NO. 46944-8-II

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

TASHA OHNEMUS,

Respondent/Cross-Appellant/Plaintiff,

v.

STATE OF WASHINGTON,

Appellant/Cross-Respondent/Defendant.

Appeal from the Superior Court of Washington
for Kitsap County
(Cause No. 12-2-01797-4)

REPLY BRIEF OF RESPONDENT/CROSS-APPELLANT

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I. INTRODUCTION

It is beyond dispute that Tasha Ohnemus ("plaintiff") was horrifically sexually and physically abused for many years by her stepfather Steven Quiles. The State also virtually concedes the CPS investigations of reports of abuse in 1996 and 1997 were far below the standard of care and resulted in Tasha being left in a violent household with Quiles until 2002. The State does not contest – in fact they emphasize the profound negative impact that the abuse has had on Tasha's mental health and well-being.

Yet, the State argues that a child who has been so seriously abused that she suffers from profound mental illness, should have the ability to look beyond the responsibility of the perpetrator to gather documents and reports to see if she was also betrayed by the negligent conduct of the State. Fortunately for plaintiff, the law in Washington has more rational expectations.

In responding to plaintiff's argument that plaintiff recognized more serious impact in 2011, the State ignores recent law from this Court holding that whether the harm being sued for is more serious, is a question of fact for the jury.

Finally, the State's cross-appeal from denial of its motion to dismiss plaintiff's SECA claim, ignores the Court of Appeals ruling in *Kuhn v. Schnall*, 155 Wn. App. 560, 228 P.3d 828 (2010), illustrating that such an issue is not ripe for a decision. In answering the question, clearly not ripe for decision, the State comes to conclusion that ignores both state case law and appellate cases.

Ohnemus respectfully asks this Court to reverse the summary judgment dismissal for her sexual and physical abuse claims and remand the case for trial. It is an issue of fact when she discovered or should have discovered the State's negligent investigation of reports of abuse in ***1996*** and ***1997*** and whether she recognized the harm she is suing for – permanent and severe mental illness – before August 2009 (three years of 2012). The SECA claim for fees and costs should be decided when it becomes "ripe" after a decision on the underlying claims.

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II. ARGUMENT IN REPLY TO THE DISMISSAL OF PLAINTIFF'S CLAIMS ON THE STATUTE OF LIMITATIONS

A. The Trial Court Improperly Made In Factual Determinations When Dismissing Ohnemus' Claims On Summary Judgment And Finding She Had "Discovered" Her Claim Against The State In More Than Three Years Before Bringing Suit

Rather than address plaintiff's arguments in a meaningful way, the State's response misstates plaintiff's arguments and ignores authority it does not like. Plaintiff's Opening Brief at pages 23-24 states:

> Applying those facts to this case, plaintiff knew she had been physically and sexually abused by her stepfather, knew she had been harmed, but had no recollection or appreciation of any CPS involvement in 1996-1997, let alone, that they had performed substandard investigations, until her 2011 discovery.

The State distorts this beyond recognition, stating:

> The evidence shows that by age 18, Ms. Ohnemus knew all of the facts necessary to file her negligent investigation claim. On May 16, 2002, when she was 14, Ms. Ohnemus described to police in detail the abuse Quiles perpetrated against her. CP 122-37. Her treatment records also show that before she turned 18 she made the causal connection between the abuse and her PTSD, depression, anxiety, and other harms for which she received significant counseling, hospitalization, and medication.
>
> Ms. Ohnemus concedes that she had this factual knowledge. Brief of Respondent/Cross-Appellant (Ohnemus Op. Br.) at 23-24. Accordingly, she should be (1) deemed to have been on notice that legal action must be taken; (2) deemed to have had notice of all facts a reasonable inquiry would disclose; and (3) required to have exercised due diligence about whether a cause of action

> was available to her and to learn of any further facts necessary to have initiated a lawsuit related to her past abuse. *1000 Virginia Ltd P'ship*, 158 Wn.2d at 581.

