No. 56781-4-II

COURT OF APPEALS, DIVISION TWO
OF THE STATE OF WASHINGTON

M.R., an individual,

Petitioner,

vs.

State of Washington, et al.,

Respondents

PETITION FOR REVIEW

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I. Identity of Petitioner and Introduction

It is undisputed that Petitioner M.R. was groomed and sexually abused as a 17-year-old while being recruited by her future college basketball coach, Cody Butler. The parties' experts also agree that this childhood sexual abuse caused the continuing, escalating sexual abuse M.R. suffered after she turned 18 and joined Butler's basketball team, thousands of miles from home.

Now an adult, M.R. realized she had been sexually abused at age 17 and that abuse caused the years of continuing abuse she suffered. She asserted claims for recovery of all "injur[ies] suffered as a result of" that childhood sexual abuse—including the continuing sexual abuse after she turned 18. RCW 4.16.340(1).

The trial court denied summary judgment based on the undisputed record. Division Two reversed. M.R. asks this Court to accept review of the Court of Appeals decision terminating review designated in Part II. **Appendix A.**

II. Court of Appeals Decision

Although acknowledging the issue as one of first impression, Division Two held in an unpublished opinion that M.R.'s continuing sexual abuse was not a recoverable "injury suffered as a result of childhood sexual abuse" under RCW 4.16.340(1) because it occurred after she turned 18.

First, Division Two narrowly construed the statute to exclude continuing sexual abuse as a recoverable "injury." It relied on RCW 4.16.340(5)—a provision this Court already has held only requires that the "starting point" for all "claims" to be an act of childhood sexual abuse—to conclude the legislature intended plaintiffs to split their claims based on "acts" of abuse occurring before and after age 18 and precluded recovery for the latter, even where the sexual abuse is a continuing course of conduct. Division Two's strict, narrow interpretation ignores this Court's holdings that both the statute's expansive terms

and its legislative history express clear legislative intent to liberally construe it in favor of providing a remedy for injuries resulting from childhood sexual abuse.

Second, Division Two's claims splitting interpretation violates this Court's holdings that statutes of limitation should ***not*** be interpreted to override Washington's longstanding prohibition on claims splitting—particularly where, as with continuing sexual abuse, the nature of the claim consists of multiple, interrelated acts causing harm.

Third, RCW 4.16.340(5)'s single prerequisite was met by M.R.'s ***unrebutted*** evidence that the childhood sexual abuse she suffered proximately caused her injuries, including the continuing sexual abuse. Yet Division Two held that Butler's continuing sexual abuse of M.R. was "independent" of the childhood sexual abuse and was not caused by the childhood sexual abuse—a finding of superseding cause. Division Two's opinion raising and determining the factual issues of proximate and

superseding cause for the first time on appeal violates our state constitution, the Rules of Appellate Procedure, and appellate precedent carefully circumscribing appellate courts' roles in reviewing summary judgment orders and prohibiting them from factfinding.

Finally, the issue of first impression of whether the same Legislature that intended to provide survivors of childhood sexual abuse with a broad avenue to redress its continuing injuries intended to cut off recovery for one of its most common, harmful resulting injuries—continuing sexual abuse—is of paramount importance to this State's many survivors. This issue requires this Court's definitive determination, not relegation to an unpublished opinion. RAP 13.4(b)(1), (b)(2), (b)(3), (b)(4).

III. Issues Presented for Review

1. Where RCW 4.16.340's only limitations on "claims or causes of action" is that they must be based on at least one act of childhood sexual abuse and seek recovery "of damages for injuries suffered as a result of childhood sexual abuse," does RCW 4.16.340(1) apply to childhood sexual abuse that continues after the survivor turns 18?

2. Where the parties' experts agreed that childhood sexual abuse proximately caused the continuing sexual abuse and Respondents did not raise the factual issue of superseding cause on summary judgment, did the Court of Appeals err in *sua sponte* raising superseding cause for the first time on appeal and determining the factual issues of superseding and proximate cause against M.R.?

IV. Statement of the Case

A. Facts Pertaining to M.R.'s Continuing Childhood Sexual Abuse

Division Two's opinion address the facts but glosses over key points. Opinion ("Op.") at 2-8.

In 2000, M.R. was a 17-year-old rising high school senior. CP 121. She participated in a basketball tournament in Nevada in hopes of being recruited to play

college basketball. CP 121-122. The tournament's director introduced her to Respondent Cody Butler, Yakima Valley Community College's ("YVCC") women's basketball coach. CP 12, 122, 155.

Butler actively tried to recruit her to join his YVCC team. CP 191. Butler and the director's comments quickly turned from her basketball skills to her body, beginning with her shoulders and arms. CP 123. *Id.* They then progressed to her buttocks and chest. CP 192. Finally, the director said "look at that V," referring to her abdominal muscles. CP 123. Without M.R.'s consent, Butler placed his hand on M.R.'s stomach and slid it down to the fringe of her pubic area, commenting "You don't see that every day. Not very many girls have that." CP 123, 192. Butler was satisfied that he had been able to touch her and commented that he "liked the way [M.R.] was built." CP 123. The director responded, "I told you, I had a girl for you." CP 123.

Both men's participation in this misconduct and Butler's position of authority made M.R. believe this behavior was normal and "part of what to expect at college-level athletics." CP 123, 203-04. Butler invited M.R. to YVCC by arranging a visit to occur the following year. CP 123.

When she visited YVCC in 2001 as an 18-year-old, Butler only continued and escalated the sexually abusive conduct he had begun normalizing when she was 17. During the visit, Butler commented to her on team members' "ass[es]," "tits," or other portions of their bodies, would "put his body on [hers]" to show her basketball "moves," and stood with her on the sidelines during practices and placed his hand on the small of her back. CP 123-26. Butler offered her a scholarship the next week. CP 126-127. However, Butler requested that she move to campus a month early without any money, food, family, or friends under the pretense of "get[ting] some extra practice

time." CP 127.

Once there and throughout her time at YVCC, Butler continued his pattern of isolation coupled with gradually escalating boundary erasures, sexualized comments, and touching. Over time, invitations to his house for dinner because he knew she had no money for food evolved into invitations to drink alcohol together. CP 127-29. Private weightlifting sessions entailed comments about her lack of a "chest," promises to "give [her] an ass" through weightlifting, and opportunities to press against her back and trace her arms. CP 127-28. Regular, private practice sessions to teach her basketball "moves" involved pulling her into his groin and thrusting his fully erect penis into her and pulling her down onto his lap and erect penis. CP 127-29. Late-night invitations to his office to look at team shoes for the next season or to create a highlight video to send to four-year colleges devolved into his constant demands for massages. CP 129. Out-of-town recruiting trips together

under the pretext of teaching her to be a "leader" turned into dinners at nice restaurants, his comments on recruits' "nice ass[es]" or "long legs," and his warnings not to gain weight and look like recruits or teammates he found unattractive. CP 130, 140, 169. A trip to the mall to purchase a cell phone for Butler veered into Victoria's Secret, Butler's comments that M.R. would look "great" in certain lingerie, and purchasing a perfume for her that he said "turned him on." CP 140. And his constant, lengthy late night phone calls centered on demands that she not date anyone. CP 129.

After M.R. transferred to a four-year college in 2003, Butler wrote her a six-page letter. CP 77-82. He joked about becoming her "abusive boyfriend." CP 79. He told M.R. that he had thought about her every day for two years; he missed her; she would always be "special" to him; he would "always be there for [her]"; and to call him if she ever needed anything. CP 78-79, 82.

In 2004, Butler asked M.R. to visit him in Reno, Nevada. CP 134. M.R. agreed and met him at a bar. *Id.* After getting her intoxicated, Butler slept in the same bed and had intercourse with her. *Id.*

As a result of Butler's sexual harassment and abuse, M.R. went from being the captain of her basketball team to years of substance abuse; abusive relationships; and, eventually, prison. CP 192-193, 200-201, 204-205, 277, 295, 296-298. After her release, she threw herself into school, maintaining a full-time job, and starting a family. CP 192. A 2018 Federal Bureau of Investigation inquiry into the Nevada tournament director's and Butler's sexual misconduct with young female athletes caused her to realize for the first time that she had been sexually abused by Butler. CP 133, 136, 192.

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B. Procedural History

On June 22, 2019, M.R. filed this lawsuit alleging claims of negligence, sexual discrimination, negligent infliction of emotional distress, outrage, and assault against the State of Washington and Butler for injuries caused by Butler's childhood sexual abuse. CP 1-13.

The State moved for summary judgment. CP 32. Although it did not dispute the "timeliness of the allegation of childhood sexual abuse" when Butler touched M.R.'s stomach and the fringe of her pubic area at age 17, it argued that RCW 4.16.340 did not apply to the continuing sexual abuse suffered by M.R. after she turned 18 years old. CP 32-44; **Appendix B.**

M.R.'s expert and the State's expert agreed that Butler's nonconsensual touching of M.R.'s stomach and the fringe of her pubic area when she was 17 was sexual abuse. CP 199, 290-91, 319. Both experts also agreed that Butler's childhood sexual abuse caused the continuing

sexual abuse M.R. suffered by preventing her from distinguishing between abusive and healthy dynamics throughout her player-coach relationship with him and "desensitiz[ing]" her to "more inappropriate touching." CP 199-200, 290-91, 319. And they agreed that M.R. experienced all of the sexual abuse "as one continuous negative experience." CP 199, 315, 317.

The trial court denied summary judgment, observing that it was "appropriate" to apply RCW 4.16.340 "in the context of a series of events by the same alleged perpetrator . . . that began when the plaintiff was under 18." RP 35-36. It concluded that "with experts agreeing that it's impossible to segregate the harm, the court thinks of this as a continuous series of events and believes that it's prudent to apply the childhood sex abuse statute of limitations to the events." RP 36.

After the trial court certified its order for review under RAP 2.3(b)(4), the Court of Appeals accepted review only

of the statutory interpretation issue.[1] Op. at 14-15. It issued its opinion on December 12, 2023 and denied M.R.'s timely motion for reconsideration on February 22, 2024. **Appendix C.**

V. Argument Why Review Should Be Accepted

A. Division Two's Interpretation of RCW 4.16.340(1) Conflicts With Its Express Language, Legislative History, Intent, and This Court's Decisions

The Court's fundamental objective in statutory interpretation is to give effect to the legislature's intent. *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002). If a statute's meaning is plain on its

[1] The State had also argued that M.R. failed to demonstrate that Butler's childhood sexual abuse caused any of her injuries because the experts had testified it was impossible to pinpoint any single event as the sole cause of any of her injuries. The trial court rejected this argument, reasoning that "when either of the experts say I'm not tying [injuries] to a single event, that's not the same thing as saying the single event isn't part of a series of events that all contributed." RP 32.

face, then this court gives effect to that plain meaning as an expression of legislative intent. *State ex rel. Citizens Against Tolls (CAT) v. Murphy*, 151 Wn.2d 226, 242, 88 P.3d 375 (2004). Courts "must not add words where the legislature has chosen not to include them." *Restaurant Development, Inc. v. Cananwill, Inc.*, 150 Wn.2d 674, 682, 80 P.3d 598 (2003).

As this Court has repeatedly observed, critically important to RCW 4.16.340(1)'s analysis is that the 1991 Legislature gave specific interpretative direction as to its intent. Division Two's opinion ignored that mandatory guidance.

The 1991 amendments "specifically superseded a line of cases that had strictly applied the discovery rule in cases involving childhood sexual abuse." *C.J.C. v. Corp. of Catholic Bishop of Yakima*, 138 Wn.2d 699, 712, 985 P.2d 262 (1999). In doing so, "[t]he Legislature adopted 'findings and intent,' which make it clear that its primary

concern was to provide a ***broad avenue of redress*** for victims of childhood sexual abuse who too often were left without a remedy under previous statutes of limitation." *C.J.C.*, 138 Wn.2d at 712 (emphasis added); *see also* LAWS OF 1991, ch. 212, § 1 ("Childhood sexual abuse is a traumatic experience for the victim causing long-lasting damage.") . Based on these findings, this Court concluded that the legislature intended a "broad reading and application of the statute." *Id.* at 713.

This Court has consistently applied that intended liberal construction in favor of providing a remedy to survivors of childhood sexual abuse, regardless of the statutory term being interpreted. *Wolf v. State*, 2 Wn.3d 93, 534 P.3d 822, 832 (2023) (applying "the underlying purpose of RCW 4.16.340—to provide broad protection for victims of childhood sexual abuse" in interpreting the term "act"); *C.J.C.*, 138 Wn.2d at 709, 713-14 (applying legislative intent of "a broad reading and application of the

statute" in interpreting term "based on intentional conduct").

The statute's language also reflects the intended liberal construction. Its "broad language is critical to its interpretation." *Wolf*, 534 P.3d at 830; *accord C.J.C.*, 138 Wn.2d at 709 (statute's "expansive" language indicative of intent). It applies to ***"[a]ll claims*** or causes of action based on intentional conduct . . . for recovery of damages ***for injury*** suffered as a result of childhood sexual abuse." RCW 4.16.340(1) (emphases added).

