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No. 102239-5

SUPREME COURT
OF THE STATE OF WASHINGTON

R.K.,

Petitioner,

v.

UNITED STATES BOWLING CONGRESS, et al.,

Respondents.

REPLY TO CONDITIONAL CROSS-PETITION FOR REVIEW

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A. Introduction.

In its answer to R.K.'s petition for review, the United States Bowling Congress (USBC) conditionally cross-petitions this Court to take review of two additional issues: (1) whether R.K.'s claims expired under the statute of limitations, RCW 4.16.340, and (2) whether USBC—by assuming all liabilities of its predecessor, the Young American Bowling Alliance (YABA)—is liable for the negligence of YABA's subsidiary agent, the Washington State Young American Bowling Alliance (WSYABA).

The first issue is without merit, as USBC concedes that R.K. suffered sexual abuse before he turned 18, and he brought his claim within three years of learning the full scope and extent of his injuries. The second issue presents no issue for review because if the umbrella organization YABA was negligent in breaching its special relationship duty of protection, then USBC—which assumed all its predecessor's liabilities—is liable to R.K. and whether

WSYABA's negligence may be imputed to YABA is irrelevant.

B. The Court should not review the statute of limitations issue, which the Court of Appeals correctly ignored.

The trial court rejected USBC's affirmative defense that R.K.'s claims are time-barred as a matter of law under the statute of limitations, RCW 4.16.340. (RP 35-37) The Court of Appeals did not address the issue. (Op. ¶42) This Court need not do so, either; USBC cites no authority from this Court—or any other court—specifically addressing RCW 4.16.340, let alone authority justifying review "under RAP 13.4(b)(1)." (Ans. 27-30)

Regardless, properly viewing all the evidence and reasonable inferences in R.K.'s favor, the trial court correctly rejected USBC's contention that R.K.'s claims are time barred under RCW 4.16.340 because *when* R.K. discovered the injuries stemming from Treddenbarger's abuse is a disputed issue of fact. USBC, which ignores the

governing standard of review, may argue its affirmative defense based on a complete factual record once the issue is resolved at trial. *See Adcox v. Children's Orthopedic Hosp. & Med. Ctr.*, 123 Wn.2d 15, 35, n.9, 864 P.2d 921 (1993) (appellate court does not review denial of summary judgment for disputed issues of fact but sufficiency of evidence to support jury's verdict).

USBC's cross-petition also ignores the breadth and scope of the Legislature's decision to expand a remedy to minors by taking into consideration their delayed awareness of the consequences of abuse. Under RCW 4.16.340(1)(c), claims based on childhood sexual abuse are timely if they are commenced "[w]ithin three years of the time the victim discovered that the act caused the injury for which the claim is brought."

In enacting RCW 4.16.340(1), the Legislature "ma[d]e clear that the discovery of less serious injuries did not commence the period of limitations." *C.J.C. v. Corp. of*

Catholic Bishop of Yakima, 138 Wn.2d 699, 713, 985 P.2d 262 (1999). This Court recently reaffirmed that "[l]awmakers intended RCW 4.16.340 to provide a broad and generous application of the discovery rule for injuries caused by childhood sexual abuse," recognizing that "victims of childhood abuse may not be able to understand or connect past abuse and emotional harm or damage until many years later" and thus "the memory of harm for a childhood abuse victim may reveal itself at different points in time." *Wolf v. State*, 2023 WL 5763490, ___ Wn.3d ___, ¶¶24-26, ___ P.3d ___ (2023) (internal quotation omitted).

RCW 4.16.340(1)(c) applies in two instances: (1) "First, when a victim is aware of the abuse and that they suffered harm as a result, but the victim discovers a new and qualitatively different injury from the abuse," and (2) "Second, when the victim is aware of the abuse and injury but discovers a causal connection of which they were previously unaware between the wrongful act and the

harm." *Wolf*, 2023 WL 5763490 at ¶27; *see also Korst v. McMahon*, 136 Wn. App. 202, 208, ¶13, 148 P.3d 1081 (2006) (RCW 4.16.340 "is unique in that it does not begin running when the victim discovers an injury. Instead, it specifically focuses on when a victim of sexual abuse discovers the causal link between the abuse and the injury for which the suit is brought.").

USBC does not dispute that R.K. presented evidence allowing a jury to find that he suffered abuse as a minor participating in YABA events. But USBC's factual recitation ignores R.K.'s evidence that he recently discovered a causal connection between Treddenbarger's sexual abuse and his injuries. The trial court correctly viewed the evidence in the light most favorable to R.K. in denying summary judgment on this issue.

