NO. 46944-8-II

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

TASHA OHNEMUS,

Respondent/Cross-Appellant/Plaintiff,

v.

STATE OF WASHINGTON,

Appellant/Cross-Respondent/Defendant.

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

BRIEF OF RESPONDENT/CROSS-APPELLANT

REBECCA J. ROE, WSBA #7560
KATHRYN GOATER, WSBA #9648

SCHROETER, GOLDMARK & BENDER
500 Central Building
810 Third Avenue
Seattle, Washington 98104
(206) 622-8000

TABLE OF CONTENTS

Table of Contents, continued

TABLE OF AUTHORITIES

Table of Authorities, continued

Table of Authorities, continued

I. INTRODUCTION

Tasha Ohnemus was sexually, physically and emotionally abused by her stepfather Steven Quiles from the time she was five years of age (1992) until she was 14 (2002) when Quiles was arrested, convicted and imprisoned.

Quiles fondled Tasha's genitals, made her pose for pornographic photos which he posted on line, forced her to perform fellatio, and raped her. He terrorized Tasha into silence by physical beatings, including with belts, boards and pipes.

On two separate occasions in 1996 and 1997, the State was notified of the abuse, and failed to intervene and protect her. As a result Quiles continued to sexually and physically assault her for another five years, causing irreparable harm.

Tasha discovered the State's 1996 and 1997 negligence and failure to protect her in 2011. She filed this lawsuit the following year. Since her discovery of the State's culpability, she has experienced an increase in the symptoms attendant to the trauma inflicted on her. She also has learned that the damage done to her is more extensive than previously known.

Because Tasha did not discover the State's tortious conduct that occurred in 1996 and 1997 until 2011, and because Tasha only recently discovered the full extent of harm caused by the profound abuse she

endured, an issue of material fact exists as to when the statute of limitations in this matter began to run. The trial court erred in finding as a matter of law that the statute of limitations expired prior to the filing of this case. This Court should reverse and remand for trial.

II. ASSIGNMENT OF ERROR

A. The trial court erred when it granted the State's summary judgment motion dismissing Tasha's legal claims for childhood sexual abuse and childhood physical abuse.

III. ISSUES PERTAINING TO ASSIGNMENT OF ERROR

A. Was there a genuine issue of material fact as to when Tasha Ohnemus discovered or should have discovered the State's investigations of abuse in 1996 and 1997 were conducted negligently?

B. By enacting RCW 4.16.340(1)(c) the Washington Legislature intentionally expanded the delayed-discovery statute of limitations for childhood sexual abuse to include situations where the victim is aware of abuse-related injuries, but later discovers more serious injuries from the abuse. Did the trial court error in dismissing Tasha's claim of childhood sexual abuse when material issues of fact existed as to when she discovered more serious injuries?

IV. STATEMENT OF THE CASE

A. Procedural History

Tasha filed her complaint in this matter in Kitsap County Superior Court on August 15, 2012. CP 3-6. Two years later the State filed a motion for summary judgment asserting the statute of limitations had expired before Tasha filed her complaint. CP 12-47. Oral Argument occurred on September 5, 2014. By written order dated September 12, 2014, the trial court granted the State's motion as it related to Tasha's childhood sexual abuse claims. CP 609-611. On October 6, 2014, the trial court clarified its prior ruling to specifically include in its order granting the State's summary judgment motion, both Tasha's childhood sexual abuse claims and her non-sexual physical abuse claims. CP 652-654. On October 24, 2014, the trial court dismissed with prejudice Tasha's claims of physical abuse and childhood sexual abuse and entered an order of final judgment for purposes of CR 54(b). The court certified the matter for appellate review pursuant to RAP 2.3(b)(4). CP 661-664.

The State filed a notice of appeal on November 17, 2014, assigning as error the court's denial of summary judgment on plaintiff's cause of action under RCW 9.68A.100. CP 665-667. Tasha filed a notice of appeal/cross appeal on November 20, 2014, assigning as error the court's dismissal of her childhood sexual and physical abuse claims. CP 691-693.

Both parties filed statements of arrangements notifying the court a verbatim transcript of the proceedings would not be submitted and the report of proceedings would consist of the pleadings and submissions by both parties related to the motion for summary judgment, and the written orders of the court. CP 681-684; 703-705.

At the request of the parties, the Court of Appeals set a briefing schedule whereby Tasha would file the initial opening brief addressing the statute of limitations decision, followed by the State's opening brief addressing the court's ruling on plaintiff's RCW 9.68A.100 cause of action.

B. Statement Of Facts

1. Spring 1996 – First Report Of Abuse

On April 24, 1996, three fifth grade girls who were friends of plaintiff Tasha Quiles (now Tasha Ohnemus and hereinafter referred to as Tasha) reported the following information to their school counselor, Linda Davis Wickstrom:

> They had high concerns for eight year old Tasha Quiles who they reported was being sexually and physically abused in her home. The girls had observed bruises on Tasha, and stated her stepfather, Steven Quiles hurt her if she is at all late in arriving home. Before or after school Tasha frequented the homes of various neighbors. The girls saw bruises within the past few weeks on Tasha's arms, legs and back. Tasha told the girls that the injuries were caused by her stepfather hitting her with a bat or

> sticks full of nails, and a whip. The marks they saw on her back could have been caused by a whip.
>
> The girls reported they have encouraged her to tell an adult but that she is too scared. They indicated Tasha has told her mom but her mom doesn't believe her.
>
> Tasha also told the girls that her dad has a girlfriend named Gina who comes to the house when her mom is not home. Gina gives sex lessons. Tasha told the girls that her stepdad and Gina show her explicit magazines, including one with Gina's picture being advertised. Tasha told the girls that Gina and her dad perform various sex acts and make her watch. They both touch Tasha's private parts. Tasha's dad puts a wax flavor on his penis and sticks it in Tasha's mouth. The sexual conduct occurs when Tasha's mother is not home. The girls reported that they have seen Gina jump out of the window when Tasha's mom arrives home. They also reported Tasha watches movies about sex. Tasha told the girls that her step dad does things to the baby but not to her sister Elizabeth. The girls also told her they witnessed the stepfather grab Tasha by the hair, lift her off the ground and throw her on the bed. The girls told the counselor they feared the stepdad would retaliate against Tasha and beat on her more if he finds out she told. CP 374-379; 381-383; 385-389.

The school counselor immediately called and reported this information to CPS intake worker Brandon Harnisch. She told Harnisch that the three fifth graders were all excellent students. The school counselor also followed up with a written report to CPS. CP 386; CP 387, pp. 30-32; CP 389, p. 43; CP 412-423; CP 432-434.