The Court may use dictionary definitions to interpret the undefined term "injury." *Accord C.J.C.*, 138 Wn.2d at 709 (using ordinary dictionary meanings to define "based on"). Black's Law Dictionary defines "injury" to include "[a]ny harm or damage," including "bodily injury." Injury, *Black's Law Dictionary* (11th ed. 2019). Likewise, Webster's defines "injury" as "an act that damages, harms, or hurts." Injury, *Webster's Third New International*

Dictionary 1164 (1986).

The continuing sexual abuse M.R. suffered after age 18 meets either definition. RCW 4.16.340(1) contains no exclusions based on the type or timing of "injury," such as continuing sexual abuse continuing past age 18. Had the legislature intended to exclude certain types of injuries or harms from this term, it knew how to do so. *See*, e.g., RCW 49.60.510(1)(a) (specifying "physical or psychiatric injury").

Instead, the ***only*** limitation RCW 4.16.340(1) imposes on "claims or causes of action" is that they seek "recovery for damages for injury suffered as a result of"—i.e., caused by—childhood sexual abuse. *See,* e.g., *State v. Christman*, 160 Wn. App. 741, 754, 249 P.3d 680 (2011) (similar statutory term "resulting in" incorporates common law principles of proximate cause). Where Butler's childhood sexual abuse of M.R. undisputedly caused her injuries, including the continuing sexual abuse, the statute's plain language allows recovery. Division Two's

interpretation impermissibly added the term "injury (except continuing sexual abuse) suffered as a result of childhood sexual abuse."

Division Two nonetheless concluded that because RCW 4.16.340(5)'s definition of "childhood sexual abuse" refers to "any act committed by the defendant against a complainant who was less than eighteen years of age at the time of the act," it categorically distinguishes between sexually abusive "acts" before and after age 18 and excludes any recovery for the latter. Op. at 11.

But in rejecting similar arguments that RCW 4.16.340(5) limited the term "claims based on intentional conduct" under .340(1) to those against the perpetrators of childhood sexual abuse, this Court previously held:

> we read the statutory definition of 'childhood sexual abuse' as ***limiting only*** the specific predicate sexual conduct upon which all claims or causes of action must be based.

C.J.C., 138 Wn.2d at 712 (emphasis added).[2] So long as the "starting point" for a plaintiff's claims is an act of childhood sexual abuse, the statute applies to them because they "stem from injuries suffered as a result of intentional childhood sexual abuse." *Id.* at 709-10. "As long as the predicate of that harm is the childhood sexual abuse, RCW 4.16.340 provides a mechanism for redress." *Wolf*, 534 P.3d at 830.

That single prerequisite was satisfied here. Each of M.R.'s claims were based on an undisputed act of childhood sexual abuse and sought recovery for "injuries suffered as a result" of that childhood sexual abuse, including the continuing sexual abuse. Division Two's

[2] Similarly, Division Two held that RCW 4.16.340(2) suggest legislative intent to exclude childhood sexual abuse continuing past age 18 from recovery under RCW 4.16.340(1). Op. at 12-13. But that provision does not control the meaning of" terms in RCW 4.16.340(1). *Wolf*, 534 P.3d at 831.

application of RCW 4.16.340(5) to further limit recovery under RCW 4.16.340(1) contravenes the Legislature's intent previously established by this Court. RAP 13.4(b)(1), (b)(4).

B. Division Two's Interpretation of a Statute of Limitations to Require Plaintiffs to Split Claims Involving an Interrelated Course of Conduct Conflicts with This Court's Decisions and the Statue's Plain Language and Intent

Division Two also concluded that RCW 4.16.340(5) essentially splits a plaintiff's claims between "acts" of childhood sexual abuse occurring before and after age 18, excluding separate "claims" for the latter. Op. at 12. But in determining whether multiple wrongful acts constitute a single claim or multiple claims under a statute of limitations, courts must "focus[] on the nature of the claim itself" and relevant legislative intent underlying the substantive cause of action. *Antonius v. King Cnty.*, 153 Wn.2d 256, 265, 103 P.3d 729 (2004).

Thus, this Court repeatedly has rejected

interpretations that each wrongful "act" is a separate "claim" where the claim is "based on the cumulative effect of individual acts" or where "injury" could result from a series of "interrelated" acts rather than a single wrongful "act." *Antonius,* 153 Wn.2d at 268, 270 (Washington Law Against Discrimination hostile work environment claim); *Caughell v. Grp. Health Co-op. of Puget Sound*, 124 Wn.2d 217, 224, 230, 876 P.2d 898 (1994) (medical malpractice claims involving a continuing course of treatment).

Interpreting multiple wrongful acts to constitute a single "claim" is particularly compelled when consistent with a statute's liberal construction and underlying purpose, *Antonius*, 153 Wn.2d at 267-68; when it is not possible to "segregate the damages" caused by each wrongful act, *Caughell*, 124 Wn.2d at 222; where nothing in the statute's history supports an intent to require plaintiffs to split their claims between multiple wrongful acts, *id.* at 227, 230; and where "splitting claims has the

practical and unfair effect of insulating" from liability for wrongful conduct outside the limitations period even where it was interrelated with wrongful conduct within the period and was a cause of the plaintiff's damages, *Id.* at 230.

Division Two's opinion is at loggerheads with this precedent. First, like the claims at issue in *Antonius* and *Caughell*, the undisputed factual record here is that the sexual abuse M.R. experienced was a series of interrelated acts; the childhood sexual abuse caused the continuing sexual abuse past age 18; her injuries were the result of the cumulative effects of individual acts; she experienced the sexual abuse as one continuous, negative event; and her damages cannot be segregated between any single "act" as the sole cause. CP 199-200, 277, 291, 311-12, 315-17, 321, 330, 332-33. Indeed, Division Two conceded that the sexual abuse was a "continuing course of conduct." Op. at 12 (distinguishing *Wolf*).

Second, the legislature presumably knew of

Washington's longstanding prohibition against claims splitting when it enacted the statute, yet nothing in its plain language demonstrates any intent to override this prohibition. *See Wynn v. Earin*, 163 Wn.2d 361, 371, 181 P.3d 806 (2008); *Sprague v. Adams*, 139 Wash. 510, 515, 247 P. 960 (1926). As discussed above, RCW 4.16.340(5) imposes no such limitation on "claims" under RCW 4.16.340(1). To the contrary, RCW 4.16.340(2) expressly recognizes that when a "series of continuing sexual abuse or exploitation incidents caused the injury complained of," the plaintiff is not required to "establish which act" caused their injuries for limitations purposes—or to split their claims based on each wrongful act.[3] RCW 4.16.340(1).

[3] Notably, RCW 4.16.340(2) does not differentiate between "childhood sexual abuse" and sexual abuse occurring after the age of 18. Rather, it applies to "a series of ***continuing sexual abuse*** or exploitation incidents . . . which [are] part of a common scheme or plan of sexual abuse or exploitation." Emphasis added; *see State v. Roggenkamp*, 153 Wn.2d 614, 625, 106 P.3d 196 (2005) (legislature means different things when it uses different

Third, nothing in RCW 4.16.340's legislative history demonstrates legislative intent to require claims splitting to limit recovery. To the contrary, its findings demonstrated that its "primary concern was to provide a broad avenue of redress for victims of childhood sexual abuse who too often were left without a remedy under previous statutes of limitations." *C.J.C.*, 138 Wn.2d at 712. Division Two's interpretation denies plaintiffs a remedy for the most severe form of "injury suffered as a result of childhood sexual abuse"—continuing and escalating sexual abuse—even when it is proximately caused by, or to use Division Two's term, "facilitated" by, childhood sexual abuse.

Division Two's narrow interpretation of the statute in favor of depriving survivors of a remedy conflicts with its language, intent, and history, and with binding Supreme

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words in the same statute).

Court precedent interpreting all three, requiring review. RAP 13.4(b)(1), (b)(4).

C. Division Two's Opinion Raising The Factual Issue of Superseding Cause and Determining It and proximate Cause Against M.R. Violates the State Constitution, Washington Appellate Precedent, and the RAPs

Division Two further held that it was not "persua[ded]" that continuing sexual abuse is a recoverable "injury suffered as a result of childhood sexual abuse" under RCW 4.16.340(1) because it found "even though an act of grooming may facilitate later abusive acts, the grooming does not *cause* the subsequent abusive act. The later act is an independent intentional act." Op. at 12.

In two sentences Division Two violated its limited role under RAP 9.12 and the state constitution as an appellate court reviewing a summary judgment order. These constraints arise from litigants' state constitutional right to have a jury determine factual issues. *Haley v. Amazon.com Servs., LLC*, 25 Wn. App. 2d 207, 218, 522 P.3d 80 (2022).

They require trial courts to "consider all admissible evidence presented to it," "view all facts and reasonable inferences therefrom in the light most favorable to the nonmoving party," and refrain from "resolv[ing] issues of material fact." *Haley*, 25 Wn. App. 2d at 217, 220.

Washington law extends this constitutional right to appellate litigants by requiring appellate courts to "engage[] in the same inquiry as the trial court." *Tanner Elec. Co-op. v. Puget Sound Power & Light Co.*, 128 Wn.2d 656, 668, 911 P.2d 1301 (1996). RAP 9.12 further effectuates this right by restricting the Court's review of summary judgment orders to "'only evidence and issues called to the attention of the trial court.'" *Wolf*, 2 Wn.3d at 832 (quoting RAP 9.12). "Issues and contentions neither raised by the parties nor considered by the trial court when ruling on a motion for summary judgment may not be considered for the first time on appeal." *Cano-Garcia v. King Cnty.*, 168 Wn. App. 223, 248, 277 P.3d 34 (2012).

Similarly, appellate courts are not fact-finding courts. *Dalton M, LLC v. N. Cascade Tr. Servs., Inc.*, 2 Wn.3d 36, 53, 534 P.3d 339 (2023). They commit reversible error when they *sua sponte* raise and decide a case on a factual issue not raised before the trial court. *Dalton M*, 2 Wn.3d at 56. Although an appellate court can base its decision on findings of fact inferred from other findings and the underlying facts, it may do so "if—but only if—all the facts and circumstances in the record . . . clearly demonstrate that the omitted finding was *actually intended, and thus made*, by the trial court." *Dalton M*, 2 Wn.3d at 54 (emphasis in original) (internal quotation omitted). Where the trial court "did not make any findings at all" about the issue, appellate courts cannot "conclude that an omitted finding . . . was actually intended, and thus made, by the trial court." *Dalton M*, 2 Wn.3d at 55 (internal quotation omitted).

Here, it was undisputed on this summary judgment

record that Butler's childhood sexual abuse of M.R. proximately caused the continuing sexual abuse she suffered after she turned 18. Further, Division Two's holding that Butler's continuing acts of sexual abuse were "independent" of the childhood sexual abuse essentially determined as a matter of law that they were a superseding cause of M.R.'s injuries. *See Albertson v. State*, 191 Wn. App. 284, 294, 361 P.3d 808 (2015) (a "superseding cause is a new independent cause that breaks the chain of proximate causation" between a defendant's act and a plaintiff's injury"). Superseding cause and proximate cause ordinarily are factual findings for juries to make, not courts. *Pacheco v. United States*, 200 Wn.2d 171, 194, 515 P.3d 510 (2022) (superseding cause); *N.L. v. Bethel Sch. Dist.*, 186 Wn.2d 422, 437, 378 P.3d 162 (2016) (proximate cause); *McCoy v. Am. Suzuki Motor Corp.*, 136 Wn.2d 350, 359, 961 P.2d 952 (1998) (superseding cause).

Whether Butler's subsequent acts constitute a

superseding cause was never raised before the trial court, the trial court made no findings, and no such findings could be inferred from the summary judgment record or the trial court's oral ruling that "the court thinks of this as a continuous series of events." RP 35-36. Division Two's opinion raising this factual issue for the first time on appeal and determining both it and proximate cause against M.R. in contravention of the summary judgment record violated this Court's precedent, the RAPs, and M.R.'s state constitutional right to have factual determinations made by a jury. RAP 13.4(b)(1)-(b)(4).

D. The Issue of First Impression of Whether RCW 4.16.340(1) Provides a Remedy for Childhood Sexual Abuse that Continues Through the Age of Majority is an Issue of Substantial Public Importance

Finally, whether childhood sexual abuse that continues after age 18 can be a recoverable "injury suffered as a result of childhood sexual abuse" is a matter of substantial public importance requiring review.

