NO. 94318-4
[Court of Appeals No. 48029-8-II]

SUPREME COURT OF THE STATE OF WASHINGTON

K.C. and L.M.,

Respondents,

v.

STATE OF WASHINGTON and DEPARTMENT OF SOCIAL AND HEALTH SERVICES,

Defendants,

GOOD SAMARITAN HOSPITAL, PATRICK SHEEHY, PhD, and LINDA WILLIAMS, M.S.W.,

Petitioners,

and

DONNA JOHNSON,

Petitioner/Defendant.

RESPONDENTS GOOD SAMARITAN HOSPITAL, SHEEHY AND WILLIAMS' PETITION FOR REVIEW

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I. IDENTITY OF PETITIONER

Petitioners Good Samaritan Hospital, Patrick Sheehy, Ph.D, and Linda Williams, M.S.W., seek review of that part of the Court of Appeals' decision affirming the trial court's refusal to give collateral estoppel effect to a prior superior court order dismissing K.C.'s claims arising out of childhood sexual abuse on statute of limitations grounds.

II. COURT OF APPEALS DECISION

On February 28, 2017, Division II of the Court of Appeals filed its unpublished slip opinion ("Slip. Op."), a copy of which is attached.[1] The Court of Appeals, among other things, affirmed the trial court's refusal to give collateral estoppel effect to a prior superior court order dismissing K.C.'s childhood sexual abuse claims on statute of limitations grounds even though it rejected all of K.C.'s arguments as to why the traditional four elements of collateral estoppel were not satisfied, and found instead that: (1) the statute of limitations issues in the prior adjudication and this action were identical; (2) the prior summary judgment dismissal was a final judgment on the merits; (3) K.C., the party against whom collateral estoppel was asserted, was the identical party in both actions; and (4) K.C.'s assertion that the judge who entered the prior order was biased because she had previously represented K.C.'s biological father in a

[1] The opinion may also be found at *KC v. Johnson*, No. 48029-8-II, 2017 Wash. App. LEXIS 499 (February 8, 2017).

family law dispute with K.C.'s mother did not establish that application of collateral estoppel would result in injustice. Slip Op. at 10-15.

Looking to cases, unlike this one, that involved application of collateral estoppel to administrative agency findings where courts are required to consider three additional factors for the injustice prong, the Court of Appeals concluded that it needed to consider whether application of collateral estoppel in this case would contravene public policy. *Id.* at 13-15. Even though the Court of Appeals acknowledged that "the statute of limitations issue for both KC and LM revolves around when each discovered or should have discovered that her harm was caused by the abuse," it viewed K.C.'s and L.M.'s claims as having "profound similarities," and then concluded that giving preclusive effect to the superior court order dismissing K.C.'s claims on statute of limitations grounds, while allowing L.M.'s claims to proceed, would somehow contravene public policy and the legislative intent of the childhood sexual abuse statute of limitations, RCW 4.16.340(1)(c),[2] "to afford child victims of sexual assault meaningful relief notwithstanding the general three year statute of limitations" and thus result in injustice. *Id.* at 14-15.

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[2] RCW 4.16.340(1)(c) provides that "[a]ll 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: ... (c) Within three years of the time the victim discovered that the act caused the injury for which the claim is brought."

III. ISSUES PRESENTED FOR REVIEW

Did the Court of Appeals err by: (1) refusing to give collateral estoppel effect to a superior court order based on inapposite authority addressing the preclusive effect of prior administrative determinations; (2) evaluating whether application of collateral estoppel had the potential for substantive injustice, rather than properly limiting the injustice prong inquiry to an examination of procedural fairness; and/or (3) concluding that the application of collateral estoppel to K.C.'s claims on statute of limitations grounds, while allowing L.M.'s claims to proceed, would result in injustice and contravene the legislative intent behind the child sexual abuse statute of limitations?

IV. STATEMENT OF THE CASE

In their initial complaint filed in April 2013 against the State and the Department of Social and Health Services (collectively the "State"), K.C., who was born in October 1978, and L.M., who was born in February 1977, alleged that their stepfather, Walter Carl Johnson, repeatedly raped, physically abused, and sexually assaulted them "for over a decade," beginning after he moved into their home with their mother, Donna Melby, later becoming Donna Johnson. CP 1, 4. K.C. and L.M. included identical allegations in their second amended complaint filed in November

2014,[3] adding as defendants Good Samaritan Hospital ("GSH"), Sheehy and Williams (collectively "the GSH defendants"). CP 1006-07, 1009.

According to K.C., Johnson stopped abusing her in May 1991, after she reported the abuse at school and shortly before Johnson and her mother divorced, when Johnson moved out of the house. CP 250, 854. According to L.M., Johnson continued to abuse her when he took her to medical appointments until she ran away, two weeks before Johnson died in 1993. CP 1793-94.

A. Background Facts Giving Rise to the Litigation.

In September 1980, a Pierce County Superior Court judge ordered Johnson to attend counseling as required by his parole officer as a condition of a deferred sentence imposed following his guilty plea to indecent liberties involving his biological daughter. CP 1703, 1715. Over the course of several months in 1981, counselor Sheehy of Good Samaritan Mental Health Center provided therapy sessions to Johnson and referred him for psychological testing. CP 1735-36.

In August 1981, Sheehy wrote a letter (co-signed by MSW Williams) to Johnson's parole officer, at Johnson's request, to address "the feasibility of his establishing a residence with Mrs. Donna Melby," the mother of then two-year-old K.C. and four-year-old L.M. CP 1, 1735.

[3] K.C. and L.M. had earlier amended their complaint to name their mother, Donna Johnson, as a defendant. CP 919-20.

Based on test results, as well as conjoint sessions with Donna, Sheehy concluded that their relationship was appropriate and recommended that ongoing monitoring by the parole officer and the court would be sufficient to address any situational problems. CP 1735-36. Sheehy also indicated his belief that Johnson had benefited from his services as much as he could and suggested that therapy be removed from Johnson's parole conditions. CP 1736.

In October 1981, Johnson's parole officer, Kenneth Davis, filed a special report asking for the court's advice whether Johnson should be granted permission to move in with Donna and her children. CP 1723. Davis described Sheehy's report, as well as the contrary concerns a Children's Protective Services officer and Johnson's previous therapist raised in advising against Johnson's proposed change of residence. CP 1723-24. Davis expressed his own reservations and requested the court's opinion. CP 1724. Although there is no existing record of how the court responded to Davis's report and request, Johnson and Donna were married on November 23, 1981, and resided together, along with K.C. and L.M., until 1991, when their marriage was dissolved. CP 1785, 1789.

