

**FILED**

**MAY 26 2015**

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

NO. 330931-III

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

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CETH HEIDEMAN, et al.,

APPELLANTS

VS

CHELAN COUNTY, a Washington Municipal Corporation, et al.,

RESPONDENTS.

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APPEAL FROM DOUGLAS COUNTY SUPERIOR COURT  
CAUSE NO. 11-2-00287-7

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**OPENING BRIEF OF APPELLANTS**

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Jeffrey R. Caffee  
Van Siclén, Stocks & Firkins  
721 45<sup>th</sup> St NE  
Auburn, WA 98002  
253-859-8899  
jcaffee@vansiclen.com

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## I. INTRODUCTION

This case involves one of society's most terrible crimes: child abuse. For years, Theron Heideman and Juanita Ponce physically, psychologically, and sexually abused their three eldest children: Ceth, Keilah, and Danika. For over 15 years, the Department of Social and Health Services (DSHS) and the Chelan County Sheriff's Office (CCSO) received multiple reports of abuse in the Heideman home. Yet, both agencies made nothing but minimal effort to assist these children. Now, after the Heideman children have finally escaped their abusive home, DSHS and CCSO still refuse to admit any wrongdoing on their part.

The trial court granted summary judgment in favor of both Respondents, concluding that Appellants could not show that their injuries were caused by Respondents' failure to adequately investigate the numerous allegations of child abuse against Heideman and Ponce. However, the trial court failed to employ the proper standard for summary judgment, improperly making factual findings and failing to consider all of the evidence in the light most favorable to Appellants. Therefore, the decision of the trial court should be reversed and this case remanded for a trial on the merits.

**II. ASSIGNMENTS OF ERROR**

- 1. The Superior Court erred by granting CCSO’s motion for summary judgment.
- 2. The Superior Court erred by finding that DSHS acted reasonably in light of the circumstances.
- 3. The Superior Court erred by granting DSHS’ motion for summary judgment.

**III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

- 1. Did the trial court have the authority to find that DSHS’s actions were reasonable in light of the circumstances?
- 2. Is there a genuine issue of material fact on whether CCSO negligently investigated allegations of abuse against the Heideman children?
- 3. Is there a genuine issue of material fact on whether DSHS negligently investigated allegations of abuse against the Heideman children?

**IV. STATEMENT OF THE CASE**

**A. Background on the Heideman Family.**

Theron Heideman is the son of Janice and Ronald Heideman. Theron and his first wife Tobie had three children: Ceth (d.o.b. 12/1/91), Keilah (d.o.b. 5/8/1993), and Danika (d.o.b. 12/7/1994). DSHS began receiving reports of possible child abuse immediately after Ceth was born. CP 582. Janice and Ronald gained custody of the Heideman children in 1995, after both Tobie and Theron were incarcerated. CP 578.

Sometime after Theron and Tobie were divorced, Theron started a relationship with Juanita Ponce. Theron and Juanita had four children

together, one of whom is an elementary schooler named R.H. CP 560. Ceth, Keilah, and Danika moved back in with Theron, Juanita, and R.H. sometime in 1999. CP 574. The Heideman children remained in Theron and Juanita's home until the incidents in question.

### **B. History of DSHS Referrals.**

Multiple reports were made to DSHS and the CCSO regarding child neglect and abuse perpetrated by Theron Heideman<sup>1</sup> and Juanita Ponce against the Ceth, Keilah, and Danika Heideman. In 1999, not long after Heideman regained custody of his children, DSHS received referrals regarding physical abuse of the children perpetrated by Heideman and Ponce. On October 28, 1999, DSHS received a report that Ponce physically abused Danika. CP 259. On November 2, 1999, DSHS received a report that Heideman hit Keilah in the face, giving her a bloody lip. CP 258-59. On November 12, 1999, DSHS received a report that Ponce pulled on Ceth's arm so hard it would cause him significant pain and discomfort. CP 586. DSHS took these referrals as "information only." CP 258-59.

In 2004, referrals to DSHS started becoming more frequent. On November 28, 2004, the Heideman children reported that Ponce was hitting them with electric cords and metal objects. CP 257-58. Four days

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<sup>1</sup> Theron Heideman is henceforth referred to by his surname. For the sake of clarity, Appellants are referred to using their first names.

prior, Ponce woke the children up in the middle of the night and began beating them with a metal paddle, leaving Keilah with a bruise on her collar bone. CP 257. Additionally, Ponce refused to allow the children to eat if they did not complete chores to her satisfaction. CP 257-58. Most of the Heideman children's meals were via free school lunches and they were becoming noticeably thin and frequently complained of being hungry. CP 258. Understandably, the Heideman children were terrified of Ponce. CP 257. Two years later, a DSHS referral noted that Ceth reported that Juanita Ponce continued to use food as a reward system for the three children. CP 570. If Ceth, Danika, or Keilah failed to "earn" food by doing chores to Ponce's satisfaction, these children were not fed. CP 570. DSHS designated this report as "information only." CP 570.

On December 8, 2004, Keilah was interviewed at school in the presence of school counselor Jim Bowen. CP 587. Prior to the interview, Bowen informed social worker Tracy Cash that Keilah reported being beaten a few weeks earlier. CP 587. Bowen's report to Cash coincided with the DSHS referral from November 28, 2004. DSHS closed this matter as unfounded. CP 590.

**C. First Child Sex Abuse Referral Concerning Theron Heideman.**

On August 15, 2006, the following referral was received by DSHS:

The ref talked to Rosalie Edwards (phone of 664-6417) who is a member (with the ref) of the Malaga City Council. Yesterday, Rosalie talked to the ref about information Rosalie had heard from one of this family's neighbors. The family neighbor is [REDACTED] who has no phone, lives across the street from this family.

...

[REDACTED] told Rosalie (who then told the ref) that Danika had told [REDACTED] that Danika's father, Theron, had sexually molested her (Danika) in the past.

...

The ref also told by 13 year old Keilah that she found some drugs (described as possible marijuana) in the family home bathroom. CP 570.

On August 16, 2006, DSHS worker Karen Oyler contacted the CCSO to initiate a child sex abuse investigation. CP 269-70. CCSO Detective Mike Harnett declined to assign the case, deciding that there was nothing new to investigate because allegations of sexual abuse had been around for years. CP 269.

Subsequently, on August 22, 2006, Detective Harnett declined to interview Danika Heideman about the past sexual abuse. CP 272. Ms. Oyler investigated this referral alone, despite having never investigated a sexual abuse referral. CP 269-70; 272. Prior to this investigation, Oyler was not trained to conduct investigations into sexual abuse allegations. CP 596. Oyler's duties at CPS were to conduct investigations into moderate to low risk cases. CP 602. Moderate to low risk cases are those

concerning lifestyle choices, and do not involve abuse or neglect. CP 602. In fact, her investigation into the Heideman home was the first time Oyler had *ever* dealt with allegations of sexual abuse. CP 369.