Childhood sexual abuse frequently is a continuing trauma, not an isolated "act." As this Court has recognized, it is "within the common knowledge" that "grooming" is the manipulative process of how a relationship between the perpetrator and a survivor "began, developed, and expanded," that it is a 'constant process happening all of the time," and that its purpose is to "desensitize" a survivor to "escalating sexual advances." *Matter of Phelps*, 190 Wn.2d 155, 161, 167, 410 P.3d 1142 (2018). The purpose of grooming and sexual abuse is to develop a "toxic trust" with the child that gradually "reduce[s] the child's inhibitions and increase[s] the offender's control over the child." Basyle J. Tchividjian, *Predators and Propensity: The Proper Approach for Determining the Admissibility of Prior Bad Acts Evidence in Child Sexual Abuse Prosecutions*, 39 Am. J. Crim. L. 327, 368 (2012). "This toxic trust eventually renders the child virtually helpless, creating an environment for ongoing abuse . . . ." Tchividjian, , 39 Am.

J. Crim. L. at 368. Indeed, childhood sexual abuse continues for an average of four years. Catrien Bijleveld, *Sex Offenders and Sex Offending*, 35 Crime & Just. 319, 356 (2007).

No switch flips in a survivor's brain suddenly allowing them to recognize continuing sexual abuse simply because they turned 18. Both scientific studies and Washington law recognize that a young person's brain continues to develop into their early 20s. *Barlow v. State*, ___ Wn.3d ___, 540 P.3d 783, 799 (2024) (Montoya-Lewis, J., dissenting). And as a matter of common sense, earlier childhood sexual abuse, entrenched "toxic trust," and manufactured helplessness further inhibit a survivor's ability to recognize continuing abuse for what it is, regardless of the turn of a calendar page.

Childhood sexual abuse continuing past the age of majority is a recurring issue for our state's courts and survivors of sexual abuse. **Appendix D** (arguing RCW

4.16.340(1) applied to teacher's childhood sexual abuse of student that continued and escalated past graduation). Whether this Court will adopt an interpretation of RCW 4.16.340(1) that reflects the legal, scientific, and moral reality that childhood sexual abuse that continues past age 18 can be an "injury suffered as a result of childhood sexual abuse" is of paramount importance to them both. RAP 13.4(b)(4).

VI. Conclusion

RCW 4.16.340(1) is the cornerstone of Washington's strong public policy addressing the continuing, lifelong injuries suffered by survivors of childhood sexual abuse. RCW 4.16.340's history and broad language is permeated with an intended liberal construction in favor of providing a remedy to survivors for injuries suffered as a result of childhood sexual abuse. Division Two's decision not only contravenes this intent and controlling decisional law but also engages in impermissible appellate factfinding and

issue raising in order to do so. This Court's ultimate decision on the statute's interpretation, rejecting Division Two's opinion on an issue of first impression that narrows relief for survivors of childhood sexual abuse, is critical.

This Court should grant review, reverse Division Two's opinion holding that RCW 4.16.340(1) does not apply to childhood sexual abuse that continues past age 18, and affirm the trial court's order denying summary judgment.

Respectfully submitted this 25th day of March 2024.

The undersigned certifies that this brief consists of 4,980 words in compliance with RAP 18.17.

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CERTIFICATE OF SERVICE

Katie Hedger, being first duly sworn upon oath, deposes and says:

I am a citizen of the United States of America and of the State of Washington, over the age of twenty-one years, not a party to the above-entitled matter and competent to be a witness therein.

That on March 25, 2024, I delivered via Email a true and correct copy of the above document, directed to:

Sean Hornbrook
Brian Baker
Attorney General of Washington
7141 Cleanwater Drive SW
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Olympia, WA 98504-0126

DATED this 25th day of March 2024.

/s/ Katie Hedger
Katie Hedger
Legal Assistant

PCVA LAW

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APPENDIX A

Filed
Washington State
Court of Appeals
Division Two

December 12, 2023

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

M.R., an individual, Respondent, v. STATE OF WASHINGTON; YAKIMA VALLEY COMMUNITY COLLEGE, a public corporation; CODY BUTLER, an individual; Petitioners.	No. 56781-4-II UNPUBLISHED OPINION

CRUSER, J. — In 2019 MR sued the State of Washington, Yakima Valley Community College, and Cody Butler (collectively the State) for a variety of claims arising from sexual abuse she alleged that she experienced in 2000 when she was 17 years old and from 2001 to 2003 when she was 18 years old or older. The State moved for summary judgment based on the statute of limitations. The trial court denied the motion for summary judgment after concluding that the childhood sexual abuse statute of limitations, RCW 4.16.340, applied to all of MR's claims, including those based on acts that occurred after MR turned 18.

The trial court certified the issue of whether RCW 4.16.340 applies to claims based on sexual abuse that began when MR was under 18 and continued after she turned 18 for immediate review under RAP 2.3(b)(4). A commissioner of this court granted discretionary review of the certified issue.

The State also argues that if the summary judgment order is reversed, then (1) the common law discovery rule does not apply to MR's claims based on the alleged acts that occurred after she turned 18 because she failed to make further diligent inquiry to ascertain the scope of the actual harm, and (2) MR's remaining claim of child sexual abuse fails because she fails to establish causation.

We hold that the plain language of RCW 4.16.340 demonstrates that the childhood sexual abuse statute of limitations applies only to claims based on acts of childhood sexual abuse occurring before the plaintiff turns 18. Accordingly, we reverse the summary judgment order and remand to the trial court for further proceedings.

FACTS[1]

I. BACKGROUND

In the summer of 2000, just before starting her senior year in high school, 17-year-old MR participated in a club basketball tournament with hopes of being recruited to play college basketball. While at the gym, the club director introduced MR to Cody Butler, an assistant women's basketball coach from Yakima Valley Community College (YVCC).

The club director and Butler began to make comments about MR's body, including her abs, buttocks, and chest. After the director commented about MR's abdominal muscles, Butler put his hand on MR's stomach and "trace[d] his hand down the line of the V on [her] stomach to the top of [her] public [sic] area, the top of [her] basketball shorts." Clerk's Papers (CP) at 53.

[1] Because we are addressing a summary judgment motion, we recount the facts in the light most favorable to the nonmoving party, MR. *Lakey v. Puget Sound Energy, Inc.*, 176 Wn.2d 909, 922, 296 P.3d 860 (2013).

MR did not consent to Butler touching her, and she found the men's comments and the touching uncomfortable and confusing. But because the men acted as if their behavior was normal and she wanted a basketball scholarship, she tolerated it.

MR turned 18 in October 2000. In 2001, sometime before her high school graduation, Butler invited MR to visit the YVCC campus.

During this visit, MR attended practice, and Butler commented about the other players' appearances. These comments included comments about the other players' "ass[es]" and "tits." *Id.* at 126. She had some physical contact with Butler during practice, and he placed his hand on the small of her back while she was on the sideline to make her feel more comfortable. At the time, this contact did not make MR feel uncomfortable.

Butler also gave one of the team members some money and told her to "make sure that [MR] had a good time that night." *Id.* at 124. The team member used Butler's money to buy alcohol and took MR to a party at the "baseball house." *Id.* Because MR wanted to impress the basketball team, she did not feel like she could say no, and she drank until she blacked out. The next day Butler noticed that she was hungover and joked about it with the other team member, stating that they had shown MR a really good time and that she would certainly now choose to come to YVCC.

MR did not feel uncomfortable during this visit. But she later came to believe that Butler's contact with her and encouraging her to drink was inappropriate.

Butler offered MR a basketball scholarship a week after her visit to YVCC. MR accepted the offer and arrived at the school in August 2001. MR attended YVCC and was a member of the basketball team until 2003. During this time, Butler spent time alone with MR, and, according to MR, treated her differently from the other players by giving her special privileges.

According to MR, Butler would frequently engage in unwanted and inappropriate physical contact with her by pressing his erect penis into her during training and by pulling her into his lap while he had an erect penis. MR stated that she was uncomfortable with this contact, but because she was inexperienced she believed that this was "how college coaches act." *Id.* at 57.

Butler would also ask MR to give him neck massages, and he would give her massages in his office. At one point, the YVCC athletic director walked in on them in Butler's office while Butler was giving MR a neck massage at 9:00 PM. Butler would also take MR out to eat and take her to his house to eat, watch television, and practice yoga. He also provided her with alcohol on several occasions.

Butler's behavior made MR uncomfortable, and she started to skip practice to avoid him. But she never complained about his behavior to anyone while at YVCC because she "had no idea that it was wrong," and she believed that he loved her. *Id.* at 130.

MR's teammates, however, observed that MR's relationship with Butler was inappropriate and believed that Butler and MR were in an intimate relationship. Some of MR's teammates told her that her relationship with Butler was wrong and complained to the athletic director. One of MR's teammates also told her "that what [Butler] was doing was inappropriate" after walking in on MR and Butler in his office. *Id.* at 65. But MR "didn't want to listen to her," and their friendship ended. *Id.*

Apparently in response to the complaint, a team meeting was held. During this meeting, without first warning MR, Butler announced that he was not sleeping with MR. MR was "[m]ortified" by this announcement, and she believed that her relationship with Butler had damaged her relationship with the other team members. *Id.* at 62.

In 2003, MR accepted a basketball scholarship at a four-year university in Montana. In 2004, MR visited Butler in Nevada. During this visit, they drank together and had sexual intercourse at least twice.

After leaving YVCC, MR became drug and alcohol addicted, she suffered from an eating disorder, and she ended up homeless and in an abusive relationship. She was eventually incarcerated in 2009.

After her release from prison in 2012, MR earned her master's degree, married, had three children, and worked full time. MR asserted that during this time she attempted to "numb[ ] [herself] to forget about the dark chapter of [her] life." *Id.* at 192. And she asserted that a series of life stressors prevented her from being mentally or physically capable of seeking the help she knew she needed.

II. LAWSUIT

In October 2018, MR became aware that the FBI was investigating the director of the basketball club she had attended in 2001 "for sexual misconduct with a former basketball player." *Id.* This news caused her to think about what had happened between her and Butler in a new light.

"It was at this time in 2018 that [she] started thinking about [what had happened to her] with a clearer head space because [she] was no longer in a cycle of sex, drugs, eating disorders, and alcohol abuse." *Id.* at 193. She began to realize what had happened to her and started the process of learning how she had been affected and how her experiences had harmed her. In early 2019, MR started therapy, and she began to understand how Butler's abuse had affected her in ways she had never before considered.

In May 2019, MR filed suit against the State. MR alleged negligence, sexual discrimination, and negligent infliction of emotional distress claims against the State of Washington, Yakima Valley Community College, and Butler and outrage and assault claims against Butler in his individual capacity. Her initial claims were based on her contacts with Butler from 2001 through 2003. She later amended her claims to include the touching incident that occurred in 2000, when she was 17 years old.

III. SUMMARY JUDGMENT

The State moved for summary judgment. Regarding the claims related to the incidents that occurred between 2001 and 2003, they argued that the two- and three-year statutes of limitations, RCW 4.16.080(2) and RCW 4.16.100(1), barred these claims and that the common law discovery rule did not apply. Regarding MR's claims based on the 2000 incident, they argued that MR failed to establish questions of fact as to whether Butler was acting as an agent for YVCC, whether the incident was a "reportable offense," or whether the incident was a proximate cause of any damages or injuries. CP at 44.

In support of its argument that MR had failed to demonstrate that the 2000 incident was a proximate cause of any damages or injury, the State filed a partial transcript of the deposition of Phoebe Mulligan, a social worker who had conducted a forensic psychological evaluation of MR. During this deposition, the State's counsel asked Mulligan if the 2000 incident caused MR's anxiety and posttraumatic stress disorder. Mulligan responded that she did not know. Counsel also asked Mulligan if the 2000 incident had caused MR's depression, eating disorder, or substance abuse. Mulligan responded that it did not.

MR responded that the common law discovery rule applied to the incidents that occurred after she turned 18 and that RCW 4.16.340, the childhood sexual abuse statute of limitations, applied to the incident that occurred when she was 17 and to any claim or cause of action "where the gravamen of the action" was the childhood sexual abuse. *Id.* at 228. Among the several exhibits that MR filed in support of her opposition to summary judgment was a declaration from Mulligan.

Mulligan disputed the State's characterization of her deposition testimony as establishing that the 2000 incident was not a proximate cause of any damages or injuries because Mulligan was unable to say that the 2000 "grooming behavior" was the cause of any specific harm. *Id.* at 197.

Mulligan stated that when a child or young person is exposed to "a prolonged period of adverse traumatic events, in multiple forms, [they] typically react negatively to the entire prolonged period of adverse traumatic events." *Id.* at 198. They also perceive that "all trauma-producing events are . . . one continuous negative experience." *Id.* Mulligan further stated that it was "generally understood in mental health that the negative effects of trauma-producing events are cumulative" and that "each event contribut[es] additional harm or damage." *Id.* at 198-99. She asserted that to understand the impact of the sexual abuse on MR, all of the events, including "the grooming that eventually allowed the sexual abuse to materialize" must be considered." *Id.* at 199.

