NO. 93519-0

SUPREME COURT OF THE STATE OF WASHINGTON

TASHA OHNEMUS,

Petitioner,

v.

STATE OF WASHINGTON,

Respondent.

CORRECTED ANSWER TO PETITION FOR REVIEW

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

I. INTRODUCTION

In the unpublished portion of its opinion, the Court of Appeals held that reasonable minds could not differ in concluding that the statute of limitations barred Ms. Ohnemus' negligent investigation claim against the State. The discovery rule did not save her claim. Medical notes recording Ms. Ohnemus' own statements established that she actually knew the factual basis of her claim against the State by the time she was 20 years old in 2007, more than three years prior to filing suit. Neither was her claim saved by RCW 4.16.340(1)(c), the special statute of limitations for childhood sexual abuse. Ms. Ohnemus failed to raise a genuine issue that, within three years of filing, she had either discovered a new and qualitatively different injury related to her sexual abuse or had, for the first time, made the causal connection between the State's alleged negligence and her injuries. Ms. Ohnemus requests discretionary review to allow these statute of limitations issues to be considered by a jury.

Ms. Ohnemus also seeks discretionary review of the published portion of the opinion, which held in a narrow ruling limited to the facts of this case that the State cannot violate RCW 9.68A.100, which criminalizes commercial sexual abuse of minors, and that therefore the State is not liable to Ms. Ohnemus for her costs and fees under RCW 9.68A.130.

None of these issues merit this Court's attention. Discretionary

review is reserved for issues of broader significance to the law—and the people—of the State of Washington. Here, where the opinion is consistent with Washington precedent and raises no issue of substantial public interest, discretionary review should be denied.

II. COUNTERSTATEMENT OF ISSUES

1. In the published portion of its opinion, did the Court of Appeals correctly determine, under the facts of this case, that the State cannot violate RCW 9.68A.100, which criminalizes commercial sexual abuse of minors, and therefore the State is not liable to Ms. Ohnemus for her costs and fees under RCW 9.68A.130?

2. In its unpublished opinion, did the Court of Appeals correctly determine that Ms. Ohnemus' negligent investigation claim is time barred notwithstanding the discovery rule, where the record shows that, more than three years before filing the instant action, she knew the State had a duty to protect her from her abusive stepfather, she believed the State breached that duty by not protecting her, and she understood that she suffered abuse longer because of the State's failure to protect her?

3. In its unpublished opinion, did the Court of Appeals correctly determine that Ms. Ohnemus' sexual abuse claim is time barred under the special statute of limitations for childhood sexual abuse, RCW 4.16.340(1)(c), where the record does not support an inference that within three years prior to filing suit Ms. Ohnemus either (a) suffered an injury new and qualitatively different from other harms connected to the abuse, or (b) first made the causal connection between the State's conduct and her injuries?

III. COUNTERSTATEMENT OF THE CASE

In August 2012, Ms. Ohnemus sued the State, alleging that Child Protective Services (CPS) had negligently investigated reports in 1996 and 1997 that her stepfather, Steven Quiles, had physically and sexually

abused her, and that CPS had consequently failed to remove her from the abuse at that time. *Ohnemus v. State*, No. 46944-8-II (Jul. 19, 2016) (slip op.) at 3, 19. Ms. Ohnemus also alleged that the State had violated RCW 9.68A.100, the statute criminalizing commercial sexual abuse of a minor, and argued that she would be entitled to attorney fees under RCW 9.68A.130 if she prevailed on that claim. Slip op. at 2, 7.

On summary judgment the superior court dismissed Ms. Ohnemus' negligent investigation claims as time barred. *Id.* at 19, 20 n.9. The court declined to dismiss her RCW 9.68A.100 claim. By joint motion, the parties stipulated that the case was "ripe for appellate review" and asked the court to certify "all of the legal issues for immediate appellate review pursuant to CR 54(b) and RAP 2.3(b)(4)."[1] CP 660. The court did so. CP 661-64. Following cross-briefing on all issues, the Court of Appeals issued a unanimous opinion, published in part.

