (Ex. 6 at 2) Laidlaw moved for partial Judgment on the Pleadings as to the wrongful termination claim. (Exs. 3, 4, 5) The District Court determined that the issue presented in Laidlaw's motion was appropriate for certification to this Court. (Ex. 6 at 2) Following input from the parties, the District Court prepared the record and certified the question to this Court. (Order at 1; Ex. 6)

III. STATEMENT OF FACTS

Laidlaw provides transit services in King County, Washington, working with subcontractors on large projects and providing public transit route bids to King County. Laidlaw hired Ms. Danny in February 1997. (Stmt. at 3) In October of 2002, Laidlaw promoted her to the position of scheduling manager. (Stmt. at 3)

While Ms. Danny worked at Laidlaw, she experienced ongoing domestic violence from her husband. (Ex. 1 ¶ 12, Stmt. at 3) In February 2003 her husband physically assaulted her, causing serious injuries. At that time she took a few days' sick leave from work to recover. (Ex. 1 ¶ 13; Stmt. at 3) She also moved out of her home, but returned as often as she could, when her husband would allow her in the house, to take care of her five minor children. (Ex. 1 ¶ 13; Stmt. at 3) That summer she told her

project manager about the abuse. (Ex. 1 ¶ 14; Stmt. at 3) In August of 2003, Plaintiff asked for time off from work so she could move with her children to a new residence, away from the abusive situation at their home. Her project manager denied her request for leave, giving as the reason that Ms. Danny was responsible for putting together the route bid for Laidlaw's largest subcontractor and the project had an October deadline. (Ex. 1 ¶ 15; Stmt. at 3)

On August 20, 2003, Ms. Danny's husband beat her 13-year-old son so badly he required hospitalization. Ms. Danny immediately took all five of her children out of the home and with the help of Child Protective Services began the process of moving into a battered women's shelter with her children. (Ex. 1 ¶ 16; Stmt. at 3) That same day she phoned Laidlaw to say that she needed to take the day off to take her son to the hospital. She also explained that her husband had beaten her son. (Ex. 1 ¶ 17) When Ms. Danny returned to work, she asked for time off so that she could move her children to a shelter. This time Laidlaw approved two weeks of leave from August 25 through September 8, 2003. (Ex. 1 ¶ 18; Stmt. at 3)

During her leave, Ms. Danny conferred with law enforcement officers regarding protection from her husband and his detention for domestic violence. She also cooperated with the prosecutor in prosecuting her husband for assaulting their son. (Ex. 7, ¶ 3, Ex. B). On September 5, 2003, Ms. Danny obtained an Order for Protection against her husband. (Ex. 7 ¶ 2, Ex. A)

During her leave from work, Ms. Danny utilized the services of the King County Department of Community and Human Services to assist her in obtaining shelter, transitional housing, domestic violence education, counseling and health services, and legal assistance related to the domestic violence she and her children had suffered. (Ex. 7 ¶ 4, Exs. C and D) After returning from her leave, Ms. Danny continued to take occasional small amounts of time off work to access services for victims of domestic violence. (Ex. 7 ¶ 5, Ex. E)

On October 9, 2003, just seven weeks after Ms. Danny's son was hospitalized due to domestic violence, Laidlaw terminated Ms. Danny from her manager position. It offered her a job as a scheduler at a reduced wage and gave her three days to consider the offer. (Ex. 1 ¶ 21; Stmt. at 3) Ms. Danny accepted the scheduler position (Ex. 1 ¶ 24) but filed a race

discrimination charge against Laidlaw with the Seattle Office for Civil Rights (OCR). On December 3, 2003, Laidlaw terminated Plaintiff's employment. (Ex. 1 ¶ 27) Its stated reason was falsification of time cards. (Stmt. at 3)

IV. ARGUMENT

Public policy tort actions in Washington arise in four different situations: “(1) where employees are fired for refusing to commit an illegal act; (2) where employees are fired for performing a public duty or obligation, such as serving jury duty; (3) where employees are fired for exercising a legal right or privilege, such as filing workers' compensation claims; and (4) where employees are fired in retaliation for reporting employer misconduct, i.e., whistleblowing.” *Gardner v. Loomis Armored Inc.*, 128 Wn.2d 931, 936, 913 P.2d 377 (1996) *citing* *Dicomes v. State*, 113 Wn.2d 612, 618, 782 P.2d 1002 (1989). Here, Ms. Danny relies on the second and third types of claim. She alleges that she performed a public duty in protecting herself and her children from domestic violence when she sought the services of Child Protective Services, obtained shelter from her abusive spouse, and assisted in the prosecution of the man who had abused her and her children. She also alleges that she exercised her

legal right and privilege to obtain an order of protection and to seek and assist in the prosecution of the abuser. Because she performed those duties and exercised those rights and privileges, her employer terminated her employment, thus jeopardizing the exercise of those public duties and rights.