Oyler was unprepared and incapable of conducting a proper investigation into the abuse referral. Oyler did not review the history of DSHS referrals. CP 601. Oyler did not interview other household members about the sexual abuse or other issues of abuse within the home. CP 605. Oyler did not interview Rosalie Edwards, to whom reports of Danika's abuse were made. CP 605. Instead, Oyler was satisfied with questioning Danika about sexual abuse allegations in the presence of Heideman, the alleged abuser. CP 272.

Oyler's interview of Keilah about the illegal drugs in the home was no better. As with Danika, Keilah was questioned about illegal drugs in the home in the presence of Heideman. CP 592. Unsurprisingly, no disclosure was obtained. CP 592. Oyler took no other steps in relation to this referral to ensure the safety of the other Heideman children and closed this case as unfounded. CP 593.

#### **D. Continued History of DSHS Referrals.**

On June 18, 2007, DSHS received a referral regarding Heideman beating Keilah with a stick. CP 569-70. Specifically, Keilah had reported to the referent, the referent's daughter, and others that Heideman beats her

and sometimes uses a stick. CP 569-70. Keilah requested that these persons call CPS on her behalf. CP 569-70.

DSHS worker Kathie Pete interviewed Keilah a day later in the front yard of the home. CP 616. During the interview Ponce exited the home and informed Pete that she did not want DSHS talking to Keilah. CP 616. Ponce was noticeably unhappy that DSHS was interviewing Keilah about the abuse allegations. CP 616. Keilah did not make a disclosure during this interview. CP 616-17. DSHS failed in its multiple attempts to question Heideman about the physical abuse against Keilah. CP 616-18. By July 25, 2007, DSHS had given up on the investigation. CP 618.

On August 29, 2007, DSHS received a report from CCSO Deputy Lamon that Ceth had been beaten by his father so badly he was taken to Central Washington Hospital and into protective custody. CP 251-52; 618. When the DSHS social worker John Plotz went to Central Washington Hospital, he found Ceth with several red welts and marks on his face and forehead. CP 329; 619. Ceth explained that his father had become angry with Ceth and repeatedly slammed his head against the wall. CP 329; 619. Heideman then threw Ceth on the floor and yelled, "Get up! I'm not through with you yet!" CP 27; 329; 619.

Ceth went on to explain that the beating that placed in him the hospital was not his first from Heideman. CP 329. Ceth informed the social worker that Heideman had beaten Ceth for years, including being kicked in the mouth. CP 329. Ceth noted that Ponce did nothing to stop Heideman during the assault. CP 329. Additionally, Ceth confirmed that Heideman used drugs inside the home. CP 329.

Later that day, DSHS social worker Kathie Pete spoke with a neighbor, Veronica Figueroa, who informed Pete that a lot of violence occurs at the Heideman home. CP 620. Figueroa added that she saw Heideman about three (3) weeks earlier yelling at Ceth and then saw Heideman holding Ceth against the side of the house as Heideman punched him in the face and stomach. CP 620. A few days after that incident, Ceth came over to Figueroa's home with a bruise on the side of his face. CP 620. When asked why Heideman was beating Ceth, Figueroa informed Pete it was because Ceth did not clean the bathroom. CP 620. Figueroa's knowledge did not end at Ceth. Figueroa informed Pete that she had witnessed Theron Heideman get angry with the girls and yell at them. CP 620-21. Figueroa added that she and the other neighbors were afraid of Heideman. CP 620.

Later that day, Ceth was interviewed again and revealed many of the same issues that had been reported to DSHS over the years. CP 621-

22. This included (1) Heideman's illegal drug use and the location of the drugs, CP 31-33, 622; (2) physical abuse of Ceth and his sisters, Danika and Keilah, CP 622; and (3) having food withheld from them by their parents. CP 39-40, 622.

When Kathie Pete returned to the home, she interviewed the other Heideman children. CP 623. Pete was shown holes in bedroom doors and walls. CP 623. When Pete entered Ceth's room she noticed that the room smelled of urine. CP 623. Finally, Pete noted that the children engaged in "protective behavior":

It is this SW opinion that the girls are pretty protective of their mom and dad. They do nothing wrong and Ceth is the trouble maker of the house and causes all of the fights. They painted a picture of a perfect family and life and Ceth is the trouble maker. CP 623.

Also that day, Janice Heideman reminded DSHS worker Lucy Moro that she still had concerns that Heideman was using drugs in the home and sexually abusing the children. CP 624. While Ceth was placed into protective custody, Danika and Keilah were left in the home. DSHS did not reopen or continue the investigation of prior referrals regarding abuse in the home related to Danika or Keilah. CP 701. Three months later, Ceth was returned to the Heideman home. CP 568, 773-74.

On September 6, 2007, DSHS interviewed R.H. about abuse in the home. CP 625. R.H. stated that Heideman needed anger classes to control

his anger. CP 626. She added that Heideman gets mad a lot, it is a scary house, and kids get hurt. CP 626. When asked who gets hit the most, R.H. explained that it was mostly Ceth, Danika, and Keilah. CP 626.

Kathie Pete then interviewed Danika at Pioneer Middle School. CP 47, 627. Danika informed the social worker that (1) the Heideman children have been slapped and yelled at, CP 627; (2) Keilah has been hit the most and yelled at the most, CP 627; (3) Heideman gets really angry and mad and hits Ceth, CP 59-62, 627; (4) Danika is afraid of Heideman, CP 59, 64, 628; (5) the Heideman children do not get to eat when they want to, CP 628; (6) the hitting began when Danika was 4 years old, CP 66, 628; (7) if she does not do her chores she gets hit, CP 628; (8) Heideman needs help with his anger problem, CP 70, 628; and (9) Danika is afraid she will start getting hit like Ceth gets hit. CP 628.

During the interview, Danika asked the social worker to stop recording and requested that Keilah be brought into the room. CP 628. After Keilah arrived, Danika pleaded with Keilah to tell the truth about the abuse and not lie anymore. CP 628. Keilah was not happy, refused to say anything more, and left. CP 628. When the DSHS worker left the school to visit the Heideman home, both Danika and R.H. explained that their home was not safe when Heideman and Ponce were angry. CP 628.

On November 19, 2008, CCSO Detective Mitch Matheson was assigned a case regarding allegations that Heideman was sexually abusing two of his daughters, Keilah and Danika. CP 277. The evidence shows that Detective Matheson failed to adhere to basic investigation protocols in the investigation the child sex abuse of the Heideman children, including: (1) failing to conduct a background investigation into the referral records of DSHS involving the Heideman children, CP 334-35; (2) failing to identify, locate, and interview witnesses for background information to use during the interview of the Heideman children and Theron Heideman, CP 278; (3) failing to locate and interview persons to whom alleged victims made initial disclosures of child sex abuse, CP 277-78; and (4) failing to identify whether other potential victims are at risk in the home. CP 277-78.