In making these statements, the State is either deliberately misstating the law, or fails to understand the fundamental distinction at issue in this case: the difference between plaintiff's knowledge of the elements of a claim against Quiles versus knowledge of a claim against DSHS. The State fails to a acknowledge that they must establish the two hearsay entries indisputably relate to DSHS/CPS conduct in 1996 and 1997 rather than what occurred in 2001 or 2002. There must be no issue of fact regarding whether plaintiff knew in 2003 or 2007 that DSHS/CPS investigated the 1996 and 1997 reports of abuse and that DSHS/CPS was negligent in that investigation. If any of those elements is debatable, or capable of another construction, the court's ruling must be reversed. Factual issues abound necessitating reversal of the trial court's dismissal.

In 2003, a therapists note reflects Tasha, age 16, was "very angry" at CPS, "hating" them for not believing her allegations and allowing the abuse to continue "so much longer." Nothing in the note reflects what time period she formed this hate, nor when they did not believe her. The record below is clear there were multiple interactions with DSHS workers from one agency or another throughout 2001 and 2002, during which

workers blamed plaintiff for family problems. They did not believe abuse was occurring and she remained in Quiles home for several months.

In addition, being angry and hating them says absolutely nothing about the factual knowledge necessary to trigger the statute. The 2003 entry bears a striking resemblance to the victim's letter to her father at issue in *Korst v. McMahon*, 136 Wn. App. 202, 148 P.3d 1081 (2006). In *Korst*, the defendant argued that a letter from the plaintiff to her father in 1995 expressing anger at her father for raping her, demonstrated the plaintiff knew the causal connection between the sex abuse and her emotional injuries. This Court reversed the dismissal, finding, as a matter of law, the evidence was insufficient:

> Korst's letter does not suggest that she knew that her father's abuse had caused her many injuries. The letter simply indicates that she resented her father for sexually abusing her, not that Korst understood the effects of that abuse. ....
>
> .... Presumably, victims of childhood sexual abuse know that they have been hurt, but RCW 4.16.340 makes it clear that a plaintiff's cause of action does not accrue until she knows that the sexual abuse has caused her more serious injuries. Laws of 1991, ch. 212 § 1. This letter merely states that the original pain of being abused has not gone away, but it does not prove that Korst knew her father's sexual abuse had caused her more serious physical and emotional symptoms. Therefore, this letter does not support a finding that Korst "discovered that the act caused the injury for which the claim is brought." RCW 4.16.340(1)(c).

If the evidence in *Korst* was insufficient as a matter of law, surely the disputed entry here creates, at a minimum, a factual issue for a jury.

The State also relies on a counseling note in 2007. In October 2007, at age 20, Tasha told her counselor she was abused between ages 4-15, and "she tried to tell CPS and social workers about [Quiles] sexual abuse." This entry has no probative value on the issue of plaintiff's alleged factual knowledge of CPS's 1996 and 1997 negligent investigations. This statement could apply to 2001-2002 interactions as easily as 1996-1997. More importantly, saying she "tried to tell them" is not the equivalent of saying she did tell them and they negligently investigated her reports. A more likely interpretation of that entry is that she was blaming herself for being too scared to tell them.

The State relies on cases from the land use area, such as *1000 Virginia Ltd. P'ship v. Vertecs Corp.*, 158 Wn. 2d 566, 146 P.3d 423, 431 (2006) and *Fradkin v. Northshore Utility Dist.*, 96 Wn. App. 118, 122, 977 P.2d 1265 (1999) for the proposition once a plaintiff "reasonably suspects that a wrongful act has occurred, he or she is deemed on notice that legal action must be taken and a lawsuit initiated." State's Brief, p. 15.

The State fails to cite far more analogous cases from the personal injury area. From these cases arises a doctrine of "another facially logical explanation." In *Lo v. Honda Motor Co.*, 73 Wn. App. 448, 869 P.2d

1114 (1994), a mother was injured, during pregnancy, in an auto accident involving a Honda malfunction. She gave premature birth to her child who was severely disabled. Late in the Honda litigation investigation, Lo and her attorneys became aware of medical negligence. She filed suit after the three year statute of limitations had expired. The trial court ruled that the statute of limitations on the medical negligence related to the auto accident had run.

