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.

PETITIONER'S ANSWER TO CONNELLY LAW *AMICUS* MEMORANDUM

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A. INTRODUCTION

The *amicus curiae* memorandum of the Connelly Law Offices, a well-respected firm with considerable experience litigating childhood sexual abuse cases, only reinforces the fact that Division II's split, published opinion interpreting RCW 4.16.340(1)(c) is an outlier. That opinion runs contrary to the language and unique legislative history of the statute, the case law interpreting it, and the public policy it effectuates. This Court's revisory authority needs to be exercised to correct the Division II majority's harmful approach to limitations on the claims of childhood victims of sexual abuse. RAP 13.4(b).

B. STATEMENT OF THE CASE

For the reasons the Jones Estate ("Estate") articulated in its petition for review at 2-7, Timothy Jones was never aware of the connection between the State's conduct and his injuries for purposes of RCW 4.16.340(1)(c). At a minimum, the declarations submitted by the Estate on that point created a

genuine issue of material fact.[1]

C. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

The *amicus* memorandum reinforces the point in the Estate's petition that this is a Supreme Court case, given the importance of the statute to childhood victims of sexual abuse, and how far the majority opinion in that published decision deviates from Washington law.

That the majority opinion is wrong is certainly discussed in detail in the dissent, op. at 25-29,[2] and the Estate's petition. Pet. at 9-26. But the problem with the majority's analysis is further highlighted by decisions of other courts on the very same

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[1] When the State asserts in its answer at 7 that none of these declarations indicate that Timothy failed to make the connection between his harm and Nick Miller's abuse, that is irrelevant to the question on which *it*, not the Estate, bore the burden of proof – Timothy never connected his harm to the State's negligence. Those declarations, or reasonable inferences from them, make that clear.

[2] The State's answer to the Estate's petition for review simply ignores Judge Cruser's powerful dissent in this case.

statute. The *amicus* memorandum points to a clear-cut split in the decisions of the divisions of the Court of Appeals on the application of RCW 4.16.340(1)(c), also highlighted by the dissent. Memo. at 3-4.[3] Contrary to the State's position, answer at 11, Division II's majority opinion cannot be squared with this Court's decision in *C.J.C. v. Corp. of Cath. Bishop of Yakima,* 138 Wn.2d 699, 985 P.2d 262 (1999). Pet. at 18-20. Despite the State's argument to the contrary, answer at 11-15, the majority opinion is also contrary to the language of RCW 4.16.340(1)(c) and its unique legislative history. Pet at 11-17. *See also*, Op. at 28 (by statute the "injury in question is the injury '*for which the claim is brought,*'" in this case the State's negligence) (emphasis added by Cruser, J., dissenting) (later also quoting from *C.J.C.*, *supra*).

The Division II opinion has been cited in a number of trial

[3] The State tacitly *concedes* this point when it resorts to the argument that no published decision conflicts with Division II's split opinion. Answer at 19-22.

court cases already. Only recently, for example, despite the State's citation of the Division II opinion in the litigation, an experienced trial judge in Spokane County in *Vaughn v. State* (Spokane County Cause No. 20-2-02394-32) denied the State's motion for summary judgment positing the very same analysis of RCW 4.16.340 as was offered by the Estate in this case.

Other interested parties have contacted the Estate about Division II's opinion and its impact. For example, the Estate is aware of *A.K. v. DSHS,* Snohomish County Cause Number 19-2-01825-31, wherein the State relied upon Division II's opinion to assert that RCW 4.16.340 precluded a child victim of sexual assault's claim. Specifically, the State argued that the plaintiff's claim accrued in 2011 upon reporting her abuser to San Antonio, Texas detectives. This directly contradicts the State's argument that "the limited application of the Court of Appeals' decision – which is based on a very specific set of factual circumstances unique to this case – does not create an issue of substantial public interest that should be determined by this Court" in its answer.

Answer at 10-11.

Thus, it is clear that Division II's opinion is not a "one off" decision as the State contends. Answer at 22-24. That split, *published* opinion will have repercussions in future childhood sexual assault cases, meriting this Court's grant of review. Trial court decisions in the service area of Divisions I and III of the Court of Appeals confirm that Division II's majority opinion is an outlier. This Court should grant review to correct its obviously erroneous analysis. RAP 13.4(b)(2), (4).

D. CONCLUSION

RCW 4.16.340(1)(c) is a key component of Washington's strong public policy against childhood sexual abuse, expressed by the Legislature and our courts. Division II's split published decision disrupts that strong public policy.

This Court should grant review and reverse the trial court's order on summary judgment in the State's favor; it should order the trial court on remand to grant summary judgment on RCW 4.16.340(1)(c) in the Estate's favor. Costs on appeal should be

awarded to the Estate.

This document contains 846 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED this 14th day of February, 2023.

Respectfully submitted,

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DECLARATION OF SERVICE

On said day below I electronically served a true and accurate copy of the ***Petitioner's Answer to Connelly Law Amicus Memorandum*** in Supreme Court Cause No. 101477-5 to the following:

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

DATED: February 14, 2023, at Seattle, Washington.

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Petitioner's Answer to Connelly Law Amicus Memorandum

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