NO. 101477-5

SUPREME COURT OF THE STATE OF WASHINGTON

BRUCE A. WOLF, as Personal Representative of the Estate of TIMOTHY JONES, deceased,

Petitioner,

v.

STATE OF WASHINGTON,

Respondent.

RESPONDENT'S ANSWER TO MEMORANDUM OF AMICUS CONNELLY LAW FIRM

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I. INTRODUCTION

Amicus Connelly Law Firm fails to provide any additional information or analysis outside of the flawed arguments set forth in Petitioner's request for review. This case satisfies none of the RAP 13.4(b) factors. The conclusory statements that Amicus uses to attack the Court of Appeals' interpretation of the plain meaning of the words in the statute are not a basis upon which review should be grounded. For the reasons set forth below, and in the Respondent's brief, this Court should decline review of the Court of Appeals' decision in this case.

II. ARGUMENT

Amicus Connelly Law Firm's brief fails to provide *any* discussion about the standard for review by this Court or how it applies to this case. No factor under RAP 13.4(b) is applicable.

A. The Court of Appeals' Decision is not in Conflict with a Decision of the Supreme Court

First, the opinion of the Court of Appeals in this matter does not "conflict with a decision of the Supreme Court."

RAP 13.4(b)(1). Amicus attempts to make the same unpersuasive argument as petitioner regarding *C.J.C. v. Corp. of Catholic Bishop of Yakima*, 138 Wn.2d 699, 985 P.2d 262 (1999), *as amended* (Sept. 8, 1999). However *C.J.C.* did *not* address the issue presented in this case, is *not* in conflict with the decision of the Court of Appeals here, and in fact *supports* the Court of Appeals' reasoning.

The question presented for review is whether it is the connection between a plaintiff's abuse and their damages that is operative for RCW 4.16.340 to bar a claim, or if a Plaintiff must also come to the legal conclusion that a particular third party might be liable before the three year statute of limitations begins to run. *C.J.C.* says nothing about this question. Instead, *C.J.C.* concerned the issue of whether a claim against a third-party defendant – one that did not perpetrate intentional childhood sexual abuse – is subject to RCW 4.16.340 *at all*. *C.J.C.*, 138 Wn.2d at 714.

However, the *C.J.C.* Court, in reaching the conclusion that such claims are subject to RCW 4.16.340, highlights the purpose behind the statute:

> [C]hildhood sexual abuse is a pervasive problem and causes long lasting damage; … victims of childhood sexual abuse may repress the memory of *the abuse* or be unable to connect *the abuse* to any injury until the statute of limitations has run; … victims may be unable to understand or make the connection between *the abuse* and the emotional damages it causes.

C.J.C., 138 Wn.2d at 712-13 (citing Laws of 1991, ch. 212, § 1) (emphasis added). This discussion highlights how out of touch the argument of both the Estate and Amicus is with the underpinning of both RCW 4.16.340 and the *C.J.C.* court's decision. The statute and *C.J.C.* undercut the Estate's position and support the Court of Appeals' opinion that it is the connection between *the abuse* and the attendant injury that is operative for purposes of RCW 4.16.340.

Amicus also references *H.B.H. v. State*, 192 Wn.2d 154, 429 P.3d 484 (2018), Mem. of Amicus at 2, but *H.B.H.* does not

cite – or even mention – RCW 4.16.340. Because, again, that is not what *H.B.H.* is about. Instead, *H.B.H.* stands for the proposition that a "special relationship between DSHS and foster children gives rise to a protective duty under Restatement § 315(b)." *H.B.H.*, 192 Wn.2d at 183.

The establishment of a duty does not in any way make the establishment and application of a statute of limitations unavailable to the legislature. If that were the case, no statute of limitations would ever be applicable to any cause of action founded on a common-law duty. Amicus' apparent argument for such a reading of *H.B.H.* lacks any merit. *H.B.H.* is wholly consistent with the Court of Appeals' decision in this matter. Because the Estate and Amicus can point to *no* Supreme Court case that is in conflict with that decision, review is inappropriate under RAP 13.4(b)(1).

B. The Court of Appeals' Decision is not in Conflict with a Published Decision of the Court of Appeals

Next, it is uncontroverted that the decision of the Court of Appeals here is not "in conflict with a *published* decision of

the Court of Appeals." RAP 13.4(b)(2) (emphasis added). Citing *unpublished* opinions from the Court of Appeals is not sufficient to merit review under RAP 13.4(b)(2), because such opinions "have no precedential value and are not binding on any court." GR 14.1(a).

Furthermore, as with the Estate, even the unpublished cases cited by Amicus support the Court of Appeals' decision here. For instance, in *K.C.* the Court specifically identified that the issue was "when KC and LM discovered that *the abuse* caused the harm." *K.C. v. Johnson,* 197 Wn. App. 1083, 2017 WL 888600, at *9 (2017) (unpublished) (emphasis added); *see also K.C. v. State*, 10 Wn. App. 2d 1038, 2019 WL 4942457, at *8 (2019), *as amended on denial of reconsideration* (Mar. 17, 2020) (unpublished) ("[B]ecause KC and LM filed their lawsuit in 2013, well within three years from when she allegedly associated her injuries *to her abuse*, the trial court erred in granting summary judgment as to KC's claim." (emphasis added)); *See* Mem. of Amicus at 3. Just like the Estate, Amicus

is unable to identify *any* published Court of Appeals decision that conflicts with the Court of Appeals' decision in this case. Because no such case exists, review is not appropriate under RAP 13.4(b)(2).

C. The Unique Facts that led to this Case and the Limited Application of the Court of Appeals' Holding Does not Give Rise to an Issue of Substantial Public Interest

Lastly, the unique set of facts and circumstances that brought this issue before the Court of Appeals emphasize that this case does not represent an "issue of substantial public interest" that merits review. RAP 13.4(b)(4). Amicus does not provide any argument as to why this prong of review should apply. Instead, Amicus makes conclusory statements about how the law firm believes this case was wrongly decided and that the Court of Appeals' opinion will create "mischief in the handling of cases." Mem. of Amicus at 3. In addition to failing to define what it means by "mischief," Amicus fails to identify any policy concerns that would determine that the Court of

Appeals' opinion concerned an "issue of substantial public interest."

Instead, the distinctive set of factual circumstances that created this issue – Mr. Jones' sexual abuse, that abuse overlapping in time with DSHS's involvement in his care, Mr. Jones' unequivocally making the connection between that abuse and his resulting injuries, and his death before this lawsuit was brought – make the question posed for review unique. In fact, RCW 4.16.340 has been in force for over 30 years and this case represents the *first* published Court of Appeals decision to address this specific issue. *See* Laws of 1991, ch. 212 § 1. Because of this, review is not warranted under RAP 13.4(b)(4).

III. CONCLUSION

As demonstrated by both Amicus Curiae Connelly Law Offices and Petitioner, there are no bases under RAP 13.4(b) which would merit review of the Court of Appeals' decision in this matter. There is no conflict with any decision of this Court,

there are no conflicting published Court of Appeals decisions, and the unique facts and circumstances do not give rise to an issue of substantial public interest. Because of this, review remains unwarranted and the Court should deny the petition.

This document contains 1233 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 14th day of February 2023.

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DECLARATION OF FILING AND SERVICE

I certify that on the date below I caused to be electronically filed the **RESPONDENT'S RESPONSE TO PETITIONER'S AMICUS BRIEF** with the Clerk of the Court using the electronic filing system which caused it to be served on the following electronic filing system participant as follows:

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I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 14th day of February 2023, at Tumwater, Washington.

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