Although Detective Matheson did not review DSHS records regarding the Heideman family, he did receive “verbal” information from CPS. CP 335. Detective Matheson documented this information in his police report, stating:

It should be noted Janice Heideman has reported similar accusations to CPS several times, 7 times last year, and all were determined to be unfounded. There is currently a no contact order naming Janice as the respondent and Theron and KH/DH as petitioners. There have been ongoing family disputes dating back

years between various Heideman family members. CP 277-78.

Detective Matheson made no mention of the prior reports of child abuse and domestic violence in the home reported by the Heideman children or neighbors and no mention of the refusal to investigate the allegations of child abuse by Detective Harnett in August 2006. CP 277. The primary focus in his 2008 report is on the “false reporting” by Janice Heideman. CP 277-78. Even a cursory review of the DSHS records would have shown a long history of child abuse allegations against Heideman that, at a minimum, would have warranted an actual investigation.

Prior to visiting the children’s schools, Detective Matheson did not conduct any background investigation into the case to assist him with the victim interviews. CP 277. Disturbingly, Detective Matheson also failed to interview Keilah. CP 278. Detective Matheson provided no explanation for the failure to interview Keilah, simply stating, “KH did not wish to speak to me.” CP 278.

This is in stark contrast to the detail provided by Detective Matheson regarding Danika Heideman’s refusal to speak in detail with him. CP 277-78. Detective Mitch Matheson closed the case approximately 24 hours after having it assigned to him without (1) reviewing DSHS records; (2) interviewing Keilah; (3) interviewing Ceth;

(4) interviewing the referent Janice Heideman; (5) interviewing Rosalie Edwards or her child; (6) interviewing Theron Heideman; or, (7) attempting to identify if any of the Heideman children were at risk of harm. CP 278. No explanation is given in Detective Matheson's report regarding the failure to follow up on the available information or witnesses other than Detective Matheson's unsubstantiated assumption that Janice Heideman was making false reports. CP 277-78.

After closing the case, the CCSO generated a referral to DSHS. CP 630. DSHS also dismissed Janice Heideman's report of sexual abuse on the premise that the Heideman family had been in the system for years and there was never disclosure. CP 630. Based on this history, Lucy Moro declined to investigate the sexual abuse referral. CP 630-31.

#### **E. Chelan County Sheriff's Office Child Sex Abuse Investigation Protocol.**

The CCSO has minimum threshold requirements regarding the conduct of an investigation into reports of abuse of children. CP 300-10.

- The investigation protocols call for the following:
  - The investigation be thorough enough to reasonably conclude that a crime was or was not committed, CP 301;
  - Investigators review all information then available, including (1) contact with the reporting party, (2) an interview of the reporting party to determine (a) the

exact nature of the alleged abuse or neglect, and (b) to document the circumstances under which the party learned of the alleged abuse or neglect, CP 301;

- Investigators identify the individual to which initial disclosure was made to determine (a) the exact nature of the alleged abuse or neglect, and (b) to document the circumstances under which the party learned of the alleged abuse or neglect, CP 301;
- Investigator's final report should document the circumstances of the initial disclosure, including (a) the circumstances of the initial disclosure, (b) who was present, (c) what was said, (d) what questions were asked, (e) the alleged victim's verbatim answers, if possible, (e) the demeanor of the alleged victim, and (f) any other pertinent information, CP 301; and
- Investigators should attempt to interview the alleged perpetrator and this interview must be documented, CP 306.

In the opinion of Susan Peters, an experienced child abuse investigator with the King County Sheriff's Office, CCSO failed to meet any of these minimum standards in its "investigation" of the allegations against Theron Heideman. CP 376-79.

Detectives with the CCSO do not dispute that their duty encompasses adherence to these minimum standards. Detective Matheson testified in his deposition:

Q: Why would you do that?

A: Well, that's my job, for one, and I take that seriously. So if it has an element where it indicates there could be some criminal action, then I'm going to investigate that.

Q: Would you say that's your duty?  
A: Yes, that's my job. And that's why -- and I take that seriously.

.....  
Q: Let's say you got a complaint alleging that a child was being abused in his or her home. With that, just the face of the complaint itself, could you tell whether -- could you say for sure that there was no criminal element involved?

A: Without investigating and talking to the -- the child and whoever made the -- made the statement, no. No. That would be premature.

Q: Why is that?

A: Well, it requires an investigation. I think you were just -- if I'm understanding you correctly, I'm receiving a report of an allegation, and then based on the report I decided not to pursue it. Is that what you're saying?

Q: Correct.

A: No. No, I wouldn't do that.

Q: You mentioned it was premature. Why would it be premature?

A: Well, I'm -- I'm ass -- I'm assuming that something didn't happen by not doing any investigation. That seems premature to me.

CP 331-33.

Detective Mike Harnett agreed with Detective Matheson's assessment, stating:

Q: On the face of a complaint of child sex abuse, just on the complaint itself, can you determine whether there's a criminal element involved or not?

A: No.

Q: Why is that?

A: It's -- it's an -- it's an allegation at that point. There's no -- you know, I operate under developing probable cause to make an arrest or, you know, to determine whether a crime has been committed or not. And,

you know, an allegation to me doesn't necessitate that there was a crime committed. It means that I should look into it and investigate it at that point.

Q: To determine whether there's a criminal element involved or not?

A: Correct.

CP 342-43.

Despite their awareness of proper practice, both Detectives failed to adhere to it this case. On August 22, 2006, Detective Harnett declined to investigate the allegations of child sex abuse of Keilah and Danika by Heideman. CP 272. Similarly on November 17, 2008, Detective Matheson failed to (1) interview any potential witnesses, (2) interview the referent, (3) interview persons to whom initial disclosure was made, (4) interview the alleged perpetrator, or (5) review background information on the parties involved even though he knew there was extensively documented history of abuse allegations involving the Heideman children in available DSHS records. CP 514-15.

#### **F. DSHS Child Abuse Investigation Protocol.**

It is standard practice for DSHS investigators to interview children outside the presence of their alleged abusers. Karen Oyler explained in her deposition why this practice should be followed.

Q: Let's say the parent is the subject.

A: No.

Q: You wouldn't want the parent there?

A: No.

- Q: Why is that?  
A: Well, because no child is going to testify against their parent when their parent is in the same room. Or very rarely.  
Q: And the parent's presence is going to influence what that child may tell you?  
A: Right.

CP 603.

DSHS social worker Kathie Pete also stated that it is the best practice to interview the child away from the alleged abuser.

- Q: If the parent was there, they would feel less inclined perhaps to disclose?  
A: Yes.  
Q: Is that part of a protocol or is that just understood to be an appropriate way of doing interviews?  
A: It's best practice to have the child by themselves.

CP 635.

Finally, a third investigator on the Heideman case, Lucy Moro, verified that children should be interviewed outside the presence of their alleged abuser and explained why.