A CPS supervisor assigned the case for investigation to Karen Thompson, the "next up" caseworker. CP 388, pp. 36-37; CP 393-394, pp. 13-14. Thompson had been hired less than five months earlier by an

interim supervisor to answer calls after hours, on weekends and holidays. However, because of high caseloads she was assigned cases to investigate, CP 392, p. 9, despite receiving no formal training until several months after the referral regarding Tasha. CP 392, p. 7.

Tasha was interviewed by Thompson and the school counselor and told them her dad was mean to her, gave her 5 minute spankings on her back or butt with a stick or pipe, and sometimes left bruises. She reported her dad "watches disgusting movies, only has his shirt on," and "pulls his pants down, and rubs his thingamajig until white stuff comes out." CP 402.

Thompson called the Quiles residence and left a voice mail message regarding her investigation, apparently oblivious to the impact such notice would have to Tasha's safety. CP 398, p. 34. She interviewed Tasha's mother, Merry Nance Quiles by phone. CP 403. Thompson testified she was concerned whether the mom would or could protect Tasha. CP 397, pp. 31-32; CP 399, pp. 38-39. Ms. Thompson's only intervention consisted of advising the mom to store pornographic magazines where the girls could not see them and requesting Mr. Quiles close the door when he was involved in private matters. CP 396, pp. 26-27; CP 403, 406.

Thompson acknowledged she did not know how to properly investigate the referral. CP 393, pp. 11-13; CP 394, p. 14; CP 395, pp. 20-21; CP 397, pp. 30-31. Because of her lack of training, she made no effort to identify or interview the three fifth grade girls who reported the abuse to the school counselor and who were critical witnesses. CP 395, pp. 18, 20. She was unaware of CPS policies regarding documentation of sexual abuse interviews of children. CP 393, p. 13. There is no evidence that she checked Tasha for physical injuries or sought a medical evaluation of Tasha. CP 400, pp. 48-49. Nor did she interview Tasha's sisters as was required by policy. CP 398-399, pp. 37-38.

Thompson closed her "investigation" on May 7, 1996, with an entry that the case was "unfounded," leaving Tasha in the family home unprotected. CP 398, pp. 36-37; CP 408-410. Thompson testified that her response to this case today would have been different than what it was in 1996 when she was inexperienced and untrained. CP 400, p. 46. At the time the school counselor contacted CPS about this abuse, and Tasha was interviewed, she was an eight year old third grader. CP 374.

2. Spring 1997 – Second Report Of Abuse

One year later, on April 24, 1997, the same school counselor again reported the Quiles family to CPS. CP 415, pp. 28-29; CP 416, p. 30; CP 425-427. The counselor had been contacted by the parent of a friend

of the Quiles girls. The friend's mother had been told that a few days prior Elizabeth Quiles, age 7, had been struck with a board with nails in it. The girls saw scratches on her neck. The school counselor interviewed Tasha and her younger sister Kyla, who confirmed the report. She then spoke to Elizabeth who had a mark under her chin but denied the story. The counselor advised CPS that the Quiles family had been reported before and that Karen Thompson had been the caseworker. CP 425-427.

This intake also was received by Mr. Harnisch. CP 416, p. 3. Harnisch noted the prior referral in 1996. CPS assigned this second referral for investigation to Robert Kyler, yet another relatively new and inexperienced case worker. CP 412, pp. 24-25.

Kyler interviewed Tasha in the presence of the school librarian. Tasha confirmed that her sister Elizabeth had been hit with a pipe with nails in it and that this occurred whenever she was bad. She also related that Elizabeth was afraid of people in authority and thought her father would hurt her if she talked about what happened. Kyler also interviewed Mrs. Quiles, the mother, who confirmed the report. CP 429-430; CP 413-414, pp. 20-22.

In April 1997 when Kyler was investigating the events with Elizabeth, he also learned that two years prior, Mr. Quiles lost his job at Mission Creek, a juvenile detention facility, due to allegations he was

sharing pornography with a minor. CP 414, p. 23. Kyler, however was unaware of the 1996 referral or of speaking with that caseworker. He acknowledged the 1996 referral should have been a red flag and CPS should have intervened in a more urgent way. CP 420-421, pp. 60-64.

Kyler testified his lack of experience and absence of supervision in investigating this report of abuse resulted in his failure to act to protect Tasha. He noted that Mrs. Quiles wanted counseling services but was worried about her husband's response. CP 414, p. 23. He testified that a mother's concern about how her husband was going to react would have been a red flag to him back in 1997 if he had had the experience at the time to recognize it. CP 414, pp. 24-25. Kyler also indicated the girls should have been examined for injuries but weren't. He explained his failure was either because of his inexperience or his supervisor failed to instruct him to do it. CP 416, pp. 30-31. He indicated he didn't have much supervision and did his best to figure things out. CP 417, p. 35.

CPS did not remove the children from the home or take any action to protect them. Instead an in-home assessment through FPS (Family Preservation Services) was initiated in May, 1997. By June 2, 1997, the FPS worker reported that Mr. Quiles was not allowing her to meet alone with the children, and he was controlling the children's responses by intimidating looks. CP 433; CP 457, pp. 69-70.

The next report from FPS was June 27, 1997, indicating Mr. Quiles had enrolled the children in counseling and day care and the kids were going to stay with his parents in New York. CPS closed its file shortly thereafter. No one verified the parent's claims or further checked on the children. CP 418, p. 41. Tasha was left unprotected and subject to the continuous sexual and physical abuse by her stepfather for the next 5 years.

3. Further Contact Between DSHS And Tasha's Family Pre-Arrest Of Quiles

On June 8, 2001, Tasha's mother contacted DSHS requesting FRS (Family Reconciliation Services). She stated there was family conflict centered around fourteen year old Tasha. She reported Tasha did not follow the rules of the home, was completely out of control, and continually antagonized and beat up her siblings. CP 590. No mention was made of the prior referrals for abuse. The DSHS social worker, Gregory Twiddy, of the Child and Family Welfare Services (CFWS) division, spoke to Tasha. Tasha admitted fighting with her sister but pointed out she had no criminal history, went to school regularly and did very well in school. The social worker recommended the family participate in phase II FRS (Family Reconciliation Services) to which they agreed. CP 591. The same social worker again spoke with Tasha's

mother, Merry Quiles, on June 25, 2001. Merry reported Tasha continued to be assaultive towards her sisters and the situation had not changed. The social worker told Merry that the FRS therapist, Eric Currier, had been attempting to contact her to commence services. He directed Merry to contact Currier. CP 593.

Family counseling began on July 16, 2001, and ended two weeks later on August 1. There were a total of six sessions, and Quiles was present for each. The last two sessions were cancelled. CP 594. The family's perception of the problem at the initial session was that Tasha ran away, attempted suicide, was physically violent to her siblings, and snuck out to meet friends. Tasha was identified as the source of conflict in the family. CP 595.

