

FILED  
Court of Appeals  
Division II  
State of Washington  
8/10/2020 3:34 PM  
No. 53957-8-II

COURT OF APPEALS, DIVISION ONE  
OF THE STATE OF WASHINGTON

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R.N., individually, J.W., individually, and S.C., individually,  
*Appellants,*

v.

KIWANIS INTERNATIONAL, a non-profit entity;  
KIWANIS PACIFIC NORTHWEST DISTRICT, a non-profit  
entity; KIWANIS OF TUMWATER, a non-profit  
corporation; KIWANIS OF CHEHALIS, a non-profit entity;  
KIWANIS OF GRAND-MOUND ROCHESTER, a non-  
profit entity; KIWANIS OF GRAND-MOUND, a nonprofit  
entity; KIWANIS OF ROCHESTER, a non-profit entity;  
KIWANIS OF CENTRALIA, a non-profit entity; KIWANIS  
OF CENTRALIA-CHEHALIS, a non-profit entity;  
CHARLES McCARTHY, an individual; GUY CORNWELL,  
an individual; LEE COUMBS, an individual; SAM C.  
MOREHEAD, an individual; EDWARD J. HOPKINS, an  
individual; LEWIS PATTON, an individual; HENRY  
MEISTER, an individual; B. DALE SHANNON, an  
individual; KIWANIS OF CHEHALIS, a non-profit  
corporation,

*Respondents.*

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ON APPEAL FROM THURSTON COUNTY SUPERIOR COURT

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BRIEF OF RESPONDENTS HENRY MEISTER, B. DALE SHANNON  
AND GUY CORNWELL

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## I. INTRODUCTION

A corporation exists only as a creature of statute. When it is dissolved, it is akin to when a person passes away. When a person or a corporation passes away, the Legislature has provided a statutory method to allow claims to be filed against the “deceased” entity. A deceased person can be sued temporarily in the form of his or her estate. A deceased corporation can be sued temporarily by virtue of a survival statute.

Corporate survival statutes temporarily extend the statutory existence of dissolved corporate entities and allow them to undertake certain activities relating to their winding up. One of those activities is participation in lawsuits, whether as plaintiff or defendant. However, claims must be brought during the period allowed by the survival statute. Otherwise, there is no entity to sue, even if the plaintiff files suit within the time allowed by the statute of limitations.

A statute of limitations is unrelated to a survival statute. A statute of limitations is a statute prescribing the period of time in which to bring a particular claim. It exists so that the claim does not become stale, and the suit inefficient and or inequitable. A claim can be timely under the statute of limitations, but cannot be brought against a particular person or entity, if that person or entity does not exist.

The Legislature has chosen to extend the time period in which plaintiffs may bring claims for childhood sexual abuse. This is right and just. But the Legislature did not revive the existence of dissolved corporations by amending the survival statute to resurrect them. The fact

that a timely childhood sexual abuse claim cannot be filed against a corporation that dissolved ten years ago is no more a “conflict” with the statute of limitations than is the fact that the same timely claim could not be brought against a person who passed away 10 years ago. The suit is timely, but only against persons and entities that exist.

The trial court here correctly concluded that Washington’s survival statute precludes any claims against dissolved corporations and their agents who acted solely in their corporate capacity. The three respondents herein, Guy Cornwell, Henry Meister, and Dale Shannon, were such agents. The appellants presented no allegation or evidence that Cornwell, Meister, or Shannon undertook or breached any duty to the plaintiffs in their personal capacity. They were sued for allegedly negligent acts in the course of their duties as agents of the dissolved corporation. They were properly dismissed.

## **II. STATEMENT OF THE CASE**

R.N.<sup>1</sup> commenced this action in 2015, alleging negligence against, *inter alia*,<sup>2</sup> Lewis County Youth Enterprises (LCYE) a former nonprofit corporation that had done business as Kiwanis Vocational Home for Youth (KVH). CP 28. No individual defendants were named. *Id.* The 2015 complaint alleged that while he was a ward of the state from 1989-1991,

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<sup>1</sup> R.N. is the lead plaintiff; for the sake of clarity and ease of reference in this brief his initials are used to refer to all named plaintiffs collectively. No disrespect to any plaintiff is intended or should be inferred.

<sup>2</sup> The First Amended Complaint named other entities: Kiwanis of Tumwater, Kiwanis of Pe Ell, Lewis County Washington, Kiwanis of Chehalis, and State of Washington agencies: Department of Social and Health Services, Department of Children, Youth and Family Services, and Child Protective Services.

R.N. was placed at KVH. CP 29-31. He alleged he was repeatedly neglected and subjected to mistreatment, sexual exploitation, and deprivation of the most basic human needs. *Id.* R.N.'s complaint specifically against KVH sounded in negligence. CP 29, 32. He alleged that KVH was aware or should have been aware that the children were subjected to this alleged mistreatment, and failed to adequately supervise, intervene, investigate, and report to proper authorities about what was going on. *Id.*

R.N. claims that as a direct and proximate result of KVH's (and other defendants') negligence, he and the other plaintiffs were harmed physically and emotionally and became institutionalized criminals as a result. CP 32.

LCYE/KVH filed its summary judgment motion in February 2017. CP 59. It argued that any claims against the former corporate entity was barred based on Washington's corporate dissolution statute, RCW 23B.14.340.<sup>3</sup> The trial court granted that motion. CP 876.

Later, R.N. amended his complaint to add individual defendants, including Co-Respondents Meister, Shannon, and Cornwell. CP 2021. *None* of the allegations involved any sexual abuse by Meister, Shannon, or Cornwell. *Id.* Nor has R.N. ever pleaded or produced evidence of any knowledge or concealment of sexual abuse by others. Instead, R.N.'s claims against Cornwell, Meister, and Shannon sound in negligent oversight, training, and supervision. *Id.*

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<sup>3</sup> The full text of RCW 23B.14.340 is reproduced at Appendix 1.

R.N. subsequently stipulated to the dismissal of Meister and Shannon, conceding that claims against them could not be sustained in light of the prior ruling that RCW 23B.14.430 barred claims against LCYE/KVH. CP 2252. Cornwell joined in a separate summary judgment motion filed by other individual defendants and also argued for dismissal based on the prior dismissal of the corporate entities under RCW 23B.14.340. CP 2986-2988. Cornwell's motion was also granted. CP 4086.

### **III. ARGUMENT**

#### **A. Standard of Review**

Review is *de novo*. R.N.'s appeal as to Shannon, Meister, and Cornwell is from a summary judgment dismissal. Appellate courts review summary judgment dismissal *de novo*, considering the evidence and all reasonable inferences from the evidence in the light most favorable to the nonmoving party. *Keck v. Collins*, 184 Wn.2d 358, 370, 357 P.3d 1080, 1086 (2015). Summary judgment is appropriate only when no genuine issue exists as to any material fact and the moving party is entitled to judgment as a matter of law. *Scrivener v. Clark Coll.*, 181 Wn.2d 439, 444, 334 P.3d 541 (2014).