Mulligan then opined that MR was more probably than not "significantly impacted by [the] four continuous years of sexual abuse, including the sexual abuse when she was seventeen years old." *Id.* at 200. She further opined that no single incident caused the damages, and that "[i]t is not possible to parse out which specific trauma-producing events caused which specific ailment that M.R. now suffers from." *Id.*

The trial court denied the State's summary judgment motion after concluding that RCW 4.16.340 applied to all claims because all of the claims were based on "a series of events by the same alleged perpetrator" that began before MR was 18 and the expert witnesses had stated that it was "impossible to segregate the harm." Verbatim Rep. of Proc. at 36. The court stated that because this was "a continuous series of events," it was "prudent to apply the childhood sex abuse statute of limitations to the events." *Id.* But the court noted that if the childhood sex abuse statute did not apply, it would "be ruling the other way" because MR did not establish the reasonable diligence that was required under the common law discovery rule. *Id.* at 37.

IV. DISCRETIONARY REVIEW

The trial court granted the State's subsequent request for certification of the summary judgment order for immediate review under RAP 2.3(b)(4). Our commissioner granted the motion for discretionary review of the statute of limitations issue under RAP 2.3(b)(4), which permits review of the controlling question of law certified by the trial court.

ANALYSIS

I. RCW 4.16.340

The issue the commissioner accepted for discretionary review is whether RCW 4.16.340's statute of limitations applies to MR's claims based on allegations of adult sexual abuse when these acts are part of a continuing pattern of abuse that started when she was under 18. There is no case law addressing the application of RCW 4.16.340 when some of the acts of sexual abuse occurred when the plaintiff was under 18 and other acts occurred after the plaintiff turned 18. Thus, this issue is an issue of first impression.

The State argues that the trial court erred when it concluded that RCW 4.16.340's statute of limitations applied to all of MR's claims. They contend that the plain language of RCW 4.16.340 establishes that the child sexual abuse statute of limitations applies only to acts that occur before the plaintiff turns 18 even if the later "abuse was a continuation of sexual abuse that began when [the plaintiff] was a minor." State's Br. at 21.

MR argues that the plain language of RCW 4.16.340 does not limit the application of the statute to claims for acts that occurred when the plaintiff was under 18. MR contends that "[t]he only limitation [the statute] imposes is that the 'injury' for which recovery is sought must be caused by childhood sexual abuse" and, apparently, that "Butler's subsequent, continuing sexual abuse after she turned 18" amounts to an "injury" caused by childhood sexual abuse. Br. of Resp't at 2 (emphasis omitted), 35.

We agree with the State.

A. LEGAL PRINCIPLES

The interpretation of a statute is an issue of law that this court reviews de novo. *Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002). Our goal when interpreting a statute is to "ascertain and carry out the Legislature's intent." *Id.* If the meaning of the statute is plain on its face, we "must give effect to that plain meaning as an expression of legislative intent." *Id.* at 9-10. We discern a statute's plain meaning from the ordinary meaning of the language in the context of related statutory provisions, the entire statute, and related statutes. *Id.* at 9-12.

If a statute is susceptible to more than one reasonable interpretation after reviewing the plain meaning, it is ambiguous. *Id.* at 12. If a statute is ambiguous, this court may "resort to aids [of] construction, including legislative history." *Id.*

B. CHILDHOOD SEXUAL ABUSE STATUTE OF LIMITATIONS AND LEGISLATIVE FINDINGS

RCW 4.16.340 establishes the statute of limitations for claims based on acts of childhood sexual abuse. The statute provides:

> (1) All claims or causes of action based on intentional conduct brought by any person for recovery of damages for injury suffered as a result of childhood sexual abuse shall be commenced within the later of the following periods:
>
> (a) Within three years of the act alleged to have caused the injury or condition;
>
> (b) Within three years of the time the victim discovered or reasonably should have discovered that the injury or condition was caused by said act; or
>
> (c) Within three years of the time the victim discovered that the act caused the injury for which the claim is brought:
>
> PROVIDED, That the time limit for commencement of an action under this section is tolled for a child until the child reaches the age of eighteen years.
>
> (2) The victim need not establish which act in a series of continuing sexual abuse or exploitation incidents caused the injury complained of, but may compute the date of discovery from the date of discovery of the last act by the same perpetrator which is part of a common scheme or plan of sexual abuse or exploitation.
>
> . . . .
>
> (4) For purposes of this section, "child" means a person under the age of eighteen years.
>
> (5) As used in this section, "childhood sexual abuse" means any act committed by the defendant against a complainant who was less than eighteen years of age at the time of the act and which act would have been a violation of chapter 9A.44 RCW or RCW 9.68A.040 or prior laws of similar effect at the time the act was committed.

RCW 4.16.340.

As part of its most recent amendment to RCW 4.16.340 in 1991, which added subsection (1)(c) to the statute, the legislature made the following intent findings:

> The legislature finds that:
> (1) Childhood sexual abuse is a pervasive problem that affects the safety and well-being of many of our citizens.
> (2) Childhood sexual abuse is a traumatic experience for the victim causing long-lasting damage.
> (3) The victim of childhood sexual abuse may repress the memory of the abuse or be unable to connect the abuse to any injury until after the statute of limitations has run.
> (4) The victim of childhood sexual abuse may be unable to understand or make the connection between childhood sexual abuse and emotional harm or damage until many years after the abuse occurs.
> (5) Even though victims may be aware of injuries related to the childhood sexual abuse, more serious injuries may be discovered many years later.
> (6) The legislature enacted RCW 4.16.340 to clarify the application of the discovery rule to childhood sexual abuse cases. At that time the legislature intended to reverse the Washington supreme court decision in *Tyson v. Tyson*, 107 Wn.2d 72, 727 P.2d 226 (1986).
> It is still the legislature's intention that *Tyson v. Tyson*, 107 Wn.2d 72, 727 P.2d 226 (1986) be reversed, as well as the line of cases that state that discovery of any injury whatsoever caused by an act of childhood sexual abuse commences the statute of limitations. The legislature intends that the earlier discovery of less serious injuries should not affect the statute of limitations for injuries that are discovered later.

LAWS OF 1991, Ch. 212 § 1.

C. ANALYSIS

RCW 4.16.340(1) states that it applies to "injur[ies] suffered as a result of childhood sexual abuse." The statute defines "childhood sexual abuse" as "any act committed by the defendant against a complainant who was less than eighteen years of age at the time of the act." RCW 4.16.340(5). This language shows that the sexual abuse at issue must be an "act" committed against a plaintiff before the plaintiff turned 18. Nothing in this language suggests that the statute also applies to any acts that occurred after the plaintiff reaches the age of 18.

RCW 4.16.340(1) permits a plaintiff to seek relief for all *injuries* that are the result of an act of childhood sexual abuse, regardless of when those injuries occurred. But this does not extend the statute of limitation on *claims* arising from later acts of sexual abuse that occurred when the plaintiff was an adult.

MR contends that "[t]he only limitation [the statute] imposes is that the 'injury' for which recovery is sought must be caused by childhood sexual abuse" and that "Butler's sexual abuse of M.R. after she turned 18" qualifies as an "injury" caused by the childhood sexual abuse because the 2000 incident facilitated the later abuse. Br. of Resp't at 2 (emphasis omitted), 36. But even though an act of grooming may facilitate later abusive acts, the grooming does not *cause* the subsequent abusive act. The later act is an independent intentional act. Accordingly, this argument is not persuasive.

MR also filed a statement of additional authorities (SAA) referring this court to *Wolf v. State*, ___ Wn.3d ___, 534 P.3d 822 (2023). MR asserts that *Wolf* demonstrates that "recoverable injuries under RCW 4.16.340 can have multiple causes," and argues that Butler's "abuse" and "conduct" in 2000 "caused his continuing sexual abuse of [MR] past age 18." SAA at 1. But as we discuss above, MR's assertion that the 2000 abuse caused the later abuse is not persuasive. And *Wolf* is not helpful here because it does not address a continuing course of conduct occurring over a time period during which the plaintiff was both a minor and an adult.

The only part of RCW 4.16.340 that could potentially be read to extend the statute to acts of sexual abuse committed against the plaintiff after the plaintiff turned 18 is subsection (2). As stated above, that subsection provides:

> The victim need not establish which act in a series of continuing sexual abuse or exploitation incidents caused the injury complained of, but may compute the date

> of discovery from the date of discovery of the last act by the same perpetrator which is part of a common scheme or plan of sexual abuse or exploitation.

RCW 4.16.340(2).

Although this subsection acknowledges that sexual abuse can occur as a series of acts taking place over a period of time, it addresses how to compute the date of discovery under such circumstances. It does not state that every act that occurs during the course of the common scheme or plan of sexual abuse that occurs after the plaintiff turns 18 qualifies as an act of childhood sexual abuse.

Had the legislature intended this result, it could have used similar language regarding an ongoing "common scheme or plan of sexual abuse or exploitation" in its definition of "childhood sexual abuse" rather than limiting the meaning of that term to "any act committed by the defendant against a complainant who was less than eighteen years of age at the time of *the act*." RCW 4.16.340(2), (5) (emphasis added).[2] The legislature certainly knew how to use language that would encompass multiple acts in a common scheme or plan, but it chose not to do so when defining the scope of "childhood sexual abuse" to which the more generous statute of limitations applies.

The conclusion that RCW 4.16.340 does not apply to acts committed after the plaintiff turns 18 that occur during the course of a common scheme or plan of sexual abuse is also consistent with the legislature's 1991 intent statement. The intent statement is specific to childhood sexual abuse; it does not mention the inclusion of any acts that might occur as part of a common scheme or plan of sexual abuse or exploitation that continues into adulthood. This suggests that the

[2] There are no cases applying this subsection in the context of continuing sexual abuse that took place over a span of time during which the plaintiff was both under and over 18 years of age.

legislature did not intend the special statute of limitations to apply outside of the context of acts committed while the plaintiff was under 18.

Additionally, the legislature's intent statement demonstrates that RCW 4.16.340 was intended to address the risks that a young person may not understand that they were abused or that a young person would not be able to connect a specific act of abuse to the resulting injury. These risks diminish as the person ages. And in enacting RCW 4.16.340, the legislature made a policy decision to draw the line regarding when this risk was sufficiently reduced to justify imposing the adult statute of limitations at 18 years of age. Interpreting RCW 4.16.340 to apply to acts that occurred when the plaintiff was 18 or older usurps the legislature's policy decision.

We hold that the plain language of RCW 4.16.340 demonstrates that the childhood sexual abuse statute of limitations applies only to claims based on acts of childhood sexual abuse occurring before the plaintiff turns 18.[3] Accordingly, the trial court erred when it concluded that RCW 4.16.340's statute of limitations applied to the claims arising out of the alleged acts of abuse that occurred after MR turned 18.

We reverse the summary judgment order, and remand for further proceedings.

II. ADDITIONAL ISSUES

In addition to the statute of limitations issue addressed above, the State argues that (1) the common law discovery rule does not apply to MR's claims based on the alleged acts that occurred after she turned 18 because she failed to make further diligent inquiry to ascertain the scope of the

[3] That is not to say that MR cannot argue to the jury that she is entitled to all damages proximately caused by the act that occurred before she turned 18. And this proximate cause inquiry must be understood in the context of the entire course of conduct, including those incidents that occurred after MR turned 18.

actual harm, and (2) MR's remaining claim of child sexual abuse fails because she fails to establish causation. We do not reach these issues.

Our commissioner granted discretionary review of the issue certified by the trial court regarding whether the statute of limitations in RCW 4.16.340 applied to all of MR's allegations of sexual abuse under RAP 2.3(b)(4). The State's additional arguments fall outside the order granting discretionary review. Because the commissioner did not grant discretionary review on any additional issues, we do not reach them. RAP 2.3(e); *Johnson v. Recreational Equip., Inc.*, 159 Wn. App. 939, 959 n.7, 247 P.3d 18 (2011) (holding that the appellate court may specify the issue or issues as to which discretionary review is granted).

We reverse the summary judgment order and remand to the trial court for further proceedings.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Cruser, J.
CRUSER, J.

We concur:

Glasgow, CJ
GLASGOW, C.J.

Price, J.
PRICE, J.

APPENDIX B

NO. 56781-4

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

M.R., an individual,

Respondent,

v.

STATE OF WASHINGTON; YAKIMA VALLEY COMMUNITY COLLEGE, a public corporation; CODY BUTLER, an individual,

Petitioners.

PETITIONERS' MOTION FOR DISCRETIONARY REVIEW

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I. INTRODUCTION

This case concerns allegations of sexual abuse and harassment that occurred approximately 15 years before Plaintiff M.R. filed suit against Defendants State of Washington, Yakima Valley Community College, and Cody Butler. With one exception, the entirety of the alleged sexual abuse occurred when Plaintiff was an adult college student; the single remaining alleged incident occurred when Plaintiff was age 17. The parties' experts agree that it is impossible to say that any particular instance of alleged abuse, as opposed to the entire series of alleged events, caused Plaintiff's damages.