A. The Published Opinion Held, as a Matter of Law Under the Facts of This Case, the State Cannot Violate RCW 9.68A.100

In the published portion of its opinion, the Court of Appeals "h[e]ld as a matter of law, under the facts of this case, that the State cannot

[1] The Court of Appeals believed, incorrectly, that the parties had not stipulated, and the superior court had not certified, the RCW 9.68A.100 issue pursuant to RAP 2.3(b)(4). However, correctly recognizing the issue "involves a controlling issue of law that will materially advance the ultimate termination of the litigation," the Court of Appeals chose to address the RCW 9.68A.100 issue under the alternative afforded the court by RAP 1.2(a). Slip op. at 1 n.1.

violate RCW 9.68A.100." Slip op. at 2. The court reasoned that "to violate this statute, the State would need to have either 'engaged in sexual conduct' with a minor, or negotiated for or solicited to 'engage in sexual conduct with a minor.'" Slip op. at 6 (quoting RCW 9.68A.100). The plain language of the statute demonstrates, however, that the State is incapable of engaging in sexual conduct. Slip op. at 6-7. Therefore, the court held, Ms. Ohnemus' RCW 9.68A.100 claim failed as a matter of law.[2]

In the published opinion, the court also held that the State is not liable to Ms. Ohnemus for costs and fees under RCW 9.68A.130. Slip op. at 7-8. RCW 9.68A.130 provides that "[a] minor prevailing in a civil action arising from violation of [RCW 9.68A] is entitled to recover" costs and reasonable attorneys' fees. Because the only violation of the chapter Ms. Ohnemus alleged was a violation of RCW 9.68A.100, which the court held the State cannot violate on these facts, Ms. Ohnemus was not entitled to costs and fees under RCW 9.68A.130. Slip op. at 7.

B. The Unpublished Opinion Addressing the Discovery Rule Held Reasonable Minds Cannot Differ That, by 20 Years Old, More Than Three Years Before Filing Her Lawsuit, Ms. Ohnemus Knew or Should Have Known the Factual Basis of Her Claim

In the unpublished portion of its opinion addressing the discovery

[2] The court did not reach the State's other arguments that it cannot violate RCW 9.68A.100 because it is not a "person" and because it is incapable of forming criminal intent. Slip op. at 7 n. 6. The court also declined to reach whether the State could be held liable as an accomplice under RCW 9.68A.100. Slip op. at 7 n.5.

rule, the Court of Appeals affirmed summary judgment dismissal of Ms. Ohnemus' negligence claim "because reasonable minds could not differ in concluding that she knew or should have known the factual basis for her current cause of action against the State more than three years prior to the August 2012 filing of this lawsuit." Slip op. at 23. Under Washington's discovery rule a "cause of action accrues and the attendant statute of limitations begins to run 'when the plaintiff knows or should know the relevant facts, whether or not the plaintiff also knows that these facts are enough to establish a legal cause of action.'" Slip op. at 22 (quoting *Allen v. State*, 118 Wn.2d 753, 758, 826 P.2d 200 (1992)).

The court determined reasonable minds could not differ that the limitations period began to run not later than 2007, based on medical notes in 2003 and 2007 which recorded statements by Ms. Ohnemus about her abuse and CPS. Slip op. at 26. The 2003 medical note, recorded by a counselor providing Ms. Ohnemus inpatient mental health care, states:

> CT [Ohnemus] did talk about the abuse she's experienced starting in the 2nd grade. Also talked about being "very angry" @ CPS and "hating" them for not believing her allegations and allowing the abuse to continue "so much longer." She reported they told her she was "just trying to get attention."

Slip op. at 24 (quoting CP 584). The 2007 therapist's note recorded that Ms. Ohnemus "'reports that she tried to tell CPS and social workers about

[Quiles's] sexual abuse. [Quiles] was finally caught and prosecuted . . . [Ohnemus] had to testify in court.'" *Id.* (quoting CP 300).