- Q: Where would you interview the child?  
A: Yeah. You -- you would want to meet with the child away from the subject, the alleged subject, at a place where the child feels comfortable and offer them a third party to be present, privacy, the issue.  
Q: Why would you want to have the child away from the subject?  
A: Well, you don't want to have the child influenced by -- I mean, if they have something to tell you, you want to ensure that they're free to just talk to you

without worrying about how they're affecting their relationship or what's going to happen at home later, that kind of thing.

CP 683.

Despite this protocol, however, DSHS frequently interviewed the Heideman children in front of their parents. The first time Keilah disclosed the abuse to her grandmother, “CPS came and interviewed us right in front of our parents.” CP 731. This practice was often repeated- for example, Keilah recalls an instance where Kathie Pete came to interview her when she “was outside while my dad was gardening.” CP 745. Ceth never met with anyone from DSHS outside the presence of his father prior to the savage beating at the hands of Theron Heideman that put him in foster care for three months. CP 776. Danika also remembers being interviewed by CPS “countless times” and that “a lot of the times was in front of my parents.” CP 822.

DSHS also never attempted to interview others outside the home. Many people knew about the abuse, including Appellants’ grandmother, friends, neighbors, and school employees. Keilah described having bruises that she “really couldn’t hide” from friends and teachers. CP 730. Even the next door neighbor knew about the beatings the Heideman children endured in the home. CP 620, 781. Furthermore, Respondents did not even consider substantiated abuse of one child in their

investigation into abuse of the others—as Moro testified, Ceth was taken into protective custody at a time when there was an open investigation into possible abuse against Keilah. CP 701.

**G. The Heideman Children Were Typical Victims of Child Abuse and Neglect.**

The argument that the children’s non-disclosure of abuse indicates that the investigation was competent does not comport with the common pattern of such investigations in the real world. Detective Harnett states that victims of child sex abuse can be reluctant to disclose the abuse:

Q: Earlier you mentioned that not all children disclose. Based on your experience, why do you think that is?

A: Well, there’s -- there’s several reasons. Maybe they’ve been coached. They’re afraid. They -- they actually love the perpetrator. They’re afraid to get them in trouble. They’re embarrassed. There’s -- there’s a lot of reasons.

Q: Based on your experience, do you think these issues with failure to disclose are more or less prevalent when you have a perpetrator that lives within the family home?

A: No. Well, it depends on how close the child is with the perpetrator and how, you know, manipulative the perpetrator is. If they’re very manipulative, if they’re -- if they create a bond with the child victim, then it -- you know, and there’s a lot of coaching on their part, then yes, it becomes very difficult to get some disclosures at times. It takes a lot of reassurance on the part of the interviewer with the child, and it can be a -- kind of a long process, a frustrating process.

.....  
Q: Do you find that most children in that situation when they’re being interviewed by you regarding

alleged sexual abuse they're reluctant to disclose this information?

A: Usually, yes.

CP 835-38.

Detective Harnett went on to describe the problems he has encountered when interviewing victims about their abuse:

You know, usually the ones that I've -- in my experience that -- that are reluctant to disclose have those issues about, you know, they've -- they've been coached that if they ever tell anybody what happened that "I'll" -- that "I'll never get to see you again" or "I'll never be able to buy you things again" or -- you know, those kinds of things. And so -- And *those are powerful things to say to a child, very powerful things*. You know, an adult has a great deal of power over a child in those -- in that area, so it makes it -- you know, *it makes it, you know, inherently difficult in a family atmosphere to get a disclosure* as opposed to, you know, a neighbor or somebody the child really doesn't know all that well; you know, that they don't have that connection with.

CP 838-39 (emphasis added).

This is precisely what happened. Heideman and Ponce grew so used to CPS visits that they began to coach their children. As Danika described it, "every time cops came or social workers came, they would sit us all down and be like: This isn't happening, you don't tell them that this is happening. If they ask you this, you tell them no." CP 831. Keilah recalled a specific incident in 2009, when Heideman and Ponce were

talking to her about the sexual abuse, "trying to get me to keep it a secret and to make it so we could work it out as a family." CP 739-40.

But Heideman and Ponce did not even need to coach their children in order to effectively keep them quiet. Appellants often refused to divulge the abuse to DSHS or CCSO because they were "scared of what would happen"- they "knew what [Heideman] was capable of." CP 731.

Detective Harnett explained that there are investigation techniques that can be used to overcome the challenges presented by investigations such as the one concerning Appellants:

Q: What are some techniques or strategies you'd use to conduct an investigation when a child either refuses to talk or doesn't disclose?

A: There's -- you know, some of the techniques, you know, you know, that -- that we use is we -- we actually -- we can be more direct and say, "Well, is it true that you told your friend Dora", for example, "that this happened to you?" or "Is it" -- or "Your mom told me that you talked about something to do with this." You know, you -- you try to, like, get them to go, you know, "Oh, shoot, I did tell somebody this." So... You know, and that -- and that -- and that doesn't, like, necessarily, like, put them on the spot, but it -- but it helps them to know that, you know, like: I told this person, so I guess it's okay to tell this guy.

.....

Q: Interviewing the reporting party or whoever the reporting party got the information from, is that a strategy you've used to deal with children who aren't forthright or refuse to talk?

A: Sometimes, yes.

Q: What would you say the benefit of that would be?

A: Just basically if it would, you know, tell the child that -- that "I know" -- "I know the information that you told this other person." And sometimes it allows them to talk about it.

CP 836-37.

A properly trained and experienced investigator of child abuse must understand that thorough and objective investigations are required to overcome the difficulties investigations can encounter when children are victims of abuse by parents living in the home. Nonetheless, the facts here show that these techniques were not even attempted. Unsurprisingly, Appellants were reluctant to confess the abuse to CPS or the CCSO.

**H. The Heideman Children are Finally Removed from the Home after Years of Abuse.**

DSHS finally began to take the allegations seriously when Keilah's probation officer and Appellants' aunt and maternal grandmother made a report to CPS. CP 83. During her interview with CCSO Detective Matheson, Keilah described the abuse she and her siblings endured. CP 95. Keilah stated her father would "smack us around, hit us with belts, kick us, throw us around," and that Ponce would

pull our hair, pull our ears, claw us with her fingernails, hit us with Hot Wheel tracks, electrical cords. My dad actually made a metal paddle with holes in it to hit us with. Smack us around. Anything she could hit us with. Shoes.

CP 730. Danika described the abuse similarly:

I was hit, you know, slapped, head-butted, kicked, thrown against the wall. Basically anything they could do to hurt they did. I wasn't just hit with hands, I got hit with belts, wooden spoons, the rubber pieces off a Hot Wheels track... I got hit with shoes. My dad actually even made a special paddle to hit us with.

CP 821.

For Ceth, the physical abuse was worse. In addition to being beaten with "Hot Wheel tracks, that metal paddle, sticks," electrical cords, and other instruments, Heideman would "beat the crap out of" him. CP 781. This progressed to the point where Ceth had to visit the hospital for his injuries. CP 252.

