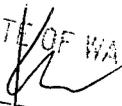


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DIVISION II
2013 OCT 23 PM 3:27
STATE OF WASHINGTON
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NO. 448742

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

BRITTANY ROBERTS,

Appellant/Plaintiff,

v.

SUZANNE HORSLEY, FREDERICK HORSLEY, KEITH TIMMER,
and CHURCH OF THE LIVING WAY,

Respondents/Defendants.

Appeal from the Superior Court of Washington
for Pierce County
(Cause No. 12-2-05018-5)

**BRIEF OF RESPONDENTS TIMMER
AND CHURCH OF THE LIVING WAY**

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I. INTRODUCTION

Plaintiff Brittany Roberts was sexually abused by Suzanne Horsley, an adult youth leader with Plaintiff's church, from June 2002 to late 2004. Plaintiff was 13-15 years old at the time. The abuse was reported to the police in January 2005. In July 2005, Horsley pled guilty to three counts of child molestation in Pierce County Superior Court. At Horsley's sentencing hearing on July 30, 2005, Plaintiff informed the court about the abuse and how it affected her.

In October 2005, Plaintiff began mental health counseling for the physical, psychological and emotional problems she was suffering from the abuse. Her therapist diagnosed her with post-traumatic stress disorder, anxiety and depression. Plaintiff ended her therapy in August 2006.

On September 8, 2006, Plaintiff turned 18. In 2011, on referral from her attorney, Plaintiff resumed mental health counseling for the problems she continued to have from the childhood sexual abuse. Plaintiff presented the same symptoms and problems to her therapist in 2011-2012, as she had to her therapist in 2005-2006.

On January 3, 2012, Plaintiff filed an action in Pierce County Superior Court for damages, based on the childhood sexual abuse she had suffered by Horsley, and her church pastor's failure to report the abuse immediately to authorities after he learned of the abuse.

On May 3, 2013, the trial court dismissed Plaintiff's action on Defendants' Motion for Summary Judgment, on the grounds Plaintiff failed to file her action within the statute of limitations provided in RCW 4.16.340(1).

II. RESPONSE TO ASSIGNMENT OF ERROR

Plaintiff argues that the trial court erred in granting Defendant's Motion for Summary Judgment. The trial court did not err in its decision. Based on the evidence presented, the court's ruling that Plaintiff had failed to bring her action within the applicable statute of limitations was consistent with the applicable statute and case law.

III. STATEMENT OF THE CASE

Plaintiff failed to file her action for childhood sexual abuse within the statute of limitations provided in RCW 4.16.340(1).

A. The Following Facts Were Undisputed Before the Trial Court

1. Suzanne Horsley sexually abused Plaintiff from June 2002 to late 2004, when Plaintiff was 13 to 15 years old. (CP 1-4)
2. At Horsley's sentencing hearing on July 3, 2005, Plaintiff informed the Court: "Suzanne stole three years of my childhood from me that I will never get back...The pain I have lasting emotionally is difficult, but I have physical problems too...The effects she has done to me will always be deep within me.

Suzanne has sexually and emotionally abused, an underage child.”
(CP 87-88)

3. When asked what effects she was experiencing when she made the above statements to the Court, Plaintiff testified as follows: Pain, sleep deprivation, emotional problems, nightmares, depression, anger, difficulty focusing and concentrating, and difficulty sleeping. (CP 93)¹
4. When asked if she associated the above problems, with the sexual abuse by Horsley, Plaintiff said, “yes.” (CP 93)
5. Plaintiff testified that in 2005, because of the problems she was having from the sexual abuse, she entered counseling with Kelly Peck, a licensed mental health counselor at Good Samaritan Behavioral Healthcare and Crisis Center in Puyallup, WA. (CP 93)
6. When asked if the problems that led her to seek counseling with Kelly Peck in 2005, included her relationships with people, her sexual relationships, motivational problems, anger, depression, nightmares, and problems sleeping, Plaintiff said, “yes.” (CP 94)
7. At her deposition, Kelly Peck testified that during Plaintiff’s counseling sessions in 2005 and 2006, Plaintiff identified the

¹ All references to Plaintiff’s testimony are taken from her deposition on 11/08/12.

following problems that Plaintiff associated with the sexual abuse by Horsley: stress, anxiety, depression, anger, feelings of betrayal, shame, guilt, worry, insomnia, nightmares, poor concentration, feelings of worthlessness, memories of the abuse triggered by smells, scents and hearing the abuser's voice, problems with sexuality and inter-personal relationships, problems with self-esteem, embarrassment and reliving the trauma.² (CP 103-104, 107-108)

8. Kelly Peck testified that in 2005-2006, Plaintiff's symptoms were severe, and that Plaintiff qualified for the greatest amount of mental health counseling available under the Regional Support Network.