The court rejected Ms. Ohnemus' argument that these medical notes could be referencing State involvement with her family in 2001 and 2002, rather than the 1996 and 1997 CPS investigations she alleges were negligent. Slip op. at 23-24. The court explained that in the 2001 record of the State social worker's communication with Ms. Ohnemus, "[t]here is no indication that Ohnemus made, or attempted to make, any allegation of abuse by Quiles to the State . . . for which she could later be angry at the State for not acting upon." Slip op. at 24. As for 2002, the State social worker did not meet with Ms. Ohnemus or anyone else in the family, so:

> Ohnemus could not be referring to the State's involvement in 2002 as a time when she tried to tell CPS about Quiles's abuse because she never had any interaction with the State at the time, nor is there anything in the record to indicate she knew the State had been contacted by her mother.

Slip op. at 25. "[E]ven when the facts are viewed in a light most favorable to Ohnemus, the record demonstrates that the only State involvement that Ohnemus could have been referencing in her 2003 and 2007 counseling sessions were the 1996 and 1997 investigations." Slip op. at 23-24.

Thus, the court concluded, reasonable minds cannot differ that at least by 2007, when she was 20, the record shows Ms. Ohnemus "actually knew of the State's 1996 and 1997 involvement, and shows that in 2003

and 2007 she was frustrated by CPS's failure to remove her from the abuse pursuant to the 1996 and 1997 investigations. Therefore, she then knew, or through the exercise of due diligence should have known, all of the essential elements of the possible cause of action more than three years prior to filing this action." Slip op. at 27 (internal quotations omitted).

C. The Unpublished Opinion Addressing RCW 4.16.340(1)(c) Held the Record Does Not Support the Inference That, Within Three Years of Her Lawsuit, Ms. Ohnemus Suffered a Qualitatively Different Injury or First Made the Causal Connection Between the State's Conduct and Her Injuries

In its unpublished opinion addressing RCW 4.16.340(1)(c), the Court of Appeals affirmed dismissal of Ms. Ohnemus' sexual abuse claim as time barred "because the record does not support an inference that she suffered an injury qualitatively different from other harms connected to the abuse" within three years of filing suit, "nor does the record support an inference that [she] failed to make a causal connection between the [State's] conduct and the injuries she sustained" until then. Slip op. at 28.

The court explained that RCW 4.16.340(1)(c) has two applications: "where the victim is aware of the abuse and aware that she suffered harm as a result, but discovers a new and qualitatively different injury attributable to the abuse" and also "where the victim is aware of the abuse and aware of her injury, but discovers a causal connection, of which she was previously unaware, between the wrongful act and her harm." Slip

op. at 29 (citing *Carollo v. Dahl*, 157 Wn. App. 796, 801, 240 P.3d 1172 (2010) and *Hollmann v. Corcoran*, 89 Wn. App. 323, 325, 949 P.2d 386 (1997)). Although Ms. Ohnemus argued only that "the issue of material fact is 'whether [she] has recently discovered injuries that are significantly more serious than she previously knew,'" the court addressed both applications. Slip op. at 29 (quoting Br. of Resp't/Cross-Appellant at 42).

First, the court determined that Ms. Ohnemus failed to raise a genuine issue that within three years prior to filing suit she experienced a new and qualitatively different injury. Slip op. at 32. Ms. Ohnemus "states in her declaration that she has 'just started to realize[] and come to terms with the notion that [she] might never fully recover from [her] injuries.'" *Id.* (quoting CP 482). Her therapist states that since Ms. Ohnemus "obtained the 2002 report on [her stepfather]," she "'needed intensive treatment' because [she] had been 'unaware of the extent of her injuries.'" *Id.* (quoting CP 485). And her psychologist expert witness opines that the "'anti-psychotic psychotropic medication' [she] began taking in 2013 indicated that she was receiving 'more significant and long term medical care than previously received,' and that it appeared '[Ms. Ohnemus] is only now aware of the full extent of her injuries.'" Slip op. at 32 (quoting CP 489). "[H]er medical records show that she has suffered from PTSD, bipolar disorder, depression, anxiety, flashbacks, and various other

conditions since at least 2002, and that by October 2007 she had already been on a variety of psychotropic medications." Slip op. at 32.