The court in *Lo v. Honda Motor Co.*, 73 Wn. App. at 460, held:

> We decline to hold as a matter of law that the fact of a traumatic medical event (birth asphyxia) and knowledge of its immediate cause (prolapsed cord) equates with notice (imputed knowledge) that the injury was caused by a medical error or omission.

Following *Lo*, in *Winbun v. Moore*, 143 Wn.2d 206, 214, 18 P.3d 576 (2001), a patient sued a family physician, emergency room physician, and the hospital. More than three years later, she joined another attending physician in the suit. In reinstating judgment on a verdict in the face of the physician's statute of limitations argument, the Supreme Court held:

> Like Lo, Winbun was faced with a "facially logical explanation" for her injuries delay of appropriate treatment due to the initial misdiagnosis of her condition by her family physician and later misdiagnosis by the emergency room physician. While in the hospital, Winbun was heavily sedated and unaware of Epstein's full role in her care. She later understood that a team of surgeons had saved her life. Although Epstein's name appears in her hospital records, so do the names of several other hospital physicians who

> treated her. From the medical records that Winbun received, it was not readily apparent that Epstein's conduct delayed appropriate treatment.

Winbun v. Moore, 143 Wn. 2d 206, 219-20, 18 P.3d 576, 582-83 (2001).

Finally, in *Webb v. Neuroeducation Inc., P.C.*, 121 Wn. App. 336, 88 P.3d 417 (2004), *rev. denied*, 153 Wn.2d 1004 (2005), the court clarified that the plaintiff must have factual knowledge to trigger the statutes, not suspicion, belief or speculation. In *Webb*, a mother attempted to terminate the father's visitation with his son by claiming abuse. The mother chose a counselor who permitted the mother's coaching of her son. A guardian ad litem subsequently exonerated the father and implicated the counselor. Though the father had expressed that certain of the counselor's actions were "curious", the record showed "his beliefs as mere speculation and supposition ungrounded by facts."

The court further observed:

> Dr. Chupurdia argues Mr. Webb must certainly have discovered the alleged malpractice by November 18, 1998 when he expressed similar beliefs in his show cause affidavit. Given the lack of facts available to Mr. Webb in November 1998 as shown in this record, we consider his belief allegations as necessarily speculative and conclusory. Viewing the facts most favorably to Mr. Webb, only when he acquired the information contained in the GAL report did he have a factual basis for his opinions and grounds for his complaint.
>
> ....

> The record shows Mr. Webb was "curious" about many things connected to Dr. Chupurdia's treatment, and proposed his beliefs as mere speculation and supposition ungrounded by facts.

The State not just ignores the above group of actually relevant cases, but never addresses, let alone distinguishes, the line of recent Oregon cases, as cited by plaintiffs, precisely on point. This is undoubtedly because they have no basis upon which to distinguish them either factually or on the basis of public policy. *T.R. v. Boy Scouts of America,* 344 Or. 282, 181 P.3d 758 (2008); *Johnson v. Multnomah Cty. Dept. of Community Justice,* 344 Or. 111, 178 P.3d 210 (2008); and *Doe 1 v. Lake Oswego Sch. Dist.*, 353 Or. 321, 297 P.3d 1287 (2013), all involved cases of child sexual abuse. In each case, as here, the plaintiff knew they had been sexually abused by the perpetrator and knew the abuse had caused harm. In each case, the Oregon courts found it was an issue of fact when the plaintiff knew, or in the exercise of reasonable diligence under the circumstances of the plaintiff, should have known, of the involvement ***and*** breach of care, of the third party entity. *See T.R. v. Boy Scouts* (police command staff); *Johnson v. Multnomah Co.* (the country supervision department) or *Doe I v. Lake Oswego Sch. Dist. (*the school district).

The State is free to argue to a jury that a 16-year-old, reeling from years of rape by her stepfather, should have obtained her CPS records or

police records,[1] to assess whether the agency responsible for protecting her had utterly failed in its responsibility. However, the decision of the trial court that only answer is "yes" is clearly erroneous.