R.N.'s appeal involves issues of statutory interpretation, also reviewed *de novo*. *Wright v. Jeckle*, 158 Wn.2d 375, 380, 144 P.3d 301 (2006). "The primary goal in statutory interpretation is to ascertain and give effect to the intent of the Legislature." *Nat'l Elec. Contractors Ass'n*, 138 Wn.2d 9, 19, 978 P.2d 481 (2004). In order to determine legislative intent,

the court begins with the statute's plain language and ordinary meaning. *King Cty. v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 142 Wn.2d 543, 555, 14 P.3d 133, 139 (2000). Legislative bodies are presumed to have full knowledge of existing statutes affecting the matter upon which they are legislating. *Martin v. Triol*, 121 Wn.2d 135, 148, 847 P.2d 471, 477 (1993).

**B. There is no conflict between the corporate dissolution survival statute and the statute modifying the discovery rule to delay commencement of the statute of limitations in childhood sexual abuse cases.**

R.N.'s claims against Meister, Shannon, and Cornwell rest on their acts or omissions as corporate agents of LCYE/KVH.<sup>4</sup> The trial court ruled that these claims were precluded by Washington's corporate survival of remedy statute, RCW 23B.14.340. CP 2252, 4086. That survival of remedy statute precludes claims against LCYE/KVH and its officers, shareholders, and directors that were not filed within three years of the dissolution. RCW 23B.14.340.

On appeal, R.N. first challenges the trial court's application of the survival of remedy statute to dismiss dissolved entities and individuals that acted on behalf of those dissolved entities. App. Br. 18-32. He argues that the survival of remedy statute conflicts with RCW 4.16.340, the statute that

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<sup>4</sup> R.N. also argues at App. Br. 33 that he sued Cornwell in his personal capacity. That argument is addressed *infra* § C. Although the names of co-Respondents Meister, Shannon, and Cornwell are individually listed in the complaint, the complaint does not allege, nor does the record reveal, that they undertook or breached any statutory or common law duty they owed to R.N. personally. Instead, the complaint and the evidence shows only that they were sued for acts or omissions in their capacity as agents of LCYE/KVH. CP 1707-1714; *see infra* § C. They therefore respond to R.N.'s statutory analysis, because that analysis applies to dismiss them as individuals acting in their corporate capacity.

tolls the statute of limitations for claims based on intentional sex abuse of children.

**1. Background on the corporate survival of remedy statute and the statute modifying the statute of limitations for childhood sexual abuse claims.**

At common law, when a corporation dissolved it ceased to exist for all purposes and therefore could not sue or be sued. *Ballard Square Condominium Owners Association*, 158 Wn.2d 603, 609, 146 P.3d 914 (2006). This rule arose out of similar common law principles, including the general principle that a tort claim against an individual tortfeasor abated upon the death of that tortfeasor. *Id.*, see e.g. *Bortle v. Osborne*, 155 Wash. 585, 591-592, 285 P. 425, 428 (1930) (at common law action for wrongful death abated upon death of tortfeasor until wrongful death statute was enacted).

In 1965, the Washington State Legislature concluded that the common law rule extinguishing all claims at the moment of a corporation's dissolution was too harsh. *Ballard Square*, 158 Wn.2d at 609. It modified the common law by creating a survival of remedy statute. It permitted parties to sue a dissolved corporation for a period of time post-dissolution. *Id.*

Washington's current survival statute allows the filing of claims against a dissolved corporation within two or three years, depending on the date of dissolution. RCW 23B.14.340.<sup>5</sup> Once the time for bringing claims

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<sup>5</sup> The statute allows for two years to file claims against corporations dissolved before 2006, and three years for corporations dissolved after that date.

has elapsed, all claims are barred, even if the claim has not yet accrued, and even if the statute of limitations has not yet expired. *Ballard Square*, 158 Wn.2d at 619-620. It applies to all claims, using sweeping language: “any right or claim existing, or any liability incurred, prior to such dissolution or arising thereafter...”.

RCW 4.16.340(1)(c)<sup>6</sup> addresses the claims of the victims of abuse who fail to make the connection between the abuse and the injuries experienced years later. It codifies an alternate version of the common law discovery rule for actions based on childhood sexual abuse, thereby tolling the commencement of the statute of limitations. The statute alters the typical common law rule that a claim accrues on the date the plaintiff knew *or had reason to know* all of the elements of the claim. Instead, under RCW 4.16.340, childhood sexual abuse victims may bring their claims within three years of their *actual knowledge* that the injury or condition was caused by a wrongful act of sexual abuse. *Hollmann v. Corcoran*, 89 Wn. App. 323, 949 P.2d 386 (1997).

**2. There is no conflict between the survival statute and the statute of limitations tolling provision. This court cannot judicially amend or repeal the survival statute in the guise of “harmonizing” it with the statute of limitations tolling provision.**

R.N. first argues that the survival statute and the tolling statute for childhood sex abuse claims are in “apparent conflict.” App. Br. 24.<sup>7</sup> He

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<sup>6</sup> The full text of RCW 4.16.340 is reproduced at Appendix 1.

<sup>7</sup> R.N. concedes that since 1988, the two statutes have existed side-by-side and both have been subsequently amended by the Legislature. App. Br. 19-24.

claims that they conflict because the tolling statute codifies the discovery rule for childhood sex abuse claims, and the survival statute does not. *Id.* He claims that courts are obligated to “harmonize statutes in apparent conflict.” *Id.*

R.N.’s argument contains three analytical errors that will be addressed in turn. First, his brief does not apply the test that determines what constitutes a “conflict” between statutes. Second, his argument rests on the fallacy that a survival of remedy statute is the same as a statute of limitations, such that the two can “conflict.” Third, his solution to the alleged “conflict” is that this Court should either re-write RCW 23.B.14.340 or ignore it altogether.

**(a) Statutes do not conflict if each can be given effect without distortion of any statutory language.**

Two statutes do not conflict if both can be given effect without distortion of the language used in either. *SEIU Healthcare Nw. Training P’ship v. Evergreen Freedom Found.*, 5 Wn. App.2d 496, 509, 427 P.3d 688 (2018), review denied sub nom. *SEIU Healthcare N.W. Training P’ship v. Evergreen Freedom Found.*, 192 Wn.2d 1025, 435 P.3d 275 (2019), citing *State v. Fagalde*, 85 Wn.2d 730, 736, 539 P.2d 86 (1975).

Two statutes also do not conflict if they are different in their scope, even if they pertain to the same subject matter. *O.S.T. ex rel. G.T. v. BlueShield*, 181 Wn.2d 691, 699, 335 P.3d 416 (2014). For example in *O.S.T.*, our Supreme Court considered whether two statutes were in conflict. *Id.* at 694. Both statutes involved the same subject matter: health insurance

coverage for neurological conditions. *Id.* at 697. The first was a specific law that mandated “employer-sponsored” group plans to provide coverage for neurodevelopmental therapies for children six and under. *Id.* Based on this law, insurers providing non-employer sponsored plans excluded coverage for neurodevelopmental therapies. *Id.* at 695. The second, enacted years later, was a much more general law mandating that “all health service” plans must cover “mental health services.” *Id.* at 697-698. Plaintiffs challenged the long-standing exclusions for neurodevelopmental therapies as violating the broader, more recent law.