A. The Only Issue Before This Court Is The Issue of Law Contained In The Certified Question.

Plaintiff's factual allegations, together with Washington statutes and case law, establish the four necessary elements of her claim of wrongful discharge in violation of public policy: (a) that a clear public policy exists; (b) that discouraging the conduct in which Ms. Danny engaged would jeopardize the public policy; (c) that the public policy-linked conduct caused the dismissal; and (d) that defendants did not have an overriding justification for her dismissal. *Roberts v. Dudley*, 140 Wn.2d 58, 64-65, 993 P.2d 901 (2000).

In the District Court, Laidlaw did not contest that Ms. Danny had alleged facts sufficient to resist its motion for judgment on the pleadings. Rather it raised only one issue of law, which it contended defeated her claim: whether Ms. Danny had established as a matter of law the "clarity element" of the tort of wrongful discharge in violation of public policy

(Ex. 3 at 1) In response to Laidlaw’s motion, the District Court properly certified to this Court the question of whether Washington law sets forth “a clear mandate of public policy prohibiting an employer from discharging an at-will employee because she experienced domestic violence and took leave from work to take actions to protect herself, her family, and to hold her abuser accountable.” (Ex. 6 at 2)

B. Ms. Danny’s Wrongful Discharge Claim Is Premised On A Legislatively Enunciated And Judicially Recognized Clear Public Policy To Combat And Remedy The Terrible Consequences Of Domestic Violence Within Washington Society.

Ms. Danny correctly alleges that Washington’s Legislature has enunciated, and its judiciary has recognized, a strong public policy of commitment to prevent and redress the wrongs associated with domestic violence:

The State of Washington has a well-defined and judicially recognized public policy to treat domestic violence as a serious crime, to protect victims, and to hold abusers accountable by encouraging victims of domestic violence to take actions to protect themselves and their families by seeking alternative living arrangements, social services and by utilizing the state’s legal system to obtain protection and to hold abusers accountable. *See e.g.*, RCW 10.99.010 (declaring the “importance of domestic violence as a serious crime against society and to assure the victim of domestic violence the maximum protection from abuse which the law and those who enforce the law can provide”)

and other related statutes including but not limited to RCW 26.50.030, RCW 43.70.610, RCW 50.20.050, and RCW 59.18.570 (intent section).

(Complaint ¶ 29)

1. Washington’s Legislature has enunciated a strong public policy to combat and remedy the sweeping ill effects of domestic violence within Washington society.

Washington’s Legislature declared the purpose and intent of its domestic violence legislation as embodying the important public policy of protecting both individual victims and society as a whole from the ravages of domestic violence, which it viewed as a “crisis.” *See* RCW 26.50.030. In response to this crisis, the Legislature has enacted a comprehensive statutory scheme providing protections from domestic violence through no-contact orders, criminal prosecution, shelter services, transitional housing, domestic violence education, health services and more.

As one of its first enactments addressing the problem of domestic violence, the Washington Legislature in 1979 passed a law providing for funding and standards for shelters for victims of domestic violence. RCW 70.123. There the Legislature declared, in part:

The legislature finds that **domestic violence is an issue of growing concern** at all levels of government and that there is a present and growing need to develop innovative

strategies and services which will ameliorate and reduce the trauma of domestic violence. Research findings show that domestic violence constitutes a significant percentage of homicides, aggravated assaults, and assaults and batteries in the United States. **Domestic violence is a disruptive influence on personal and community life and is often interrelated with a number of other family problems and stresses.** Shelters provide safety, refuge, advocacy, and helping resources to victims who may not have access to such things if they remain in abusive situations...