On July 19, DSHS social worker Twiddy spoke to the therapist and learned the family was making limited progress. Merry Quiles was sharing limited information and did not seem invested in the therapeutic process. CP 597. The social worker again received a report from the therapist on September 24, 2001, indicating progress was very limited and the prognosis was guarded as there was limited participation by family members. CP 598.

Therapist Currier also did a Case Termination Summary indicating the sessions were difficult. Family members responded with limited

answers, often just a few words, or didn't respond at all. Tasha attempted to participate during some of the sessions. She said she wanted to be able to talk to her mother about personal, emotional issues. She asked if she and her mother could be closer, perhaps spend time together. Tasha's mother appeared uncomfortable with the idea and said she would rather have Tasha talk about such things with Quiles. CP 479. Therapist Currier concluded family therapy noting that the parents scapegoated Tasha. CP 602.

When deposed in this litigation Merry Quiles, Tasha's mother, confirmed that Steven Quiles had warned everyone in the family to keep their mouths shut during the family counseling sessions. She also testified that Tasha and her sisters were fearful of Quiles and obeyed his commands. CP 475, pp. 94-96.

The 2001 records are devoid of reference to the 1996 and 1997 reports of abuse. CP 478-479, 586-587, 590-591, 593, 597-598, 602.

The following year, on April 23, 2002, Tasha's mother again called DCFS asking for a Youth At Risk assessment of Tasha. Merry claimed the family had wanted to go through FRS counseling in 2001, but Tasha refused to cooperate. Tasha had recently run away, was stealing from the family and did not follow family rules. CP 601. On April 29, 2002, a DSHS Child Welfare Services worker (CWS), contacted Tasha's

mother. Merry asked the social worker to write an assessment based on the family's involvement with DSHS and FRS therapist Currier the prior year. The social worker indicated she would have to do a visit with the family and preferred to re-refer them to FRS counseling before proceeding with an At Risk Youth petition. Merry said she first needed to confer with her husband. CP 602. The following day, April 30, 2002, Tasha's mother told the social worker her husband did not want anyone coming to the home or meeting with them to ask questions, and she was not interested in counseling. The social worker closed the case. CP 603. As with the 2001 records, the 2002 reports make no reference to the 1996 and 1997 referrals for abuse. CP 601-603.

The next contact between DSHS and the Quiles family was a phone call on May 15, 2002, from a DSHS social worker to notify Merry that law enforcement had taken the girls into protective custody and placed the girls with Division of Children and Family Services "DCFS." CP 607.

4. Arrest And Prosecution of Quiles

In the spring of 2002, Tasha found a video camera in the wall of her bathroom which Quiles was using to take images of the naked girls. CP 126-127. Tasha told her mom what she had found, and also disclosed that Quiles had been touching her. CP 134. Merry said she would take

care of it that summer, but continued to leave Tasha alone with Quiles. CP 135.

On May 9, 2002, Tasha, together with a sister, talked to school counselor Don Farrell and told him about the camera, her mother's promise to do something that summer, the sexual abuse, and Quiles' posting some of the naked images on the internet. Tasha also related her mother's admonishment that family stuff stays with family. CP 102. Farrell reported this information to CPS the same day. The report was referred to local law enforcement. The police responded and arrested Quiles on May 15. CP 436. Ultimately Quiles was convicted of several counts of child sexual abuse and sent to prison for 10 years. CP 438-449.

5. State's Failure To Investigate And Protect

Barbara Stone, former administrator for DSHS, testified as an expert on liability on behalf of plaintiff. Ms. Stone worked for DSHS for approximately 32 years. She served as the Director of the Division of Licensed Resources for the Children's Administration. CP 452, p. 19; CP 461-468. Ms. Stone testified CPS failed to meet the standard of care in responding to the 1996 and 1997 child abuse referrals. Regarding the 1996 report, the investigator did not interview all of the children in the home, failed to check for injuries, failed to complete family assessment regarding risk, failed to identify and interview the three school girl

witnesses, failed to establish a safety plan for the children, and did not intervene despite a clear disclosure of sexual abuse. CP 453-454, pp. 51-53; CP 455, p. 61; CP 458-459, pp. 88-89.

With regard to the 1997 referral, she determined the report involved serious allegations of using implements to hit the children as a form of discipline. CPS did not do a full assessment of the mother, they did not interview the dad, they did not physically check either of the children. The State failed to investigate the referrals and did not protect the children. CP 456-457, pp. 67-70.

It was noted in the referral to FRS counseling services that there was secrecy in the family, along with fear, and that Mr. Quiles was not allowing any individual time for the counselor to see the children. CPS took no action to protect despite this additional information. CP 459, pp. 89-90; CP 456-457, pp. 67-70.

The State withdrew its expert witness on liability. CP 470-471. The State's own social workers admitted that their inexperience and lack of training caused them to inadequately investigate the 1996 and 1997 referrals. CP 393-394, pp. 11-14; CP 395, pp. 20-21; CP 397, pp. 30-31; CP 400, p. 46; CP 420-421, pp. 60-64.

6. Recent Discovery Of State's Negligence And Additional Harm

In the summer of 2011 at age 24, Tasha obtained a copy of the criminal records regarding her abuse by her stepfather. Included in those records were documents revealing that Child Protective Services (CPS) had received the 1996 and 1997 reports regarding her stepfather's conduct as referenced above. Prior to reading these reports, she was not aware that CPS knew about the abuse or that they decided not to act to protect her. She was ages eight and nine at the time those events occurred and CPS contact with her was minimal. CP 474; CP 481.

Tasha was devastated to learn of the betrayal by CPS. The information compounded and exacerbated the already existing emotional injuries.[1] She was overcome by the information. In the past she felt her mother had betrayed her by not standing up to her stepfather, but now she felt even greater, deeper, despair knowing that CPS had not done anything, back when she was in elementary school, to protect her. She felt let down,

[1] With the arrest of Quiles in 2002, Tasha has been under the care of physicians and mental health providers. She was hospitalized on several occasions, attempted suicide and has suicidal thoughts. She has sleep disturbances and panic attacks, and her disability interferes with several aspects of her life including her ability to function at a normal level or to attend to the everyday requirements of life. She has been diagnosed with Posttraumatic Stress Disorder, Severe and Recurrent episodes of Major Depressive Disorder, and a Personality disorder characterized by mixed borderline and dependent traits. Her psychological injuries affect her social, occupational and school functioning. Her psychological injuries have led to drug abuse, relationship dysfunction and a host of other symptoms and ramifications. CP 488-489.

that she was worthless and that the rug had been pulled out from under her. CP 481.