The court concluded "[n]one of these statements alleges or indicates that [Ms. Ohnemus] is suffering from an injury that is different from the injuries she has suffered for many years." *Id.* Thus "the record does not support an inference that [she] suffered an injury 'qualitatively different from other harms connected to the abuse' from which she previously suffered." *Id.* (quoting *Carollo*, 157 Wn. App. at 801).

Second, the court explained the record shows Ms. Ohnemus understood the causal connection by 2007, because she "understood that her injuries were caused by the abuse she suffered" and "further understood that she suffered more abuse because the State did not remove her from Quiles's home." Slip op. at 34. "[I]n 2003 and in 2007, [Ms. Ohnemus] expressed resentment towards the State for its failure to remove her from the abuse;" she "believed that the abuse continued 'so much longer' because of the State's failure to act on the allegations;" and she "connected the abuse she was subjected to as a child to the injuries she currently suffers from more than three years prior to filing the current suit against the State." *Id.* (quoting CP 584). Because Ms. Ohnemus "had made 'the causal connection between the defendant's act,' in this case the State's alleged negligent investigation, 'and the injuries for which the

claim is brought'" more than three years prior to filing suit, her claim was time barred. *Id.* (quoting *Hollmann*, 89 Wn. App. at 334).

IV. REASONS WHY REVIEW SHOULD BE DENIED

A. On RCW 9.68A, the Published Opinion Properly Addressed a Controlling Issue of Law and Correctly Determined, Under the Facts of the Case, the State Could Not Violate RCW 9.68A.100

The Court of Appeals, in the published portion of its opinion, held "as a matter of law, under the facts of this case, that the State cannot violate RCW 9.68A.100," and therefore RCW 9.68A.130 does not entitle Ms. Ohnemus to recover her costs and fees based on the State allegedly violating chapter RCW 9.68A. Slip op. at 2, 7. Ms. Ohnemus contends discretionary review is warranted because the court improperly addressed issues that are unripe and moot and "unnecessarily resolve[d] a question that does not materially advance the litigation." Pet. at 19. She is incorrect.

First, the record flatly contradicts Ms. Ohnemus' assertion that the court "reached beyond the issues presented by the parties or certified by the trial court." Pet. at 18. The parties' joint motion sought certification from the superior court to resolve "the statute of limitation[s] issue [Ms. Ohnemus] wants to have addressed . . . and also the RCW 9.68A.100 issue the [State] wants to have addressed." CP 659. On the parties' joint representation, the superior court found "the statute of limitation question and the applicability of RCW 9.68A.100 involve controlling question[s] of

law" and certified the case for review. CP 663-64 (emphasis added). It is disingenuous for Ms. Ohnemus to now argue against a position she actively espoused in the superior court.

Second, deciding the RCW 9.68A.100 issue does not "'step[] into the prohibited area of advisory opinions.'" Pet. at 19 (quoting *Walker v. Munro*, 124 Wn.2d 402, 411-12, 879 P.2d 920 (1994)). As the Court of Appeals recognized, the superior court's rulings on summary judgment left "an issue to be tried" — Ms. Ohnemus' claim that the State violated RCW 9.68A.100. Slip op. at 1 n.1. The Court of Appeals decided this issue as a matter of law, without need of further factual development, on the plain language of the statute. Slip op. at 4-8. And by resolving this "controlling issue of law," the court "materially advance[d] the ultimate termination of the litigation." Slip op. at 1 n.1.

Ms. Ohnemus' argument to the contrary focuses exclusively on her pursuit of costs and fees under RCW 9.68A.130 and disregards completely that statute's requirement for a plaintiff to first "prevail[] in a civil action arising from violation of [RCW 9.68A]." She argues that because the superior court "made no final decision on [her] claim for costs and fees," her "SECA[3] claim was thus not 'ripe' until after a decision on the underlying claims." Pet. at 19. But the underlying claim relevant to

[3] "SECA" refers to RCW 9.68A, the Sexual Exploitation of Children Act.

recovery under RCW 9.68A.130, by that statute's plain language, is Ms. Ohnemus' claim that the State violated RCW 9.68A.100.