RCW 70.123.010 (emphasis added). Five years later, the Legislature enacted the first version of the Domestic Violence Prevention Act (RCW 26.50), which created the civil Order for Protection for victims of domestic violence. The Legislature stated:

Domestic violence is a problem of immense proportions affecting individuals as well as communities. Domestic violence has long been recognized as being at the core of other major social problems: Child abuse, other crimes of violence against person or property, juvenile delinquency, and alcohol and drug abuse. **Domestic violence costs millions of dollars each year** in the state of Washington for health care, absence from work, services to children, and more. **The crisis is growing.** (emphasis added)

RCW 26.50.030.

Since that enactment, the Legislature has amended the statute several times in order to improve access to this system for victims of domestic violence. *See, e.g.*, RCW 26.50 FINDINGS -- 1992 C 111 (“Domestic violence must be addressed more widely and more effectively

in our state: Greater knowledge by professionals who deal frequently with domestic violence is essential to enforce existing laws, to intervene in domestic violence situations that do not come to the attention of the law enforcement or judicial systems, and to reduce and prevent domestic violence by intervening before the violence becomes severe.”).

More recently, in response to the federal Violence Against Women Act of 1994, the Legislature enacted the Foreign Protection Order Full Faith and Credit Act:

The legislature finds that existing statutes may not provide an adequate mechanism for victims, police, prosecutors, and courts to enforce a foreign protection order in our state. It is the intent of the legislature that the barriers faced by persons entitled to protection under a foreign protection order will be removed and that violations of foreign protection orders be criminally prosecuted in this state.

In Chapter 10.99 RCW, the Legislature passed a comprehensive set of reforms designed to improve the criminal justice system’s response to domestic violence. This chapter, which sets forth various requirements including criminal procedure to be used in domestic violence cases, training of law enforcement in domestic violence issues, and mandatory enforcement of restraining orders, declares:

The purpose of this chapter is to recognize the importance of domestic violence as a serious crime

against society and to assure the victim of domestic violence the maximum protection from abuse which the law and those who enforce the law can provide. ... Only recently has public perception of the serious consequences of domestic violence to society and to the victims led to the recognition of the necessity for early intervention by law enforcement agencies. It is the intent of the legislature that the official response to cases of domestic violence shall stress the enforcement of the laws to protect the victim and shall communicate the attitude that violent behavior is not excused or tolerated.

RCW 10.99.010 (emphasis added). Further, in instructing the Department of Health to establish a comprehensive domestic violence education program, the Legislature stated in RCW 43.70.610:

The legislature finds that domestic violence is the leading cause of injury among women and is linked to numerous health problems, including depression, abuse of alcohol and other drugs, and suicide. Despite the frequency of medical attention, few people are diagnosed as victims of spousal abuse. (emphasis added)

These statutes, and a host of others, reflect the understanding that victims of domestic violence face significant barriers to taking steps necessary to remove themselves from the violence to protect themselves and their families. The Legislature recognized that in enacting laws such as RCW 50.20.050, which allows an employee to retain eligibility for unemployment compensation if the employee left work to protect herself or immediate family members from domestic violence. Washington's

Temporary Assistance for Needy Families plan similarly makes exemptions from its Workfirst and “Welfare to Work” requirements where those requirements would make it more difficult for individuals receiving assistance to escape family violence or would unfairly penalize victims of family violence. *See*, www.workfirst.wa.gov/about/planbody.pdf at IV-4, p. 39 ¶ 3. Similarly, RCW 59.18.570 and RCW 59.18.580 make it an act of discrimination to deny rental housing to victims of domestic violence, and allow victims to terminate leases of rental property without penalty when necessary to flee their abusers.

Further, in recognition of the financial hardship of recovery from crimes of domestic violence, RCW 7.68.070(2) permits victims of crimes of domestic violence who report the crime to law enforcement to apply for and receive funds through the Crime Victims Compensation Program. Understanding that some victims must keep their whereabouts hidden from an abuser, the Washington Legislature also created the Address Confidentiality Program, through which victims of domestic violence may obtain a confidential, private address, sufficient for all mail, public records, and service of legal process. RCW 40.24.030. Likewise, the Legislature has provided that domestic violence victims in fear of further

violence may legally change their names under seal, so there is no publicly-available record of such actions. RCW 4.24.130(5).

The Legislature has also considered the connection between domestic violence and harm to children. To help address that problem, Washington's Parenting Act requires a court to limit a parent's time with his or her child when that parent has committed domestic violence. RCW 26.09.191. Both Washington family law and the Domestic Violence Prevention Act provide for the inclusion of children in orders restraining the abuser from contact and further acts of violence. RCW 26.09.050(1), RCW 26.10.040(1)(d), RCW 26.26.130(9) and RCW 26.50.060(1)(b) and (2). And RCW 4.24.130(5), noted above, allowing for sealed name changes, includes name changes for the children of victims of domestic violence.

