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No. 36723-8-II

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

A.O. and S.O.,

Appellants,

v.

PUGET SOUND SOCIAL SERVICES and THE STATE OF
WASHINGTON

Respondents.

RESPONDENT, PUGET SOUND SOCIAL SERVICES'S,
RESPONSE BRIEF

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I. INTRODUCTION.

This appeal arises out of the proper dismissal by the trial court on a Motion for Summary Judgment of a child that claimed sexual abuse. The Defendant, Puget Sound Social Services, d/b/a Deschutes Children's Center was dismissed because the Statute of Limitations had run.

The Plaintiff, A.O. was a resident of Deschutes Children's Center in 1988, turned 18 in 1998 and a lawsuit was brought in the year 2005. He has alleged that he only recently learned of the connection between what he claims to be Post Traumatic Stress Disorder and the events that occurred at Deschutes Children's Center and, therefore, his complaint was timely filed. The Defendant admits that as early as 1995, he was aware that all of his problems were related to his time at Deschutes Children's Center.

II. STATEMENT OF CASE

Defendant. A.O., was born on September 26, 1977 (CP 191, pg. 4 of the Deposition of A.O. that occurred on March 29, 2007.)

As early as 1995, the Plaintiff made the connection that he suffered from a mental illness as a result of sexual abuse that he experienced at Deschutes Children Center. (CP 256-57).

The Statement of the Case contained within the Appellants' Opening Brief is hereby fully incorporated into this brief.

III. AUTHORITY.

On review of an Order for Summary Judgment, the Appellate Court performs the same inquiry as the trial court. *Hisle v. Todd Pac. Shipyards Corp.*, 151 Wn.2d 853, 860, 93 P.3d 108 (2004). In reviewing a summary judgment motion, the Appellate Court views all facts in a light most favorable to a non-moving party. *Vallandigham v. Clover Park School District No. 400*, 154 Wn.2d 16, 26, 109 P.3d 805 (2005).

RCW 4.16.340 states:

"(1) All claims or causes of action based on intentional conduct brought by a person for recovery of damages for injury suffered as a result of childhood sexual abuse shall be commenced within the later of the following periods:

(a) Within three years of the act alleged to have caused the injury or condition;

(b) Within three years of the time the victim discovered or reasonably should have discovered that the injury or condition was caused by said act; or

(c) Within three years of the time the victim discovered that the act caused the injury for which the claim is brought:

PROVIDED, That the time limit for commencement of an action under this section is tolled for a child until the child reaches the age of eighteen years.

(2) The victim need not establish which act in a series of continuing sexual abuse or exploitation incidents caused the injury complained of, but may compute the date of discovery from the date of discovery of the last act by the same perpetrator which is part of a common scheme or plan of sexual abuse or exploitation.

(3) The knowledge of a custodial parent or guardian shall not be imputed to a person under the age of eighteen years.

(4) For purposes of this section, "child" means a person under the age of eighteen years.

(5) As used in this section, "childhood sexual abuse" means any act committed by the defendant against a complainant who was less than eighteen years of age at the time of the act and which act would have been a violation of chapter 9A.44 RCW or RCW 9.68A.040 or prior laws of similar effect at the time the act was committed."

The Appellant correctly cites the section of the statute which applies in this case, RCW 4.16.340(b)(c).

The Plaintiff recalls meeting with a Dr. Katrina Riadova at Fairfax Hospital on December 28, 2005, but as he recalled that she told him that he has Post Traumatic Stress Disorder (PTSD). The

Plaintiff states that prior to 2005, no one told him that he was suffering PTSD and that it is hard for him to understand the connection between his PTSD and sexual assault at the Deschutes Children's Center. See CP 74, 75. It is unquestioned, however, that the Appellant has spent much of his life being seen by one mental health provider or another. Appellant turned eighteen on September 26, 1995. The issue before the Court is primarily when the clock began ticking for the Appellant/Plaintiff. When he knew he was injured or when a professional put it together for him. The question even under RCW 4.16.346(b) is open as to when he should have known.