The Supreme Court in *O.S.T.* rejected the insurers’ argument that the two statutes were in conflict because one did not mandate coverage for neurodevelopmental therapies for persons over age 6 in non-employer sponsored plans, and one did. *Id.* at 699-700. The court concluded that the scope of each law differed: the earlier law established a minimum standard of coverage, and the later law raised that minimum standard. *Id.* The *O.S.T.* opinion also established that the “specific trumps the general” principle of statutory interpretation only applies if the statutes conflict. *Id.* at 700.

Legislative enactments that are not actually in conflict should be interpreted so as to give meaning and effect to both, even though one statute is general in application and the other is more specific. *Davis v. King County*, 77 Wn.2d 930, 468 P.2d 679 (1970). Such an interpretation gives significance to both acts of the Legislature. *Pearce v. G. R. Kirk Co.*, 92 Wn.2d 869, 872, 602 P.2d 357, 359 (1979). The “general governs the specific” rule of statutory interpretation applies only if the statutes deal with

the same subject matter and conflict cannot be harmonized. *Tacoma v. Taxpayers*, 108 Wn.2d 679, 743 P.2d 793 (1987), *State v. Edwards*, 53 Wn. App. 907, 771 P.2d 755, review denied, 113 Wn.2d 1002, 777 P.2d 1050 (1989).

- (b) The survival statute does not conflict with the statute of limitations at issue here, or with any statute of limitations. The fact that a claim is timely or untimely has nothing to do with whether a person or entity exists against which to bring that claim. Each statute can be given effect without distorting the language of the other.**

The survival statute and the statute of limitations can both be given effect without distorting the language of the other. They do not conflict. Each statute pertains to a completely different subject matter: the existence of a corporate entity to be sued, and the timeliness of a claim of childhood sexual abuse.

A survival statute applies to temporarily extend the existence of a dissolved entity. The United States Supreme Court has long acknowledged that a corporation's existence is subject to the express governance of the sovereignty that created it. *Chicago Title and Trust Co. v. Forty-One Thirty-Six Wilcox Bldg. Corp.*, 302 U.S. 120, 124-25, 58 S.Ct. 125, 127, 82 L.Ed. 147 (1937). The corporation's dissolution puts an end to its existence, and there must be some statutory authority for the prolongation of its life for litigation purposes. *Id.* The Nebraska Supreme Court has explained that a survival statute is a legislative grant of a limited substantive right to sue that would otherwise have been destroyed when the corporate entity ceased

to exist. *Keefe v. Glasford's Enterprises, Inc.*, 248 Neb. 64, 68, 532 N.W.2d 626, 629 (1995).

Washington law comports with the United States Supreme Court's analysis that a survival statute is a legislative extension of corporate existence that is unrelated to the viability of any particular claim. *Ballard Square*, 158 Wn.2d at 619. "[T]he right to sue a dissolved corporation did not exist at common law; instead, the right exists by virtue of statutes in chapter 23B.14 RCW, i.e., the right exists as a matter of "legislative grace."

A statute of limitations, on the other hand, applies to limit the time in which to bring particular claims. *See, Ballard Square*, 158 Wn.2d at 609, 614-615 (even when survival statute permits suit against entity, statute of limitations still applies to individual claims). It cuts off the time during which claims may be pursued, and may be overcome by equitable or other common law principles such as the discovery rule. *Id.*, *see also* 19 C.J.S. Corporations § 953 (2007).

The question of whether a corporate survival statute is a statute of limitations has been considered by a number of courts, all of which have concluded that corporate-survival statutes are not statutes of limitation. *See, e.g., OXY USA Inc. v. Quintana Prod. Co.*, 79 So.3d 366, 382 (La.Ct.App.2011); *Gomez v. Pasadena Health Care Mgmt., Inc.*, 246 S.W.3d 306, 315-13 (Tex.App.2008); *Deere & Co. v. JPS Dev., Inc.*, 264 Ga.App. 672, 673, 592 S.E.2d 175, 177 (2003); *Theta Props. v. Ronci Realty Co.*, 814 A.2d 907, 910, 912 (R.I.2003); *Gilliam v. Hi-Temp Prods. Inc.*, 260 Mich.App. 98, 112, 677 N.W.2d 856, 867 (2003); *State ex rel. Nat.*

*Super Markets, Inc. v. Sweeney*, 949 S.W.2d 289, 292 (Mo.Ct.App.1997); *Keefe v. Glasford's Enters., Inc.*, 248 Neb. 64, 68, 532 N.W.2d 626, 629 (1995); *Swindle v. Big River Broad. Corp.*, 905 S.W.2d 565, 568 (Tenn.Ct.App.1995); *Smith v. Halliburton Co.*, 118 N.M. 179, 879 P.2d 1198, 1202–03 (1994); *Indiana Nat'l Bank v. Churchman*, 564 N.E.2d 340, 344 (Ind.Ct.App.1990); *Davis v. St. Paul Fire & Marine Ins. Co.*, 727 F.Supp. 549, 551 (D.S.D.1989); *Williams v. United States*, 674 F.Supp. 334, 337 (N.D.Fla.1987).

A good explanation for the distinction between a survival statute and a statute of limitations is found in *Martin v. Texas Woman's Hosp. Inc.*, 930 S.W.2d 717, 720-21 (Tex. App. 1996). The court noted that a statute of limitations relates to the claim, where the survival statute relates to the entity:

When a plaintiff fails to sue within the limitations period, the claim still exists, but, unless the statute of limitations affirmative defense is waived, it can no longer be brought against a defendant. By contrast, if a party fails to sue within the time limits of the survival statute, there is no longer an entity which can be sued. After its dissolution, a corporation cannot be revived by a statute of limitations tolling provision, no matter how sweeping its reach.

*Id.*

Understanding the distinction between the function of a survival statute and the function of a statute of limitations is critical to analyzing whether the two statutes conflict. Again, a conflict between statutes exists when one cannot be obeyed without distorting the language of – or outright violating – the other. *SEIU Healthcare*, 5 Wn. App. 2d at 509. For example,

if the survival statute said that the statute of limitations for childhood sexual abuse commences when the corporation dissolves, then it would clearly conflict with RCW 4.16.340, which states that it commences upon discovery of the cause of action. One statute could not be applied without distorting or ignoring the language of the other. But the survival statute does not say that. It does not say anything about the statute of limitations on any claim. It simply provides how long a dissolved corporation continues to exist after dissolution.

At least one federal court has examined a plaintiff's claim that a survival statute "conflicted" with a statute that tolled the commencement a statute of limitations. *Park Ctr. Inc. v. Champion Int'l Corp.*, 804 F. Supp. 294, 301 (S.D. Ala. 1992). In *Park Ctr*, an Alabama federal district court considered a plaintiff's claim that Alabama's corporate survival statute was subject to tolling. The plaintiff claimed the corporation had engaged in fraudulent concealment, which tolled commencement of the statute of limitations.

The *Park Ctr.* court explained that the two statutes did not conflict because the survival statute was not a statute of limitations: "The Alabama survival statute does not act as a statute of limitations, but rather, it acts as a limitation on the capacity of the corporation to bring suit. ...[T]here is nothing to toll here, and the principle of fraudulent concealment has no application to a corporate survival statute." *Id.*, citing *Canadian Ace Brewing Co. v. Anheuser-Busch, Inc.*, 448 F.Supp. 769, 771-72

(N.D.Ill.1978), aff'd, 601 F.2d 593 (7th Cir.), cert. denied, 444 U.S. 884, 100 S.Ct. 175, 62 L.Ed.2d 113 (1979).