Q: So – obviously, you're the one that needs to tell us, but are we to understand that this means that based on what she reported as her problems stemming from the sexual abuse that she had suffered that you felt that the problems were severe in her case?

A: Yes.

Q: All right. And, therefore, she would qualify for the greatest amount of mental health counseling?

A: Yes.

(CP 104)

² All references to Kelly Peck's testimony are taken from her deposition on 03/13/13.

9. Kelly Peck testified that Plaintiff's symptoms led her to reach a working diagnosis of post-traumatic stress disorder, a depression disorder and possible anxiety disorder, all due to the sexual abuse by Horsley. (CP 108-109)

10. After Plaintiff ended counseling with Kelly Peck in August 2006, she did not seek counseling again until November 2011, when she began seeing Mary Dietzen, Ph.D., on referral from her attorney. (CP 92)

11. Plaintiff testified that the problems she saw Dr. Dietzen for starting in November 2011, were the same problems she had seen Kelly Peck for, in 2005-2006:

Q: Have you mentioned or reported problems to Mary Dietzen that were different than problems you reported to Kelly Peck?

A: Not that I can recall right now but – no, nothing comes to mind at the moment.

Q: So basically the same kinds of problems that you were having that brought you to Kelly Peck as a result of the abuse that Suzanne Horsley perpetrated on you are the same kinds of problems you've presented to Mary Dietzen?

A: Yes, the same – yeah, everything is pretty much the same.

(CP 97)

12. When asked whether her symptoms had changed between 2005,

and the present, Plaintiff testified as follows:

Q: Have any of those symptoms changed; in other words, have they gotten less frequent, more intense, different, or have they pretty much stayed the way they were in 2005, six, up to the present?

A: It depends. Sometimes they intensify, sometimes they don't, sometimes they stay the same.
(CP 95)

13. When asked whether her problems were more serious in 2012, than

they were in 2005-2006, Plaintiff testified as follows:

Q: Are the issues that you are dealing with Mary Dietzen, are they worse than they were years ago when you were seeing Peck, are they better or about the same or can you say?

A: I can't really say. Like I said earlier, it varies.

Q: Did it vary when you were seeing Kelly Peck as well?

A: Yes.

(CP 97)

14. Dr. Dietzen testified that Plaintiff's test results in 2012, showed her

depression and anxiety were moderate. Further, Dr. Dietzen stated

that Plaintiff's symptoms were consistent with PTSD, as did Kelly

Peck in 2005-2006. (CP 117, 108-109)

15. Plaintiff testified that her current struggles with inter-personal

relationships and sexual relationships started in 2005:

Q: Next page, 62, that visit is on March 8 of 06. It says, "Brittany continues to have some interpersonal struggles with her relationship with boys and mixed feelings she has towards sex and how she feels her 'abuse ruined it all for her.'"

Did I read that accurately?

A: That could be an accurate statement.

Q: Did you feel that what Suzanne Horsley had done to you had ruined many aspects of your life?

A: I feel that, yes.

Q: Including but not limited to having healthy relationships with boys and being able to engage in sex in a healthy way?

A: Yes.

Q: You still have those problems today?

A: Yes

(CP 96)

16. Plaintiff testified that the problems she has had at her jobs started in 2006:

Q: Let me ask you this; do you feel that any of the problems that you have had that you were seeing Mary Dietzen for have in any way interfered with your ability to do your job?

A: Yes.

Q: How?

A: Because sometimes when I go on EMS calls and I'm in certain homes, it will bring back memories of the way Susie's house was set up or sometimes if the – they act like

Susie had acted, it kind of brings me back or the smell of the house or just different things.

Q: Again, this kind of you see something or smelling something and it triggers a memory?

A: Yes.

Q: That's not different than what you told Kelly Peck back in 05/06, correct?

A: Correct.

Q: Are there other ways in which your problems stemming from the abuse affect or have affected your job?

A: My – the tests that I have to take, for example, like my EMT test, it's a lot of studying and sitting, and sometimes when I'm sitting and trying to study, my mind seems to wander to other things and sort of focusing on –

Q: That's a problem you had in 05/06 as well?

A: Yes.

Q: What other ways, if at all, have the symptoms or the residues of the abuse affected your ability to do your job?

A: There's sometimes when I just don't feel like doing anything. My job is a very social job. We deal a lot with the public and there's sometimes where even with my job at the Red Lion where I just don't feel that I want to be around people.

Q: That's something that you had years ago as well –

A: Yes.

Q: - when you saw Peck?

A: Yes.

Q: Anything else come to mind?