Finally, the Legislature has continued to respond to the concerns of victims of domestic violence in light of recent events. In the wake of the 2003 murder of Crystal Brame by her husband, Tacoma Police Chief David Brame, the Legislature passed a bill requiring all law enforcement agencies in the state to create and enforce policies designed to address officer-involved domestic violence. RCW 10.99.090. And just this year,

the Legislature added domestic violence victims and their advocates to the list of people between whom communications are privileged. *See* Sections 1, 2(8), 5(1)(c) Chapter 259, Session Laws of 2006.

As these and other legislative pronouncements make plain, domestic violence is not simply a private wrong. It is a serious threat to the public and to the social fabric of Washington State. The Washington Legislature has repeatedly and forcefully enunciated the public policy of protecting individual victims and society generally from the ravages of domestic violence.

2. This Court and Washington's Courts of Appeal have recognized the existence of the clear public policy enunciated by the Legislature concerning domestic violence.

The Washington courts have recognized the strength of the public policy set forth in the myriad statutes designed to protect victims of domestic violence and to protect society generally from the ravages of domestic violence. This Court cited the legislative findings expressed in Washington's domestic violence laws, Chapters 10.99, 26.50, 26.09, and 26.26 RCW, to warrant the public censure and suspension of a municipal court judge who committed an act of domestic violence in public a week after being disciplined for remarks insensitive to victims of domestic

violence. *In Re Disciplinary Proceedings Against Turco*, 137 Wn.2d 227, 248, 970 P.2d 731, 742 (1999). There, this Court remarked that the “Legislature has established **a clear public policy** with respect to the importance of societal sensitivity to domestic violence and its consequences” *Turco*, 137 Wn.2d at 253, n 7, 970 P.2d at 744 n. 7 (emphasis added). *See also, Howe v. Douglas County*, 102 Wn. App. 559, 563 (2000) *rev’d in non-relevant part, Howe v. Douglas County*, 146 Wn.2d 183 (2002) (“The Legislature has not been reluctant to declare public policy in a wide range of areas... [including that of combating domestic violence in] *In re Disciplinary Proceedings Against Turco*”). Similarly, in *Jacques v. Sharp*, 83 Wn. App. 532, 537, 922 P.2d 145 (Division 1, 1996), the court explained that the “public policy of this state on the subject of domestic violence is strongly expressed in several statutes.”²

In a similar case arising in Massachusetts, the superior court denied an employer’s motion to dismiss a claim for wrongful termination in violation of public policy brought by an employee who alleged that her

² There, the court cited Chapter 10.99 RCW, RCW 10.31.100(2)(a) and Chapter RCW 26.50. *Jacques*, 83 Wn. App. at 537.

employer fired her because she was absent from work to pursue judicial recourse for a domestic violence incident, to assist the police in the presentation of evidence, and to address her own security. *Apossos v. Memorial Press Group*, 15 Mass.L.Rptr 322, 2002 WL 31324115 at *3 (Superior Ct. 2002).³ The Court held that Ms. Apossos stated a claim for violation of clear Massachusetts public policy enunciated in a provision of the state's constitution entitling citizens recourse to the law for injury, in a statute allowing victims of domestic violence to obtain orders of protection, and the judicially recognized public policy of encouraging

³ Ms. Apossos, like Ms. Danny, sought an order of protection through the Massachusetts courts and cooperated in the criminal investigation of the abuser. These claims are distinguished from those raised in Pennsylvania and North Carolina courts. In *Green v. Bryant*, 887 F. Supp. 798, 801 (E. D. Pa. 1995) the court held that the plaintiff did not state a claim for wrongful discharge in violation of public policy because, although she had been the victim of domestic violence, she had not exercised any right or privilege under the domestic violence or criminal statutes. The court noted that it might be "a different case, and a closer question as to the public policy exception, if plaintiff alleged that she was discharged because she had applied for victim compensation or had sought a protective order." *Id.* The court also rejected Green's statutory tort argument, noting that the Pennsylvania legislature had not enacted any statutory protections in employment for victims of domestic violence. *Id.* Of course, Ms. Danny is not asserting a statutory tort claim here. See Ex. 4, at 3:12-21, 10:6-11:11. Similarly, in *Imes v. City of Asheville*, 163 N.C.App. 668, 672, 594 S.E.2d 397 (2004), the plaintiff's wrongful discharge claim failed in part because he did not allege that he had availed himself of any statutory rights or protections under the domestic violence or criminal statutes of North Carolina. ("The complaint does not allege any of "the narrow exceptions to [the employment-at-will doctrine] ... grounded in considerations of public policy designed either to prohibit status-based discrimination or to insure the integrity of the judicial process or the enforcement of the law.")