Third, Ms. Ohnemus, still singularly focused on costs and fees, contends the Court of Appeals reaches the wrong result because an award under RCW 9.68A.130 merely requires "**violation**" of the chapter, "[n]o criminal conviction is required." Pet. at 19-20. This is a red herring, as the court clearly held "as a matter of law, under the facts of this case, the State cannot violate RCW 9.68A.100."[4] Slip op. at 5. This fact-specific ruling does not warrant discretionary review.

B. On the Discovery Rule, the Unpublished Opinion Is Consistent with Washington Precedent and Properly Dismissed Ms. Ohnemus' Claim on Summary Judgment

The Court of Appeals' unpublished opinion affirmed summary judgment dismissal of Ms. Ohnemus' negligence claim "because reasonable minds could not differ in concluding that she knew or should have known the factual basis for her current cause of action against the State more than three years prior to the August 2012 filing of [her] lawsuit." Slip op. at 23. Ms. Ohnemus contends this holding "conflicts with closely analogous Washington law and rules on a question of first impression without any discussion of onpoint authority from Oregon to the

[4] Ms. Ohnemus also erroneously contends that RCW 9.68A.100 "prohibits communication with a minor for immoral purposes." Pet. at 20. The statute actually prohibits commercial sexual abuse of a minor. As the court notes, "the only violation of [RCW 9.68A] that Ohnemus alleges is a violation of RCW 9.68A.100." Slip op. at 7.

contrary." Pet. at 13. Her contentions fail to justify review.

First, Ms. Ohnemus does not identify any question of first impression concerning the discovery rule, nor can counsel for the State discern one. Ms. Ohnemus' statement of the issue identifies a routine, fact-specific application of the discovery rule: "whether, as a matter of law and undisputed fact, a sexual abuse victim exercised due diligence in discovering the basis for her negligence claims, to toll the 3-year general statute of limitations against an entity other than the perpetrator." Pet. at 4.

Second, Washington appellate courts deciding a Washington case under Washington law have no obligation to discuss foreign authority, regardless of what position it may take. The court's silence as to Oregon decisions does not warrant discretionary review.

Third, the court applied settled law regarding Washington's discovery rule to reach its unpublished, fact-specific holding. Consistent with settled Washington law, the court explained that under Washington's discovery rule a "cause of action accrues and the attendant statute of limitations begins to run 'when the plaintiff knows or should know the relevant facts, whether or not the plaintiff also knows that these facts are enough to establish a legal cause of action.'" Slip op. at 22 (quoting *Allen v. State*, 118 Wn.2d 753, 758, 826 P.2d 200 (1992)). Ms. Ohnemus does not dispute the court's statement of the governing legal standard.

Instead, she claims the court "serious[ly] misappli[ed] Washington law" by holding:

> as a matter of law based on disputed facts erroneously viewed against her and resolved by the Court of Appeals, a 16-year-old . . . was not duly diligent because she should have obtained her CPS or police records to assess whether the agency responsible for protecting her had utterly failed in its responsibility.

Pet. at 14. This would be a powerful indictment—if it were accurate. It is not. Rather, the court held that Ms. Ohnemus' statements in medical notes from 2003 and 2007 show she "actually knew of the State's 1996 and 1997 involvement, and show[] that in 2003 and 2007 she was frustrated by CPS's failure to remove her from the abuse pursuant to the 1996 and 1997 investigations." Slip op. at 27.

Ms. Ohnemus bases her claim of disputed issues of fact on her deposition testimony on summary judgment that she "had no recollection or appreciation of any CPS involvement in 1996-97, let alone that they had performed substandard investigations" until 2011. Pet. at 17. But as the court explained, this "self-serving testimony need not be taken at face value," and more importantly, the relevant fact is that Ms. Ohnemus "remembered CPS's involvement, and her attempts to tell them of the abuse in 2003, when she [was] 16, and in 2007, when she was 20. Thus, she was on inquiry notice at least in 2007 to investigate why CPS had not

intervened and if they had been negligent in failing to intervene." Slip op. at 27 n.12. As the court correctly held, by 2007 Ms. Ohnemus' statements "establish that she recognized the State had a duty to protect her, that she believed the State breached that duty, that she believed the State's breach caused the abuse to continue; and that she recognized the continued abuse caused her damage." *Id.* at 27. Accordingly, at least by 2007 when she was 20, more than three years prior to Ms. Ohnemus filing her lawsuit, the cause of action accrued and the statute of limitations began to run.