In *M.S. v. Dinkytown Daycare Center Inc.*, 485 N.W.2d 587 (S.D. 1992) the South Dakota Supreme Court applied a corporate survival statute to bar a claim of childhood sexual abuse brought more than two years after a corporation's dissolution, despite a statute which tolled the statute of limitations during the time the plaintiff was a minor. The *Dinkytown* court explained that the survival statute did not extinguish the children's claim, it simply left the children without an entity to bring that claim against:

[T]he right at issue in this case, i.e., the children's right to recover from Dinkytown, was purely statutory. As previously discussed, absent the corporate survival period in [South Dakota's corporate dissolution statute], the children's right to recover would have been extinguished with Dinkytown's dissolution. It was only because of [the corporate dissolution statute] that the children's right to recover was extended after the date of dissolution. Despite this extension, the children's right to recover after dissolution never arose. The right was subject to a condition, i.e., commencement of an action within two years of the date of dissolution. This the children and parents did not do and, therefore, a condition precedent to the children's right to recover never occurred.

*Id.* at 590.

Here, the survival statute and the statute of limitations are not in conflict. Both can be given effect without distorting the language of either. RCW 4.16.340 extended R.N.'s time to file claims relating to childhood sexual abuse. Those claims are timely according to the statute. R.N. is free to bring those claims against any entity or individual with the capacity to be

sued. However, because of LCYE/KVH's dissolution, it does not exist as an entity to be sued according to RCW 23B.14.340. After three years elapsed from the date of its dissolution, no claims of any kind could be filed against it, because it did not exist.

In fact, if the corporate survival statute "conflicts" with the childhood sexual abuse statute of limitations because it prevents the claim from being made against the dissolved entity, then the corporate survival statute "conflicts" with *every* statute of limitations that extends beyond the survival statute's cutoff. For example, the statute of limitations on written contracts is six years. Imagine an entity breaches a contract and dissolves two months later. Four years after that breach, the contract claim is not yet expired, but the entity cannot be sued because the survival statute forbids it.

There is no conflict here. A corporate survival statute extends the time to bring *any claim* against a dissolved corporation. RCW 23B.14.340 does not contain a statute of limitations for R.N.'s claim or any claim. Likewise, RCW 4.16.340 does not revivify the dissolved corporate entity.

**3. Reinstating LCYE/KVH to allow this particular claim against it and its officers, shareholders, and directors would not "harmonize" any perceived "conflict." It would either completely rewrite the survival statute, or completely ignore it.**

R.N. argues that the statutes do conflict, that the childhood sexual abuse tolling statute should prevail, and that this Court should reinstate LCYE/KVH and its officers, directors, and shareholders for purposes of his suit. App. Br.24-28. R.N. argues that the survival statute is a more general

predecessor that should give way to the statute of limitations. *Id.*, citing *O.S.T.*

Even assuming *arguendo* that the survival statute could be seen as “conflicting,” conflicts between statutes are to be reconciled and effect given to each if this can be achieved with no distortion of the language used. *Tommy P. v. Board of Cy. Comm'rs*, 97 Wn.2d 385, 391, 645 P.2d 697 (1982). In fact, it is the “duty” of this Court to give effect to both statutes. *SEIU Healthcare Nw.* 5. Wn.App.2d at 503.

The statutes here can be reconciled. If R.N.’s claims are timely under RCW 4.16.340, then that tolling statute is given effect by allowing his claims to proceed against any entities that exist.<sup>8</sup> RCW 23B.14.340 is also given effect by restricting R.N.’s claims only to those individuals and entities that still exist as a matter of law.

R.N. believes that as a matter of public policy, the childhood sexual abuse tolling provision should supersede all other statutes and common law rules forbidding suit against non-existent entities. App. Br. 26. This argument is appealing, because the abuse of children is a devastating scourge.

However, it is not difficult to conceive of instances where it would be chaotic and unjust to ignore the legal rule that non-existent entities cannot be sued. *Bortle, supra*, provides an example of one such instance.

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<sup>8</sup> Of course, R.N. would still need to demonstrate a genuine issue of material fact as to the elements of his claims. Meister, Shannon, and Cornwell do not concede any factual allegation made against any entity or individual, but for purposes of the present appeal, they are immaterial.

In that case, our Supreme Court noted that a marital community “no longer exists after the death of one of the spouses, but its estate is simply held intact by administrative proceedings for the purpose of paying indebtedness created during its existence. The entity called the ‘community’ is immediately dissolved upon the death of one of its members, and is in law as effectually dead as a deceased individual.” *Bortle*, 155 Wash. at 596, quoting *Bank of Montreal v. Buchanan*, 32 Wash. 481, 73 P. 482, 483. If an individual defendant was married at the time of the alleged abuse, but has been divorced for 10 years at the time the plaintiff files suit, should a court reinstate the marital community because the claim is timely under RCW 4.16.340? Likewise, what if the perpetrator died five years prior? Must the trial court resurrect the perpetrator’s long-settled estate to defend the claim? Will the personal representative be reinstated, and the assets clawed back from the heirs?

If the Legislature wants to reinstitute dissolved corporate entities, reinstate their officers, and recapitalize their shareholders solely so that they may be subject to claim for childhood sexual abuse, it may attempt to do so by amending the survival statute. But this Court cannot do so in the guise of statutory interpretation. That would not “harmonize” the statutes. It would rewrite the language of one or both statutes, which this Court is prohibited from doing. *Fagalde*, 85 Wn.2d at 736 (court can reconcile conflicting statute only if it can be achieved without “distortion of the language used”).

The plain language of RCW 23B.14.340 precludes all claims – including R.N.’s claims – against LCYE/KVH, and those entities’ officers, directors, and shareholders. Cornwell was named in R.N.’s complaint as an employee, Meister and Shannon were named as directors of those dissolved entities. Based on the undisputed material facts, KVH dissolved as a corporation on June 1, 2010. Plaintiffs did not file their lawsuit naming KVH until February 27, 2015. Plaintiffs’ claims against Cornwell, Meister, and Shannon in their corporate capacities are barred as they were not brought within three years of the dissolution.

**C. The trial court correctly dismissed R.N.’s claims against Cornwell, Meister, and Shannon as individuals because none of R.N.’s allegations are about acts undertaken in their personal capacities, only in the corporation’s capacity.**

R.N. argues that Meister, Shannon, and Cornwell were still subject to suit as individuals. App. Br. 32-39.<sup>9</sup> R.N. contends that (1) even if LCYE/KVH is dissolved, individuals exist apart from the dissolved corporation and are subject to suit in their corporate capacities, and (2) the survival statute does not mention corporate “employees,” and therefore does not warrant dismissal of the claim against Cornwell because he an employee. App. Br. 33-39.

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<sup>9</sup> R.N. does not state in his brief that Meister and Shannon were named individually. Of the three respondents addressed herein, R.N. claims that only Cornwell was named individually. App. Br. 33. However, the caption of R.N.’s complaint did also list Meister and Shannon as “individuals,” and its prefatory description listed them individually, albeit explained their corporate roles. CP 1707-1709. In an abundance of caution, this brief addresses the trial court’s dismissal of all three.