“cooperation with the police ...” *Id.* The court noted that Apessos’ “cooperation with the police after her court appearance ... had the general character of cooperation in a law enforcement investigation ... and the specific character of implementing the Abuse Prevention Act,” and thus termination for those actions would implicate public policy. *Id.* (citations omitted). Like the actions undertaken by Ms. Apessos, Ms. Danny’s actions in obtaining an order of protection and her cooperation with the police and prosecutor in the successful prosecution of her and her son’s abuser were in furtherance of Washington’s public policy.

Ms. Danny acted in furtherance of “public policy interests[, which] ... are primal, not complex: the protection of a victim from physical and emotional violence; and the protection of a victim's livelihood.” *Id.*⁴ Here, Ms. Danny acted to protect herself and her children from domestic violence, and her actions helped protect all of Washington society from the radiating ill effects of that violence.

⁴ The *Apessos* court also recognized the important relationship between Apessos’ employment and her ability to act in furtherance of the public policy: “The preservation of a livelihood should serve to reduce domestic dependence and its concomitant vulnerability to abuse. The two are connected. A victim should not have to seek physical safety at the cost of her employment.” *Apessos*, 2002 WL 31324115 at *4.

C. Ms. Danny’s Wrongful Discharge Claim Is Also Premised On A Legislatively Enunciated And Judicially Recognized Clear Public Policy Favoring Assistance In Criminal Investigations and Prosecutions And In The Saving Of Human Life.

1. A clear mandate of public policy exists concerning cooperation with law enforcement.

Ms. Danny’s cooperation with the police and prosecutor in the prosecution of the man who abused her and her children was in furtherance of legislatively enunciated and judicially recognized public policy concerning the protection of human life and the functioning of law enforcement. In *Gardner v. Loomis Armored Inc.*, 128 Wn.2d 931, 942, 913 P.2d 377, 383 (1996), this Court examined several sources of public policy and, albeit in *dicta*, stated that four statutes, RCW 9.01.055, 9A.76.020, 9A.76.030, and 7.69.010, “support a public policy encouraging citizens to *cooperate* with law enforcement when requested or clearly required by law.”⁵ (emphasis in original) Here, Ms. Danny’s cooperation in the prosecution of her abuser and her son’s abuser furthered the public policy enunciated in those statutes. *Gardner*, 128 Wn.2d at 944. She was

⁵ This ruling was *dicta* in *Gardner* because there the Court found that the plaintiff’s actions were taken not in pursuit of the public policy enunciated in those statutes, but rather in the “broad good samaritan public policy” and the general “public policy favoring the protection of human life.” *Gardner*, 128 Wn.2d at 943-44.

both requested and required to cooperate as a witness in the prosecution of a violent crime. *See, Gardner*, 128 Wn.2d at 942, *citing* RCW 9.69.100 (requiring witnesses of violent crimes to report the crime to officials).

Similarly, in *Gaspar v. Peshastin Hi-Up Growers*, 128 P.3d 627 (2006), Division Three of the Washington Court of Appeals held that the plaintiff had stated a claim for wrongful termination in violation of the public policy enunciated in the same statutes cited in *Gardner*. Under RCW 7.69.010, witnesses and victims of crimes have a civic and moral duty to cooperate fully with law enforcement and prosecutors. In recognition of that duty, RCW 9.01.055 gives citizens who aid police the same civil and criminal immunity as the police. RCW 9A.76.030 makes it a crime to unreasonably refuse to comply with an officer's request to summon aid for the officer and RCW 9A.76.020 makes it a crime to willfully obstruct a police officer from discharging his or her duties. Mr. Gaspar alleged that he had assisted the police and prosecutor in a criminal investigation of a property crime and that he had been terminated from his employment because of that assistance. These actions in furtherance of these statutes' purposes implicated the public policy embodied in them and provided a solid basis for his claim of termination in violation of

public policy. *Gaspar*, 128 P.3d at 63, citing *Flesner v. Technical Commc'ns Corp.*, 410 Mass. 805, 811, 575 N.E.2d 1107 (1991) (“Cooperating with an ongoing governmental investigation is an important public deed which fits this category” of action protected by public policy).⁶