Defendants moved for summary judgment arguing that (1) the allegations of adult sexual abuse were time-barred by the applicable general statutes of limitation in RCW 4.16.080(2) and .100(1) and the common law discovery rule, and (2) Plaintiff lacked evidence of causation as to her sole allegation of childhood sexual abuse. For purposes of the motion, Defendants did *not* dispute the timeliness of the allegation of childhood

sexual abuse. The trial court, however, erroneously applied the special *childhood* sexual abuse statute of limitations in RCW 4.16.340 to the allegations of sexual abuse that occurred when Plaintiff was an *adult* and denied the entirety of Defendants' motion.

Defendants now seek discretionary review of that denial of summary judgment for two reasons. First, as certified by the trial court, application of RCW 4.16.340 to Plaintiff's allegations of adult sexual abuse is a controlling question of law for which, at a minimum, there is a substantial ground for a difference of opinion and immediate appellate review may materially advance the resolution of this litigation. *See* RAP 2.3(b)(4). Second, the trial court committed obvious error in applying RCW 4.16.340 beyond Plaintiff's single alleged incident of childhood sexual abuse, and that error on a case dispositive issue renders further proceedings in the trial court useless. *See* RAP 2.3(b)(1). This Court should accept review for either reason.

But for the trial court's obvious error in applying RCW 4.16.340 to Plaintiff's claims of adult sexual abuse, Defendants would have been entitled to judgment in their favor. Accordingly, because that error on a case dispositive issue renders all further proceedings useless in the trial court, review should be granted under RAP 2.3(b)(1).

VI. CONCLUSION

For the above reasons, this Court should accept review of the order denying Defendants' motion for summary judgment.

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RESPECTFULLY SUBMITTED this 13th day of June, 2022.

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APPENDIX C

Filed
Washington State
Court of Appeals
Division Two

February 22, 2024

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

M.R., an individual, Respondent, v. STATE OF WASHINGTON; YAKIMA VALLEY COMMUNITY COLLEGE, a public corporation; CODY BUTLER, an individual; Petitioners.	No. 56781-4-II ORDER DENYING MOTION FOR RECONSIDERATION

Respondent M.R. moves for reconsideration of the Court's unpublished opinion filed on December 12, 2023. Upon consideration, the Court denies the motion. Accordingly, it is

SO ORDERED.

PANEL: Jj. Glasgow, Cruser, Price

FOR THE COURT:

CRUSER, J.

APPENDIX D

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

A.L.G., individually,

Plaintiff,

vs.

SEATTLE PREPARATORY SCHOOL, a Washington corporation; JANE and JOHN DOES 1-5, individuals,

Defendant.

NO. 22-2-09002-2 SEA

PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT SEATTLE PREPARATORY SCHOOL'S MOTION FOR SUMMARY JUDGMENT

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I. RELIEF REQUESTED

Plaintiff A.L.G. respectfully requests that the Court deny Defendant Seattle Preparatory School's ("Seattle Prep's") motion for summary judgment.

First, Plaintiff's claims arise out of multiple instances of sexual misconduct which meet the broad statutory definition of childhood sexual abuse. Plaintiff A.L.G. testified that during the time that she was a student at Seattle Prep, Pietz would put his hands on her legs, in the space between her knees and the short line of her thighs. Looking back, she testified that this touching was sexually motivated and became part of the grooming. This sexual contact meets the definition of "sexual abuse" and Plaintiff's claims were timely filed under RCW 4.16.340.

Second, Plaintiff brings claims against Defendant predicated on childhood sexual abuse. The other forms of harms and damages Plaintiff suffered, including sexual grooming, boundary invasions, emotional abuse, and the subsequent sexual abuse after she turned eighteen are indistinguishable from and part of her injuries resulting from childhood sexual abuse and also fall under RCW 4.16.340's statute of limitations.

Third, even if RCW 4.16.340 did not apply to Plaintiff's claims, such claims are timely under the common law discovery rule. The record establishes that A.L.G. did not understand that she had been sexually abused more than three years before filing this lawsuit, A.L.G. did not understand her psychological damages more than three years before bringing this lawsuit, and A.L.G. did not make the connection between her injuries and Seattle Prep's negligence and liability more than three years before bringing this suit.

Fourth, Seattle Prep is liable for Pietz's continuing sexual abuse of Plaintiff A.L.G. in the Summer of 2003 after she graduated from Seattle Prep because it was proximately caused by Seattle Prep's breach of its undisputed duty to protect her from Pietz's childhood sexual abuse when she was a student. It also owed a duty to Plaintiff A.L.G. based on its special relationship with her as its employee in the "Ready, Set, Go!" program and based on its special relationship with Pietz.

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II. STATEMENT OF FACTS

A. A.L.G. Did Not Connect Her Damages to Jeffrey Pietz's Sexual Victimization More Than Three Years Prior to Filing the Complaint.

From 1999-2003, Plaintiff A.L.G. attended Seattle Prep as a young and talented high school student. During the time she was a Seattle Prep student, she played softball.[1] Seattle Prep teacher and coach, Jeffrey Pietz, was A.L.G.'s varsity softball coach her junior and senior year.[2] While her coach, and during the time A.L.G. was a Seattle Prep student, Pietz targeted A.L.G. and engaged in boundary invasions, inappropriate sexual touching, and grooming techniques including "touch, talk, emotional, sexually motivated contact in situations that [they] were in together."[3] Ultimately Pietz had oral and sexual intercourse with A.L.G., shortly after A.L.G.'s graduation.[4]

Prior to her senior year of high school, Pietz's grooming towards A.L.G. included "peer-to-peer behaviors" such as sharing inside jokes, having conversations about topics "that you would share with your friends," and providing special privileges.[5] The next year, Pietz's inappropriate grooming, boundary invasions, and touching of A.L.G. escalated. During her senior year, every time there was a huddle for softball, he was right next to A.L.G. "shoulder to shoulder, hand on [her] hand."[6] When they were driving in the van to practices, A.L.G. was always supposed to sit next to him in the front of the van "where he would touch [her] leg or [her] arm."[7] One day A.L.G. chose to sit in the back of the van with the rest of her teammates instead of the front of the van with Pietz.[8] Throughout softball practice that day, instead of being the "jokey happy fun coach," Pietz was "completely stoic" and would hit the ball to the team

[1] Cochran Decl. at Ex. 1 at 132:6-22.
[2] *Id.* at 132:12-22.
[3] *Id.* at 115:14-116:4.
[4] *Id.* at 115:21-116:4; 154:4-155:13.
[5] *Id.* at 142:9-22.
[6] *Id.* at 117:14-19.
[7] *Id.* at 117:19-21.
[8] *Id.* at 166:14-21.

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harder than usual to the point where A.L.G.'s teammate asked A.L.G. what was going on.[9] A.L.G. knew that Pietz was punishing her because he did not like the fact that she had tried to put space between them.[10] After that softball practice incident, A.L.G. continued to sit in front of the van with Pietz "to appease him."[11]

While A.L.G. was a Seattle Prep student, Pietz often put his arm around A.L.G."[12] There were also multiple times when Pietz put his hands on A.L.G.'s legs; these incidents usually occurred in more "intimate moments" when they were alone or having an emotional conversation.[13] For example, during one of the first incidents, A.L.G. was alone with Pietz in his office and Pietz started to talk to A.L.G. about her relationship with her boyfriend at the time.[14] During that conversation, they were sitting face-to-face and Pietz placed his hands on her legs, in the space between her knees and the "short line of [her] thighs."[15] Pietz continued to meet with A.L.G. after hours where he put his hands on her legs and he would also place his hand on her legs when they were in the van together.[16] This touching "became familiar. It became part of the grooming."[17]

During the softball season, the softball team also had social events. During an overnight for a team event, Pietz set his sleeping bag right next to A.L.G.[18] Over spring break during their senior year, Pietz took his female players prom dress shopping in Portland, and later admitted to A.L.G. that he was "checking [her] out" as she tried on dresses.[19] Later, at a State softball

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[9] *Id.* at 166:22-167:16.
[10] *Id.* at 167:4-7.
[11] *Id.* at 167:12-16.
[12] *Id.* at 117:21-23.
[13] *Id.* at 136:11-17.
[14] *Id.* at 136:17-24.
[15] *Id.* at 136:11-137:3; 137:14-15.
[16] *Id.* at 117:24-25; 137:4-8; 138:11-18.
[17] *Id.* at 137:4-8.
[18] *Id.* at 143:5-18.
[19] *Id.* at 118:5-11.

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tournament her senior year, the team stayed at a hotel in Tacoma.[20] Pietz invited A.L.G. to his hotel room and A.L.G. sat on his bed right next to him "legs touching."[21] At this same tournament, Pietz and A.L.G. also met at a stairwell to talk "just the two of [them]" where they sat "leg to leg" right next to each other so that their legs were touching.[22]

Within one day of A.L.G.'s graduation in 2003, and the same day she returned home from the Seattle Prep Senior Night "all-nighter" Pietz invited A.L.G. to go over to his house.[23] At his house, Pietz kissed A.L.G. and groped and sexually touched her.[24] Later that same day, Pietz and A.L.G. met in his car where Pietz first started to touch her leg, and then moved his hand up her leg and again sexually touched her. Pietz "asked or implied" that A.L.G. should reciprocate so she performed oral sex on him.[25]

Soon thereafter, the Seattle Prep "Ready, Set, Go!" summer program started where A.L.G. was an employee of the Seattle Prep program and Pietz was her supervisor.[26] Pietz's sexual victimization of A.L.G. continued and escalated to sexual intercourse while she was working as a Seattle Prep employee under his supervision.[27] This sexual intercourse even occurred on the school premises.[28]

Pietz's sexual victimization of A.L.G. only ended because A.L.G moved out of state to Arizona for college.[29] However, even after A.L.G. moved out of state, Pietz still attempted to contact her, and even purchased a burner phone for her to try to maintain contact.[30] When

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[20] *Id.* at 117:25-118:4; 134:6-15.
[21] *Id.* at 117:24-118:4; 134:22-25.
[22] *Id.* at 117:24-118:4; 134:6-15.
[23] *Id.* at 145:19-146:20.
[24] *Id.* at 146:3-148:3.
[25] *Id.* at 148:11-150:12.
[26] *Id.* at 151:1-6; Cochran Decl. at Ex. 3 at 66:24-67:11.
[27] Cochran Decl. at Ex. 1 at 150:17-151:6; 154:1-155:13; 156:25-157:2; Cochran Decl. at Ex. 3 at 66:24-67:11.
[28] Cochran Decl. at Ex. 1 at 155:1-9.
[29] *Id.* at 48:7-19.
[30] *Id.* at 51:2-9.

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A.L.G. tried to distance herself from Pietz, he would have "a big emotional reaction" like a "depressive episode."[31] At one point, A.L.G. had to physically break the burner phone because she "felt like he wouldn't leave [her] alone."[32]

After the sexual grooming and abuse by Pietz, A.L.G. began experiencing trauma symptoms like problems with depression, overeating, and anxiety.[33] She thought it was because she was homesick and did not fit in.[34] In college, she struggled with self-harm and an eating disorder where she would binge eat, over-exercise, and then throw up.[35] As she was struggling with these problems in her early years of college and post-college, A.L.G. "spent a lot of time trying to figure out why and looking back at [her] childhood and not really uncovering anything and just really struggling with . . . the root of all of that."[36]

In 2012, A.L.G. started to see a therapist, Dr. Wright, for mental health treatment.[37] She initially did not talk to Dr. Wright about Pietz because at that time she "had no idea it was abuse or something bad" or that she had been harmed by Pietz.[38] It was not until June 2020 that A.L.G. first disclosed the sexual victimization by Pietz to Dr. Wright.[39] After disclosing to Dr. Wright, A.L.G. testified that it felt like "peeling back the layers in [her] brain" because of how much she had repressed.[40] A.L.G. further testified that prior to 2020 she did not understand that she was a victim of sexual abuse and she did not make the connection between the abuse and her injuries.[41]

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[31] *Id.* at 54:21-55:10.
[32] *Id.* at 54:8-15.
[33] Urquiza Decl. at ¶ 19.
[34] Urquiza Decl. at ¶ 19; Cochran Decl. at Ex. 2 at 225:5-18; 311:13-19.
[35] Cochran Decl. at Ex. 2 at 225:5-18.
[36] *Id.* at 310:9-15.
[37] Cochran Decl. at Ex. 1 at 47:15-17.
[38] *Id.* at 189:25-190:7; 191:17-192:3.
[39] Urquiza Decl. at ¶ 20; Cochran Decl. at Ex. 2 at 262:16-22.
[40] Cochran Decl. at Ex. 2 at 262:16-18.
[41] Cochran Decl. at Ex. 1 at 191:15-192:3.