C. On RCW 4.16.340(1)(c), the Unpublished Opinion Is Consistent with Washington Precedent and Properly Dismissed Ms. Ohnemus' Claim on Summary Judgment

The Court of Appeals' unpublished opinion also affirmed dismissal of Ms. Ohnemus' sexual abuse claim as time barred under RCW 4.16.340(1)(c). Slip op. at 28. Ms. Ohnemus contends that discretionary review is warranted because the holding "conflict[s] with *B.R. [v. Horsley*, 186 Wn. App. 294, 345 P.3d 836 (2015)]," and because it "raises an issue of substantial public interest for victims of child sexual abuse" by "tak[ing] a highly fact-sensitive issue away from the jury." Pet. at 10-11. Neither reason withstands scrutiny.

First, the unpublished opinion is fully consistent with *B.R.*, which also applies RCW 4.16.340(1)(c) to a claim of childhood sexual abuse. Both cases, consistent with Washington precedent, recognize that

RCW 4.16.340(1)(c) has two applications. As *B.R.* explains, "'this special statute of limitations 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.'" *B.R.*, 186 Wn. App. at 299 (quoting *Korst v. McMahon*, 136 Wn. App. 202, 208, 148 P.3d 1081 (2006)) (emphasis added); *see also* Pet. at 12. Consistent with *B.R.*, in the unpublished opinion the Court of Appeals explained, in further detail, the two circumstances in which RCW 4.16.340(1)(c) applies:

> This subsection applies where the victim is aware of the abuse and aware that she suffered harm as a result, but discovers a new and qualitatively different injury attributable to the abuse. *Carollo v. Dahl*, 157 Wn. App. 796, 801, 240 P.3d 1172 (2010). It also applies where the victim is aware of the abuse and aware of her injury, but discovers a causal connection, of which she was previously unaware, between the wrongful act and her harm. *Id.*; *Hollmann v. Corcoran*, 89 Wn. App. 323, 325, 949 P.2d 386 (1997).

Slip op. at 29 (emphasis added). The legal standard in the unpublished opinion is consistent with *B.R.* and other Washington precedent.

Nonetheless, Ms. Ohnemus argues the Court of Appeals "ignored" *B.R.*, which she explains "holds that a new injury to a child sexual abuse victim (not necessarily a new diagnosis) can be more serious and qualitatively different than previous claims." Pet. at 10. *B.R.* does clearly

illustrate what can constitute a new or more serious injury for purposes of RCW 4.16.340(1)(c). And the unpublished opinion is consistent with that illustration. In *B.R.*, plaintiff B.R. had been sexually abused as a teen and had received counseling at that time to address symptoms related to her abuse. *B.R.*, 186 Wn. App. at 295-96. When B.R. terminated that counseling, she "was not married, was not sexually active, and had never been employed." *Id.* at 296. Years later B.R. sued her abuser, claiming RCW 4.16.340(1)(c) applied because "she [had] experienced new or more serious injuries from her sexual abuse when she was married, became sexually active, discussed having children with her husband, got a job, and tried to reconnect with the church." *B.R.*, 186 Wn. App. at 306. The *B.R.* court held that "[a]lthough B.R. had dealt with serious symptoms of her abuse for many years, she presented evidence that, until recently, she was not aware that her new, adult difficulties with her marriage, her work, and connecting with religion were caused by the childhood abuse." *Id.* at 301. Under RCW 4.16.340(1)(c), these injuries could be "new or more serious" if B.R. "did not understand how her sexual abuse would affect these parts of her life until she actually had these experiences." *B.R.*, 186 Wn. App. at 306. *B.R.* held, therefore, that genuine issues of material fact precluded dismissal on summary judgment. *Id.*

The unpublished opinion is fully consistent with the legal standard *B.R.* illustrates regarding what constitutes a new or qualitatively different injury under RCW 4.16.340(1)(c). Applying that standard, the court reached a different result because none of Ms. Ohnemus' evidence:

> alleges or indicates that [she] is suffering from an injury that is different from the injuries she has suffered for many years. Moreover, her medical records show that she has suffered from PTSD, bipolar disorder, depression, anxiety, flashbacks, and various other conditions since at least 2002, and that by October 2007 she had already been on a variety of psychotropic medications.