Tasha shared her discovery of CPS's 1996 and 1997 conduct and the impact it was having on her with Kate Wright who was her mental health treatment coordinator/case manager at the time, summer 2011. Ms. Wright observed that Tasha was in need of intensive treatment as a result of this new information. Ms. Wright observed at that time, Tasha was unaware of the extent of her injuries. In consultation with Tasha's treatment team members, Tasha was referred to a psychiatrist who first saw her in December 2011. CP 484-485.

Dr. Steve Tutty, a licensed clinical psychologist, did a psychological assessment of Tasha. Dr. Tutty determined that Tasha is severely affected by the sexual and physical abuse she endured for so many years. She suffers from a significant disability as a result of those injuries. Her ability to appreciate the extent of her injuries has been impaired, and by extension, her ability to cope with the symptoms of her injuries is limited. Because of her youth, the chronicity, and the extent of abuse to which she was subjected, she lacks the coping skills to appreciate the extent of her injury, and the impact it is having on her life. CP 489, 506.

Dr. Tutty testified that the realization in 2011, that CPS failed to intervene and protect was very impacting for Tasha and subsequently compounded the emotional injures from which she already struggled. The impact of the abuse, now coupled with the knowledge CPS did not intervene and protect her, has escalated. In 2013 Tasha's treatment was expanded to include anti-psychotic psychotropic medication (Risperdal). The use of this medication signifies an escalation in the symptoms requiring this medical response. The addition of this medication is a clear marker that her condition is now requiring more significant and long term medical care than she had previously received. Dr. Tutty advises that Tasha's prognosis for recovery is poor, and that Tasha is only now aware of the full extent of her injuries and the impact they have on her long term prospects of recovery. CP 489. Tasha has just started to realize and come to terms with the notion she might never fully recover from her injuries. CP 482.

V. ARGUMENT

A. Summary Of Argument

Tasha Ohnemus produced substantial evidence that the statute of limitations was tolled until 2011 when she discovered CPS's negligence which then led to her discovery of more significant and serious injuries. In the face of a material dispute of fact as to when the statute of limitations

commenced to run, the court erred when it ruled as a matter of law that the statute of limitations had expired prior to the filing of this lawsuit.

B. Standard Of Review

In evaluating a summary judgment motion, the court considers the evidence and draws all reasonable inferences in favor of plaintiff. CR 56(c); *Lybbert v. Grant Co.*, 141 Wn.2d 29, 34, 1 P.3d 1124 (2000). Defendants are entitled to summary judgment only if the record shows "no genuine issue as to any material fact." *Id.* On a summary judgment motion, courts do not make credibility determinations or weigh the evidence. *Margoles v. Hubbart*, 111 Wn.2d 195, 211, 760 P.2d 324, 333 (1988).

On appeal from summary judgment, the appellate court engages 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). The court reviews the motion for summary judgment de novo, and treats all facts and inferences therefrom in a light most favorable to the nonmoving party. *Fell v. Spokane Transit Auth.,* 128 Wn.2d 618, 625, 911 P.2d 1319, (1996). Summary Judgment is only upheld if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. CR 56(c). *Green v. A.P.C. (Am. Pharm. Co.)*, 136 Wn.2d 87, 94, 960 P.2d 912, 915 (1998). "Questions of fact may be determined as a

matter of law 'when reasonable minds could reach but one conclusion.'" *Owen v. Burlington N. & Santa Fe R.R. Co.*, 153 Wn.2d 780, 788, 108 P.3d 1220 (2005) (quoting *Hartley v. State,* 103 Wn.2d 768, 775, 698 P.2d 77 (1985)).

C. Material Issue Of Fact When Tasha Discovered Tortious Conduct By CPS

1. Burden Of Proof

The statute of limitations is an affirmative defense on which the defendant bears the burden of proof. *Haslund v. City of Seattle*, 86 Wn.2d 607, 620-21, 547 P.2d 1221 (1976); *Korst v. McMahon*, 136 Wn. App. 202, 148 P.3d 1081 (2006); *Rivas v. Overlake Hosp. Med. Ctr.*, 164 Wn.2d 261, 189 P.3d 753 (2008); *Oostra v. Holstine,* 86 Wn. App. 536, 937 P.2d 195 (1997).

A claim "accrues" for purposes of commencing the running of the statute of limitations when the plaintiff discovered or reasonably should have discovered, all the elements of her claim. *Ohler v. Tacoma General Hospital,* 92 Wn.2d 507, 598 P.2d 1358 (1979). This includes discovery of the identity of the defendant, the fact of a defendant's tortious conduct, the causal connection between defendant's conduct and the injury, or the extent of harm caused by the defendant.

A claim may accrue at different times. "Accrual" is ordinarily a question of fact; *Green v. A.P.C.*, 136 Wn.3d 87, 960 P.2d 912 (1998);

Adcox v. Children's Orthopedic Hosp. & Med. Ctr., 123 Wn.2d 15, 864 P.2d 921 (1993); *Honcoop v. State*, 111 Wn.2d 182, 194, 759 P.2d 1188 (1988); *Doe v. Finch*, 133 Wn.2d 96, 942 P.2d 359 (1997). *North Coast Air Services, Ltd. v. Grumman Corp.*, 111 Wn.2d 315, 759 P.2d 405 (1988).

The statute of limitations exists because "stale claims may be spurious and generally rely on untrustworthy evidence." CP 31. However, the risk of stale claims is outweighed by the unfairness of precluding justified causes of action when there is "objective, verifiable evidence of the original wrongful act and the resulting physical injury." *Kaiser v. Milliman*, 50 Wn. App. 235, 747 P.2d 1130 (1988).

There is no doubt that plaintiff Tasha Ohnemus was subjected to horrendous sexual, physical and psychological abuse. In view of the State's withdrawal of its liability expert and the admissions of the case workers, there is little room for the State to argue it wasn't negligent and did not cause Tasha to be subjected to significantly more abuse and injury.

2. Plaintiff's Claim Against The State Did Not Accrue Until 2011 When She Became Aware Of CPS Involvement And Negligent Investigation Of Her Abuse Reported In 1996 And 1997

In 2011, at the urging of her counselor, and for purposes of extending Crime Victim Compensation coverage for her therapy, plaintiff

obtained the Mason County Police reports from her 2002 criminal case. In reading those reports, she first discovered the CPS investigations in 1996 and 1997. She had not remembered any interviews at school when she was 8 and 9 years old. She had no other interaction with those case workers and therefore there is no other way she would have known of the 1996 or 1997 investigations. The investigations in 1996 and 1997, all but conceded by the State to have been negligently conducted, resulted in her remaining in the abusive environment five to six additional years.

Washington law follows the discovery rule, *i.e.*, a cause of action does not accrue until an injured party knows or in the reasonable exercise of due diligence should have discovered, the factual basis for the claim. *Beard v. King County*, 76 Wn. App. 863, 867, 889 P.2d 501 (1995); *In re Estates of Hibbard*, 118 Wn.2d 737, 752, 826 P.2d 690 (1992); *Allen v. State*, 118 Wn.2d 753, 758, 826 P.2d 200 (1992).