B. K.C. and L.M.'s Lawsuits Against the State and GSH.

In 2013, when K.C. and L.M, as adult women, sued the State for damages resulting from sexual abuse by their stepfather, they alleged that

the State failed to properly monitor Johnson following his conviction of indecent liberties involving his biological daughter, by allowing him to live with their mother from 1981 to 1991. CP 1-3. The State moved for summary judgment in August 2014, arguing, among other things, that K.C.'s claims were barred by the statute of limitations, CP 16, 22, 29-32, and that, due to the passage of time, both K.C. and L.M. had insufficient evidence to prove negligence and causation without resorting to speculation, CP 32. The trial court, Judge Katherine M. Stolz, granted summary judgment dismissing K.C.'s claims on statute of limitations grounds, CP 973, and also dismissing all claims against the State based on speculation, CP 968, 973; *see also* CP 969. Although K.C. and L.M. filed a notice of appeal, they withdrew the appeal less than one month later. CP 876, 933.

In November 2014, K.C. and L.M. amended their complaint to add the GSH defendants, seeking damages for medical negligence, and alleging that the GSH defendants negligently recommended to Johnson's parole officer in 1981 that Johnson should be allowed live in Donna's home with K.C. and L.M. CP 1006-14. The GSH defendants moved for summary judgment, arguing, among other things, that K.C.'s claims were barred by collateral estoppel, having been dismissed by Judge Stolz on statute of limitations grounds. CP 1399, 1417. The trial court, Judge Vicki Hogan, denied the motion, ruling that collateral estoppel did not

apply to K.C.'s claims because the record she had before her was different than the record before Judge Stolz. 7/10/15 RP 31; CP 1598-1600, 1628.

Although the Court of Appeals on discretionary review found that the records before Judge Stolz and Judge Hogan were the same, not different, Slip Op. at 10-11, the Court of Appeals nonetheless affirmed Judge Hogan's refusal to apply collateral estoppel, deciding *sua sponte* that applying collateral estoppel to K.C.'s claims, while allowing her sister's claims to proceed, would contravene public policy and thus result in an injustice. *Id.* at 14-15. It is that portion of the Court of Appeals' decision that gives rise to this Petition for Review.

V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

This Court should grant review under RAP 13.4(b) (1) and (4). The Court of Appeals decision is in conflict with decisions of this Court which have considered public policy as a factor in evaluating the injustice prong of collateral estoppel only when considering the preclusive effect of rulings of administrative agencies, and then only with respect to procedural, not substantive, unfairness. The Court of Appeals' analysis of the injustice prong of collateral estoppel also raises issues of substantial public interest as it (1) engrafts an amorphic "public policy" analysis unrelated to the kinds of procedural or public policy considerations the courts have employed in cases concerning collateral estoppel based on

administrative agency rulings to determine whether the party against whom collateral estoppel is asserted had a full and fair opportunity to litigate the issue in the administrative proceeding; and (2) imputes to the Legislature an intent, never expressed or implied by the Legislature, to preclude application of collateral estoppel to a judicial determination that one sibling's claims are barred by the childhood sexual abuse statute of limitations simply because another sibling's similar claims are allowed to proceed.

A. The Court of Appeals Decision Is in Conflict with Decisions of this Court Consistently Directing Consideration of Public Policy Only When Evaluating the Preclusive Effect of Administrative Agency Findings.

Collateral estoppel "prevents relitigation of an issue after the party against whom the doctrine is applied has had a full and fair opportunity to litigate his or her case." *Nielson v. Spanaway Gen. Med. Clinic, Inc.*, 135 Wn.2d 255, 262, 956 P.2d 312 (1998). For collateral estoppel to apply, four elements must be established:

> (1) the issue decided in the earlier proceeding was identical to the issue presented in the later proceeding, (2) the earlier proceeding ended in a judgment on the merits, (3) the party against whom collateral estoppel is asserted was a party to, or in privity with a party to, the earlier proceeding, and (4) application of collateral estoppel does not work an injustice on the party against whom it is applied.

Christiansen v. Grant County Hosp. Dist. No. 1, 152 Wn.2d 299, 307, 96 P.3d 957 (2004) (citations omitted); *see also Thompson v. Department of*

Licensing, 138 Wn.2d 783, 790, 982 P.2d 601 (1999); *Nielson*, 135 Wn.2d at 263. As to the fourth element, in determining whether application of collateral estoppel would work an injustice, "Washington courts look to whether the parties to the earlier proceeding received a full and fair hearing on the issue in question." *Thompson*, 138 Wn.2d at 795-96; *see also Nielson* 135 Wn.2d at 264-65.

For collateral estoppel purposes, "'injustice' means more than that the prior decision was wrong." *State Farm Mut. Auto Ins. Co. v. Avery*, 114 Wn. App. 299, 306, 57 P.3d 300 (2002) (citation omitted). As this Court recognized in *Christensen*, "whether the decision in the earlier proceeding was substantively correct is generally not a relevant consideration in determining whether application of collateral estoppel would work an injustice." *Id.* at 317 (*citing Thompson*, 138 Wn.2d 795-800). And, as this Court explained in *Thompson*:

> The public policy of avoiding a duplication of proceedings where the parties had ample incentive and opportunity to litigate an issue indicates that no injustice is done in giving preclusive effect to a decision from the first proceeding, even if, as here, we may have reason to believe the first result was erroneous.

Thompson, 138 Wn.2d at 799.[4] The injustice prong of collateral estoppel

[4] As this Court further explained in *Thompson*, 138 Wn.2d at 795, adopting a rule that, if the prior court erred on the law, the subsequent court should not be bound by the prior ruling would "tend to eviscerate the collateral estoppel doctrine," because "[i]n every case the litigant who lost on a point of law before a prior tribunal would have the

is "most firmly rooted in procedural unfairness," *id.* at 795, and "calls for an examination primarily of procedural regularity," *id.* at 799.

In cases involving the question whether collateral estoppel should be applied to administrative agency findings, this Court has held with respect to collateral estoppel's injustice prong that "[t]hree additional factors must be considered under Washington law *before collateral estoppel may be applied to agency findings*: (1) whether the agency acted within its competence, (2) the differences between procedures in the administrative proceeding and court procedures, and (3) public policy considerations." *Christensen*, 152 Wn.2d at 308 (citing *Reninger v. Dep't of Corr.*, 134 Wn.2d 437, 450, 951 P.2d 782 (1998); *Shoemaker v. City of Bremerton*, 109 Wn.2d 504, 508, 745 P.2d 858 (1987); *State v. Dupard*, 93 Wn.2d 268, 275, 609 P.2d 961 (1980)) (italics added).