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Plaintiff's expert, Dr. Anthony Urquiza, a clinical psychologist, evaluated Plaintiff A.L.G. in this case. Dr. Urquiza opines on a more probable than not basis: "[f]or years A.L.G. has been diligent about going to therapy and seeking treatment for her symptoms, but despite these efforts, she was unable to make a connection between the symptoms she was experiencing and Pietz's sexual victimization."[42] He concludes that only recently has she made the connection between her injuries and the sexual victimization by Pietz.[43] She was unable to make this connection earlier because, "[t]he deceptive and coercive manner of her sexual victimization has kept her unaware, ashamed, and silent—all while her anxiety and trauma symptoms have substantially altered her mental health trajectory."[44]

Dr. Urquiza further opines that A.L.G. meets the diagnosis criteria for Posttraumatic Stress Disorder (PTSD), Anxiety Disorder, and Persistent Depressive Disorder.[45] He states, "given the pervasive nature of sexual victimization, A.L.G. did not even begin to understand that she was a victim of sexual abuse until approximately 2020 (when she disclosed to Dr. Wright that she had a sexual relationship with Pietz) and she did not make any connection between her injuries and the sexual victimization."[46]

B. A.L.G. Did Not Connect Her Psychological Damages to Defendant's Negligence More Than Three Years Prior to Filing the Complaint

Pietz's predatory behavior towards students did not go unnoticed by Seattle Prep. In 1998, just one year before A.L.G. first started attending Seattle Prep, the Seattle Prep principal, Matt Barmore, observed Pietz returning to the Seattle Prep campus from lunch with multiple female athletes in his car.[47] The only action Barmore took in response to this was to inform Pietz

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[42] *Id.* at ¶ 22.

[43] *Id.* at ¶ 24.

[44] *Id.* at ¶ 23.

[45] *Id.* at ¶ 24. Similarly, Seattle Prep's expert also evaluated Plaintiff and testified that throughout A.L.G.'s adult life A.L.G. has been willing to access mental health treatment during periods of distress. Cochran Decl. at Ex. 4 at 47:12-15. She also determined that A.L.G. met the criteria for PTSD. *Id.* at 25:15-21.

[46] Urquiza Decl. at ¶ 24.

[47] Cochran Decl. at Ex. 5 at126:19-127:19.

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that only under extenuating circumstances should he give a ride to a player individually in his car.[48] A female Seattle Prep basketball coach, Rebecca Valdivia, who worked at Seattle Prep from approximately 2000-2003 also observed Pietz's inappropriate behavior with students and noticed there was "something off."[49] Pietz would frequently pull players to the side to talk with them or take them into the hall.[50] Valdivia also observed Pietz being "overly friendly with the girls,"[51] including driving female players in his car and selecting his favorite players that he wanted to ride with.[52] He would openly joke and engage in flirtatious behavior with his female students.[53]

In approximately 2002, the Seattle Prep controller, Lorna Walter, observed Pietz and A.L.G. walking alone together near her home in Queen Anne.[54] Ms. Walter thought it was "odd" to see a teacher alone with a student.[55] The next day, Ms. Walter reported this to the Seattle Prep principal, Matt Barmore, and the president, Bob Graby.[56] Barmore and Graby failed to take any disciplinary action in response to this report.

In March 2005, Seattle Prep documented a report of Pietz's "icky, creepy behavior" that cited Pietz text messaging with students, spending time alone in a hotel room with an athlete, sharing gum with an athlete, and spending time alone with a student in Hawaii.[57] In June 2005, a female student athlete also reported that Pietz had a "weird relationship with other players" and that other students would make comments about "being sure to be safe around Coach Pietz"[58] In

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[48] *Id.* at 136:14-24.
[49] Cochran Decl. at Ex. 6 at 24:22-23.
[50] *Id.* at 25:6-25.
[51] *Id.* at 26:1-15.
[52] *Id.* at 26:3-6.
[53] *Id.* at 31:4-32:5.
[54] Cochran Decl. at Ex. 7 at 13:11-14:21.
[55] *Id.* at 15:12-13.
[56] *Id.* at 15:17-16:20.
[57] Cochran Decl. at Ex. 8.
[58] Cochran Decl. at Ex. 9.

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December 2005, the Seattle Prep principal received an email from a staff member stating, "I am forwarding this email string to you so that we might discuss Jeff Pietz and the boundaries he sets or doesn't set with students."[59] In January 2006, a Seattle Prep representative met with Pietz to advise him to stop text messaging student athletes and to stop giving rides to girls.[60]

In March 2006, a Seattle Prep Board Trustee sent an email to other Trustees about concerns regarding Pietz, stating "[f]or many years I have been aware of the 'perception' of inappropriateness as it relates to Jeff's relationships with our female athletes."[61] He further stated that "when we were briefed at the last board meeting about the prospect of allegations of sexual misconduct by a coach there were at least 6 of us… who believed it was [Pietz]."[62] In the same email, the Trustee wrote, "I have also received numerous calls, as a Trustee and a parent, from other concerned parents."[63]

In April 2006, another Trustee responded to this email stating, "when Prep has received complaints that could be verified, it has investigated and, in each case, has found that the allegations of impropriety were groundless."[64] During this time period, Pietz suddenly resigned from Seattle Prep in May 2006.[65] In June 2006, the principal at Pietz's new place of employment contacted Seattle Prep's principal because administrators there had received an anonymous letter making "allegations" against Pietz.[66] The Seattle Prep principal responded that the allegations "are not true."[67]

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[59] Cochran Decl. at Ex. 10.
[60] Cochran Decl. at Ex. 11.
[61] Cochran Decl. at Ex. 12.
[62] *Id.*
[63] *Id.*
[64] Cochran Decl. at Ex. 13.
[65] Cochran Decl. at Ex. 14.
[66] Cochran Decl. at Ex. 15.
[67] *Id.*

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When Pietz was deposed in this case, he admitted to having sexual contact with A.L.G.[68] He also admitted to having sexual contact with two other former Seattle Prep students and he admitted to attempted sexual contact with another former Seattle Prep student.[69] Pietz also admitted that at the time he was having sexual intercourse with A.L.G. in the summer of 2003, she was a Seattle Prep employee and he was the director of the "Ready, Set, Go!" Program and her supervisor.[70]

A.L.G. did not begin to understand the causal relationship between her injuries and Seattle Prep's negligence until 2020, when she first spoke to her therapist about Pietz, discovered there were other victims of Pietz, and she started to investigate the root of her injuries and the sexual victimization by Pietz.[71] In the summer of 2020, she started to conduct her own research regarding sexual abuse and sexual grooming: "it was really a process of me understanding for the first time that there was abuse that had taken place and that this was a serial predator as opposed to just this relationship I had categorized in my mind. And just understanding—starting to understand things like what responsibility an institution or teachers might have such as mandatory reporting."[72]

After A.L.G. wrote a letter to Seattle Prep in 2020 about Pietz's abuse, A.L.G. also had several conversations with Seattle Prep's President, Kent Hickey.[73] From her conversations with Hickey, A.L.G. learned for the first time information pertaining to Seattle Prep's knowledge and concerns about Pietz including that Hickey had "found notes from board meetings where board members had brought up concerns about Jeff Pietz and his behavior."[74] Hickey also brought up "conversations he had with Father Tyrrell about Jeff Pietz's behavior . . . 'Father Tyrrell

[68] Cochran Decl. at Ex. 3 at 17:14-25.
[69] *Id.*
[70] *Id.* at 67:4-11.
[71] Urquiza Decl. at ¶ 26.
[72] Cochran Decl. at Ex. 1 at 84:18-85:10.
[73] *Id.* at 88:4-8.
[74] *Id.* at 88:25-90:4.

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remembers specifically having a conversation with Jeff Pietz about his behavior, that it was concerning and that he shouldn't be left with women alone or isolated or in his office or off campus or in his car.'"[75] Mr. Hickey also told A.L.G. about "anonymous letters from parents to Seattle Prep describing Pietz's behavior and citing their anonymity because they didn't want their child to deal with the fallout of kind of being under his influence."[76]

Dr. Urquiza opines that A.L.G. did not start to become aware of this institutional betrayal by Seattle Prep until 2020, and that A.L.G.'s recent knowledge and awareness of Seattle Prep's institutional betrayal exacerbated A.L.G.'s trauma-related symptoms.[77]

III. EVIDENCE RELIED UPON

This response relies upon the Declarations of Darrell L. Cochran (Cochran Decl.) and Anthony Urquiza (Urquiza Decl.) as well as the existing record on file.

IV. LEGAL ARGUMENT

Summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CR 56(c). The trial court views the facts and any reasonable inferences from those facts in the light most favorable to the nonmoving party. *Federal Way Sch. Dist. No. 210 v. State*, 167 Wn.2d 514, 523 (2009). As the Court of Appeals recently stated in *Haley v. Amazon.Com Services, LLC.*, 25 Wn. App. 2d 207, 209 (2022), "[s]ummary judgment is a mechanism for dismissing claims that are unsupported by law or fact. It is not a tool for assessing the weight or credibility of a party's evidence."

[75] *Id.* at 90:5-22.

[76] *Id.* at 92:25-93:4.

[77] Urquiza Decl. at ¶¶ 25-26.

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A. Jeffrey Pietz's Sexual Abuse of A.L.G. Before She Turned 18 Constitutes "Childhood Sexual Abuse"

RCW 4.16.340(5) defines "childhood sexual abuse" as acts against a "complainant who was less than eighteen years of age at the time of the act and which act would have been a violation of chapter 9A.44 RCW or RCW 9.68A.040 or prior laws of similar effect at the time the act was committed." Here, the sexual contact falls under multiple violations of chapter 9A.44 RCW. Under RCW 9A.44.100 (2003), the crime of indecent liberties requires that a person "knowingly causes another person who is not his or her spouse to have sexual contact with him or her or another" by "forcible compulsion" or "when the other person is incapable of consent by reason of being mentally defective, mentally incapacitated or physically helpless." RCW 9A.44.100(1)(a)-(b). Under RCW 9A.44.096 (2001) a person is guilty of sexual misconduct with a minor in the second degree when the person is a school employee who has, or knowingly causes another person under the age of eighteen to have, sexual contact with a registered student of the school who is at least sixteen years old and not married to the employee, if the employee is at least sixty months older than the student.[78]

RCW 9A.44.010(2) defines "sexual contact" as "any touching of the sexual or other intimate parts of a person done for the purpose of gratifying sexual desire of either party or a third person." The term "intimate parts" is broader than the term "sexual parts" and may include touching over clothing. *In re Welfare of Adams*, 24 Wn. App. 517, 519 (1979). Contact is "intimate" within the meaning of the statute if a person of common intelligence could fairly be expected to know that, under the circumstances, the parts touched were intimate and therefore the touching was improper. *State v. Jackson*, 145 Wn. App. 814, 819 (2008). Whether an area other than genitalia and breasts are intimate is a question to be resolved by the trier of fact. *State v. Jackson*, 145 Wn. App. at 819; *In re Welfare of Adams*, 24 Wn. App. at 520. A jury may

[78] Plaintiff A.L.G. was born on May 23, 1985. Cochran Decl. at Ex. 1 at 7:24-8:1. Pietz was born on March 30, 1973. Cochran Decl. at Ex.

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determine that parts of the body in close proximity to the primary erogenous areas are intimate parts. *State v. Harstad*, 153 Wn. App. 10, 21 (2009).

Several Washington cases have examined the contours of what constitutes "sexual contact" under Chapter 9.44 RCW, and they support the finding here that issues of fact remain as to whether Pietz had "sexual contact" with A.L.G. before she turned eighteen. The seminal case examining "sexual contact" is *In re Welfare of Adams*, 24 Wn. App. 517 (1979). There, a school boy was found on the floor with a school girl in a little-used area of the school. *Id.* at 518. The girl's pants were removed. *Id.* The boy admitted to undoing one button of her pants, touching the outer part of her hips while kneeling beside her, and being sexually excited. *Id.* On appeal, the court considered whether the boy had made "sexual contact" with the girl under the indecent liberties statute, RCW 9A.88.100[1], which used a nearly identical definition as found in RCW 9A.44.010(2). *Id.* The *Adams* Court held the boy had made "sexual contact" because "the hips are a sufficiently intimate part of the anatomy that a person of common intelligence has fair notice that the nonconsensual touching of them is prohibited." *Id*. at 520. The court added that "the conduct was of such nature that a person of common intelligence could fairly be expected to know that under the circumstances the parts touched were intimate and therefore, the touching was improper." *Id*. at 521.

Similarly, Division One in *State v. Harstad* has determined that the touching of upper inner thighs satisfies the element of intimate parts. 153 Wn. App. at 21-22. The Court concluded, "a person of common intelligence could be expected to know that [the child's] upper inner thigh, which puts the defendant's hand in closer proximity to a primary erogenous zone than touching the hip does, was an intimate part." 153 Wn. App. at 22. The *Harstad* Court also considered the "sexual gratification" component of the definition of "sexual contact." *Id.* at 21. The *Harstad* Court took into consideration that the defendant touched the child at night when everyone else was asleep, he touched her "right by her private place" multiple times, and his

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hand was "rubbing" when he touched her and found sufficient evidence of touching for sexual gratification. *Id.* at 21.