The abuse was not solely physical. On a daily basis, Ponce forced Appellants to clean the home until it was spotless, leaving no time for homework or other activities. CP 67. If the home wasn't cleaned to her liking, Ponce would wake them up in the middle of the night and force them to continue cleaning. CP 64-65. Ponce also denied the children access to water as a form of punishment, sometimes for long periods of time. CP 40. On one occasion, Ceth was forced to attend school without showering for over a month and a half. CP 780.

Keilah was subjected to sexual abuse by her father. When she was seven years old, her father began performing oral sex on her. CP 101, 104. As she got older, "it went from just oral, me to him, him to me, to

fingers entering, to attempting to have sex, to sex.” CP 727. Danika witnessed the abuse, having seen her father on top of Keilah in bed through an outside window. CP 820. Heideman even attempted to sexually assault Danika, locking her in his room and asking her if he could perform oral sex on her. CP 846.

Following Keilah’s full disclosure to Detective Matheson, Keilah and Danika were removed from the home. Appellants describe their lives as having vastly improved after moving out of the Heideman home. CP 796, 825-27.

**I. The Heideman Children Expressed Concern Regarding Inability of DSHS and CCSO to Help.**

Keilah has always stated she believed DSHS to be ineffective. Keilah feared that DSHS would show up, inform Heideman about the abuse report, and then leave without taking Keilah from the home - leaving Keilah to deal with Heideman’s anger:

Q: Why did you tell Allie and her mom not to tell anybody about the abuse?

A: Because I didn't want to have to go home and then have CPS show up and my dad would get mad. I didn't want to have to sit there. I didn't want to have to go through it knowing that CPS would just leave me back at my house instead of take me away.

Q: Why do you think CPS was just going to leave you if you told them about the abuse?

A: Because I didn't believe that they'd help.

CP 744.

Keilah would have confirmed the reports of physical, sexual, and emotional abuse in the home had there been an assurance on the part of CPS or CCSO that she would be removed from the home. CP 372. In her deposition, Keilah testified:

Q: Did you think Ms. Pete would help you if you told her about the abuse?

A: No.

Q: Why not?

A: I -- I didn't really believe that there was any help at all.

Q: Is there anything Ms. Pete could have done to make you feel comfortable enough to tell her about the abuse?

A: Maybe if she told me beforehand that I wouldn't -- he [Theron Heideman] wouldn't be able to touch me if I said anything.

CP 745-46.

These assurances were not provided to Keilah and her suspicions regarding DSHS' and CCSO's refusal to remove the Heideman children from Heideman's home was confirmed when Ceth was returned to the home three months after suffering a beating at the hands of Heideman that placed him in the hospital.

The lack of trust building was also evident in Detective Matheson's inept interview of Danika in November 2008. When Detective Matheson briefly interviewed Danika in 2008, she quickly discovered that Detective Matheson did not care enough about the reports of sexual abuse to take the

time to learn about the reports or attempt to gain her trust. CP 515. Detective Matheson's questions regarding Taylor, the granddaughter of Rosalie Edwards and the person to whom initial disclosure of sexual abuse was made, is illustrative. CP 515. Detective Matheson asked Danika about Taylor and she replied, "Taylor who?" CP 515. Not having interviewed the reporting party Janice Heideman, Rosalie Edwards, or Taylor herself, Detective Matheson did not even know Taylor's last name. CP 515.

#### **J. Procedural History.**

Ceth, Keilah, and Danika Heideman filed suit against CCSO and DSHS on July 28, 2011. CP 1-7. CCSO moved for summary judgment on January 7, 2014. CP 13-14. The Douglas County Superior Court granted the motion on the basis that Appellants had not generated sufficient evidence to establish an issue of fact on proximate cause. CP 414; 1 RP 36-37. Explaining its reasoning, the trial court stated:

The problem that I have is that CPS, apparently, and law enforcement with Chelan County, asked the question on several occasions and the children wouldn't talk. And maybe they had very good reason to do that and maybe they were afraid of their father. But if you look at the depositions, Keilah talked only because she felt like her father was going on to abuse her younger sister as opposed to because she needed help herself in that particular case.

As a matter of fact, as I understand, when she ran away New Year's Eve night, that was the last time that her father ever abused her at that particular time, and

apparently she got her friends - - or her friends agreed to do some sort of drubbing of her father. So I just have a difficult time with probable [sic] cause being anything more than speculation.

1 RP 36. Appellants moved for reconsideration, which the trial court denied, articulating its belief that Appellants' assertions that they would have disclosed the abuse had the CCSO earned their trust were somehow contrary to Appellants' prior reluctance to speak to CCSO detectives. CP 418; 444-45.

On December 15, 2014, after further discovery by both parties, DSHS moved for summary judgment. CP 526. The trial court granted the motion, explaining:

In light of the fact that the statute does, as the Court indicated, talk about harmful placement decisions, including taking the children away from the home and in spite of the denial of the children, I just think that DSHS acted reasonably and the Court's going to grant the summary judgment.

2 RP 36-37; CP 931-33. Appellants timely filed their notice of appeal on January 27, 2015. CP 936-37.

## V. ARGUMENT

### A. Standard of Review

This Court reviews decisions on summary judgment de novo. *Keck v. Collins*, 181 Wn. App. 67, 78, 325 P.3d 306, *review granted*, 181 Wn.2d 1007, 335 P.3d 941 (2014). On summary judgment, the moving

party has the burden to show that there is no dispute of material facts; the motion may only be granted in the absence of disputed material facts. CR 56; *Detweiler v. J. C. Penney Cas. Ins. Co.*, 110 Wn.2d 99, 108, 751 P.2d 282 (1988). All reasonable inferences must be resolved against the moving party, and in the light most favorable to plaintiff. *Id.* The responding party's only obligation at this stage is to present evidence to "create an issue of fact, not to carry of burden of persuasion." *deLisle v. F.M.C. Corp.*, 57 Wn. App. 79, 84, 786 P.2d 839 (1990). "Where different inferences may be drawn from evidentiary facts as to the ultimate facts, . . . summary judgment is not warranted." *Weisert v. Univ. Hosp.*, 44 Wn. App. 167, 172, 721 P.2d 553 (1986). Likewise, questions of credibility or weight of the evidence must be resolved by the jury. *Browning v. Ward*, 70 Wn.2d 45, 51, 422 P.2d 12 (1966); *Herriman v. May*, 142 Wn. App. 226, 232, 174 P.3d 156 (2007).

The evidence and all reasonable inferences considered in a light most favorable to Appellants are sufficient to create a question of fact as to whether DSHS and CCSO negligently investigated the child abuse allegations made against Heideman and Ponce.