The leading Washington case on when the statute commences to run is *Ohler v. Tacoma General Hospital,* 92 Wn.2d 507, 598 P.2d 1358 (1979). Ms. Ohler was born premature at Tacoma General Hospital in 1953. She was placed in an incubator manufactured by Air Shields. When discharged from the hospital, she was blind. She knew from an early age her blindness resulted from "too much oxygen to (her) eyes," but

believed the treatment was properly and necessarily administered because of her premature birth.

In 1974, at age 21, she learned from a friend and media accounts that her blindness may have been preventable, and her blindness from excess oxygen may have been the result of wrongful conduct of the hospital and the incubator manufacturer. In reversing summary judgment to the hospital, the Supreme Court held that though plaintiff knew the alleged act, administration of oxygen, and knew the result, blindness, there was a factual issue whether she knew or should have known the result was caused by a breach of the hospital's duty.

Ohler has been cited with approval in several subsequent cases. *North Coast Air Services, Ltd. v. Grumman Corp.*, 111 Wn.2d 315, 759 P.2d 405 (1988) (plane crash in 1974 attributed to pilot errors; plaintiff learned in 1984 of potential aircraft defect and filed in 1986). *Green v. A.P.C.*, 136 Wn.2d 87, 960 P.2d 912, (1998) (plaintiff knew in 1981 she was a "DES daughter" but did not know it would impact reproductive capabilities until 1994).

Applying those facts to this case, plaintiff knew she had been physically and sexually abused by her stepfather, knew she had been harmed, but had no recollection or appreciation of any CPS involvement

in 1996-1997, let alone, that they had performed substandard investigations, until her 2011 discovery.

Oregon also follows the discovery rule and has several reported cases illustrating the application of the rule to sexual assault cases like this one. *T.R. v. Boy Scouts of America*, 344 Or. 282, 181 P.3d 758 (2008) involved a plaintiff abused by a City of The Dalles police officer who ran a Boy Scout sponsored Explorer Scout program. At the time of the sexual abuse in 1996, the plaintiff was 16 years old and living in foster care. T.R. took an early graduation and joined the Army to get away. At age 21, his grandmother read him a newspaper article about another The Dalles police officer arrested for serving alcohol to minors. T.R. called the Department and reported his abuse. During the course of participating in grand jury proceedings, he suspected, for the first time, The Dalles police command staff may have permitted the sexual abuse and failed to protect. He filed a claim against the City in 2003.

The Oregon Supreme Court ruled it was a question of fact for the jury when the plaintiff's claims "accrued." The defendant was required to prove that plaintiff knew or, in the exercise of reasonable care, should have known, facts that would have made a reasonable person aware of the substantial possibility the conduct of the City caused him harm.

Johnson v. Multnomah Cty. Dept. of Community Justice, 344 Or. 111, 178 P.3d 210 (2008), decided the same year as T.R., involved a plaintiff raped by an unknown assailant in 1997, when she was 14. By 2003, the perpetrator was linked to her rape when he committed several more sexual assaults. In December 2003, plaintiff's parents told her news reports suggested the perpetrator's supervision by the county was inadequate. Plaintiff filed her notice of claim in April 2004.

The county defended by producing a number of news reports about the perpetrator's history, his supervision, and finally, his inadequate supervision. The Oregon Supreme Court ruled there were disputed issues of fact when the plaintiff knew or should have known about the county's tortious conduct. The court concluded:

> Finally, the parties agree that "discovery" of an injury involves actual or imputed knowledge of three separate elements: harm, tortious conduct,[2] and causation. *Gaston v. Parsons*, 318 Or. 247, 255, 864 P.2d 1319 (1994). In other words, the notice of claim period does not commence to run, under the discovery rule, until a plaintiff knows or, in the exercise of reasonable care should know, that he or she has been injured and that there is a substantial possibility that the injury was caused by an identified person's tortious conduct. *Adams*, 289 Or. at 239, 611 P.2d 1153 (so stating). (Footnote omitted.)

Oregon cases preceding *Johnson*, specifically *Adams v. Oregon State Police*, 289 Or. 233, 239, 611 P.2d 1153 (1980) and *Gaston v. Parsons,* 318 Or. 247, 255, 864 P.2d 1319 (1994), like the Washington

cases previously cited, emphasize that plaintiff must know (or reasonably should have known) that the specific defendant in the lawsuit both acted in their case, and breached the duty of care, *i.e.*, acted tortiously. This is consistent with Washington law in *Ohler, id* and *North Coast Air Service, id.*

A very recent Oregon case, *Doe 1 v. Lake Oswego Sch. Dist.,* 353 Or. 321, 332-33, 297 P.3d 1287 (2013) further clarifies that reasonable diligence is evaluated from the perspective of a reasonable person in the plaintiff's circumstances.

> . . . [K]nowledge that an actor committed an act that resulted in harm is not always sufficient to establish that a plaintiff also knew that the act was tortious. And, as those cases also demonstrate, whether a plaintiff knew or should have known the elements of a legally cognizable claim, including the tortious nature of a defendant's act, is generally a question of fact determined by an objective standard:
>
> > "The discovery rule applies an objective standard—how a reasonable person of ordinary prudence would have acted in the same or a similar situation. The discovery rule does not require actual knowledge; however, mere suspicion also is insufficient. The statute of limitations begins to run when the plaintiff knows or, in the exercise of reasonable care, should have known facts that would make a reasonable person aware of a substantial possibility that each of the elements of a claim exists."

> *Kaseberg v. Davis Wright Tremaine, LLP*, 351 Or. 270, 278, 265 P.3d 777 (2011) (internal citations omitted). In applying that standard, a court must consider the facts from the perspective of a reasonable person in the circumstances of the plaintiff. *T.R. v. Boy Scouts of America*, 344 Or. 282, 297-98, 181 P.3d 758 (2008). Those circumstances include, but are not limited to, plaintiff's status as a minor, *id.* at 297, 181 P.3d 758, the relationship between the parties, *Kaseberg*, 351 Or. at 279, 265 P.3d 777, and the nature of the harm suffered. *Gaston*, 318 Or. at 256, 864 P.2d 1319. A court cannot decide that question as a matter of law unless the only conclusion that a reasonable trier of fact could reach is that the plaintiff knew or should have known the critical facts at a specified time. *Kaseberg*, 351 Or. at 278, 265 P.3d 777 (so stating); *T.R.*, 344 Or. at 296, 181 P.3d 758 (same).

It is undisputed Tasha did not recall CPS's involvement in her family in 1996 and 1997 when she was 8 and 9 years old. She recalled first being aware of DSHS involvement in 2001 when she was reported for acting out and blamed for family disruption. She then participated in family reconciliation services, FRS, while still being sexually, physically and psychologically abused.