When viewing the facts in a light most favorable to Plaintiff, the sexual touching by Pietz of A.L.G.'s legs before she turned eighteen constitutes "childhood sexual abuse" under RCW 4.16.340. Indeed, the crime of indecent liberties under RCW 9A.44.100 (2003) requires only that a person "knowingly causes another person who is not his or her spouse to have sexual contact with him or another" either "by forcible compulsion" or "when the other person is incapable of consent by reason of being mentally defective, mentally incapacitated, or physically helpless." RCW 9A.44.100(1)(a)-(b). And RCW 9A.44.096 (2001), which is specific to school employees, requires that a school employee has sexual contact with a registered student of the school who is at least sixteen years old and not married to the employee, if the employee is at least sixty months older than the student.

The evidence presented supports the factual contention that Jeff Pietz knowingly caused Plaintiff A.L.G. to have sexual contact with him when she was a minor and he was a school employee and more than sixty months older than her. A.L.G. testified that during the time she was a Seattle Prep student, Pietz touched her leg on multiple occasions when they were alone together or in his van. This usually occurred in more "intimate moments" where they were alone tor having an emotional conversation.[79] Similar to the touching of the child's thigh in *Harstad,* Pietz touched the area between A.L.G.'s knees and the "short line of [her] thighs."[80] Moreover, Plaintiff A.L.G., as a minor, was incapable of consent to sexual abuse and grooming by her teacher. The Washington State Supreme Court has expressly held, "because we recognize the vulnerability of children in the school setting, we hold, as a matter of public policy, that children do not have a duty to protect themselves from sexual abuse by their teachers." *Christensen v.*

[79] Cochran Decl. at Ex. 1 at 136:11-17.

[80] *Id.* at 136:11-137:3; 137:14-15.

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Royal Sch. Dist. No. 160, 156 Wn.2d 62 (2005). It also held that the minor student lacked the ability to meaningfully consent to any sexual activity with her adult teacher. *Id.* at 72.

The evidence also establishes that Pietz touched A.L.G. for his own sexual gratification. Although at the time A.L.G. did not understand it was sexual abuse, looking back she testified that his touch and advances towards her "had sexual intent."[81] A.L.G. described a sexualized environment at Seattle Prep where Pietz would always try to be close to her and touch her.[82] Pietz even later admitted to A.L.G. that during the time she was a student and he was her coach he had been "checking out" her backside when they went prom dress shopping together.[83] And immediately after A.L.G. graduated from Seattle Prep, Pietz's sexual advances towards A.L.G. escalated to sexual intercourse.[84] Moreover, Pietz also admitted to having sexual contact with multiple other former Seattle Prep students, showing his pattern, practice, and motive of targeting and grooming Seattle Prep female students for sexual contact.[85] Accordingly, in viewing all evidence, circumstantial evidence, and reasonable inferences in the light most favorable to Plaintiff, the sexual contact by Pietz before A.L.G. turned eighteen constitutes childhood sexual abuse and A.L.G.'s claims are timely under RCW 4.16.340.

B. Plaintiff's Injuries Inherently Include Sexual Grooming, Boundary Invasions, Emotional Abuse, and the Subsequent Sexual Abuse

RCW 4.16.340's plain language, our Supreme Court's clear precedent on it, and the facts of this case remove any doubt whatsoever that the sexual grooming, boundary invasions, emotional abuse, and subsequent sexual abuse Plaintiff suffered after she turned eighteen are indistinguishable from and part of her injuries resulting from childhood sexual abuse and also fall under RCW 4.16.340's statute of limitations. "By its plain terms, RCW 4.16.340 encompasses

[81] *Id.* at 176:20.
[82] *Id.* at 115:14-116:4; 117:14-118:11.
[83] *Id.* at 118:5-11.
[84] *Id.* at 154:1-3.
[85] Cochran Decl. at Ex. 3 at 17:14-25.

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all causes of action 'based on intentional conduct . . . ***for recovery of damages for injury suffered as a result of childhood sexual abuse.***'" *CJ.C v. Corp. of Catholic Bishop of Yakima.*, 138 Wn.2d at 709 (emphasis added).

In 1991, the legislature amended RCW 4.16.340 to clarify the time within which survivors of childhood sexual abuse must file their claims. LAWS OF 1991, ch. 212; *C.J.C.*, 138 Wn.2d at 712. In doing so, "[t]he Legislature adopted 'findings and intent,' which make it clear that its primary concern was to provide a ***broad avenue of redress*** for victims of childhood sexual abuse who too often were left without a remedy under previous statutes of limitation." *Id.* (emphasis added); *see also Wolf v. State*, 2 Wn.3d 93 (2023) (applying "the underlying purpose of RCW 4.16.340—to provide broad protection for victims of childhood sexual abuse" in interpreting the term "act" as meaning the particular wrongful conduct on which a particular claim is based).

Based on those findings, our Supreme Court has concluded that "the Legislature intended a ***broad reading and application of [RCW 4.16.340]***." *C.J.C.*, 138 Wn.2d at 713 (emphasis added); *see also id.* at 709 (legislature intended a "broad and liberal construction" of RCW 4.16.340). Our Supreme Court held that RCW 4.16.340(1)'s plain language "is expansive." *Id.* at 709. "It permits '[a]ll claims or causes of action' brought by 'any person' provided only that claims be 'based on intentional conduct' ***involving*** 'childhood sexual abuse.'" *Id.* at 709 (emphasis added).

The statute does not contain any exclusions based on the type or timing of "injury," such as sexual abuse continuing past the age of majority. The ***only*** limitation that it imposes on "claims or causes of action" is that they seek "recovery for damages for injury suffered as a result of"—i.e., caused by—childhood sexual abuse.

Although RCW 4.16.340 does not define the term "injury," the Court may utilize dictionary definitions to determine the legislature's intent. *Fraternal Ord. of Eagles, Tenino Aerie No. 564 v. Grand Aerie of Fraternal Ord. of Eagles*, 148 Wn.2d 224, 239 (2002). Black's

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Law Dictionary defines "injury" to include "[a]ny harm or damage," including "bodily injury." INJURY, *Black's Law Dictionary* (11th ed. 2019). Likewise, Webster's defines "injury" as "an act that damages, harms, or hurts." INJURY, *Webster's Third New International Dictionary* 1164 (1986). This interpretation is also consistent with the legislature's use of the broad term "injury," the absence of any exclusions from that broad term, and ordinary dictionary definitions. *Accord* Wolf, 534 P.3d at 830 ("RCW 4.16.340(1)'s broad language is critical to its interpretation."); *C.J.C.*, 138 Wn.2d at 709 (using ordinary dictionary meanings to define "based on" in RCW 4.16.340(1)). The sexual grooming, boundary invasions, emotional abuse, and the subsequent sexual abuse Plaintiff suffered after she turned eighteen meets this definition of injury.

The sexual grooming, boundary invasions, emotional abuse, and subsequent sexual abuse Plaintiff suffered were attendant to and inherently a part of those childhood sexual abuse claims and injuries and it is impossible to segregate the harm caused by Pietz's multiple acts of sexual abuse. First, the other attendant forms of sexual grooming, boundary invasions, and emotional abuse undisputedly "***involv[ed]*** childhood sexual abuse." *C.J.C.*, 138 Wn.2d at 709. As our Supreme Court has recognized, "'Two necessary components' for the commission of sex crimes 'are access and control,' and developing trust is necessary to the grooming process." *State v. Crossguns*, 199 Wn.2d 282, 295 (2022). "'Manipulating relationships of trust with children for purposes of gratifying the abuser' is a major component to the crime of child sexual assault." *Id.* As our Supreme Court has recognized, it is "common knowledge" that grooming's purpose and end result—i.e., the resulting injury—is to "desensitize" a child to "escalating sexual advances" continuing over time. *Matter of Phelps*, 190 Wn.2d 155, 161, 167 (2018). Plaintiff's abuser, Jeff Pietz, utilized sexual grooming, boundary invasions, and emotional manipulation in order to develop trust with A.L.G. He then used this trust to introduce a pattern of inappropriate behaviors and sexual contact with A.L.G.

Second, Pietz's sexual grooming, boundary invasions, emotional abuse, and childhood sexual abuse of A.L.G. proximately caused the continuing sexual abuse of A.L.G. past the age of

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eighteen. Plaintiff's expert Dr. Urquiza opines that "[i]n the absence of these extensive grooming behaviors and sexual contact escalating over time, Pietz would not have been in a position to leverage his 'relationship' with A.L.G. and manipulate her into sexual intercourse immediately upon her graduation from Seattle Prep."[86] He explains, "as recognized by the relevant literature, Pietz's grooming behaviors and increased sexual contact were the necessary predicate to his sexual abuse of A.L.G.—abuse that, on a more probable than not basis, could not have occurred in the absence of this extensive grooming process."[87] He further concludes "that the harms and damages from Pietz's grooming and sexual contact with A.L.G. while she was a Seattle Prep student cannot be separated out from the harms and damages that resulted from the intercourse and other sexual acts that occurred after her graduation from Seattle Prep.[88]

Pietz's sexual abuse of A.L.G. began before she turned eighteen, and her injuries were caused by the cumulative effects of those acts. Indeed, RCW 4.16.340 itself acknowledges that harm from multiple acts of sexual abuse is not segregable and that sexual abuse to which the statute applies can consist of a series of continuing acts. *See* RCW 4.16.340(2) ("The victim need not establish which act in a series of continuing sexual abuse or exploitation incidents caused the injury complained of . . . .).

C. In the Alternative, There Are Genuine Issues of Material Fact Regarding Whether A.L.G.'s Claims Are Timely Under the Common Law Discovery Rule

Even if RCW 4.16.340 did not apply to Plaintiff's claims, such claims are timely under the common law discovery rule. The general rule in Washington common law is that a personal injury action accrues at the time the act or omission occurs. *In re Estates of Hibbard*, 118 Wn.2d 737, 744 (1992). "An exception to this is provided by the common-law discovery rule." *Funkhouser v. Wilson*, 89 Wn. App. 644, 666 (1998), *aff'd in part and remanded sub nom.*,

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[86] Urquiza Decl. at ¶ 15.

[87] *Id.*

[88] *Id.* at ¶ 17. Defendant's expert, Dr. Heavin also testified that she would not be able to assign a certain percentage of damages to the sexual grooming separate from the damages from the sexual intercourse. Cochran Decl. at Ex. 4 at 72:11-19.

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C.J.C., 138 Wn.2d 699 (1999). Washington State has a long history of applying the discovery rule to lawsuits, in part due to the recognition that "the statute of limitations is not such a meritorious defense that either the law or the facts should be strained in aid of it." *Guy F. Atkinson Company v. State*, 66 Wn. 2d 570 (1965). "Under the discovery rule, 'a cause of action accrues when a claimant knows, or in the exercise of due diligence should have known, all the essential elements of the cause of action, specifically duty, breach, causation and damages.'" *Funkhouser*, 89 Wn. App. at 666; *see also Tyson v. Tyson*, 107 Wn.2d 72, 81-82 (1986) (Pearson, J., dissenting). "The question of when a plaintiff should have discovered the elements of a cause of action so as to begin the running of the statute of limitations is ordinarily a question of fact." *Green v. A.P.C. (Am. Pharm. Co.)*, 136 Wn.2d 87, 100 (1998). Likewise, "whether a plaintiff was duly diligent in pursuing a legal claim is a question of fact for the jury unless reasonable minds could reach but one conclusion." *Funkhouser*, 89 Wn. App. at 667.

In *Funkhouser*, the Court of Appeals considered the application of the common-law discovery rule in a civil sexual abuse lawsuit.[89] There, a church leader named Wilson molested the church pastor's daughter, Juanita Funkhouser, in the 1970s. *Id*. at 650. Decades later, after she had received "extensive counseling," Funkhouser told her father about Wilson's abuse. *Id*. at 651. Funkhouser's father reached-out to a former prominent church member, David Schultz, and asked whether it was possible that Wilson had molested Funkhouser. *Id*. at 652. It was then that Schultz revealed for the first time that he received a phone call in 1968 warning that Wilson had molested a child. *Id*. at 649, 652. Funkhouser brought action against the church in 1994. *Id*. at 651.

The issue on appeal was whether Funkhouser's action against the church was time-barred. The parties did not dispute that Funkhouser had recalled some acts of the abuse and had "always

[89] *Funkhouser* turned to the common-law discovery rule after rejecting application of RCW 4.16.340 in a negligence lawsuit, holding that the special statute applied only to intentional tort actions against the actual perpetrator of the abuse. This point of law, which followed from *Jamerson v. Vandiver*, 85 Wn. App. 564, *review denied*, 133 Wn.2d 1005 (1997), was overturned by the Washington State Supreme Court in *C.J.C. v. Corporation of Catholic Bishop of Yakima*, 138 Wn.2d 699 (1999).