**B. Whether DSHS acted reasonably in conducting its investigations is a question for the jury.**

The trial court erred by granting summary judgment in favor of DSHS, as it based its decision on an erroneous factual finding. As its sole explanation for granting summary judgment, the trial court stated, “I just think that DSHS acted reasonably.” 2 RP 36. This was not a determination that the trial court was entitled to make, and certainly does not provide a basis for summary judgment. “Whether one charged with negligence has exercised reasonable care is a question of fact for the jury.” *Hoffman v. Gamache*, 1 Wn. App. 883, 888, 465 P.2d 203 (1970) (citing *Gordon v. Deer Park Sch. Dist.*, 71 Wn.2d 119, 125, 426 P.2d 824 (1967)); *see also State v. Ferguson*, 3 Wn. App. 898, 901, 479 P.2d 114 (1970) (“Reasonableness is thus preeminently a fact question.”). This question can only be determined as a matter of law if no reasonable person could find otherwise. *Browning*, 70 Wn.2d at 48. For negligence claims, this situation arises in two types of cases:

The first is where the circumstances of the case are such that the standard of duty is fixed, and the measure of duty defined, by law, and is the same under all circumstances. (Citing case.) And the second is where the facts are undisputed, and but one reasonable inference can be drawn from them. (Citing authorities.)

*Dahl v. Klampher*, 71 Wn.2d 203, 208, 427 P.2d 709 (1967) (citing *McQuillan v. City of Seattle*, 10 Wash. 464, 465, 38 P. 1119 (1895)).

At the conclusion of the summary judgment hearing, the trial court stated, "In light of the fact that the statute does, as the Court indicated, talk about harmful placement decisions, including taking the children away from the home and in spite of the denial of the children, I just think that DSHS acted reasonably." 2 RP 36. It is clear from the trial court's reasoning that it considered DSHS's actions to be justified **in light of particular circumstances**; those circumstances being the possibility of liability for removing the children and the children's unwillingness to speak with CPS. That these circumstances outweighed all other surrounding circumstances (for example, the relative ages of Appellants, the seriousness of the allegations, etc.) is not a foregone conclusion, but simply one individual's personal interpretation of the facts, their weight, and credibility.

The trial court cannot make factual findings on a summary judgment motion; however, this is precisely what the trial court did by determining that DSHS acted reasonably in light of certain circumstances that it viewed as significant. Therefore, the decision of the trial court with respect to DSHS should be reversed.

**C. Appellants presented evidence to raise a genuine issue of material fact on the issue of proximate cause.**

With respect to CCSO, and with respect to DSHS assuming *arguendo* that the trial court did not base its decision purely on an illegitimate factual finding, summary judgment was not proper because there is a genuine issue of fact on whether CCSO's and DSHS' negligent investigations were the proximate cause of Appellants' injuries.

Proximate cause is defined as cause in fact and legal causation. *M.H. v. Corp. of Catholic Archbishop of Seattle*, 162 Wn. App. 183, 194, 252 P.3d 914 (2011). "Generally, the issue of proximate causation is a question for the jury." *Attwood v. Albertson's Food Centers, Inc.*, 92 Wn. App. 326, 330, 966 P.2d 351 (1998). A showing of proximate cause must be supported by "more than mere conjecture or speculation." *Miller v. Likins*, 109 Wn. App. 140, 145, 34 P.3d 835 (2001). However, causation need not be established by direct evidence, but may be established by circumstantial evidence. *Attwood*, 92 Wn. App. at 330.

Pursuant to RCW 26.44.050, DSHS and law enforcement have a duty to investigate reports of suspected child abuse. A cause of action for negligent investigation arises when the State and/or local law enforcement agency conducts an incomplete or biased investigation that results in a harmful placement decision, such as allowing a child to remain in an

abusive home. *M.W. v. Dep't of Social & Health Servs.*, 149 Wn.2d 589, 591, 595, 70 P.3d 954 (2003). Here, the Respondents conducted negligent investigations in which the Heideman children were interviewed in the presence of their abusers, no one other than Appellants was ever interviewed, and prior observations were disregarded, among many other errors. This resulted in the Heideman children remaining in the abusive home for many years.

#### **1. Cause in Fact.**

Proximate causation includes both cause in fact and legal causation. *Hiner v. Bridgestone/Firestone, Inc.*, 138 Wn.2d 248, 256, 978 P.2d 505 (1999). "To establish cause in fact, a claimant must establish that the harm suffered would not have occurred but for an act or omission of the defendant. There must be a direct, unbroken sequence of events that link the actions of the defendant and the injury to the plaintiff." *Joyce v. Dept. of Corrections*, 155 Wn.2d 306, 322, 119 P.3d 825 (2005). In most cases, cause in fact is a jury question. *Id.*

The trial court erred when it concluded as a matter of law that cause in fact was too speculative to present an issue for the jury. The Supreme Court's decisions on proximate cause in negligent supervision cases are dispositive.

In *Joyce v. Dept. of Corrections*, 155 Wn.2d 306, 322-23, 119 P.3d 825 (2005), the Department of Corrections (DOC) was responsible for supervising an offender convicted of assault and possession of stolen property. *Joyce*, 155 Wn.2d at 309. Approximately one week after the DOC filed a notice of violation and requested a court hearing; the offender stole a vehicle while under the influence of marijuana, struck the plaintiff's vehicle, and killed her. *Id.* at 313–14. The Estate sued the DOC for negligent supervision. *Id.* at 314. The evidence at trial showed the offender did not comply with any of the conditions of the judgment and sentence, and that the DOC knew the offender had been admitted to psychiatric institutions and was using illegal drugs. *Id.* at 312–14. A former corrections officer testified that if the DOC had obtained a bench warrant, the offender would have been in jail on the date of the car accident that killed the plaintiff. *Id.* at 322.

In *Joyce*, the State argued that even if it had properly monitored the offender and reported violations to the court, it was unknown what action, if any, the court would have taken. *Joyce*, 155 Wn.2d at 321. Therefore, the State argued, any causal connection between breach of duty and the plaintiff's death was too speculative. *Id.* at 321. Despite the State's "too speculative" arguments, the *Joyce* court held that evidence of proximate causation was sufficient where the State knew of the offender's

drug use, psychotic behavior, and propensity to drive stolen vehicles at high speeds. *Id.* at 322–23. The *Joyce* court reiterated that cause in fact is a jury question. *Id.* at 322.

The court in *Martini v. Post*, 178 Wn. App. 153, 165, 313 P.3d 473 (2013) reiterated the theme of *Joyce* on cause in fact and the need to view all evidence in the light most favorable to the non-moving party on summary judgment. In *Martini*, plaintiff brought an action against his landlord for failure to repair windows that were inoperable because they were painted shut. *Martini*, 178 Wn. App. at 157-58. A house fire occurred and plaintiff’s wife was unable to escape due to the inoperable windows. *Id.* The trial court granted summary judgment against the *Martini* plaintiff.