But, even when this Court has evaluated those additional factors in cases where collateral estoppel is premised on a prior administrative agency determination, the focus has remained on procedural fairness and procedural regularity, with the Court considering such things as differences in the degree of proof between the administrative and the court proceedings, *e.g.*, *Standlee v. Smith*, 83 Wn.2d 405, 407, 518 P.2d 721 (1974), fundamental differences in the purposes and procedures in the

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opportunity to reargue that same point of law before a subsequent tribunal when the opponent attempted to apply collateral estoppel."

administrative hearing versus a criminal trial, *e.g.*, *State v. Vasquez*, 148 Wn.2d 303, 309, 59 P.3d 648 (2002), and disparity of relief between the two forums that is so great that it is unlikely that a party would have vigorously litigated the crucial issues in the first proceeding, *e.g.*, *Reninger*, 134 Wn.2d at 453.

Although this Court has also indicated that "[p]olicy arguments have been often the deciding factor when collateral estoppel is based upon prior administrative determination," *Dupard*, 93 Wn.2d at 275, this Court has made clear that the application of collateral estoppel does not necessarily contravene public policy "simply because a subject implicates public policy." *Christensen*, 152 Wn.2d at 316. Thus, this Court in *Christensen*, in considering the preclusive effect of a Public Employment Relations Committee ("PERC") ruling dismissing a claim of retaliatory discharge for union activities on a later court action for wrongful discharge in violation of public policy, concluded that "[t]he fact that the tort of wrongful discharge in violation of public policy rests on public policy does not mean that application of collateral estoppel to preclude relitigating the reason for discharge violates public policy." *Id.* at 321.

And, when Legislative intent is considered as part of a public policy analysis for purposes of collateral estoppel as applied to administrative agency decisions, this Court has made clear that the focus is

on whether the Legislature has indicated "its intent on the matter of preclusion," either expressly or by implication, and if so, "that intent generally controls whether the judicially applied doctrine of collateral estoppel will apply." *Id.* at 314-315. Thus, given the Legislature's grant of authority to PERC and express legislative recognition of PERC's expertise, this Court in *Christensen* concluded that the Legislature did not intend to prevent the application of collateral estoppel to PERC's ruling. *Id.* at 315.

In *Dupard*, in deciding whether the State was collaterally estopped in a criminal prosecution from litigating matters previously determined in defendant's favor at a parole revocation hearing, this Court looked to public policy and determined that it required rejection of collateral estoppel because parole revocation "is not part of a new criminal prosecution," but "a "continuing consequence" of the *original* conviction." *Id.* at 276. (italics in original). This Court reasoned that, where the question at a parole hearing is whether a parolee committed a new crime, the inquiry is more appropriately addressed to the criminal justice system, noting that the Legislature provided an exception to the rule for speedy parole hearings where the parolee has been accused of a new crime. *Id.* Thus, the Court concluded that, "[p]ractical public policy requires that new criminal matters, when charged in the criminal justice system, must

be permitted to be there decided, unhampered by any parallel proceedings of the" parole board. *Id.* at 277.

In *State v. Vasquez*, 148 Wn.2d at 309, this Court again focused on considerations of procedural unfairness and the legislative purpose behind administrative procedures to decide whether determinations made in an administrative license suspension hearing should bar relitigation of those determinations in subsequent criminal prosecutions. Based on a review of license suspension statutory provisions, as well as legislative history, the Court observed that the administrative process was meant to be limited in scope and focused on immediately removing drivers from the road, *id.* at 314-15, and that suspension hearings are expressly separate from criminal proceedings, are conducted informally by a Department of Licensing employee without legal training, and apply relaxed evidentiary rules and limit evidence, with no opportunity for testimony or cross-examination. *Id.* at 315-17. Given the fundamental differences in both purpose and procedure between the administrative hearing and the criminal trial, the Court concluded that giving license suspension hearings preclusive effect in criminal proceedings would "defeat the legislative purpose of conducting swift and expeditious administrative hearings" and cause delays and "deplete already scarce resources within the prosecutor's office" by "forcing the State to fully litigate matters at the administrative

level." *Id.* at 317-18.

The Court of Appeals decision in this case is inconsistent with the reasoning of this Court's decisions, described above, for a number of reasons justifying review under RAP 13.4(b)(1). First, this Court has repeatedly stated that it is in cases involving the preclusive effect *of agency decisions*, such as *Dupard*, *Vasquez*, and *Christensen*, that the three additional factors, including public policy, must be considered in connection with the injustice prong of collateral estoppel, *see Christensen*, 152 Wn. 2d at 308; *Dupard*, 93 Wn. 2d at 275,[5] but not in cases addressing the preclusive effect of court rulings, such as *Thompson*. This Court has not previously required a public policy analysis before applying preclusive effect to final orders entered in prior court proceedings free from procedural irregularity. Nevertheless, here, the Court of Appeals, after finding that the first three traditional elements of collateral estoppel had been satisfied, and after rejecting the only argument K.C. made as to the fourth – the injustice – element, the Court of Appeals nonetheless

[5] *See also, e.g., Reninger*, 134 Wn.2d at 449 (in dispute as to injustice element of collateral estoppel because of differences between the civil services remedies and those available in a civil tort action, court stated: "We have employed three criteria for deciding whether to apply collateral estoppel to the findings of an administrative body: (1) whether the agency acting within its competence made a factual decision; (2) agency and court procedural differences; and (3) policy considerations"); *Shoemaker*, 109 Wn.2d at 508 ("Where the prior adjudication took place before an administrative body, collateral estoppel may be proper, depending on other, additional factors. These have been stated as "including" the following: (1) whether the agency acting within its competence made a factual decision; (2) agency and court procedural differences; and (3) policy considerations").

determined that it needed to engage in a public policy analysis, citing *Christensen*, *Dupard*, and *Vasquez*, Slip Op. at 13-15, to determine whether giving preclusive effect to a prior superior court judge's ruling that K.C.'s claims arising out of childhood sexual abuse were barred by the statute of limitations would result in an injustice in a second superior court action involving K.C.'s claims arising out of childhood sexual abuse.

Second, although it couched its analysis in terms of procedure, the Court of Appeals essentially focused on the substantive injustice of a potentially erroneous result rather than procedural fairness or irregularity. Slip Op. at 14-15. The Court of Appeals did not examine whether, or determine that, the summary judgment proceeding before Judge Stolz differed in purpose, formality, evidentiary standard, or burden of proof from the proceedings before Judge Hogan. To the contrary, it is obvious that K.C. had a full and fair opportunity to litigate, and did litigate, the statute of limitations issues in the summary judgment proceeding before Judge Stolz.