**1. Under the survival statute’s provision about corporate “directors,” a suit cannot be maintained against the individuals Meister and Shannon for negligent acts undertaken in their corporate capacity as directors.**

R.N. argues that the trial court should not have dismissed his claim against Meister and Shannon in their individual, personal capacities. App. Br. 33-37. R.N. maintains that individual directors, officers and shareholders can be sued despite the survival statute because they exist, even if the corporation does not.

It is a settled rule of statutory construction that a court must give effect to all the words in a statute and to render no portion of a statute meaningless or superfluous. *Better Fin. Sols., Inc. v. Transtech Elec., Inc.*, 112 Wn. App. 697, 704, 51 P.3d 108 (2002), as amended (Aug. 16, 2002), citing *Davis v. Dep’t of Licensing*, 137 Wn.2d 957, 963, 977 P.2d 554 (1999) and *Marina Cove Condominium Owners Assoc. v. Isabella Estates*, 109 Wn. App. 230, 241, 34 P.3d 870 (2001). This Court should avoid statutory interpretations that lead to absurd results. *Tingey v. Haisch*, 159 Wn.2d 652, 663, 152 P.3d 1020 (2007).

Again, the survival statute applies to claims against dissolved corporations and their “directors, officers, or shareholders.” RCW 23B.14.340. For that statutory language to have any meaning, it must at least encompass claims against persons who acted for the dissolved corporation in their corporate capacities. If a plaintiff can avoid application of the survival statute by simply stating in a complaint that they are suing persons “individually” but all of the allegations are for acts undertaken in

their corporate capacities, then the survival statute’s language about “directors, officers, or shareholders” becomes superfluous and absurd.

Nor can a suit be maintained against these individual directors for “negligent supervision” or any of R.N.’s other claims, because a corporate officer is not individually liable for negligent acts undertaken on behalf of the corporation. *Keodalah v. Allstate Ins. Co.*, 194 Wn.2d 339, 352, 449 P.3d 1040 (2019); *Annechino v. Worthy*, 175 Wn.2d 630, 637–38, 290 P.3d 126 (2012). This is because the predicate element of a negligence claim is duty. For individual liability to obtain, there must be evidence that the alleged tortfeasor personally owed a separate duty to the plaintiff other than the duty the corporation owed. *Keodalah*, 194 Wn.2d at 353; *Annechino*, 175 Wn.2d at 639.

There are cases, some of which R.N. cites, where our Supreme Court has found officers personally liable for the torts of corporations. App. Br. 34; see *Dodson v. Economy Equip. Co.*, 188 Wash. 340, 343, 62 P.2d 708 (1936) (president and general manager directly participated in conversion of property); *Johnson v. Harrigan–Peach Land Dev. Co.*, 79 Wn.2d 745, 753, 489 P.2d 923 (1971) (officers participated in fraudulent acts and maintained close control); *State v. Ralph Williams' N.W. Chrysler Plymouth, Inc.*, 87 Wn.2d 298, 322, 553 P.2d 423 (1976) (officer was personally responsible for many of the company's unlawful acts in violation of the Consumer Protection Act, chapter 19.86 RCW); *Grayson v. Nordic Constr. Co.*, 92 Wn.2d 548, 551, 554, 599 P.2d 1271 (1979) (officer drafted

and directed the mailing of a brochure that contained deceptive advertising in violation of the Consumer Protection Act).

However, officers and other corporate agents are only individually liable when they either knowingly committed wrongful acts or directed others to do so knowing the wrongful nature of the requested acts. *Annechino*, 175 Wn.2d at 638. In *Annechino*, our Supreme Court held that negligent misstatements to a bank customer did not give rise to individual liability by a corporate officer. *Annechino*, 175 Wn.2d at 639. Worthy, the bank's chief executive officer, told Annechino that the bank would ensure FDIC coverage for his family's deposits and reviewed and approved of an erroneous account chart prepared by an employee. *Id.* at 637-638. The negligence resulted in Annechino losing money because the accounts were not all insured. However, Annechino did not claim that Worthy knew the chart was incorrect or knowingly directed the employee's misconduct. *Id.* at 638.

Our Supreme Court in *Annechino* distinguished between intentional and negligent tortious acts by corporate officers. For the former, an officer may be held individually liable. For the latter, the officer cannot. The *Annechino* court concluded that no negligence or breach of fiduciary duty claim was sustainable against the officer. The bank, not the officer, owed the duty to the customer. *Id.* at 637.

In *Keodalah*, our Supreme Court ruled that an individual insurance claims adjuster could not be held liable to an insured for an alleged breach of the duty of good faith and for CPA violations. *Keodalah*, 194 Wn.2d at

350-352. The insurance adjuster misrepresented the insured's actions preceding an accident, and falsely claimed the insured was 70 percent at fault despite having direct evidence to the contrary. *Id.* at 343. Despite these intentional actions, the *Keodalah* court upheld the 12(b)(6) dismissal of individual claims against the adjuster. *Id.* at 345. It concluded that any duty of good faith owed to the insured was owed by the corporate insurer, not by the individual claims adjuster.

Thus, to avoid dismissal under Washington law on duty, R.N. was obliged to present evidence that Meister and Shannon engaged in knowing, intentional actions against R.N. This is the only way they could be subject to an individual duty of care to R.N., distinct from the corporate duty foreclosed from suit by the survival statute. Because R.N. presented no such evidence, the trial court correctly dismissed claims against Meister and Shannon as directors of LCYE/KVH under RCW 23B.14.340.

Nowhere did R.N. allege – much less create a genuine issue of material fact -- that Meister and Shannon personally undertook or breached any individual duty to R.N. separate from their corporate duties, which are not subject to suit as described in *Annechino* and *Keodalah*. In fact, R.N.'s complaint described Meister and Shannon as corporate actors, not as individuals acting on their own behalf. CP 1711. Thus, R.N. did not plead, nor did he have any evidence of, Meister and Shannon personally undertaking or breaching any duty to R.N. as an individual through intentional actions.

Allegations and evidence that would give rise to personal, individual liability here, such as the intentional act of child abuse, would be actionable against a living abuser. The fact that alleged abusers in this case, John and Peggy Halvorson, worked for LCYE/KVH when they allegedly abused him would not shield them from suit in their individual capacity as abusers. Those intentional, personal acts of abuse would violate a personal duty to R.N. and give rise to the abuser's personal liability.

There are no such allegations here. R.N.'s allegations and evidence against Meister and Shannon as directors go to alleged negligence in the execution of their corporate duties of oversight. Thus, the trial court correctly dismissed R.N.'s individual claims against Meister and Shannon as "directors" under the survival statute.

**2. Cornwell's former status as an employee of KVH is immaterial to the statutory analysis; the trial court also correctly dismissed him on summary judgment.**

R.N. argues that the survival statute does not list "employees" and therefore it does not preclude claims against employees of LCYE/KVH, including Cornwell. In other words, R.N. contends that a dissolved corporation does not exist to be sued if the complaint names officers, directors, and shareholders, but it still does exist if the complaint names corporate "employees".