B. The RCW 4.16.340 History Demonstrates The Legislature's Intent To Permit Sex Abuse Claims For More Severe Reactions That Develop Later In Life; Respondents Fail To Address This Argument Nor This Court's Ruling In *B.R. v. Horsley*

Relying on *Carollo v. Dahl*, 157 Wn. App. 796, 240 P.3d 1172 (2010), the State maintains plaintiff's injuries were essentially the same from the beginning of her abuse; therefore, they win. The State is apparently unaware of this Court's ruling in *B.R. v. Horsley*, 186 Wn. App. 294, 345 P.3d 836 (2015) which did not follow the reasoning in *Carollo*, rather followed *Korst v. McMahon*, 136 Wn. App. 202, 208, 148 P.3d 1081 (2006) as urged by plaintiff here.

In *B.R.*, the plaintiff was 13 and 14 at the time she was sexually abused by her church youth minister. She reported, the perpetrator was prosecuted, and *B.R.* went into counseling. She was treated for stress, anxiety, depression, anger, betrayal, guilt, relationship and school

[1] The State blithely asserts "she could have made public records requests and obtained the records from law enforcement and from the State. She could have obtained many of those documents from the court." State Brief, p. 20. This statement has little relationship to the reality of an attorney trying to obtain records in 2015, let alone a 16 or 20 year old pro se trying to obtain records in 2003 and 2007. The fact that a hearing had to occur before the State would release the records to counsel, and only pursuant to a multi-page protection order, belies this statement.

problems. She completed counseling and went on to college, marriage and work.

When her marriage broke up in her early twenties, she came to the realization the abuse impacted her life more than she had realized. She struggled with grownup problems: marital issues, issues at work, the realization she did not want children because of feelings of inadequacy in protecting a child, and a crisis in confidence in religion.

The court reversed the summary judgment saying:

> In summary, B.R. argues that she experienced new or more serious injuries from her sexual abuse when she was married, became sexually active, discussed having children with her husband, got a job, and tried to reconnect with the church. B.R. presented evidence that these injuries are new or more serious because she did not understand how her sexual abuse would affect these parts of her life until she actually had these experiences and entered into sexual abuse counseling with Dr. Dietzen in 2011. This evidence, together with Horsley's contrary evidence and viewed in a light most favorable to B.R., demonstrates that material facts are in dispute. Thus, a jury must resolve the factual issues and determine whether the statute of limitations bars her claim.

B.R. v. Horsley, 186 Wn. App. 294, 345 P.3d 836, 843 (2015). The case went on to state:

> This case is more like Korst than Carollo. Like Korst, B.R. did not understand the full effect of the childhood sexual abuse until she entered counseling as an adult. Although B.R. had dealt with serious symptoms of her abuse for many years, she presented evidence that, until recently, she was not aware that her new, adult difficulties

> with her marriage, her work, and connecting with religion were caused by the childhood abuse.
>
> ....
>
> There are three sources of evidence that support B.R.'s claim that within the three-year statute of limitations she discovered new or more serious injuries that were caused by the abuse: B.R.'s declaration, ...
>
> ....
>
> B.R.'s declaration explaining the genesis of her problems with sexual dysfunction and Dr. Dietzen's deposition testimony where she stated that she thought B.R. had not experienced these problems before the last "two-plus years," demonstrate that a triable question exists regarding whether she experienced a new injury relating to intimate relationships during the three-year statute of limitations. ...
>
> These injuries are precisely the type of injuries for which the legislature intended to provide a remedy when it considered the 1991 amendment to RCW 4.16.340. In enacting the 1991 amendment to the statute of limitations for actions based on childhood sexual abuse, the legislature recognized that these are the types of injuries that a victim may not fully understand until later in life: "Even though victims may be aware of injuries related to the childhood sexual abuse, more serious injuries may be discovered many years later."

Applying *B.R.* to this case, plaintiff has long suffered the effects of her horrific abuse. She has suffered the full range of negative sequelae associated with such abuse: depression, post-traumatic stress, substance abuse, and relationship issues, including promiscuity and prostitution.

However, the specific injuries plaintiff is suing on are: psychosis, permanent harm, and betrayal by her alleged protectors at DSHS. These impacts were only recognized well within the three years prior to filing her

suit in August 2012, and on this basis, too, a jury should decide when the state of limitations accrued.