Moreover, the Court of Appeals focused on the similarities of the sisters' claims and GHS's defenses while ignoring the fact that the State, in the proceeding before Judge Stolz, only raised the statute of limitations with regard to K.C.'s claims. *See* CP 16, 22-32. Nothing in the record suggests that K.C. was unable or lacked incentive to respond to the State's

motion simply because the State did not bring an identical motion with respect to the timeliness of L.M.'s claims. The relative similarity of the factual allegations made by the two sisters did not require the State to litigate the two claims uniformly, as K.C. and L.M. are separate parties claiming individual injuries that one of them could well have discovered were caused by childhood sexual abuse earlier than the other. The Court of Appeals' decision provides no principled reason why the GSH defendants should be prevented from fully litigating their potential defenses, including the assertion of collateral estoppel solely against K.C.

Third, the Court of Appeals did not suggest that the Legislature intended that collateral estoppel could never preclude a claim of child sexual abuse on statute of limitations grounds. Nor did it identify any legislative intent or purpose to ensure that the statute of limitations cannot apply to prevent claims of some, but not all, members of the same family or related victims of the same abuser, especially when those family members or related victims could well have discovered that their injuries were caused by the abuse. Nothing in RCW 4.16.340 or its legislative history as described by the Court of Appeals, Slip Op. at 8-9, suggests any express or implied intent with regard to preclusion. *See Christensen*, 152 Wn.2d at 313-15. Although there is no question that the Legislature intended to cast a wide net in favor of giving victims of childhood sexual

abuse time to discover that childhood sexual abuse caused their specific injury before requiring them to bring suit, nothing in the legislative history or statement of intent suggests that once a court has determined, after a procedurally full and fair proceeding, that a plaintiff's claim is barred by the applicable statute of limitations, it would contravene public policy to apply collateral estoppel. *Id.*

B. The Court of Appeals Decision Involves Issues of Substantial Public Interest That Should Be Determined by This Court.

This Court should also accept review under RAP 13.4(b)(4) to definitively reject the Court of Appeals' unwarranted restriction of the applicability of collateral estoppel to prior court determinations free from procedural irregularity. The Court of Appeals' decision raises an issue of substantial public interest insofar as it engrafts an amorphic "public policy" analysis unrelated to the kinds of procedural or public policy considerations the courts have employed in cases involving collateral estoppel based on prior administrative agency rulings, not prior court rulings, to determine whether the party against whom collateral estoppel is asserted had a full and fair opportunity to litigate the issue in the administrative proceeding. The Court of Appeals' decision effectively eviscerates the collateral estoppel doctrine on a basis rejected in *Thompson*, 138 Wn.2d at 795, by allowing K.C. to reargue the same point

of law in a subsequent court proceeding that she lost before Judge Stolz irrespective of the procedural fairness of that proceeding. As the *Thompson* court made clear: "Judicial economy and the desirability of avoiding inconsistent results militate against a rule stating the meaning of injustice in the context of collateral estoppel means a substantively incorrect prior decision." *Id.*

The Court of Appeals' decision also raises an issue of substantial public interest insofar as it imputes to the Legislature an intent, never expressed or implied by the Legislature, to preclude application of collateral estoppel to a judicial determination that one sibling's claims are barred by the childhood sexual abuse statute of limitations simply because another sibling's similar claims have not been barred. Nothing in the childhood sexual abuse statute of limitations, its legislative history, or the Legislature's statement of intent suggests that it would contravene public policy to apply collateral estoppel to a prior judicial determination that a plaintiff's claim arising from childhood sexual abuse is barred by the applicable statute of limitations. To the extent that the Legislature did expressly or impliedly intend "to afford child victims of sexual assault meaningful relief notwithstanding the general three year statute of limitations," Slip Op. at 14, the Legislature determined that such meaningful relief would be fulfilled by giving such victims three years

from the time they discovered that the childhood sexual abuse caused the injury for which their claim was brought. RCW 4.16.340(1)(c). The Court of Appeals' decision provides no principled reason why, once a court, after having given the victim a full and fair opportunity to litigate the issue, determines that the victim's claim was brought more than three years after such discovery, it would contravene public policy, or result in an injustice, to apply collateral estoppel to that determination.

VI. CONCLUSION

For all these reasons, the Petition for Review should be accepted.

RESPECTFULLY SUBMITTED this 30th day of March, 2017.

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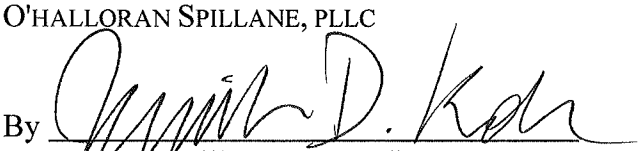
By 

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

KC and LM, Respondents, v. DONNA JOHNSON, GOOD SAMARITAN HOSPITAL, PATRICK SHEEHY PhD, and LINDA WILLIAMS, M.S.W., Petitioners, STATE OF WASHINGTON and DEPARTMENT OF SOCIAL & HEALTH SERVICES, Defendants.	No. 48029-8-II UNPUBLISHED OPINION

BJORGEN, C.J. — KC and LM brought a negligence action against the Department of Social and Health Services (DSHS), Good Samaritan Hospital, Patrick Sheehy, Ph.D., and Linda Williams, M.S.W. (GSH), for allegedly failing to prevent KC's and LM's sexual abuse at the hands of their stepfather. On discretionary review, GSH challenges three summary judgment rulings by the trial court, arguing that (1) the trial court improperly denied summary judgment dismissing KC's claim on collateral estoppel grounds, (2) the trial court improperly denied summary judgment dismissing LM's claim on statute of limitations grounds, and (3) the trial

court improperly granted KC's and LM's motion for summary judgment striking GSH's statute of limitations affirmative defense.

We hold that (1) the trial court properly decided that KC's claims were not collaterally estopped by a prior decision on the statute of limitations applicable to those claims, (2) the trial court properly denied summary judgment requesting dismissal of LM's claim under the statute of limitations because there are genuine disputes of material fact, and (3) the trial court improperly granted summary judgment striking GSH's statute of limitations affirmative defense because there are genuine disputes of material fact. Accordingly, we affirm the trial court in part, reverse in part, and remand for further proceedings consistent with this opinion.

FACTS

In 2012, KC began reviewing court records to determine if her mother, Donna Johnson, was eligible for certain benefits on account of her mother's marriage to her ex-husband, Carl Walter Johnson.[1] While reviewing those records, KC learned that Johnson had been permitted to live with Donna and her then young children, including KC and her sister LM, even though he had been convicted of molesting his own daughters. It was in the period after Johnson moved in that he sexually abused KC and LM. KC told her sister LM about the records she discovered, and on April 23, 2013, KC and LM filed a complaint against the State of Washington and DSHS, alleging negligent screening, investigation, and monitoring of Johnson.