Slip op. at 32. "Thus, the record does not support an inference that Ohnemus suffered an injury 'qualitatively different from other harms connected to the abuse' from which she previously suffered." Slip op. at 32 (quoting *Carollo*, 157 Wn. App. at 801).

Likewise, the court determined the record shows that by 2007, more than three years before filing her lawsuit, Ms. Ohnemus understood the "causal link between the abuse and the injury for which the suit is brought." *B.R.*, 186 Wn. App. at 299. Ms. Ohnemus "understood that her injuries were caused by the abuse she suffered" and "further understood that she suffered more abuse because the State did not remove her from [her stepfather's] home." Slip op. at 34. Therefore, the court held that Ms. Ohnemus "had made 'the causal connection between the defendant's act,' in this case the State's alleged negligent investigation, 'and the

injuries for which the claim is brought.'" Slip op. at 34-35 (quoting *Hollmann*, 89 Wn. App. at 334).

Finally, Ms. Ohnemus contends *B.R.* announces an additional holding: that when RCW 4.16.340(1)(c) accrues "is a question only for the jury." Pet. at 11 (emphasis added). Without citation, she asserts *B.R.* "hold[s] that there is virtually always a genuine issue of material fact as to whether a child sexual abuse victim's injuries are qualitatively different or more serious to start this special limitations period, and as to when such a victim connects the abuse to their claimed injuries." Pet. at 11. Thus, she argues, the very act of dismissing her claim on summary judgment conflicts with *B.R.* and "raises an issue of substantial public interest" by "tak[ing] a highly fact-sensitive issue away from the jury." Pet. at 10-11.

But *B.R.* makes no sweeping holding that application of RCW 4.16.340(1)(c) must always go to the jury. Notably, such a holding would, itself, conflict with long-settled Washington precedent that summary judgment on statute of limitations is appropriate "where the pleadings, depositions, interrogatories, admissions, and affidavits in the record establish that no genuine issue of material fact exists regarding when the statutory period began." *B.R.*, 186 Wn. App. at 298. Consistent with that precedent, *B.R.* simply made a fact-specific application of RCW 4.16.340(1)(c) to hold that, on the facts presented, there existed

genuine issues of material fact precluding summary judgment. Like *B.R.*, the Court of Appeals made a fact-specific application of RCW 4.16.340(1)(c). On the facts presented here, unlike in *B.R.*, Ms. Ohnemus failed to raise a genuine issue of material fact. The cases reach opposite results not because the Court of Appeals' opinion conflicts with *B.R.* in a manner warranting discretionary review by this Court, but simply because the cases involve different facts.

V. CONCLUSION

For the reasons explained above, discretionary review is not warranted for the Court of Appeals' unpublished opinion dismissing Ms. Ohnemus' negligence claim as time barred under the discovery rule and RCW 4.16.340(1)(c). Neither is discretionary review warranted for its published opinion that, on the facts of the case, the State cannot violate RCW 9.68A.100 and therefore is not liable for costs and fees under RCW 9.68A.130. Review should be denied.

RESPECTFULLY SUBMITTED this 19th day of October, 2016

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Subject: RE: Case No. 93399-5; Ohnemus v. State of Washington

Attached is the State's Corrected Answer to Petition for Review for filing. The only correction was to the case number, which was inadvertently overlooked.

Thank you.

From: Gross, Debora (ATG)
Sent: Wednesday, October 19, 2016 2:14 PM
To: 'Supreme@courts.wa.gov'
Subject: Case No. 93399-5; Ohnemus v. State of Washington

Attached for filing is the State's Answer to Petition for Review in the above-referenced matter.

<< File: AnswerPetitionReview_TOC_TOA_10_19.pdf >>
If you have questions, please contact Allyson Zipp, (360) 586-6444

Deb Gross
Debora A. Gross

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