A noted writer on Post Traumatic Stress Disorder has written as follows:

"Diagnosis of PTSD is easy when the clinician is oriented to the concept that trauma, whether it produces physical injury or not, can precipitate a stress disorder. A history will reveal the quadriga of PTSD, drawn by the horses of a markedly distressing stressor, persistently reexperienced traumatic event, persistent avoidance of stimuli associated with the trauma, and persistent symptoms of increased arousal. Continuation of symptoms beyond one month indicates a pathologic reaction to trauma and the development of a PTSD. As time passes, the relationship between the trauma and symptoma-

tic behavior becomes less obvious, and misdiagnoses can occur when the clinician or patient either overlooks or de-emphasizes the connection between the two."

Post-Traumatic Stress Disorder, Diagnosis, Treatment, and Legal Issues, C.B. Scignar, M.D., 2nd Edition.

It does not seem disputed in this case that all of the signs and symptoms that Appellant/Plaintiff has now he had at his eighteenth birthday. What was lacking, according to the Appellant, was his meeting with a psychologist or psychiatrist who could give him the diagnosis of PTSD, based upon his signs and symptoms of mental illness. Appellant alleges that an analogy can be found between his case and a toxic exposure case. *Green v. A.P.C.*, 136 Wn.2d 87, 960 P.2d 912 (1998). In *Green*, the plaintiff consulted with a lawyer for legal advice about the potential for a connection between toxic exposure and corresponding injuries. Later he met with a physician who made a connection.

In this case, the Appellant was seeing doctors, both before he turned eighteen and after he turned eighteen. He was given different diagnosis by his own statements. Appellant's issue is quite different than in *Green*. Here there was perhaps a misdiagnosis if we assume all things in a light most favorable to the non-moving party.

It is the undersigned's respectful opinion that if A.O. saw physicians and they did not diagnosis him properly, then the fault lies with the doctors for they should have known his illness and told him. He may have a malpractice claim against the physicians who did not diagnose him properly if everything he said was true.

At this late date, Appellant's claim against Deschutes Children's Center has run and the trial court's entry on the judgment should be upheld. To rule otherwise is to extend the Statute of Limitations into the infinity of varying and changing psychological diagnosis that seem to have no end.

IV. CONCLUSION.

For all the reasons stated above, Respondent, Puget Sound Social Services d/b/a as Deschutes Children's Center, respectfully requests that the Summary Judgment be affirmed.

DATED this 20th day of December, 2007 at Tacoma, Washington.



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Deschutes Children's Center

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STATE OF WASHINGTON
BY an
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PROOF OF SERVICE

I declare that:

I am employed in the County of Pierce, State of Washington. I am over the age of eighteen (18) years and not a party to the within action. My business address is 802 North 2nd Street, Tacoma, Washington 98403-1929.

On December 20, 2007, I served the attached RESPONDENT, PUGET SOUND SOCIAL SERVICES'S, RESPONSE BRIEF on the parties to this action by placing a true copy thereof in a sealed envelope addressed as follows:

Mr. Rene David Tomisser, AAG
OFFICE OF THE ATTORNEY GENERAL
P.O. Box 40126
Olympia, Washington 98504-0126

and on the Appellants on December 20, 2007 to this action by placing a true copy thereof in a sealed envelope addressed as follows:

Mr. John R. Connelly, Jr., Esq.
Mr. Lincoln C. Beauregard, Esq.
CONNELLY LAW OFFICES
2301 North 30th Street
Tacoma, Washington 98403-3322

I placed such sealed envelope, with postage fully prepaid for first class mail, for collection and mailing at Tacoma, Washington, following ordinary business practices. I am readily familiar with the practice of the law offices of John Cain for processing of mail, said practice being that the ordinary course of business, mail is deposited in the United States Postal Service the same day as it is placed for processing.

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

DATED this 20th day of December, 2007 at Tacoma, Washington.

Bobbi Cain
BOBBI CAIN