A. Facts Pertaining to Johnson

In 1980, Johnson pled guilty to indecent liberties stemming from different incidents of sexual contact with his biological daughters and received a deferred five year sentence on the

[1] Because Donna Johnson and Carl Johnson have the same last names, we refer to Donna by her first name; we refer to Carl as Johnson. No disrespect intended.

condition that he comply with probation requirements. In 1981, Johnson's probation officer wrote a memo to the trial court, requesting advice regarding whether to permit Johnson to move into Donna's home. The memo noted that Johnson's treatment provider determined that he could safely move into Donna's home if he continued to comply with his treatment schedule, but also expressed concern based on information from Johnson's prior treatment provider, Dr. H.R. Nichols, who identified problems with his treatment progression. Although the record does not contain the court's response to the probation officer's questions, the record does indicate that Donna and Johnson were married on November 23, 1981, and that he was permitted to move into Donna's residence sometime in 1981 or 1982.

B. Facts Pertaining to Abuse of KC and LM

KC and LM were both sexually abused by Johnson after he moved into Donna's residence. He would molest the girls while they were alone or at night and eventually involved one of KC and LM's brothers in the abuse. Both girls recall the abuse beginning when each was about 4 years old. In the period the abuse was occurring, KC attempted to harm herself, and both girls' academic performance declined. By age 12, LM became sexually active with older partners and became pregnant by age 15 by her boyfriend. KC and LM's biological father was investigated on suspicion of molesting the girls and he grew resentful toward them as a result of the accusations, leading to a deterioration of their relationship.

Both KC and LM attempted to disclose the abuse at different times but were not believed. Even after KC disclosed the abuse in November 1990 and child protective services (CPS) investigated, the abuse continued. Although Donna eventually forced Johnson to leave the family home, he continued to abuse LM when he drove her to medical appointments. Johnson died of a heart attack when LM was 15 and KC was 13, just after LM had run away from home.

C. DSHS Trial

In this proceeding, held before the Honorable Katherine Stolz, DSHS filed a summary judgment motion requesting that KC's complaint be dismissed under the statute of limitations, RCW 4.16.340(1)(c), because KC stated in her deposition that she had been experiencing emotional symptoms as a consequence of her sexual abuse for her entire adult life. RCW 4.16.340(1)(c) states:

> (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:
> . . . .
> (c) Within three years of the time the victim discover[s] that the act caused the injury for which the claim is brought.

DSHS also identified KC's "trouble coping with every-day life, suicial attempts in her early years, ongoing suicidal thoughts throughout her adult life, and depression and anxiety as part of her PTSD [Post Traumatic Stress Disorder] diagnosis" as evidence that KC had correlated her injuries to her childhood sexual abuse more than three years before filing her negligence suit. Clerk's Papers (CP) at 32. KC responded that none of the evidence offered by DSHS demonstrated that she had connected her symptoms with childhood sexual abuse.

After hearing argument, the trial court granted summary judgment to DSHS, explaining:

> [Court]: I'll grant the summary judgment motion, you know. The bottom line is that it was very – a lot of this is predicated on some sort of, you know, speculation as to what somebody should have, could have, or would have done; and we are also talking [sic] a climate regarding sex abuse that is, you know, over 30 years ago, you know, in some of these references; and you know, things were a lot different then than they are now. I mean, you can't go and retroactively apply the standards of what they do today to what they did 30-odd years ago; so you know, at this point, given the fact that we – you know, there's a good reason why things have statute of limitations is because, you know, records don't exist, memories have faded, individuals are dead; so there's really no way to reconstruct what happened with anything other than speculation as to what someone could have or should have done. I'll grant the summary judgment motion.
> . . . .

> [Court]: Okay. [Plaintiff's] [c]ounsel, I understand; but, you know, again, this is too old – this case is too old. There's too many gaps, too many people who can't come in to testify as to about what they did or did not do, what they did or did not know.
>
> [P]: But that's not the legal standard.
>
> [Court]: I am finding, Counsel, that, you know, there isn't enough here to give to a jury, so I've granted the summary judgment motion; so let's go ahead and get the order ready to sign.
>
> . . . .
>
> [P]: Your Honor, so I can explain to my clients, the basis of the Court's ruling is to say that we're speculating –
>
> [Court]: That's not the only basis.
>
> [P]: -- and that the case is just really old.
>
> [Court]: It's not the only basis, but, you know, I'm granting the summary judgment motion. It's, you know, been too long. It's outside the statute of limitations for one of them, KC; but the bottom line is: You don't have the individuals who can actually verify the documents; so a lot of this is would be just hearsay, anyway. I mean, unless you can start questioning someone to say this is what we did, this is why we did it, this is what actually happened, you know, you don't have the ability to prove a case because you can't dump a lot of documents on a jury and ask them to reconstruct them.

Verbatim Report of Proceedings (VRP) (Sept. 26, 2014) at 16, 20-22. That same day, the court entered an order dismissing all of KC's and LM's claims against DSHS with prejudice, and KC and LM filed a notice of appeal.

On September 30, 2014 KC and LM filed a motion to recuse Judge Stolz based on her past representation of KC and LM's biological father, Delbert Melby, in a family law dispute against their mother, Donna. KC and LM also filed a motion for reconsideration of the summary judgment order on the same day. DSHS responded in part by arguing that the trial court no longer had jurisdiction over the motions because the case had been appealed. On October 10, Judge Stolz denied the motion to recuse, and KC and LM amended their complaint to add Donna as a defendant in the case. On October 13, KC and LM withdrew their appeal of Judge Stolz's summary judgment ruling.[2]

[2] We dismissed the appeal on October 29, and issued the mandate for this case on December 8.

On October 15, KC and LM made a motion to have the presiding judge consider the impartiality of Judge Stolz on reconsideration. On October 17, Judge Stolz transferred the case to another department due to Donna's addition as a defendant, but reaffirmed her order dismissing KC's and LM's claims against DSHS. Judge Stolz's order also noted that KC and LM had agreed to strike their motion to reconsider the summary judgment order dismissing their case. On October 31, Judge van Doorninck denied KC and LM's motion to reconsider Judge Stolz's refusal to recuse herself, and on November 14 Judge Culpepper denied KC and LM's motion to reconsider Judge van Doorninck's ruling on reconsideration.

D. Good Samaritan Hospital Trial

On November 19, 2014, KC and LM filed their second amended complaint, adding Good Samaritan Hospital, Patrick Sheehy, Ph.D., and Linda Williams, M.S.W. (GSH) as defendants. KC and LM alleged that GSH was negligent in the provision of counseling services. GSH and KC and LM filed summary judgment motions and made oral arguments before Judge Hogan on July 10, 2015.