Plaintiff did not know of CPS involvement in 1996-1997 until she received the police reports in 2011. At that time, she acted diligently to investigate whether CPS had acted tortiously in 1996-1997. She filed her lawsuit on August 15, 2012, well within the three-year statute running from the time the claim accrued.

In its motion the State relied heavily on *Allen v. State*, 118 Wn.2d 753, 758, 826 P.2d 200 (1992) and *Estate of Hibbard*, 118 Wn.2d 737, 752, 826 P.2d 690 (1992). Neither helps them. In *Allen,* the plaintiff's parents were murdered. In 1979 they actively participated in the investigation initially, but they moved and lost touch with the Pierce County proceedings. In 1983 they learned of the perpetrator's conviction and in 1984 of a potential negligent supervision case. Family members urged the plaintiff to act, but for emotional reasons, she did not.

That is not the case here. Plaintiff acted immediately upon learning of the inept CPS "investigation" in 1996 and 1997. Her circumstances are not analogous to an adult woman who was aided by family members and did not act because she wanted to put the matter behind her.

Estate of Hibbard is factually convoluted, but at the end of the day, also very different from this case. Plaintiff's parents were murdered in 1997 by a perpetrator released from Western State Hospital. The Bank was appointed personal representative of the estate and the law firm Gordon Thomas was retained as attorneys. The Estate was closed in 1980. Neither the Bank nor their attorneys investigated a claim against the State. In 1984, plaintiff read a newspaper account of the legal case involving the same perpetrator, *Petersen v. State*, which caused her to believe she may

have a legal claim. The heart of the ruling was that plaintiff had all the factual knowledge she needed when her parents were murdered in 1997. She became aware of a new legal theory – not a fact. The court ruled that plaintiff knew or should have known all the essential elements of the cause of action: duty, breach, causation and damages and refused to apply the discovery rule.

In the instant case Tasha, as an elementary student, had no understanding or appreciation of the significance of a CPS caseworker's presence when a school counselor talked to her about whether her stepfather was abusive. She was and remained oblivious to CPS involvement in those early dealings with her school counselor. It was not until 14 years later, in 2011 that she first learned of CPS' negligent conduct in 1996 and 1997. She immediately took action to investigate whether there was a claim and filed her lawsuit within a year. It is a jury question whether she acted with reasonable diligence given her youth and impaired mental health resulting from years of severe abuse.

3. The State Failed to Meet Its Burden Of Proof

The State has the burden of proving that Tasha knew, or in the exercise of reasonable care should have known, facts that would have made a reasonable person aware of the substantial possibility the conduct of CPS caused her harm. The State asserted the Statue of Limitations

expired years before Tasha filed her lawsuit based on two cryptic chart notes in Tasha's mental health records. The State claimed those notes conclusively established, as a matter of law, that Tasha knew of the tortious conduct by CPS in 2003 and 2007, thus waiting until 2012 to file this lawsuit violated the statute.

The State's argument fails because it requires evidence to be viewed in a light most favorable to the State rather than Tasha and requires the court to draw inferences in favor of the State, not Tasha. The State's position also ignores the contradictory evidence submitted by Tasha that creates a genuine issue of material fact, and requires the court to make a credibility determination against Tasha.

In August 2003, one year after Quiles was arrested and prosecuted, Tasha was an inpatient at Kitsap Mental Health Services. She was experiencing night terrors, increased anxiety/panic attacks, and depression/self-harm tendencies. CP 584. The social worker assigned as her therapist entered the following in her records:

> Met č ct yesterday for another 1:1 session. Ct reports that she's feeling "good" emotionally and ready to D/C. Ct did talk about the abuse she's experienced starting in the 2nd grade. Also talked about being "very angry" @ CPS and "hating" them for not believing her allegations and allowing the abuse to continue "so much longer." She reported they told her she was "just trying to get attention."

As already noted, there was an array of DSHS social workers involved with the Quiles family using acronyms of CWS, CFWS, FPS, FRS, and CPS. In 2001 when Tasha was age 13, she interacted with DSHS child social workers who technically were not CPS workers. There is no reason to believe Tasha knew then or even now, who works for CPS, versus CWS, FPS, or FRS. At that time Tasha was still being abused by Quiles and continued to be abused by him for another nine months. In treating all facts and inferences in a light most favorable to Tasha, one could conclude the reference to CPS in the notes is attributable to either a misunderstanding by Tasha of which subdivision of DSHS/DCFS any given worker belonged to, or an erroneous interpretation by the note makers. At a minimum, a genuine issue of material fact exists regarding when Tasha learned of CPS's role in the 1996 and 1997 investigations.

This note was not written by Tasha, nor is it documentation she has endorsed. The portions of the notation that are designated as quotes from Tasha are limited to the following: "very angry", "hating", "so much longer", and "just trying to get attention." The social worker did not quote Tasha when suggesting her anger was directed at CPS. The court should view this note and the inferences therefrom in a light most favorable to Tasha, and determine that reference to CPS did not originate with Tasha.

The State also relied on an unsigned progress note dated October 31, 2007 which indicated the following:

> Tasha reports that she tried to tell CPS and social workers about Steve's sexual abuse. Steve was finally caught and prosecuted after photographing Tasha and ____ in the bathroom with a hidden camera which he put the pictures over the internet.

The author of this note is unknown. Whether the note reflects information provided by Tasha, was gleaned from a prior record, or is merely the writer's interpretation of historical events is unknown. Like the 2003 note, there is nothing in the content of this note that ties it to the CPS investigations in 1996 and 1997. In viewing the facts and inferences therefrom in a light most favorable to Tasha, the 2007 note is not dispositive of anything.

The defense did not present evidence, such as testimony from the creators of these notes, to tie the two chart notes to the 1996 and 1997 disclosures which are the subject matter of this lawsuit. Tasha, on the other hand, did present evidence of her 2011 discovery of CPS tortious acts and corroborating evidence from case manager Kate Wright and clinical psychologist Dr. Tutty.

The State asserted Tasha had no contact with CPS after 1997, and argued Tasha's purported reference to CPS in the above notes must refer to her knowledge of CPS involvement in the 1996 and 1997 reports. The

assumption that Tasha and/or the authors of the notes knew the difference between CPS and all the other related DSHS programs such as FRS, FPS, CWS, etc. is drawing inferences in the wrong direction. Courts do not make credibility assessments and weigh the evidence on summary judgment motions. *Margoles v. Hubbart, id.* The trial court's sole responsibility in ruling on a motion for summary judgment is to determine there is no genuine issue of material fact and that the issue can be determined as a matter of law.