The same logical flaw that applies to R.N.'s precluded claims against "individual" directors applies to R.N.'s claim against the dissolved corporations' "individual" employees: a suit against an employee for violation of corporate duties is the same as a suit against the corporation.

*See Broyles v. Thurston County*, 147 Wn. App. 409, 428, 195 P.3d 985 (2008). A corporation is artificial, invisible and intangible. *Id.* It exists only in contemplation of law. *Id.* By necessity it acts through its officers, directors, employees, and other agents. *See id.* As with a corporation's duties in every other sphere in which it operates, it is the corporate officers, directors, and other agents who must discharge its duties. Their failure to discharge the corporate duty is the corporation's failure to discharge its duty. *See id.*

Also, an employee acting within the scope of employment duties subjects the employer (in this case, the dissolved corporation that is not subject to suit) to the doctrine of vicarious liability under the doctrine of *respondeat superior*. *Breedlove v. Stout*, 104 Wn. App. 67, 69, 14 P.3d 897 (2001). So suing individuals in their corporate capacities would violate the survival statute by allowing a claim against a dissolved corporation by proxy. This would be an impermissible indirect violation of the statute. *See e.g., Richards v. Redelsheimer*, 36 Wash. 325, 331, 78 P. 934 (1904) (impermissible to rename an oral lease an oral “contract” for a lease to avoid clear application of the statute of frauds).

Since a corporation can only act via its ownership, governance body, or employees, naming individuals in their “capacity as employees” is the same as naming the corporation. Bringing claims against individuals in their capacity as employees violates the survival statute. In all cases where a plaintiff names individual employees, the trial court would have to revive the dead corporate body to allow suit to proceed.

Here, R.N. presented only allegations and evidence that Cornwell was an employee of KVH, and undertook his duties as an employee to train and supervise staff. *See e.g.*, CP 919 (Cornwell involved in training), 958 (Cornwell involved in discussions about KVH and mental health providers), 1081-1082 (plaintiff testified Cornwell would engage in physical discipline as was common at KVH), 1343 (Cornwell letter to Shannon reporting about fundraising drive).

The Second Amended Complaint identified Cornwell in his capacity as an employee of KVH. CP 1711. R.N. alleged that Cornwell engaged in negligent placement, training, supervision, and hiring, and that the resulting abuse caused him outrage and intentional emotional distress.<sup>10</sup> CP 1714-1716. However, he did not present any evidence that Cornwell personally engaged in any knowing, intentional acts against him. He alleged that Cornwell acted negligently as an agent for the dissolved corporation, not intentionally on his own behalf.

Naming an individual in his or her capacity as an employee is naming the corporation. At the least, it would subject the corporation to a claim under the principle of *respondeat superior*, violating RCW 23B.14.340. The statute applies to employees acting in their corporate capacity, and the trial court correctly dismissed R.N.'s claims against Cornwell in his capacity as an employee under the survival statute.

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<sup>10</sup> In connection with the outrage and infliction of emotional distress, R.N.'s complaint does state it the alternative that all defendants might have inflicted that outrage and distress intentionally. However, to sustain such a claim against any defendant in his or her personal capacity, R.N. was obliged to produce evidence of such intention. R.N. produced no such evidence as to the respondents herein.

**D. The trial court did not abuse its discretion in declining to grant R.N.'s motion to amend. The amendment would have been futile, because the amended complaint simply clarified the defendants' corporate duties without stating any facts giving rise to individual liability.**

R.N. challenges the trial court's denial of his motion to amend his complaint to "clarify" that he was also claiming various individuals were negligent in their "individual" capacities. App. Br. at 41-42. He argues that Cornwell, Meister, and Shannon would have suffered no prejudice from the amendment, because they did not have summary judgment motions pending. He correctly notes that generally, courts are to freely allow parties to amend their pleadings, but omits some of the elements of that discretionary decision, focusing solely on whether or not the amendment would have resulted in prejudice to the defendants. *Id.*

A decision to grant or deny a motion to amend is reviewed for an abuse of discretion. *Ensley v. Mollman*, 15 Wn. App.744, 758, 230 P.3d 599 (2010). This Court reviews a trial court's denial of a motion to amend an answer for abuse of discretion. *Walla v. Johnson*, 50 Wn.App. 879, 882, 751 P.2d 334 (1988). The trial court's discretion must not be 'manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.' *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971).

A motion to amend made after an adverse summary judgment ruling can be disruptive to the proceedings, and 'the trial court should consider whether the motion could have been timely made earlier in the litigation.' *Doyle v. Planned Parenthood of Seattle-King County, Inc.*, 31 Wn.App. 126, 131, 639 P.2d 240 (1982). The court should also consider "whether

the motion is futile or untimely.” *Ino Ino, Inc. v. City of Bellevue*, 132 Wn.2d 103, 142, 937 P.2d 154 (1997). Other factors include whether the motion to amend is made in bad faith or lacks merit. *Walla*, 50 Wn.App. at 886.

**1. The denial of the motion for leave to amend was neither manifestly unreasonable nor untenable. The motion was untimely because it was made after an adverse summary judgment ruling based on facts that had always been available.**

The original 2015 complaint raised no allegations against individuals, only entities. CP 1-3. In April 2017, the trial court dismissed the LCYE/KVH entity, citing the survival statute. CP 975. In July 2018, R.N. filed a second amended complaint listing a number of individuals, including Meister, Shannon, and Cornwell, who were involved with KVH. On September 4, 2018, co-defendant Patton responded the Second Amended Complaint by moving for summary judgment based on the April 2017 order. CP 1806. He argued that R.N. belatedly named individual board members to avoid application of the 2017 survival statute order to preclude his claims. CP 1806-1810.

Two weeks before Patton’s summary judgment motion was set for hearing, R.N. moved to amend his complaint for a third time. CP 1904. The proposed Third Amended Complaint included more details about these individuals’ duties and actions in their various roles with Kiwanis and KVH. CP 1898. However, none of the new details involved any individual

negligence undertaken outside the course of Shannon, Meister, or Cornwell's corporate duties. *Id.*

The trial court denied R.N.'s motion to amend on October 12, and granted Patton's summary judgment motion one week later. CP 1984, 1997. After that, the trial court dismissed similarly situated individuals on the same grounds as the 2017 and 2018 summary judgment orders. In January 2019, R.N. stipulated to the dismissal of Meister and Shannon, *admitting* that claims against them could not be sustained in light of the 2017 ruling that RCW 23B.14.430 barred claims against LCYE/KVH. CP 2252. Not long after, Cornwell joined in a separate summary judgment motion filed by other individual defendants and also argued for dismissal based on the prior dismissal of the corporate entities under RCW 23B.14.340. CP 2986-2988. Cornwell's motion was granted in June 2019. CP 4086.

R.N.'s September 2018 motion to amend was made belatedly, and intended to avoid the application of the adverse April 2017 summary judgment ruling to similarly situated individual litigants, including Cornwell, Meister and Shannon. It was also made directly in response to Patton's pending summary judgment motion requesting application of that prior ruling to individual litigants, an application which R.N. admitted was applicable as to Meister and Shannon.<sup>11</sup> It was not an abuse of discretion under Washington law. *Doyle*, 31 Wn. App. 126.