In its motion for summary judgment, GSH argued that KC's and LM's claims were barred by the statute of limitations and that KC was collaterally estopped from relitigating the issue of whether her claims were barred by the statute of limitations. With respect to KC, GSH made similar arguments to those made by DSHS based on KC's statements that she had been experiencing her symptoms for her entire life. GSH also noted that "[b]ased on the same facts, Judge Stolz previously ruled that KC's claims are barred by the statute of limitations," and argued that KC's claims should be dismissed under the statute of limitations. CP at 1415.

As to LM, GSH argued that, like KC, she had experienced mental health issues for her entire life, and consequently, her claims were barred by the statute of limitations. GSH also

argued that LM's claims were barred by the statute of limitations because her medical records showed that she was diagnosed with PTSD in 2010 and that she had already begun making connections between her symptoms and past abuse by July 2011, more than three years prior to adding GSH to the lawsuit in November 2014.

LM responded that the medical records were conjoint marital counseling sessions, rather than "individual psychotherapy" sessions, as claimed by GSH. CP at 1442. While the record reflects that LM attended many sessions with her partner, records from other sessions indicate that LM attended some sessions by herself. LM also contended that the medical reports only reflected the impressions of the counselor, not LM, and therefore the information contained in the medical reports did not correlate to LM's subjective understanding of the connection between her abuse and her symptoms for the purpose of the statute of limitations. GSH responded that it would be "absurd" to suppose that LM's counselor would be able to identify "[symptoms] of sadness, loss, grief, and PTSD due to extensive [history] of childhood abuse," without participation from LM. CP at 1566.[3]

In her oral rulings, Judge Hogan denied GSH's motion to dismiss KC's claim on the grounds of collateral estoppel, reasoning that "[t]here [was] a new record before [the] Court." CP at 1628. The court also denied GSH's summary judgment motion to dismiss KC's and LM's claims on statute of limitations grounds and granted their summary judgment motion to preclude Good Samaritan from arguing a statute of limitations affirmative defense at trial. When asked during argument whether the court knew when KC's and LM's causes of action accrued, Judge Hogan responded, "I don't." CP at 1634.

[3] Additionally, some of the relevant medical records contain LM's signature, which could indicate that she examined the documents.

GSH sought discretionary review of the trial court's summary judgment rulings rejecting application of collateral estoppel to KC, denying GSH's motion to dismiss LM's claims as barred under the statute of limitations, and precluding GSH from raising a statute of limitations affirmative defense at trial. Our commissioner granted review.[4]

ANALYSIS

I. RCW 4.16.340

RCW 4.16.340 establishes the statute of limitations for claims based on childhood sexual abuse. As set out above, the heart of this statute is a limitations period of three years from the time the victim discovers that the act caused the injury for which the claim is brought. The legislature passed this statute in response to our Supreme Court's decision in *Tyson v. Tyson*, 107 Wn.2d 72, 727 P.2d 226 (1986). *See,* ENGROSSED SECOND H.B. 2058 Digest. In *Tyson*, the court held that the three year statute of limitations barred the plaintiff's claim, despite the fact that the plaintiff had repressed memories of her sexual assault. *Tyson*, 107 Wn.2d at 75, 79-80. When the legislature amended RCW 4.16.340 in 1991, it commented:

> In addition to the cases in which a victim may suffer injuries, but does not know that the sexual abuse caused the injury due to suppressed memory of the sexual abuse, a victim may remember the sexual abuse but may have a delayed reaction to the abuse. The victim may experience significant suffering from the abuse later in life. A victim may have experienced some trauma from abuse when the abuse occurred but the trauma may not have been severe enough to prompt the victim to sue within three years of the victim's 18th birthday.
>
> . . . .
>
> The Legislature finds that sexual abuse is a *pervasive problem that affects the safety and well-being of many citizens*. Childhood sexual abuse is traumatic and the damage is long-lasting. Victims may not only repress the memory of the abuse for many years, but may also be unable to connect being abused with any injury until

[4] Although the commissioner granted review on the issue of whether some or all of KC's and LM's claims were time barred by the statute of limitations, on appeal GSH has limited its argument on this issue to whether LM's claims are time barred.

> later in life. Although the victim may be aware of the sexual abuse, more serious reactions to the abuse may develop later.
>
> . . . .
>
> The Legislature also intends that the discovery of minor injuries from sexual abuse does not trigger the statute of limitations for injuries that were not discovered or did not manifest themselves until later years.

ENGROSSED SECOND H.B. 2058 Digest (emphasis added).

Our Supreme Court has clarified that RCW 4.16.340 encompasses negligence claims brought against third parties who allegedly failed to protect children from abuse. In *C.J.C. v. Corporation of Catholic Bishop of Yakima*, the court reasoned that because RCW 4.16.340(1) applied to "'all . . . causes'" or claims that were "'based on intentional conduct,'" the legislature did not intend to limit application of the statute to intentional acts. 138 Wn.2d 699, 709, 985 P.2d 262 (1999) (quoting *Am. Legion Post No. 32 v. City of Walla Walla*, 116 Wn.2d 1, 8, 802 P.2d 784 (1991)). The court explained that "intentional sexual abuse is the predicate conduct upon which all claims are based, including the negligence claims," because "the injury resulting from the abuse 'forms the grounds' for the claims." *Id.* at 709-10.

II. 2015 SUMMARY JUDGMENT MOTIONS

A. Standard of Review

Summary judgment is appropriate only if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Walston v. Boeing Co.*, 181 Wn.2d 391, 395, 334 P.3d 519 (2014) (citation omitted). Summary judgment is granted only if, given the evidence, reasonable persons could reach only one conclusion. *Walston*, 181 Wn.2d at 395. Our court engages in the same inquiry as the trial court, with questions of law reviewed de novo and the facts and all reasonable inferences from the facts viewed in the light most favorable

to the nonmoving party. *Christensen v. Grant County Hosp. Dist. No. 1*, 152 Wn.2d 299, 305, 96 P.3d 957 (2004).

B. Collateral Estoppel as to KC

Collateral estoppel, or issue preclusion, prevents relitigation of an issue in a subsequent proceeding involving the same parties. *Id.* at 306. The collateral estoppel doctrine "promotes judicial economy and serves to prevent inconvenience or harassment of parties," by reducing repetitive litigation and providing for finality as to particular issues. *Id.* (citation omitted). Whether collateral estoppel applies to bar relitigation of an issue is reviewed de novo. *Id.* at 305. A party invoking collateral estoppel must demonstrate that:

> (1) the issue decided in the earlier proceeding was identical to the issue presented in the later proceeding, (2) the earlier proceeding ended in a judgment on the merits, (3) the party against whom collateral estoppel is asserted was a party to, or in privity with a party to, the earlier proceeding, and (4) application of collateral estoppel does not work an injustice on the party against whom it is applied.