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known that they harmed her to some extent." *Id*. But the *Funkhouser* Court framed the issue as "not when Funkhouser discovered Wilson's intentional tort, but ***when she discovered or should have discovered the elements of her negligence claims against the respondents***." *Id*. at 667 (emphasis added). As to this question, "[w]hether Funkhouser should have discovered that the defendants did not disclose Wilson's history sooner than she did depends on whether she had 'the means and resources to detect wrongs within the applicable limitation period," in other words, whether she 'could have' known of that information. *Id*.

The church defendants argued that Funkhouser always had the means and resources to detect all the wrongs because "all she had to do was to tell her father that Wilson had molested her." *Id*. at 667. The *Funkhouser* Court agreed that the case did not involve concealment because Schultz disclosed the information once the appropriate questions were asked. 667-68. Nonetheless, the Court reasoned that the church defendants' position ignored "basic realities" that the Legislature recognized when enacting RCW 4.16.340. The *Funkhouser* Court held that even in common-law applications of the discovery rule, "courts should take into account the legislative findings that led to the adoption of [RCW 4.16.340]."

The factors "that are likely to delay recognition of the full extent of injury inflicted by the perpetrator of sexual abuse" are also "likely to delay discovery that the abuse might have been prevented if persons having a special relationship with the child had not breached a duty to protect the child from the abuse." *Id*. at 669. The *Funkhouser* Court declined to rule as a matter of law that Funkhouser failed to exercise due diligence by failing to disclose the abuse to her father until 1991. *Id*. at 669.

In arguing that the common law discovery rule does not apply, Defendant does not submit any evidence or argument that Plaintiff has not been diligent. Defendant also does not submit any evidence or argument that Plaintiff has discovered the "full extent" of her injuries. Instead, Defendant Seattle Prep misplaces its reliance on Division Three's opinion in *Cox v. Oasis Physical Therapy, PLLC*, 153 Wn. App. 176 (2009) to argue that reasonable minds could not

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dispute that A.L.G. should have known Pietz was sexually abusing her while the abuse was occurring.

However, in *Cox*, Division Three, applying the discovery rule, relied on the fact that the record showed that immediately after the physical therapist had the plaintiff remove her bra and began moving his hands "all over the place," the plaintiff complained about the incident and stopped seeing the physical therapist as a patient. *Cox*, 153 Wn. App. at 190. The plaintiff also continued to complain about the therapist "daily" during her employment and declared that she would go home crying and suffered headaches, insomnia, stomach aches, loss of appetite and anxiety as a result of how she was treated. *Id.* at 191. Division Three concluded that the discovery rule did not toll the statute of limitations for the plaintiff's negligence claims because the plaintiff "was fully aware of [the physical therapist's] behavior and its effects on her at the time it was occurring." *Id.* at 191.[90]

To the contrary, at a minimum it is disputed that A.L.G. knew that Pietz's sexual abuse of her was wrong (or that it was sexual abuse) while it was occurring. And in fact, Defendant Seattle Prep even concedes that prior to 2020, "A.L.G. did not believe she had been sexually abused. She did not consider herself a victim. She did not believe she had been harmed by her sexual relationship with Mr. Pietz." Def. Mot. at 13. A.L.G. testified that at that time the sexual abuse was happening she "had no idea it was abuse or something bad" or that she had been harmed by Pietz.[91] Plaintiff's expert, Dr. Urquiza also opines that only recently has A.L.G. made the connection between her injuries and the sexual victimization by Pietz, despite her efforts to seek mental health treatment and to try to discover the root of her problems.[92] She was unable to make this connection earlier "in large part due to her avoidance (a common symptom of sexual victimization related trauma) and her perception that the source of her problems were her own

[90] Defendant also relies on a Spokane County Superior Court order in *Bachman-Rhodes v. Cheney School District* which is not controlling precedent or binding authority, and should be disregarded.

[91] Cochran Decl. at Ex. 1 at 189:25-190:7; 191:17-192:3.

[92] Urquiza Decl. at ¶ ¶ 22-24.

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inadequacies."[93] "The deceptive and coercive manner of her sexual victimization has kept her unaware, ashamed, and silent—all while her anxiety and trauma symptoms have substantially altered her mental health trajectory."[94]

Moreover, the record shows that not only was A.L.G. unable to make the connection between the abuse and her injuries more than three years before filing this lawsuit, A.L.G. also did not discover the negligence of Seattle Prep which resulted in the sexual abuse by Pietz more than three years before filing this lawsuit. Even more egregious than the facts in *Funkhouser*, where the court agreed that the case did not involve concealment, the facts of this case demonstrate that Seattle Prep knew about Pietz's inappropriate interactions with female students but continued to allow him to have unfettered access to female students and athletes. Despite reports and complaints of inappropriate behavior, Pietz was allowed to remain at Seattle Prep and was even later promoted to Athletic Director. A.L.G. testified that did not begin to understand the causal relationship between her injuries and Seattle Prep's negligence until 2020, when she first discovered there were other victims of Pietz, spoke to her therapist about Pietz, and started to investigate the root of her injuries and the sexual victimization by Pietz. It was only once she started researching sexual abuse and talking about it with her therapist that she discovered she had even been sexually abused.[95]

Consistent with A.L.G.'s testimony, Dr. Urquiza also opines that A.L.G. did not start to become aware of this institutional betrayal by Seattle Prep until 2020, and that A.L.G.'s recent knowledge and awareness of Seattle Prep's institutional betrayal has exacerbated A.L.G.'s trauma-related symptoms.[96] Once A.L.G. started learning in 2020 that she had been sexually abused, investigating information about what Seattle Prep knew about Pietz's conduct, and

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[93] *Id.* at ¶ 23.

[94] *Id.* at ¶ 23.

[95] Cochran Decl. at Ex. 1 at 84:18-85:10.

[96] Urquiza Decl. at ¶¶ 25-26.

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started to discover the causal connection between the abuse and some of her harms, she filed suit in 2022. Accordingly, at a minimum, genuine issues of material fact exist regarding whether A.L.G.'s claims are timely under the common law discovery rule precluding summary judgment.

D. Seattle Prep Owed a Duty to Plaintiff A.L.G. After She Graduated from Seattle Prep

It is well-established in Washington that a duty to prevent a third person from intentionally harming another may arise when "a special relationship exists between the defendant and either the third party or the foreseeable victim of the third party's conduct." *Niece v. Elmview Grp. Home*, 131 Wn.2d 39, 43 (1997). The existence of a duty to control the conduct of a third person with whom a defendant has a special relationship depends on proof that the defendant was aware of the tortfeasor's dangerous propensities. *N.K. v. Corp. of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints*, 175 Wn. App. 517, 526 (2013). Foreseeability is a question for the jury unless the circumstances of the injury are "so highly extraordinary or improbable as to be wholly beyond the range of expectability." *Niece*, 131 Wn.2d at 50.

First, it is undisputed that Seattle Prep owed a duty to Plaintiff when she was a student in its care. And Plaintiff has presented evidence creating a question of fact regarding Seattle Prep's breach of that duty while she was in its care as a student. Accordingly, it is liable for injuries proximately caused by its breach of that duty, regardless of their time or location. *Accord N.L. v. Bethel Sch. Dist.*, 186 Wn.2d 422, 435 (2016) ("the relevant inquiry is to the location of the negligence rather than the location of the injury"). The only limitation is that the injuries must be a foreseeable result of the breach. *N.L.*, 186 Wn.2d at 438 (school liable for off-campus rape of student at off-campus apartment outside school's custody where rape was foreseeable result of school's failure to protect student from on-campus grooming by registered sex offender). Here, Pietz's escalating and continuing sexual abuse was a foreseeable result of Seattle Prep's failure to protect A.L.G. from Pietz's grooming and childhood sexual abuse while she was a student. *Accord Phelps*, 190 Wn.2d at 161.

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Second, as more thoroughly explained above, Defendant is liable for the sexual abuse that occurred past when she reached the age of majority because it was proximately caused by the childhood sexual abuse. The evidence establishes that the acts or incidents of sexual abuse in a series of acts or incidents beginning during Plaintiff's childhood and continuing past when she reached the age of majority are recoverable because they are ***proximately caused*** by the childhood sexual abuse and sexual grooming that occurred when Plaintiff was a student at Seattle Prep. This interpretation is consistent with our Supreme Court's holding in *C.J.C.* that the sole limitation imposed by RCW 4.16.340(5) on actionable claims is that they must involve at least one predicate act of childhood sexual abuse. The statute still would be inapplicable to claims where the only "sexual abuse" as defined by the statute occurred after age 18. This interpretation is also consistent with the legislature's use of the broad term "injury," the absence of any exclusions from that broad term, and ordinary dictionary definitions. *Accord Wolf*, 534 P.3d at 830 ("RCW 4.16.340(1)'s broad language is critical to its interpretation."); *C.J.C.*, 138 Wn.2d at 709 (using ordinary dictionary meanings to define "based on" in RCW 4.16.340(1)). It is also consistent with the legislature's recognition in RCW 4.16.340(2) that childhood sexual abuse may constitute a series of continuing acts that are part of a common scheme or plan of abuse or exploitation. And it is further consistent with our legislature's intent to provide a broad avenue of redress to survivors of childhood sexual abuse who might lack a remedy under ordinary limitation periods and our Supreme Court's holding that courts must give the statute a broad reading and application favoring survivors.

Third, Defendant completely fails to address the fact that after A.L.G. graduated from Seattle Prep in June of 2003, she worked as a Seattle Prep employee under the direct supervision of Pietz where he continued to sexually abuse her. Defendant owed a separate duty to Plaintiff after she graduated from Seattle Prep because during the Summer of 2003, Seattle Prep was Plaintiff's employer. The employer-employee relationship is one of the special relationships that creates a duty to protect against intentional harm by a third party. *LaRose v. King Cnty.*, 8 Wn.

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App. 2d 90, 123 (2019). It is well established that "an employer owes to an employee a duty to provide a safe place to work." *Id.* In doing so, "[t]he employer has a duty to make reasonable provision against foreseeable dangers of criminal misconduct to which the employment exposes the employee." *Id.*

Here, the evidence establishes that Seattle Prep was Plaintiff A.L.G.'s employer in the Summer of 2003 and it knew (or should have known) of the "general field of danger," namely that there were reports and complaints regarding Pietz's interactions with females, and that Pietz openly engaged in inappropriate behavior with female students and athletes. The harm to Plaintiff of being sexually abused by Pietz, her supervisor, fell within the general field of danger which Seattle Prep should have anticipated.

Fourth, Seattle Prep owed Plaintiff a duty based on its special relationship with Pietz and knowledge of Pietz's dangerous propensities. In this case, Seattle Prep maintained a special relationship with Pietz as his employer and it was ultimately charged with hiring him, supervising him, and overseeing him. In his position as director of the "Ready, Set, Go!" summer program, Pietz was tasked with supervising Plaintiff A.L.G. and Seattle Prep had the ability and obligation to control Pietz's actions by disciplining him or terminating him from his position of power.

Seattle Prep was also responsible for putting Pietz and Plaintiff in contact. In *C.J.C.*, the court looked approvingly to *Marquay* (a New Hampshire Supreme Court case), which found an employer liable when "criminal conduct by off duty or former employees… was consistent with a propensity of which the employer knew or should have known, and the association between the victim and the employee was occasioned by the employee's job." *C.J.C.*, 138 Wn.2d at 724. Similarly, RESTATEMENT (SECOND) OF TORTS § 302B recognizes liability where a special protective relationship exists, *or "*[w]here the actor has brought into **contact** or **association** with the [victim] a person whom the actor knows or should know to be peculiarly likely to commit

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intentional misconduct, under circumstances which afford a peculiar opportunity or temptation for such misconduct." RESTATEMENT (SECOND) OF TORTS § 302B cmt. e(D) (1965).

Here, Pietz first came in contact with A.L.G. as her teacher and coach at Seattle Prep. It was through this contact that A.L.G. was then hired by Pietz as part of the "Ready, Set, Go!" program, and he used this relationship and his position of authority to continue to sexually abuse Plaintiff A.L.G. in the Summer of 2003. The evidence establishes that Seattle Prep, through numerous interactions and complaints was aware of Pietz's dangerous propensities towards women. Despite Seattle Prep's ability to control Pietz and its awareness of the risks he posed, Seattle Prep allowed him to remain in a position of power where he had easy access to victims like Plaintiff.

V. CONCLUSION

For the foregoing reasons, the Court should deny Defendant's motion for summary judgment.

RESPECTFULLY SUBMITTED this 16th day of January, 2024.

PFAU COCHRAN VERTETIS AMALA PLLC

I certify that this memorandum contains 8,382 words in compliance with the Local Civil Rules.

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CERTIFICATE OF SERVICE

I, **Katie Hedger**, hereby declare under penalty of perjury under the laws of the State of Washington that I am employed at Pfau Cochran Vertetis Amala PLLC and that on today's date, I served the foregoing via **Email** by directing delivery to the following individuals:

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DATED this 16th day of January 2024.

/s/ Katie Hedger
Katie Hedger
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