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<sup>11</sup> R.N. continued to insist that Cornwell could be sued despite RCW 23B14.340 because Cornwell was also an employee, but that argument is addressed *supra* § III.C.2 and *infra*.

Also, the motion to amend could have been made earlier in the litigation, rather than in response to yet another pending summary judgment motion. The evidence R.N. cited in support of his motion to file the Third Amended Complaint was not newly discovered. Compare CP 1414 (Ex. 40 to Cochran Decl. filed December 2, 2017) and CP 1958 (Ex. 5 to Cochran Decl. filed October 8, 2018 in support of motion to amend). R.N. admitted that the motion to amend was not based on new information, but was merely a “clarification” of allegations R.N. had previously made. CP 1941-1960.

The trial court reasoned that the lateness of the proposed amendments, combined with the impending summary judgment motion, created prejudice. RP 10/12/2018: 15. This reasoning is not untenable or manifestly unreasonable under *Doyle*.

**2. The motion to amend to clarify various individuals’ corporate roles was futile because R.N. did not allege any acts giving rise to personal liability, only corporate liability.**

R.N.’s proposed Third Amended Complaint included more details about Meister and Shannon’s respective duties as board members.<sup>12</sup> CP 1898. R.N. argues on appeal that the trial court abused its discretion in denying leave to amend to add these details. App. Br. 40-42.

A motion to amend a complaint to allege the particulars of *how* a named individual defendant acted in a corporate capacity is futile, if the allegations do not give rise to individual liability. *Shelton v. Azar, Inc.*, 90

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<sup>12</sup> The proposed Third Amended Complaint did not alter any of the description of Cornwell’s duties or actions.

Wn. App. 923, 929, 954 P.2d 352, 355 (1998). Merely detailing each defendant's corporate duties does not give rise to their individual liability, and thus the amendment would not give rise to a viable claim. *Id.* In *Shelton*, co-workers Reed and Shelton were travelling for work when they rented a car and drove from the airport to their hotel. *Id.* at 926. Reed drove. En route to the hotel, Reed collided with a taxicab run by Azar, Inc. *Id.* Shelton was injured; he received worker's compensation benefits. His employer was therefore statutorily immune from liability. Shelton then sued the third party taxicab company, Azar. *Id.* Azar filed a third party complaint against Reed, Shelton's co-worker who was driving the car. *Id.* Shelton moved for summary judgment dismissal, and Azar then moved to amend its complaint to allege that Reed was negligent individually. *Id.* at 927. The trial court granted the motion to amend, and denied Shelton's motion for reconsideration. *Id.*

After granting discretionary review in *Shelton*, this Court held that the trial court abused its discretion by allowing amendment of the complaint to state negligence allegations against Reed individually. Because Reed, as Shelton's co-worker, was statutorily immune from suit either directly or as the result of a third party complaint, this Court held that granting amend a complaint to name the employee was futile and an abuse of discretion. *Id.* at 931. This Court reasoned that the amendment would have been futile because Reed was acting in the course of his employment, not in his individual capacity. *Id.* Azar's amended complaint did not state a cause of action for breach of a duty that Reed owed to *Azar*, but only for damages to

Azar arising from a breach of a duty that Reed owed to *Shelton*. *Id.* Since Reed was immune from suit for any breach of that duty, the trial court erred in granting the amendment naming Reed as an individual cross-defendant. *Id.*

The legal distinction this Court relied on in *Shelton* is the same distinction our Supreme Court relied upon in *Annechino* and *Keodalah*. Individuals are not personally liable for negligence allegedly committed in the course of employment and in fulfillment of the corporation's duties to a plaintiff. *Annechino*, 175 Wn.2d at 639. Despite the general rule that individuals are liable for torts committed in the scope of employment,<sup>13</sup> that liability is restricted to breaches of that employee's *individual* duty to the plaintiff. *Annechino*, 175 Wn.2d at 639. The employee "is subject to tort liability to a third party harmed by the agent's conduct only when the agent's conduct breaches a duty that the *agent* owes to the third party." *Id.* at 638, *quoting* RESTATEMENT (THIRD) OF AGENCY § 7.02 (emphasis added).

In *Annechino*, our Supreme Court concluded that bank employees could not be held individually liable for breach of fiduciary duties that they undertook on behalf of their employers:

The record does not support finding that Reynolds or Worthy independently formed quasi-fiduciary relationships with the Annechinos or that they could otherwise be held liable as agents of the bank. Both Reynolds and Worthy transacted with Annechino on behalf of the bank. More importantly, the Annechinos were aware at the time that they deposited money with the bank that they were dealing with the bank,

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<sup>13</sup> See, *Eastwood v. Horse Harbor Found., Inc.*, 170 Wn.2d 380, 400, 241 P.3d 1256 (2010); RESTATEMENT (THIRD) OF AGENCY § 7.01 (2006).

not with bank employees or officers as individuals. If any quasi-fiduciary relationship existed, the duty was owed by the bank in the first instance and not individually by Reynolds or Worthy. Further, the Annechinos do not allege, nor does the record indicate, that Reynolds or Worthy knowingly made any misrepresentations.

*Annechino*, 175 Wn.2d at 638-639.

Here, the proposed amendments were just as futile as the amendment sought in *Shelton*. R.N. does not allege any individual duty undertaken by Meister or Shannon on behalf of Kiwanis with respect to R.N. Instead, his proposed Third Amended Complaint simply added details about their relationships with other Kiwanis entities.<sup>14</sup> CP 1898. The trial court did not abuse its discretion in denying leave to grant the amendment. In fact, if the trial court had granted the amendment, Meister and Shannon could have sought discretionary review under *Azar* to reverse *that* decision as an abuse of discretion.

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<sup>14</sup> R.N.'s proposed Third Amended Complaint stated that Meister was also a member of the Chehalis Kiwanis Club, which does not make him an agent of Kiwanis. The proposed Third Amended Complaint also alleges and that Shannon attended KVH board meetings in 1989 as an officer of Kiwanis International. CP 1898. The proposed amended language asserts that Shannon, on behalf of Kiwanis, was involved in "an effort to thwart efforts by certain members of local Kiwanis clubs to assert effective oversight over KVH" in response to "criticism and concerns." *Id.* R.N.'s language here is vague for a reason. The "criticism and concerns" during Shannon's term as a Kiwanis Lt. Governor were *not* about sexual abuse. They were about fundraising, governance structure, and the fiscal management of LCYE/KVH. CP 1342-1343, 1352-1354, 1366, 1414-1416, 1418, 1423, 1435-1436, 1446, 1455. Allegations involving sexual abuse only appear in the record after Shannon left his post as a Kiwanis Lieutenant Governor and was serving on the LCYE/KVH board. See, e.g., CP 1435 (March 26, 1990 letter stating Shannon was current member of advisory board and "Past Lt. Governor[ ]"), 1459, 1463. There is no evidence in the record that Meister or Shannon violated any duty to R.N. involving allegations of sexual abuse, and certainly not in their roles as officers or members of Kiwanis.