Id. at 307.

GSH asserts that KC is collaterally estopped from relitigating whether her claim is time barred by the statute of limitations based on Judge Stolz's prior ruling that KC's claim was barred by the statute of limitations. KC and LM dispute each factor with regard to this claim of collateral estoppel.

1. Identity of Issue

KC and LM argue that the trial court properly concluded that differences in the evidentiary records before Judge Stolz and Judge Hogan precluded application of collateral estoppel. At oral argument before Judge Hogan, KC claimed that several of KC's specific harms, education impairments, early pregnancy, and substance abuse were "never brought before Judge Stolz." CP at 1616. The record belies KC's and LM's assertions. In making her ruling,

Judge Hogan considered KC's 2015 declaration, which included statements from KC and excerpts from a forensic examiner discussing KC's problems with substance abuse, education, and pregnancy. Judge Stolz considered KC's 2014 declaration in her summary judgment ruling, which is entirely identical to KC's 2015 declaration. Both declarations were signed "this 15th day of September, 2014," are addressed to "HONORABLE KATHERINE M. STOLZ," and in all other respects are the same, aside from the filing date. CP at 442, 1039. Having reviewed KC's 2014 declaration, Judge Stolz would have been aware of KC's problems involving early pregnancy, substance abuse, and education. Therefore, despite KC and LM's argument in briefing that "Judge Hogan's ruling was based upon a different evidentiary record," we find that the issue in this case is identical to the issue litigated before Judge Stolz for the purpose of collateral estoppel. Br. of Resp'ts at 23.

2. Judgment on the Merits

KC and LM maintain that collateral estoppel requires finality and there have never been any final rulings on the pending motions before Judge Stolz. However, GSH seeks application of collateral estoppel only with respect to Judge Stolz's order granting summary judgment. A grant of summary judgment "'constitutes a final judgment on the merits and has the same preclusive effect as a full trial of the issue.'" *Brownfield v. City of Yakima*, 178 Wn. App. 850, 870, 316 P.3d 520 (2014) (quoting *Nat'l Union Fire Ins. Co. of Pittsburgh v. Nw. Youth Servs.*, 97 Wn. App. 226, 233, 983 P.2d 1144 (1999)). Furthermore, a judgment becomes final for the purpose of collateral estoppel at the beginning of the appeals process rather than the conclusion. *Nielson v. Spanaway Gen. Med. Clinic, Inc.*, 85 Wn. App. 249, 254-55, 931 P.2d 931 (1997) (citations omitted). Therefore, we find that Judge Stolz's summary judgment order was a final judgment on the merits.

3. Identity of Party

KC and LM contend that collateral estoppel is not appropriately applied to KC because "[GSH] and DSHS are different parties, with different legal obligations, and different damages were caused by their differing involvement." Br. of Resp'ts at 23. However, this argument inverts the proper standard, that "the party *against whom* collateral estoppel is asserted was a party to, or in privity with a party to, the earlier proceeding." *Christensen*, 152 Wn.2d at 306 (emphasis added). In this case, GSH argues that collateral estoppel should be applied to KC, who was a party in the summary judgment proceeding before Judge Stolz. Therefore, we find that the identity of the party is identical for the purpose of collateral estoppel.

4. Injustice

KC and LM allege that Judge Stolz's representation of Melby, KC and LM's biological father, in a 1984 family law dispute involving Donna, their mother, creates an appearance of bias that requires us to set aside Judge Stolz's ruling. Application of collateral estoppel does not work an injustice where a party against whom collateral estoppel is asserted "'had an unencumbered, full, and fair opportunity to litigate his claim in a neutral forum.'" *Nielson*, 85 Wn. App. at 255 (quoting *Rains v. State*, 100 Wn.2d 660, 666, 674 P.2d 165 (1983)). In the context of collateral estoppel, "'[i]njustice' means more than that the prior decision was wrong. When faced with a choice between achieving finality and correcting an erroneous result," the court generally opts for finality. *State Farm Mut. Auto. Ins. Co. v. Avery*, 114 Wn. App. 299, 306, 57 P.3d 300 (2002) (citations omitted).[5]

[5] At least one court has articulated a four-factor test to determine whether application of collateral estoppel would work an injustice. *Avery*, 114 Wn. App. at 306. Those factors are: (1) the character of the court issuing the judgment; (2) the scope of the original court's jurisdiction; (3) procedural informality; and (4) procedural safeguards, including appeal. *Id.* at 306-09. Because neither party has briefed or argued these factors, or otherwise argued that the underlying

Under the appearance of fairness doctrine, a judge must recuse herself "if [she] is biased against a party or [her] impartiality may reasonably be questioned." *State v. Dominguez*, 81 Wn. App. 325, 328, 914 P.2d 141 (1996). However, a party claiming bias must produce "[e]vidence of a judge's actual or potential bias . . . before the appearance of fairness doctrine will be applied." *Id.* at 328-29. A judge's prior representation of a party in an unrelated matter does not necessarily raise the specter of potential bias. *Id.* at 329. In *Dominguez*, the trial court judge had previously both prosecuted and defended the defendant in unrelated criminal matters. *Id.* The court held that "the mere fact that the judge earlier acted once for [the defendant] and once against him, both times in his professional capacity as an attorney, does not establish potential bias." *Id.* In this instance, Judge Stolz's alleged bias is more attenuated than the claimed bias of the trial judge in *Dominguez*, because Judge Stolz's former client is not a party to the current dispute. Therefore, application of collateral estoppel would not result in an injustice on this basis.

However, the injustice prong of the collateral estoppel analysis also contemplates whether application of the doctrine would contravene public policy. In *Christiansen*, our Supreme Court noted that "the injustice factor [of collateral estoppel] 'recognizes the significant role of public policy.'" 152 Wn.2d at 309 (quoting *State v. Vazquez*, 148 Wn.2d 303, 309, 59 P.3d 648 (2002)). Examining the case of *State v. Dupard*, 93 Wn.2d 268, 609 P.2d 961 (1980), the court in *Christiansen* explained:

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proceeding contained procedural or jurisdictional defects, we decline to address these factors specifically.

> In *Dupard*, the issue was whether collateral estoppel would be applied in a criminal prosecution where the charges were based on conduct that had been the subject of a parole revocation decision by the Board of Prison Terms and Paroles. The court concluded that the legislature contemplated that new crimes would be processed initially in the criminal justice system and not in a parole revocation hearing. The court specifically noted that RCW 9.95.120 provided a parole hearing within 30 days for violations *other than* felonies or misdemeanors.