To grant summary judgment on the grounds argued by the State required the trial court to disregard evidence that established genuine issues of material fact. It required the court to ignore Tasha's evidence that she was unaware of CPS involvement in 1996 and 1997. The court had to ignore evidence that she only learned of CPS involvement during 1996 and 1997 in 2011.

Tasha's law suit is not premised on negligence by CPS after the abuse was disclosed to the police in 2002 and the perpetrator was arrested. Nor does it encompass the State's CFWS and FRS intervention in 2001. It is based on the failure of CPS to properly investigate the complaints that occurred five years before. Evidence regarding a dispute of material facts exists as to when Tasha became aware of the State's negligent investigation into those complaints which resulted in its failure to protect

her for the succeeding 5 years of continued abuse. Granting summary judgment in favor of the State was reversible error.

D. Material Issue Of Fact When Tasha Discovered The Nature And Extent Of Harm Caused By The Sexual Abuse She Endured

1. Before RCW 4.16.340, Washington Courts Barred Childhood Sexual Abuse Claims

In the seminal case of *Tyson v. Tyson*, 107 Wn.2d 72, 727 P.2d 226 (1986), a daughter sued her father for childhood sexual abuse. *Id.* at 74. The daughter suppressed all memories of the abuse until nearly 14 years after the last assault, and filed her complaint within one year of recalling the abuse. *Id.* The court affirmed summary judgment dismissal of her claim.

The next year, in *Raymond v. Ingram*, following *Tyson,* the Court of Appeals similarly dismissed a victim's claim of sexual abuse at the hands of her grandfather. *Raymond v. Ingram*, 47 Wn. App. 781, 783-84, 737 P.2d 314 (1987). The court concluded the statute of limitations had run because the victim had always known that she was injured by the abuse:

> Raymond admitted that, before she had therapy, she remembered the assaults and realized that as a child she had mental anguish associated with the sexual abuse. Before her therapy, she also had memories of the events giving rise to her cause of action and of some injury associated with those events.

Id. at 787. "It does not matter that Raymond had not discovered the causal connection to all her injuries, because when Raymond reached the age of majority she knew that she had substantial damages associated with the sexual abuse." *Id.*

2. The Legislature Enacted And Amended RCW 4.16.340 To Counter Judicial Decisions Limiting Childhood Sexual Abuse Claims Based On The Statute Of Limitations

In direct response to *Tyson* and similar cases, in 1988, the Washington Legislature created an expanded civil statute of limitations for childhood sexual abuse cases, allowing victims to bring claims within three years of discovering the injury caused by the abuse:

> 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 three years of the act alleged to have caused the injury or condition, **or three years of the time the victim discovered or reasonably should have discovered that the injury or condition was caused by said act**, whichever period expires later.

Laws of 1988, ch. 144, § 1 (emphasis added).

The Legislature again broadened the avenues of relief for victims of childhood sexual abuse in 1991, creating a distinct new category for sexual abuse claims where the victim did not suppress the memories of the assault, but failed to connect the abuse to injuries or where the injuries did

not manifest until many years after the abuse. The revised 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.

RCW 4.16.340; 1991 Wash. Legis. Serv. Ch. 212 (SHB 2058) (emphasis added).

The Legislature adopted "findings and intent" which "make 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. v. Corp. of Catholic Bishop of Yakima*, 138 Wn.2d 699, 712, 985 P.2d 262 (1999). Findings 4 and 5 apply to situations described in subsection (1)(c), where the victim has been aware that the abuse was harmful, but fails to connect it to

specific injury or does not recognize the extent of harm until many years later:

> The legislature finds that:
>
> > **(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.**
> >
> > 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, Vol. I, ch. 212, n.15 (emphasis added).

In 1999, the Washington Supreme Court explicitly acknowledged that RCW 4.16.340 was enacted to broaden the statute of limitations. *C.J.C v. Corporation of Catholic Bishop of Yakima*, 138 Wn.2d 699, 712, 713, 985 P.2d 262 (1999). *C.J.C.* observed that Washington courts had been construing the discovery rule too narrowly, and needed to instead follow the Legislature's lead in providing broad avenues of relief for victims of childhood sexual abuse. *Id.* "[T]he Legislature specifically provided for a broad and generous application of the discovery rule to civil actions for injuries caused by childhood sexual abuse." *Id.*

The court noted the Legislature's deliberate action to broadly construe the discovery rule to permit childhood sexual abuse claims involving newly manifested injuries: "Significantly, in 1991, the statute was broadened in order to make clear that the discovery of less serious injuries did not commence the period of limitations. In addition, the Legislature specifically superseded a line of cases that had strictly applied the discovery rule in cases involving childhood sexual abuse." *Id.* at 713.[2]

Cases since the passage of RCW 4.16.340 in 1991 have repeatedly cited the need to broadly construe the remedial legislation:

> Our Legislature has determined that a victim of childhood sexual abuse may know he was abused, but be unable to make a connection between the abuse and emotional harm or damage until many years later. He may also be aware of some injuries, but not discover more serious injuries until many years later. This is because of the insidious nature of childhood sexual abuse – it is a traumatic experience causing long-lasting damage. Laws of 1991, vol. 1, ch. 212. Accordingly, our Legislature enacted RCW 4.16.340(1) under which a victim of childhood sexual abuse may sue the abuser for damages suffered as a result of the abuse within the later of...(3) three years of the time the victim discovered that the abusive act caused the injury for which the claim was brought.

---

[2] *See also Miller v. Campbell*, 137 Wn. App. 762, 766-67, 155 P.3d 154 (2007) ("The three-year statute of limitations on a claim arising from an act of childhood sexual abuse does not begin to run at least until the victim discovers 'that the act caused the injury for which the claim is brought.' RCW 4.16.340(1)(c). Legislative findings supporting this statutory discovery rule state the Legislature's intent '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. The legislative findings disapprove of '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.' Laws of 1991, ch. 212, § 1.

Cloud v. Summers, 98 Wn. App. 724, 733, 991 P.2d 1169 (1999).[3]

3. Plaintiff May Be Aware Of Some Injury, But Not "Discover" More Serious Injury Until It Occurs

Washington courts have determined that the standard to be applied regarding the child sexual abuse statute of limitations is a subjective one. "[T]he statute of limitations is tolled until the victim of child abuse *in fact* discovers the causal connection between the defendant's acts and the injuries for which the claim is brought." *Hollmann*, 89 Wn. App. at 325, 949 P.2d 386 (emphasis added); *see also Cloud ex rel Cloud v. Summers*, 98 Wn. App. 724, 734-35, 991 P.2d 1169 (1999).