On appeal, the *Martini* defendant argued that evidence provided by the plaintiff was too speculative as to whether plaintiff’s wife could have escaped the house even if the window was not painted shut. *Martini*, 178 Wn. App. at 160. The Court of Appeals reiterated that a plaintiff need not prove cause in fact to an absolute certainty and it is sufficient that a plaintiff present evidence that “allow[s] a reasonable person to conclude that the harm more probably than not happened in such a way that the moving party should be held liable.” *Martini*, 178 Wn. App. at 165. The Court continued, addressing the defendant’s argument that the plaintiff

had not established “concrete” evidence of causation, stating, “[Defendant] ignores the fact that at summary judgment Abson [plaintiff] is entitled to all reasonable inferences drawn from the evidence.” *Martini* at 166.

Given the long history of child abuse and neglect, a reasonable jury could find that had Respondents conducted a proper investigation it would have uncovered evidence necessary to remove the children from their abusive home at an earlier date. The facts establish that reports of child abuse and neglect involving Appellants date back to as early as December 2, 1991. By 2004, Heideman and Ponce were beating the children with electric cords and metal objects. Heideman and Ponce beat the children in the middle of the night with metal paddles, leaving bruises which were evident to Appellants’ classmates and teachers. Heideman and Ponce withheld food from the Heideman children, which became so severe that DSHS works noted that the children were becoming noticeably thin and complained of hunger. CP 571. On multiple visits to the Heideman home, the neglect of the Heideman children was apparent in the piles of mice feces and strong smell of urine in one of the children’s rooms. CP 257-58, 571-72, 623. These facts were well documented by DSHS, and even a cursory view of the history of complaints should have alerted Respondents of the need to perform a proper investigation.

It is more than mere speculation that DSHS or CCSO would have removed the children from their abusers sooner had they acted non-negligently.<sup>2</sup> Appellants made numerous disclosures of abuse before 2009 – to people they *trusted*. DSHS’ records show that the children made multiple reports to their extended family, CP 154, 165, 777, school employees, CP 164, 572-73, 586-87, friends, CP 569, 727, and neighbors, CP 620, 781. Respondents, on the other hand, did not show themselves to be trustworthy, often interviewing the children in the presence of their abusers.

Appellants occasionally attempted to seek help from Respondents, to little avail. The multiple instances when they did so include all of the following:

- (1) In 2004, Keilah reported to Tracy Cash (DSHS) that she had been beaten with a metal paddle which left bruising, CP 458;
- (2) In 2007, Ceth reported to John Plotz (DSHS) numerous incidents of physical abuse in the Heideman home as well as illegal drug use, CP 329, 619;
- (3) In 2007, Ceth reported to Kathie Pete (DSHS) numerous incidents of physical abuse in the Heideman home, including the physical abuse of Danika and Keilah, and the withholding of food in the Heideman home, CP 622;

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<sup>2</sup> The trial court’s error stems at least in part from asking the wrong question. The question is not whether Appellants would have disclosed the abuse earlier, but whether Respondents would have uncovered the abuse earlier. RCW 26.44.050 places the duty to investigate on DSHS and law enforcement, not on the victims.

- (4) In 2007, Danika reported to Kathie Pete that the Heideman children got “slapped a lot” and Keilah had been hit the most, CP 627;
- (5) In 2007, Danika reported to Kathie Pete that the Heideman children continued to have food withheld, CP 628;
- (6) In 2007, Danika reported to Kathie Pete that Juanita Ponce had been hitting her since she was four years old, CP 628;
- (7) In 2007, Danika reported to Kathie Pete that she was unable to do school work because of fears of being hit for not doing chores, CP 628;
- (8) In 2007, Danika reported to Kathie Pete that Theron Heideman had an anger problem and that she wanted the hitting to stop, CP 628;
- (9) In 2007, Danika reported to Kathie Pete that she feared that Theron Heideman would start hitting her like he would hit Ceth, CP 628; and
- (10) In 2007, R.H. and Danika reported to Kathie Pete that it was not safe in their house when Theron Heideman got angry. CP 626, 628.

Moreover, Respondents even had objective evidence gathered by their own investigators that should have alerted them to the seriousness of what might be going on in the Heideman household, including the need to refer Heideman to the health department, CP 587, the strong smell of urine in one of the children’s bedrooms, CP 623, and Ceth’s visit to the hospital after being beaten by his father. It should be no surprise that Appellants were not readily willing to confess everything to DSHS and CCSO, where they failed even to take their own observations seriously. In light of these

facts, there is a genuine issue of material fact as to causation that must be left to the jury.

Respondents previously asserted, and the trial court agreed, that Appellants denials of abuse are proof that there is nothing more Respondents could have done to ameliorate the abuse. (“The problem that I have is that CPS, apparently, and law enforcement with Chelan County, asked the question on several occasions and the children wouldn't talk.”) 1 RP 36. A similar argument was advanced in *Hertog ex rel. SAH v. City of Seattle*, 138 Wn.2d 265, 979 P.2d 400 (1999). There, the City asserted that there was no cause in fact because Mr. Krantz’s probation officer did not know that he was using drugs, and therefore could not have prevented Krantz from raping the plaintiff. *Hertog*, 138 Wn.2d at 283. Both the Court of Appeals and the Supreme Court rejected this argument, reasoning “that if Hoover [the probation officer] had attempted to learn earlier whether monitoring by random urinalysis was being done and learned it was not, he could have sought revocation earlier.” *Id.* The Supreme Court continued,

Simply because Hoover sought revocation once does not mean that the duty to use reasonable care in supervision is forever satisfied. Further, the fact he did not actually know of probation violations does not answer the question whether he should have known of any such violations.

*Id.* The Court therefore held that there was a material issue of fact on the issue of cause in fact. *Id.*

Similarly, here, had Respondents conducted an adequate investigation earlier, the Heideman children could have been removed from their abusive home earlier. Simply because Respondents spoke to Appellants (in most cases in front of their abusers) does not mean that their duty to use reasonable care in investigating child abuse is forever satisfied. Moreover, even if Respondents did not know of the abuse, that does not answer the question whether they **should have** known of the abuse. This case is indistinguishable from *Hertog*, and summary judgment is similarly improper on the issue of cause in fact.

## **2. Legal Causation.**

Although the trial court found that legal causation did exist, Appellants anticipate that Respondents will contend that this element of proximate cause was also missing. However, the trial court's finding on this point was correct. Legal cause, unlike factual causation based on a physical connection between an act and an injury, is grounded in policy determinations as to how far the consequences of a defendant's acts should extend. *Minahan v. W. Wash. Fair Ass'n*, 117 Wn. App. 881, 888, 73 P.3d 1019 (2003) (quoting *Schooley v. Pinch's Deli Market, Inc.*, 134 Wn.2d 468, 478, 951 P.2d 749 (1998)). It is a concept that permits a court for sound policy reasons to

limit liability where duty and foreseeability concepts alone indicate liability can arise. The trial court properly found legal causation between Respondents' negligent investigations and the placement decision allowing the Heideman children to remain in their abusive home.

Washington State policy on the protection, prevention, and safeguarding of children against abuse by their parents and guardians is clear. RCW 26.44.010. When determining whether a child and a parent should be separated during or immediately following an investigation of alleged child abuse or neglect, *the safety of the child shall be the department's paramount concern*. RCW 26.44.010 (emphasis added). Washington policy regarding children and abuse allegations in their homes places the safety of children as the paramount concern.