Here, in addition to those statutes involved in *Gardner* and *Gaspar*, Ms. Danny’s actions implicated legislative policy concerning the abuse or neglect of minors. In RCW 9A.72.110 and RCW 9A.72.120 the Legislature also enunciated clear public policy of maintaining the integrity of the law enforcement process by providing for the protection of those who participate in a criminal investigation into the abuse or neglect of a minor child. In RCW 9A.72.110, the Washington Legislature provided that persons may “give truthful and complete information relevant to a criminal investigation of the abuse or neglect of a minor child” without intimidation. Similarly RCW 9A.72.120 provides that persons may provide “information relevant to a criminal investigation or the abuse or

⁶ The superior court in *Aspeossos* relied on *Flesner* as well in holding that termination because the plaintiff took leave to obtain and file an order of protection from domestic violence and because of her cooperation with the resulting police investigation stated a claim for termination in violation of public policy. *Aspeossos*, 2002 WL 31324115 at *3.

neglect of minor child” without any person attempting to induce that witness “to testify falsely [or] withhold testimony”

The public policy inherent in these statutes was judicially recognized in *State v. Sanders*, 66 Wn. App. 878, 884, 833 P.2d 452 (1992). There, the court held that due to the strong public policy of ensuring effective prosecutions for abuse of a child, neither the spousal testimonial nor marital communications privilege applies to a witness tampering charge under RCW 9A.72.120. Indeed, the public policy against intimidation of witnesses in criminal or child abuse cases is so strong that defendant’s prior conviction under RCW 9A.72.110 for intimidating a witness is admissible for impeachment purposes. *State v. Delker*, 35 Wn. App. 346, 349-50, 666 P.2d 896 (1983).

Here, Ms. Danny’s participation in the prosecution of her son’s abuser furthered the public policy enunciated in RCW 9A.72.110 and .120, as well as the public policy recognized in *Gardner* and in *Gaspar* concerning the integrity of the law enforcement process.

2. A clear mandate of public policy exists concerning the saving of human life.

Finally, in *Gardner*, 128 Wn.2d at 944, this Court held that the plaintiff who had come “to the assistance of a citizen held hostage ...

and/or who is in danger of serious physical injury and/or death[.]” had satisfied the clarity element of his claim for wrongful discharge in violation of public policy. As this Court explained, “Society places the highest priority on the protection of human life. This fundamental public policy is clearly evidenced by countless statutes and judicial decisions.”

Id. Undoubtedly, Ms. Danny’s actions helped protect her life, as well as the lives of her children. She initially sought time off to remove her children from danger, and after one child suffered serious injury, she took time off to remove them all from harm’s way. In so doing, she acted in furtherance of the public policy of protecting human life, where those lives were threatened by the scourge of domestic violence.⁷ Surely Washington’s public policy encourages the actions Ms. Danny took and

⁷ See, e.g., Starr, et al., 2004 Washington State Fatality Review Report, Washington State Coalition Against Domestic Violence, pp. 6-7 (December 2004) (noting that 44% of women murdered in Washington in 2003 were killed by their current or former intimate partners, and stating “We know from closely examining the events leading up to domestic violence homicides that domestic violence victims were often trying to get away from their abusers. The way their communities addressed the issues relevant to domestic violence significantly impacted their ability to achieve safety...for themselves and their children.”) *See also*, Klein and Orloff, Symposium on Domestic Violence: Article: Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law, 21 Hofstra L. Rev. 801, 813(1993)(“Studies demonstrate that offering protection and services to battered women significantly reduces the number killed by their batterers”)

protects her from a discharge from employment that occurred because of those actions.

V. CONCLUSION

For all these reasons, this Court should hold that a clear mandate of public policy prohibits an employer from discharging an at-will employee because she experienced domestic violence and took leave from work to take actions to protect herself, her family, and to hold her abuser accountable.

DATED this 13th day of April, 2007.

Respectfully submitted,

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PROOF OF SERVICE

I hereby certify that on this 13th day of April, 2006, I caused the foregoing brief and attached appendix to be e-mailed to the Washington State Supreme Court and a copy delivered to:

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