III. ARGUMENTS IN RESPONSE TO THE STATE'S CROSS-APPEAL OF THE DENIAL OF DEFENDANT'S SUMMARY JUDGMENT ON PLAINTIFF'S SECA CLAIM

A. This Case Is Not Ripe For A Decision On The Defendant's Liability For Fees And Costs Under SECA

RAP 18.9(c) states:

> **RAP 18.9(c) Dismissal on Motion of Party.** The appellate court will, on motion of a party, dismiss review of a case (1) for want of prosecution if the party seeking review has abandoned the review, or (2) **if the application for review is** frivolous, **moot**, or solely for the purpose of delay ... (Emphasis added.)

A decision that is not ripe is moot:

> "A moot case is one which seeks **to determine an abstract question which does not rest upon existing facts or rights.**" *Hansen v. W. Coast Wholesale Drug Co.,* 47 Wn.2d 825, 827, 289 P.2d 718 (1955). Generally, cases presenting moot issues on appeal are dismissed. *City of Seattle v. Johnson,* 58 Wn.App. 64, 66–67, 791 P.2d 266 (1990); **RAP 18.9(c).** (Emphasis added.)

The court cannot decide an issue that is not ripe. Ripeness depends in part on whether "'the challenged action is final.'" *Lewis County v. State*, 178 Wn. App. 431, 440, 315 P.3d 550 (2013) (quoting *Jafar v. Webb,* 177 Wn.2d 520, 525, 303 P.3d 1042 (2013)), *review denied,* 180 Wn.2d 1010 (2014). The attorney fees issue which the State purports to cross-appeal is not ripe because the trial court made no final decision; it is a potential claim for fees in the event that the dismissal on statute of

limitations grounds is reversed and plaintiff ultimately prevails at trial. If a claim is speculative and hypothetical, it is not ripe. *Lewis County,* at 440 (citing *Diversified Indus. Dev. Corp. v. Ripley,* 82 Wn.2d 811, 815, 514 P.2d 137 (1973)). *See also Bellewood No. 1, LLC v. LOMA*, 124 Wn. App. 45, 50, 97 P.3d 747 (2004) ("a claim is ripe for judicial determination if the issues raised are primarily legal and do not require further factual development, and the challenged action is final."); *Rhoades v. City of Battle Ground,* 115 Wn. App. 752, 760, 63 P.3d 142 (2002) (same); *First Covenant Church of Seattle, Washington v. City of Seattle,* 114 Wn.2d 392, 400, 787 P.2d 1352 (1990) (same), *adhered to on remand,* 120 Wn.2d 203 (1992). "Absent these elements, the court 'steps into the prohibited area of advisory opinions.'" *Walker v. Munro,* 124 Wn.2d 402, 411-12, 879 P.2d 920 (1994).

An appeal such as the State's is moot if it presents "purely academic issues" and it is "not possible for the court to provide effective relief." *Gorden v. Lloyd Ward & Associates, P.C.,* 180 Wn. App. 552, 560, 323 P.3d 1074 (2014) (quoting *Klickitat County Citizens Against Imported Waste v. Klickitat County,* 122 Wn.2d 619, 631, 860 P.2d 390 (1993)). If an appeal is moot, it should be dismissed. *Id.*

Plaintiff's position in the trial court, as here, is that a ruling on the SECA claim should be deferred. As we noted then:

> There are many more questions than answers in the trial court cases that have ruled on motions to dismiss plaintiff's claims under SECA. The only consensus is that courts will defer the issues that arise regarding application of the statute until after a plaintiff prevails on the underlying claim of sexual exploitation. The courts treat the claim as they would a motion for attorneys' fees on a discrimination, wage and hour or other such fee-shifting statutes. *Kuhn v. Schnall*, 155 Wn. App. 560, 578, 228 P.3d 828 (2010).
>
> At that later point, the court will have to determine whether a defendant can be civilly liable for attorney's fees and costs without a charge and/or conviction under a subsection of RCW Ch. 9.68A. *J.C. v. Society of Jesus*, 457 F. Supp. 2d 1201, 1204 (W.D. Wash. 2006) suggests there can be; *Roe v. City of Spokane*, 2008 WL 4619836 (E.D. Wash. 2008); *Boy I v. Boy Scouts of America*, 832 F. Supp. 2d 1281 (2011).