Christiansen, 152 Wn.2d at 309. The court concluded that "[t]his indicator of legislative intent weighed against application of collateral estoppel," and that "[i]f a legislative body indicates its intent on the matter of preclusion, that intent generally controls whether the judicially applied doctrine of collateral estoppel will apply." *Id.* at 309, 314. However, the court also noted that "simply because a subject implicates public policy does not mean that application of collateral estoppel *contravenes* public policy," and that the analysis is still concerned primarily with procedural fairness. *Id.* at 315-16.

In this instance, KC and LM have made essentially identical claims against GSH, and GSH has asserted the same affirmative defense against both KC and LM. The statute of limitations issue for both KC and LM revolves around when each discovered or should have discovered that her harm was caused by the abuse. RCW 4.16.340. With such profound similarities, application of collateral estoppel to bar KC's claim on statute of limitations grounds while LM's nearly identical claim proceeds under the same statute of limitations would result in injustice; it would contravene the legislative intent to afford child victims of sexual assault meaningful relief notwithstanding the general three year statute of limitations. ENGROSSED SECOND H.B. 2058 Digest. Statute of limitations "are procedural rules that are properly the

realm of the Legislature." *Sidis v. Brodie/Dohrmann, Inc.*, 117 Wn.2d 325, 330-31, 815 P.2d 781 (1991); *Hutton v. State*, 25 Wn.2d 402, 405, 171 P.2d 248 (1946).[6]

Given the unique circumstances of this case and the legislative intent embodied in RCW 4.16.340(1)(c), we hold that application of collateral estoppel to KC would contravene public policy, and thereby result in injustice. As such, we affirm the grant of summary judgment dismissing GSH's collateral estoppel argument as applied to KC.

C. Statute of Limitations as to LM

GSH argues that based on the medical records they submitted, no reasonable jury could conclude that LM's claim is not time barred.

RCW 4.16.340(1)(c) provides that a childhood sexual assault victim's three year statute of limitations is tolled until "the victim discovered that the act caused the injury for which the claim is brought." We have previously acknowledged that this statutory tolling provision "'is unique . . . it specifically focuses on when a victim of sexual abuse discovers the causal link between the abuse and the injury for which the suit is brought.'" *B.R. v. Horsley*, 186 Wn. App. 294, 299, 345 P.3d 836 (2015) (quoting *Korst v. McMahon*, 136 Wn. App. 202, 208, 148 P.3d 1081 (2006)). The statute of limitations does not begin when a victim identifies an injury, but rather when a victim associates an injury with prior abuse. *Id.* at 300 (citations omitted). Therefore, LM's claim is timely if she correlated her harms to her abuse less than three years before filing her claim. *Id.* at 299-300.

[6] However, at least one case has characterized a statute of limitations as "both substantive and procedural." *Stikes Woods Neigh. Ass'n v. City of Lacey*, 124 Wn.2d 459, 466, 880 P.2d 25 (1994).

While GSH has produced medical records suggesting that LM could have associated her harms with her abuse more than three years before she filed her claim, all reasonable inferences must be resolved in favor of the nonmoving party on summary judgment. *Christensen*, 152 Wn.2d at 305. More specifically, *Korst*, 136 Wn. App. 202, illustrates well, although obliquely, the demanding showing under this standard needed to sustain summary judgment against a plaintiff based on this statute of limitations. In *Korst*, the trial court granted defendants' motion for a directed verdict and dismissed the plaintiff's claim as time barred based in part on a letter that the plaintiff wrote to her abuser. *Korst*, 136 Wn. App. at 204-05. The plaintiff's letter expressed anger and frustration at her assailant for sexually abusing her and lamented the pain that the experience caused. *Id.* at 209. We reversed the trial court, reasoning that the plaintiff's letter "merely states that the original pain . . . has not gone away, but it does not prove that [the plaintiff] knew her father's sexual abuse had caused her more serious physical and emotional symptoms." *Id.* at 210.

Viewing all the evidence in favor of LM, a jury could reasonably conclude that LM associated her harms with her abuse less than three years before filing her complaint. Although GSH provided records pertaining to LM that mention childhood abuse, these records do not conclusively establish that LM connected her abuse to her harms. Similarly, LM's statement that "[this abuse] has affected my life for as long as I can remember," is similar to the plaintiff's expression of pain in *Korst*.[7] CP at 1366. As such "a jury must resolve the factual issues and determine whether the statute of limitations bars her claim." *B.R.*, 186 Wn. App. at 306

[7] "I was just a kid, what 13-14 when I was raped by Dad. Do you know for the victim (me) Its [sic] something that *never* goes away. . . . It's just constant hurts." *Korst*, 136 Wn. App. at 209 (alteration in original).

(citations omitted). For these reasons, we affirm the trial court order denying GSH's summary judgment as to LM.

D. Statute of Limitations Affirmative Defense

GSH argues that the trial court erred in granting KC and LM's summary judgment motion precluding GSH's statute of limitations affirmative defense. As discussed in the preceding section, the determination of when a victim associated a particular harm with earlier abuse is a question of fact for the jury. *B.R.*, 186 Wn. App. at 306 (citations omitted). At the July 10, 2015 summary judgment hearing, both parties disputed when KC and LM associated their harms with their abuse, and Judge Hogan stated that she did not know when their claims accrued. Precluding GSH from arguing a statute of limitations affirmative defense would effectively remove the determination of a question of fact from the jury: the question of when KC and LM discovered that the abuse caused the harm. Given the conflicting evidence on this issue and Judge Hogan's admitted uncertainty as to when the claims accrued, we reverse the grant of summary judgment striking GSH's statute of limitations affirmative defense.

CONCLUSION

We affirm the trial court's denial of the summary judgment motion requesting dismissal of KC's claims as collaterally estopped. We also affirm the trial court's denial of the summary judgment motion requesting dismissal of LM's[8] claims under the statute of limitations, and we reverse the trial court's summary judgment ruling precluding GSH's statute of limitations

[8] As noted, GSH does not argue on appeal that KC's claims are barred under the statute of limitations.

affirmative defense. Finally, we remand for further proceedings consistent with this opinion.

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.

BJORGEN, C.J.

We concur:

WORSWICK, J.

MELNICK, J.

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that under the laws of the State of Washington that on the 30th day of March, 2017, I caused a true and correct copy of the foregoing document, "Respondents Good Samaritan Hospital, Sheehy and Williams' Petition for Review," to be delivered in the manner indicated below to the following counsel of record:

Counsel for Respondent:	SENT VIA:
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DATED this 30th day of March, 2017, at Seattle, Washington.

Carrie A. Custer

Carrie A. Custer, Legal Assistant

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