The Heideman children's situation is the situation contemplated by the Washington legislature in declaring its purpose behind RCW 26.44 - Abuse of Children. The negligence of DSHS must be found to extend to its harmful placement decision for the Heideman children. If not, then no victim of a harmful placement decision could bring action against a government entity as a result of that entity's failure to investigate or conduct a competent investigation.

**D. Appellants' denials of abuse did not excuse Respondents of their duty to investigate.**

Appellants further anticipate that Respondents will argue that they had no duty to continue to investigate claims of abuse after the children denied it. However, this argument was rejected by the court in *Yonker by and through Snudden v. Dep't of Soc. and Health Servs.*, 85 Wn. App. 71, 930 P.2d 958 (1997). In that case, Maryann Snudden called CPS after she noticed her two year old son explicitly acting out intercourse with a stuffed animal. *Id.* at 73. Snudden told CPS that her ex-husband had a pornography addiction, and that he lived in a studio apartment where her son could easily have seen his father having sex. *Id.* CPS refused to take any action, on the basis that the allegation was not specific enough. *Id.* One year later, the three year old boy told Snudden and her parents that his father had performed oral sex on him. *Id.* at 74. Snudden again called CPS. *Id.* The boy would not repeat the allegation to the CPS investigator, so CPS closed the investigation without taking any further action. *Id.* After the boy's father confessed to molesting his son, Snudden sued DSHS on her son's behalf for negligent investigation. *Id.*

DSHS moved for summary judgment on the basis that "CPS did not have a duty to discover and stop abuse in every case in which a report was made," and that Snudden's report had not been specific enough to

trigger a duty. *Id.* The Court of Appeals rejected this overly broad argument as a basis for summary judgment. First, the Court held that DSHS's duty is triggered not by reports of "actual abuse," but by reports of "*the possible occurrence of abuse.*" *Id.* at 80, quoting RCW 26.44.050 (emphasis in *Yonker*). Second, the Court held that questions of the sufficiency of the initial report are to be resolved "on a case-by-case basis" *i.e.* on the **facts**. *Id.* at 81. That the child refused to repeat the allegation directly to the investigator was of no moment, and did not excuse DSHS of its duty to investigate as a matter of law. *Id.* Thus, the Court of Appeals held that summary judgment was not appropriate. *Id.* at 82.

Indeed, acceptance of the contrary position would lead to the absurd result that DSHS and law enforcement have the duty to investigate only when the abused children themselves are willing to repeatedly admit – even in front of their abusers – that they were being abused. Such a standard would put far too much of a burden on the victims. It must be remembered that Appellants were mere children at the time of their denials – Danika was only 11 when the allegations of sexual abuse first came to light. Children are not going to confirm abuse to someone they don't know without some attempt to secure their trust. As Detective Hartnett testified, "it takes a lot of rapport building to get to that point where a child is going to tell you something." CP 836.

Second, requiring the child to confirm the abuse before an investigation can begin would run contrary to law and defeat the very purpose of our state's child abuse laws. RCW 26.44.010, the legislature's declaration of purpose, states "When the child's physical or mental health is jeopardized, or the safety of the child conflicts with the legal rights of a parent, custodian, or guardian, **the health and safety interests of the child should prevail.**" (emphasis added).<sup>3</sup> It is not in a child's health and safety interest to force them to repeat abuse allegations to total strangers before the government will do anything to help them.

As in *Yonker*, the Appellants' denials of abuse to CPS workers do not excuse DSHS or CCSO of its duty as a matter of law. If there is any question over the sufficiency of the allegations in this case, it is a question of fact, over which there is a genuine dispute in this case. Here, there was not one, or even a mere few, allegations of abuse, but numerous made over the course of more than 15 years. Many of the reports came directly from the Heideman children themselves. Allegations also came from their grandmother, neighbors, and parents of friends. The allegations of abuse were even substantiated with regard to Ceth in 2007, while an

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<sup>3</sup> To the extent that the trial court considered DSHS' or CCSO's potential liability toward the parents as weighing against liability toward the children ("In light of the fact that the statute does, as the Court indicated, talk about harmful placement decisions, including taking the children away from the home..." 2 RP 36), it was in error. It is the children's interest, not the parents', that should prevail.

investigation regarding Keilah was still pending. From these facts, a jury could find that the allegations were sufficient to trigger Respondents' duty to investigate.

Respondents' duty to investigate does not cease as a matter of law when the child abuse victim denies that abuse occurred. This Court should hold accordingly.

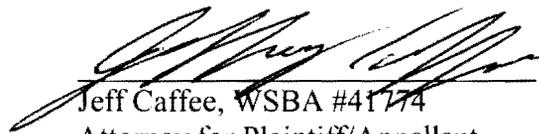
## **VI. CONCLUSION**

Ceth, Keilah, and Danika Heideman were abused by their father and stepmother for almost a decade. Yet, despite receiving multiple reports from various sources, including family members, neighbors, and even the children themselves, DSHS and CCSO did little to actually investigate the allegations of abuse. As a result, Ceth, Keilah, and Danika were left in an abusive home for far longer than they should have been.

The trial court erred by granting summary judgment in favor of DSHS and CCSO, as it did so based on erroneous factual findings and a failure to consider all of the evidence in the light most favorable to the Appellants. The evidence presented was more than adequate to raise a material issue of fact on whether Respondents' failure to adequately investigate proximately caused Appellants' injuries. Therefore, this Court

should REVERSE the decision of the trial court and remand for further proceedings.

DATED this the 22<sup>nd</sup> day of May, 2015.

A handwritten signature in black ink, appearing to read "Jeff Caffee", is written over a horizontal line.

Jeff Caffee, WSBA #41774  
Attorney for Plaintiff/Appellant  
Van Sicien, Stocks & Firkins  
721 45<sup>th</sup> Street N.E.  
Auburn, Washington 98002  
Phone: 253-859-8899  
Email: [jcaffee@vansicien.com](mailto:jcaffee@vansicien.com)

## CERTIFICATE OF SERVICE

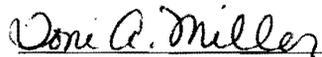
I certify that I caused one copy of the foregoing Opening Brief of Appellant to be served on the following parties of record and/or interested parties by delivering it via Fed-Ex, to the below named attorneys:

Elizabeth Baker  
Office of the Attorney General  
7141 Cleanwater Drive SW  
Olympia, WA 98504-0146

Allison Croft  
Attorney General's Office  
800 Fifth Ave #2000  
Seattle, WA 98104-3188

Robert R. Siderius, Jr.  
Jeffers Danielson Sonn & Aylward  
2600 Chester Kimm Rd.  
Wenatchee, WA 98801-8116

Dated this 22<sup>nd</sup> day May, 2015, at Auburn, Washington.

  
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Toni A. Miller