B. Should The Court Reach The Merits Of The State's Cross-Appeal, The Court Must Rule That The Statute Applies Based On The Plain Language And The Public Policy Supporting Broad Relief To Victims Of Child Sexual Abuse

1. The Plain Language of RCW 9.68A.130 Supports Applying It To This Case

The plain language of RCW 9.68A.130 shows that it applies to this case and no contrary intent is evidenced by the wording of the statute (or by its legislative history). Courts are to give words in a statute "their plain and ordinary meaning, unless a contrary intent is evidenced in the statute." *C.J.C. v. Corp. of Catholic Bishop of Yakima*, 138 Wn. 2d 699, 708, 985 P.2d 262 (1999). If "the statutory language is clear and unambiguous, the statute's meaning is determined from its language alone" and a court "may

not look beyond the language nor consider the legislative history." *Id.* When construing the meaning of a statute, a court must construct the act "as a whole, giving effect to all language used." *Id.* Related provisions must be "interpreted in relation to each other and all provisions harmonized." *Id.*

RCW 9.68A.130 provides that a minor "prevailing in a civil action arising from violation of this chapter is entitled to recover the costs of the suit, including an award of reasonable attorneys' fees." RCW 9.68A.130.

In turn, RCW 9.68A prohibits communication with a minor for immoral purposes. RCW 9.68A.090(1) ("a person who communicates with a minor for immoral purposes ... is guilty of a gross misdemeanor."). "Communication" for immoral purposes has been broadly defined as "any spoken word or course of conduct with a minor for purpose of sexual misconduct." *C.J.C.*, 138 Wn.2d at 715-16 (citing *State v. Schimmelpfennig*, 92 Wn.2d 95, 103-04, 594 P.2d 442 (1979)) (emphasis added in *C.J.C.*); *State v. McNallie*, 120 Wn.2d 925, 933 (1933).

By its plain language, RCW 9.68A.130 applies here because the plaintiffs' claims arise from the sexual abuse by her stepfather. If that sexual abuse had not occurred, there would be no conduct from which the plaintiffs' claims could arise. If plaintiff prevails on her claims, she is entitled to her fees and costs.

RCW 9.68A.130 only requires that Plaintiffs' claims arise from a "violation" of RCW 9.68A – under the plain language of the statute, no criminal conviction is required. When a statutory term has no statutory definition, courts "give the term its plain and ordinary meaning ascertained from a standard dictionary." *State v. Watson*, 146 Wn.2d 947, 955, 51 P.3d 66 (2002).

If the legislature meant RCW 9.68A.130 to apply only to a criminal defendant, it would have said so. *See C.J.C.,* 138 Wn.2d at 713 ("[i]f the Legislature had intended the act to apply exclusively to the perpetrators of the abuse, the statute would have included specific limitations to that effect. It does not do so.").

Likewise, if the Legislature had intended to require a conviction before allowing the recovery of costs and fees in a civil action, the legislature would have used the term "conviction" and not "violation." A violation of a statute and a conviction for a violation of a statute are two very distinct things.

But given the plain language of the statute, and the legislative findings, the legislature clearly intended RCW 9.68A.130 to apply much more broadly than only claims against a criminal defendant, after the defendant was convicted. "The Legislature does not engage in unnecessary or meaningless acts, and we presume some significant

purpose or objective in every legislative enactment." *In re Recall of Pearsall-Stipek*, 141 Wn.2d 756, 769, 10 P.3d 1034 (2000) (citations omitted).

Given the clarity of these words and the legislative remedial priorities, it is not surprising that the first published decision to address RCW 9.68A's remedial provision rejected the arguments raised by the State. *See J.C. v. Society of Jesus*, 457 F. Supp. 2d 1201, 1204 (W.D. Washington 2006). The *J.C.* plaintiff sued the employer of a priest who had molested him but did not sue the priest. *Id.* Although the priest was deceased and had not been convicted of any wrongdoing, J.C. asserted a cause of action under RCW 9.68A.090 (communication for immoral purposes) and RCW 9.68A's fee provision. *Id.* The employer moved for summary judgment on the ground that the statute permits attorneys' fees "only where the person who violated the Act is the defendant in the action." *Id.* The court rejected this argument because "it conflicts with the text of the statute." *Id.* The employer next argued that it could be liable for attorneys' fees only if vicariously guilty of the priest's crimes. The court found no such limitation, as the plaintiff's civil action was a matter of the Church's civil, not criminal, liability. *Id.* Finally, the employer argued there could be no civil liability for fees unless there had been a "conviction" for a crime under RCW 9.68A. *Id.* The court pointed

out the "obvious answer" to this was that the fee statute did not require a "conviction" but merely a "violation." *Id.*