KVH and Kiwanis were separate entities. Asserting that Meister and Shannon also Kiwanis members or officers is only relevant if there is evidence that they undertook duties with respect to R.N. on behalf of Kiwanis. There is no evidence that they undertook any duties with respect to R.N. in their capacities as members of Kiwanis.

R.N.'s belated attempt to paint respondents as "agents" of Kiwanis also did not justify granting his motion to amend. As explained supra, corporate agents can only be individually liable if they undertook or breached an individual duty to R.N. in their personal capacity. See Resp. Br. III. C.2., citing *Annechino* and *Keodalah*. So amending the complaint to assert that Meister and Shannon were agents of Kiwanis does not give rise to their individual liability, even if the survival statute is not an issue.

This Court can affirm the trial court's denial of the motion to amend on any ground supported in the record. Amending the complaint to add allegations that Meister and Shannon were agents of Kiwanis would have been futile. The trial court's decision was not manifestly unreasonable or untenable.

The trial court correctly concluded that R.N. could not avoid the survival statute simply by adding more details of the corporate officers, directors, and shareholders and refiling his complaint. The proposed amendment was futile.

#### **IV. CONCLUSION**

The trial court neither erred in dismissing Cornwell, Meister, and Shannon, nor abused its discretion in denying the motion to amend. The survival statute's language is plain and it precludes R.N.'s claims against them. It does not conflict with RCW 4.16.340. Both statutes were harmonized and applied.

Respectfully submitted this 10<sup>th</sup> day of August, 2020.

**CARNEY BADLEY SPELLMAN, P.S.**

A handwritten signature in blue ink, appearing to read 'S. Tribe', written over a horizontal line.

By \_\_\_\_\_  
Sidney C. Tribe, WSBA No. 33160  
*Attorneys for Respondents Henry Meister, B.  
Dale Shannon, and Guy Cornwell.*

## CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that I am an employee at Carney Badley Spellman, P.S., over the age of 18 years, not a party to nor interested in the above-entitled action, and competent to be a witness herein. On the date stated below, I caused to be served a true and correct copy of the foregoing document on the below-listed attorney(s) of record by the method(s) noted:

Via Appellate Portal to the following:

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DATED this 10<sup>th</sup> day of August, 2020.

S: Patti Saiden  
Patti Saiden, Legal Assistant

# **APPENDIX 1**

## RCW 4.16.340

### Actions based on childhood sexual abuse.

(1) All claims or causes of action based on intentional conduct brought by any person for recovery of damages for injury suffered as a result of childhood sexual abuse shall be commenced within the later of the following periods:

- (a) Within three years of the act alleged to have caused the injury or condition;
- (b) Within three years of the time the victim discovered or reasonably should have discovered that the injury or condition was caused by said act; or
- (c) Within three years of the time the victim discovered that the act caused the injury for which the claim is brought:

PROVIDED, That the time limit for commencement of an action under this section is tolled for a child until the child reaches the age of eighteen years.

(2) The victim need not establish which act in a series of continuing sexual abuse or exploitation incidents caused the injury complained of, but may compute the date of discovery from the date of discovery of the last act by the same perpetrator which is part of a common scheme or plan of sexual abuse or exploitation.

(3) The knowledge of a custodial parent or guardian shall not be imputed to a person under the age of eighteen years.

(4) For purposes of this section, "child" means a person under the age of eighteen years.

(5) As used in this section, "childhood sexual abuse" means any act committed by the defendant against a complainant who was less than eighteen years of age at the time of the act and which act would have been a violation of chapter **9A.44** RCW or RCW **9.68A.040** or prior laws of similar effect at the time the act was committed.

[ **1991 c 212 § 2**; **1989 c 317 § 2**; **1988 c 144 § 1**.]

### NOTES:

**Finding—Intent—1991 c 212:** "The legislature finds that:

(1) Childhood sexual abuse is a pervasive problem that affects the safety and well-being of many of our citizens.

(2) Childhood sexual abuse is a traumatic experience for the victim causing long-lasting damage.

(3) The victim of childhood sexual abuse may repress the memory of the abuse or be unable to connect the abuse to any injury until after the statute of limitations has run.

(4) The victim of childhood sexual abuse may be unable to understand or make the connection between childhood sexual abuse and emotional harm or damage until many years after the abuse occurs.

(5) Even though victims may be aware of injuries related to the childhood sexual abuse, more serious injuries may be discovered many years later.

(6) The legislature enacted RCW **4.16.340** to clarify the application of the discovery rule to childhood sexual abuse cases. At that time the legislature intended to reverse the Washington supreme court decision in *Tyson v. Tyson*, 107 Wn.2d 72, 727 P.2d 226 (1986).

It is still the legislature's intention that *Tyson v. Tyson*, 107 Wn.2d 72, 727 P.2d 226 (1986) be reversed, as well as the line of cases that state that discovery of any injury whatsoever caused by an act of childhood sexual abuse commences the statute of limitations. The legislature intends that the earlier discovery of less serious injuries should not affect the statute of limitations for injuries that are discovered later." [ **1991 c 212 § 1**.]

**Intent—1989 c 317:** "(1) The legislature finds that possible confusion may exist in interpreting the statute of limitations provisions for child sexual abuse civil actions in RCW **4.16.190** and **4.16.340** regarding the accrual of a cause of action for a person under age eighteen. The legislature finds that amending RCW **4.16.340** will clarify that the time limit for commencement of an action under RCW **4.16.340** is tolled until the child reaches age eighteen. The 1989 amendment to RCW **4.16.340** is intended as a clarification of existing law and is not intended to be a change in the law.

(2) The legislature further finds that the enactment of chapter 145, Laws of 1988, which deleted specific reference to RCW **9A.44.070**, **9A.44.080**, and **9A.44.100(1)(b)** from RCW **9A.04.080** and also deleted those specific referenced provisions from the laws of Washington, did not intend to change the statute of limitations governing those offenses from seven to three years." [ **1989 c 317 § 1.**]

**Application—1988 c 144:** "Sections 1 and 2 of this act apply to all causes of action commenced on or after June 9, 1988, regardless of when the cause of action may have arisen. To this extent, sections 1 and 2 of this act apply retrospectively." [ **1988 c 144 § 3.**]

## **RCW 23B.14.340**

### **Survival of remedy after dissolution.**

The dissolution of a corporation either (1) by the filing with the secretary of state of its articles of dissolution, (2) by administrative dissolution by the secretary of state, (3) by a decree of court, or (4) by expiration of its period of duration shall not take away or impair any remedy available against such corporation, its directors, officers, or shareholders, for any right or claim existing, or any liability incurred, prior to such dissolution or arising thereafter, unless action or other proceeding thereon is not commenced within two years after the effective date of any dissolution that was effective prior to June 7, 2006, or within three years after the effective date of any dissolution that is effective on or after June 7, 2006. Any such action or proceeding against the corporation may be defended by the corporation in its corporate name.

[ 2006 c 52 § 17; 1995 c 47 § 5; 1990 c 178 § 6; 1989 c 165 § 167.]

### **NOTES:**

**Effective date—1990 c 178:** See note following RCW **23B.01.220**.

# CARNEY BADLEY SPELLMAN

August 10, 2020 - 3:34 PM

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**Appellate Court Case Title:** R.N., J.W., & S.C., Appellants v. Kiwanis International et al., Respondents  
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