Dr. Jon Conte, Professor Emeritus in the School of Social Work at the University of Washington and Director of the Joshua Center on Child Sexual Abuse Prevention,

and a leading expert on damages and causation in child sexual abuse, determined that R.K. neither knew nor could have reasonably known of the extent of his present and future damages as a result of Treddenbarger's abuse. (CP 591, 595-97) Dr. Conte concluded R.K. presents "two additional areas of harm and damage" that he "has little or no awareness of"; namely, a "rigid psychological defense of working too hard, too intensively, and too long," which "block[s] negative feelings and experiences resulting from the sexual abuse." (CP 597) Dr. Conte noted that these defenses will cause additional harms as R.K. ages and could result in "unforeseen development crises" and impose "emotional and social costs" by, for example, further isolating himself from others. (CP 597)

USBC argues that Dr. Conte's expert testimony is insufficient to toll the statute of limitations under RCW 4.16.340 because "[w]orking hard and having a successful

career" cannot be an "injury" under the statute as a matter of law. (Ans. 27-29) USBC is wrong for two reasons.

First, USBC mischaracterizes the scope and extent of R.K.'s injury. As Dr. Conte explained, R.K. doesn't just work "too hard" but has in fact adopted a "rigid psychological defense" as a result of Treddenbarger's abuse that will continue to "impose emotional and social costs" as R.K. further isolates himself from others. (CP 597) This is no different than the injury alleged in *B.R. v. Horsley*, 186 Wn. App. 294, 345 P.3d 836 (2015), where the court held that the plaintiff's "new adult difficulties"—including difficulties "with her work"—raised a "genuine dispute of material fact . . . as to when" the plaintiff "realized the cause and extend of the [alleged] injuries," thereby precluding summary judgment. 186 Wn. App. at 301, ¶¶17-18.

Second, USBC ignores that its statute of limitations argument presents an affirmative defense involving issues of fact upon which it will have the burden of proof at trial.

Mayer v. City of Seattle, 102 Wn. App. 66, 76, 10 P.3d 408 (2000), *rev. denied,* 142 Wn.2d 1029 (2001). Whether R.K. was aware of the causal link between Treddenbarger's abuse (or more specifically, YABA's failure to protect R.K. from that abuse) and his emotional and social isolation prior to his evaluation by Dr. Conte presents a genuine dispute of material fact for the jury. *See Oostra v. Holstine*, 86 Wn. App. 536, 543, 937 P.2d 195 (1997) (whether an action is timely commenced under RCW 4.16.340 is typically "a question for the trier of fact to determine[.]"), *rev. denied*, 133 Wn.2d 1034 (1998). The issue does not warrant this Court's review because the trial court's order preserves USBC's right to argue its defense at trial.

C. R.K. does not oppose review of the Court of Appeals' refusal to hold USBC liable for the negligence of WSYABA's negligence as YABA's subsidiary agent.

USBC also asks the Court to review whether WSYABA's liability may be imputed to USBC. (Ans. 29-30) Review of this issue is irrelevant—if the Court ultimately

holds that USBC (via its predecessor, YABA) owed R.K. a common law special relationship duty of protection, it would have to reverse regardless of whether the subsidiary WSYABA's negligence can also be imputed to USBC.

R.K. argued below that because YABA exercised substantial control over its subsidiaries, YABA was vicariously liable for its subsidiary's negligence, as an alternative basis for holding USBC liable for R.K.'s injury.[1]

While the Court of Appeals rejected this basis for USBC's liability, R.K. does not oppose the Court taking review of this issue. A jury could find that WSYABA lacked any meaningful autonomy and functionally operated as an extension of YABA itself. YABA required WSYABA and all local affiliate subsidiaries to adopt "mandatory" constitutional and bylaw provisions, and any bylaw

[1] App. Br. 35-39 and Reply Br. 17-23 (arguing a parent corporation may be vicariously liable for its subsidiary when the parent exercises sufficient control over the subsidiary such that it forms an agency relationship).

provisions that WSYABA tried to independently adopt or amend required YABA approval (CP 436, 438-42, 475-83, 492-97), controlled registration for all members (CP 443-44, 454), controlled its coach certification program (CP 449-50), and required that all bowling events and tournaments comply with YABA rules and policies. (CP 455-56)

Because YABA controlled nearly all aspects of WSYABA's operation and perpetuated the reasonable belief that WSYABA acted on YABA's direction, a jury could find YABA vicariously liable for WSYABA's negligence based on an agency relationship. *See ITT Rayonier, Inc. v. Puget Sound Freight Lines*, 44 Wn. App. 368, 377, 722 P.2d 1310 (1986) (Whether an agency relationship exists is typically a question of fact reserved for the jury); *see Soderberg Advertising, Inc. v. Kent-Moore Corp.*, 11 Wn. App. 721, 733-34, 524 P.2d 1355 (1974) (alter ego liability based on control).

In sum, R.K. does not oppose the Court taking review of this issue.

D. Conclusion.

The Court should deny review of the statute of limitations issue because R.K. presented sufficient evidence to create a genuine dispute of material fact regarding the cause and extent of his alleged injuries. Although the corporate liability issue is arguably irrelevant, R.K. does not oppose review of that issue.

I certify that this reply is in 14-point Georgia font and contains 1,630 words, in compliance with the Rules of Appellate Procedure. RAP 18.17(b).

Dated this 14th day of September, 2023.

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DECLARATION OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on September 14, 2023, I arranged for service of the foregoing Reply to Conditional Cross-Petition for Review, to the court and to the parties to this action as follows:

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