2. The Washington Supreme Court Has Recognized That This Legislative Intent Provides Abuse Victims Full Access to the Courts, Including Claims Against Non-Perpetrator Defendants

The Washington Supreme Court has acknowledged the legislature's strong public policy of providing abuse victims full access to the courts, and has acknowledged that RCW 9.68A and RCW 4.16.340 are a combined effort to further that policy for abuse victims.

In *C.J.C. v. Corporation of the Catholic Bishop of Yakima*, 138 Wn.2d 699, 707-08, 714, 985 P.2d 262 (1999), the Court expressly overruled *Jamerson v. Vandiver*, 85 Wn. App. 564, 567, 934 P.2d 1119 (1997), which had held that RCW 4.16.340 only applied to claims against an abuser, not to those who failed to protect victims from the abuser.

In the three underlying cases that gave rise to *C.J.C.*, the trial courts relied on *Jamerson* to hold that RCW 4.16.340 only applied to claims against an individual perpetrator of childhood sexual abuse, and did not apply to "negligence claims brought against church entities and individual church officials who did not themselves directly perpetrate intentional acts of childhood sexual abuse, but who allegedly failed to

protect the child victims or otherwise prevent the abuse ..." *Id.* at 704, 708.

The trial courts relied on *Jamerson* to conclude that RCW 4.16.340 only applied to claims against the individual perpetrator because the statute requires that childhood sexual abuse claims be "based on intentional conduct." *Id.* at 706-08 ("... the trial courts dismissed ... all claims against church entities and members who had not themselves directly perpetrated the abuse").

In reversing *Jamerson*, the *C.J.C.* Court began by acknowledging that RCW 4.16.340's definition of childhood sexual abuse "limits the predicate conduct to acts in violation of the criminal code," but it held that RCW 4.16.340 applied to negligence claims against entities who allowed the abuse to occur "because they stem from injuries suffered as a result of intentional childhood sexual abuse." *Id.* at 708, 710. In other words, even though RCW 4.16.340 refers to intentional, criminal conduct, the Court found that victims could pursue negligent supervision claims against entities who failed to prevent the criminal conduct because those claims are "based on" the criminal conduct.

This is particularly true where RCW 9.68A and RCW 4.16.340 are part and parcel of the State's efforts to implement that public policy, and

the Washington Supreme Court has already concluded that those efforts apply to claims against entities who failed to protect victims from abuse.

Although other provisions of RCW 9.68A may address criminal conduct, RCW 9.68A.130 does nothing more than award attorneys' fees and costs to abuse victims who ultimately prevail on civil claims that arise from the abuse. *Cf. State v. Delgado*, 148 Wn.2d 723, 63 P.3d 792 (2003) (addressing retroactivity of a criminal statute that has criminal penalties).

IV. CONCLUSION

There are material issues of fact when plaintiff discovered, or reasonably should have discovered, the State's investigations in 1996 and 1997, and that the investigations were substandard. There are factual issues as to when she discovered the specific harm for which she is suing for here. Plaintiff must be permitted to present these issues to a jury; summary judgment should be reversed.

DATED this 26th day of June, 2015.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that I served a copy of the Reply Brief of Respondent/Cross-Appellant upon all parties of record on the 26th day of June, 2014, via electonic mail as follows:

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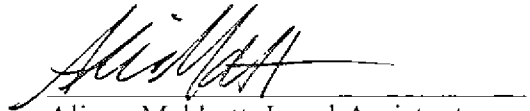
I certify under penalty under the alws of the State of Washington that the foregoing is true and correct.

DATED this 26th day of June, 2015.



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