In the most analogous case to the one at bar, the Washington Court of Appeals determined the child sexual abuse statute of limitations permits lawsuits to be filed within three years of the realization of more serious injury or a discovery of the causal connection between injury and abuse, even where a victim knew they were abused, and knew of some injury. *Hollmann v. Corcoran*, 89 Wn. App. 323, 332-4, 949 P. 2d 386 (1997). In

---

[3] The court in *Cloud* was unequivocal that the legislative intent in enacting RCW 4.16.340 was to expand the time allowed for victims of child sexual abuse to bring civil claims:

> Indeed, as our Legislature has found, childhood sexual abuse, by its very nature, may render the victim unable to understand or make the connection between the childhood abuse and the **full extent** of the resulting emotional harm until many years later. Until that "disability" is lifted, the cause of action either will not accrue or, if accrued, the running of the statute of limitations will be tolled.

Id. at 735.

Hollmann, the plaintiff was the victim of child sexual abuse for years, ending in 1987. He went into counseling in 1989. He disclosed to his counselor sexual contact with an adult male that made him feel extremely guilty. His counselor diagnosed him with PTSD and told him the basis for the diagnosis.

In 1993 Hollmann participated in a psychological evaluation following a back injury. During this evaluation and subsequent therapy a causal connection between his injuries and the child sexual abuse was made. The *Hollmann* court reversed the trial court's summary judgment holding the statute of limitations for child sexual abuse provides for discovery in fact of the causal connection between a known act and subsequent **injuries including injuries that develop years later**. *Hollmann, supra*, at 334. In *Hollmann,* as here, the victim knew he had been molested and knew it caused injury. Nonetheless, the *Hollmann* court found it was a jury question when the plaintiff had discovered in fact the causal connection between abuse and serious injury for which he was suing.

In 2006, *Hollmann* was relied on in *Korst v. McMahon*, 136 Wn. App. 202, 207-208, 148 P.3d 1081 (2006) (plaintiff's letter to her father seven years before she filed suit but 20 years after the abuse expressing

anger at being sexually abused did not demonstrate she understood the effects of the abuse):

> Most statutes of limitations impose a duty on the plaintiff to discover injuries. But this subsection is unique in that it omits the language "or reasonably should have discovered." In fact, the legislature included a "Findings—Intent" section, with this statute, to explain why childhood sexual abuse cases arising from intentional conduct warrant a unique statute of limitations. As Division Three of this court noted in *Hollmann v. Corcoran*, 89 Wn. App. 323, 334, 949 P.2d 386 (1997), legislative findings (4) and (5) explain this specific omission:
>
> > (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.
>
> RCW 4.16.340 (Finding – Intent – 1991 c 212). When the legislature amended RCW 4.16.340 in 1991, it "intend[ed] **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. In light of the legislature's findings, the *Hollmann* court interpreted the plain language of RCW 4.16.340(1)(c) as not imposing a duty on the plaintiff to discover her injuries in childhood sexual abuse cases. *Hollmann*, 89 Wn. App. at 334, 949 P.2d 386. (Emphasis added.)

In 2010, Division III issued an opinion in *Carollo v. Dahl*, 157 Wn. App. 796, 240 P. 3d 1172, involving a plaintiff victim of child sexual abuse who had symptoms of PTSD that became markedly more severe several years after his initial diagnosis. Deviating from the language of the statute and the express intent of the legislature, the *Carollo* court held

that the discovery of more serious injuries required that the discovery must be of different, not just more serious injuries. No other court has cited *Carollo* with approval. The Carollo holding altered the legislature's intent that "even though victims may be aware of injuries related to the childhood sexual abuse, more serious injuries may be discovered many years later," and required that the discovery must be of **different,** not just more serious injuries. This Court must apply the law as the Legislature intended it to be applied – to broadly allow child sexual abuse victims time to experience, appreciate and connect the injuries from the abuse.

Because plaintiff's abuse was so extensive and debilitating, despite many years of counseling, she has continued to experience increasingly difficult symptoms. Learning of CPS's shoddy investigations that subjected her to years of additional abuse sent plaintiff into a marked tailspin requiring increased medication. It is only since filing this lawsuit that she has become aware that her psychological injuries are likely permanent. Dr. Tutty testified Tasha is only now aware of the full extent of her injuries and the impact they have on her long term prospects for recovery which is poor. A genuine material issue of fact exists as to whether Tasha has recently discovered injuries that are significantly more serious than she previously knew.

VI. CONCLUSION

The trial court erred when it determined as a matter of law that there was no material issue of fact regarding when Tasha knew or should have known that CPS committed tortious acts in 1996 and 1997, by negligently investigating referrals Tasha was being abused, and by failing to intervene and protect her. In dismissing Tasha's case the trial court erred by viewing the evidence in a light most favorable to the moving party – the State. This Court should remand this case for trial on both the child sexual and physical abuse claims.

The Court also should find that the statute of limitations in child sexual abuse cases begins to run when one discovers additional or more serious injuries caused by the abuse. Where, as in the instant case, evidence is submitted that supports a determination the victim became aware of more significant harm, including that her injuries are likely permanent, the court should hold that the Statue of limitations will

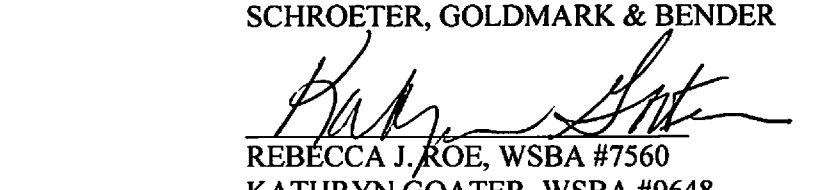
/////
////

commence on such discovery. The court also should reverse and remand the child sex abuse claim on this basis.

DATED this 9th day of March, 2015.

Respectfully submitted,

SCHROETER, GOLDMARK & BENDER



REBECCA J. ROE, WSBA #7560
KATHRYN GOATER, WSBA #9648

SCHROETER, GOLDMARK & BENDER
810 Third Avenue, Ste. 500
Seattle, WA 98104
Tele: 206-622-8000 ~ Fax: 206-682-2305

SCHROETER GOLDMARK BENDER

March 09, 2015 - 2:13 PM

Transmittal Letter

Document Uploaded: 1-469448-Respondent Cross-Appellant's Brief.pdf

Case Name: Tasha Ohnemus v. State of Washington
Court of Appeals Case Number: 46944-8

Is this a Personal Restraint Petition? Yes ■ No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: ____

Answer/Reply to Motion: ____

■ Brief: __Respondent Cross-Appellant's__

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: ____
Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: _____

Comments:

No Comments were entered.

Sender Name: Darla Moran - Email: mabbutt@sgb-law.com

A copy of this document has been emailed to the following addresses:

torolyef@atg.wa.gov
josephd@atg.wa.gov
elizabethb3@atg.wa.gov
tinas1@atg.wa.gov
goater@sgb-law.com
roe@sgb-law.com
mabbutt@sgb-law.com