A: Not at the moment, no.

(CP 97-98)

17. Plaintiff commenced this action on January 3, 2012, more than five years after she ended mental counseling with Kelly Peck, and more than five years after she turned 18. (CP 1)

IV. ARGUMENT

A. In 2005, Plaintiff Identified the Same Problems She Alleged in Her 2012 Lawsuit, and Knew Those Problems Were Due to Defendant's Childhood Sexual Abuse.

Based on RCW 4.16.340(1) and the case law that has applied it, Plaintiff did not file her action within the applicable statute of limitations. Therefore, the trial court's dismissal of Plaintiff's action on summary judgment was proper.

RCW 4.16.340(1) states that the statute of limitations does not begin to run on the victim of childhood sexual abuse until the victim recognizes the injuries they claim in their action and until the victim connects those injuries to their childhood sexual abuse. Here, Plaintiff connected her injuries to her childhood sexual abuse as early as 2005.

Plaintiff conceded two critical facts before the trial court. First, she stated that the problems that she began treatment for in 2011, with

Mary Dietzen Ph.D., were the same problems she treated for with Kelly Peck, MSW, in 2005-2006:

Q: So basically the same kinds of problems that you were having that brought you to Kelly Peck as a result of the abuse that Suzanne Horsley perpetrated on you are the same kinds of problems you've presented to Mary Dietzen?

A: Yes, the same – yeah, everything is pretty much the same.

(CP 97)

Second, Plaintiff stated that in 2005-2006, she knew those problems were due to Horsley's sexual abuse:

Q: So those were things you were having in 2005 – 2006?

A: Yes, and current, yeah.

Q: Due to the abuse?

A: Yes.

(CP 95)

Even before Plaintiff began mental health counseling in 2005, she made the same admissions at Horsley's sentencing on July 3, 2005, when she said: "Suzanne stole three years of my childhood from me that I will never get back...The pain I have lasting emotionally is difficult, but I have physical problems too...the effects she has done to me will always be deep within me. Suzanne has sexually and emotionally abused, an underage child." (CP 87-88) Plaintiff testified those effects included pain, sleep

deprivation, emotional problems, nightmares, depression, anger, difficulty focusing and concentrating, and difficulties sleeping. (CP 93)

When our legislature passed RCW 4.16.340, it recognized that victims of childhood sexual abuse may suffer injuries, but may suppress memory of the abuse. Or they may remember the sexual abuse, but have a delayed reaction to it, and begin to experience significant suffering from the abuse later in life. This is consistent with one of the Legislature's findings of intent, where it stated: "(5) Even though victims may be aware of injuries related to the childhood sexual abuse, more serious injuries may be discovered many years later." Here, Plaintiff did not suppress her memory of the abuse, nor did she have a delayed reaction to the injuries it caused her.

Rather in 2005, Plaintiff identified the serious problems she was experiencing as a result of her childhood sexual abuse, including problems with sexuality, inter-personal relationships, concentration, memories of the abuse, reliving the abuse, nightmares, difficulty sleeping, depression, anxiety, anger and guilt. (CP 93) These are the same problems she claims in her lawsuit.

Furthermore, in 2005, Plaintiff knew that Horsley's sexual abuse was the cause of her problems. At Horsley's sentencing hearing in July, 2005, during her mental health counseling from October 2005 to August

2006, and at her deposition in 2012, Plaintiff stated that she knew in 2005, that her problems were due to Horsley's sexual abuse. (CP 95)

In addition, Dr. Dietzen said that when Plaintiff began treatment with her in 2011, her problems included: difficulties concentrating, intrusive thoughts, flashbacks and confusion about her sexuality. (CP 207) These are the same problems Plaintiff reported to Kelly Peck, when she started mental health counseling with Ms. Peck in October 2005. In fact, Plaintiff reported more problems to Kelly Peck, than she did to Dr. Dietzen. (CP 103-104, 107-108, 117).

Moreover, Kelly Peck stated Plaintiff's symptoms in 2005-2006, were severe. (CP 104) In 2012, Dr. Dietzen said they were moderate. (CP 117)

The Washington cases that both sides have cited hold that the statute of limitations does not begin to run on the victim of childhood sexual abuse until the victim connects their injuries with the abuse. Moreover, the cases also hold that when a victim is aware of some injuries, but later discovers more serious injuries, the statute begins to run at the later date. But no case holds that when a victim of childhood sexual abuse recognizes they have suffered serious emotional and psychological injuries due to the abuse, the fact that the victim's problems continue to manifest in their adult life, delays the running of the statute until they

reach adulthood. Here, Plaintiff connected her injuries to the abuse as early as 2005, turned 18 in 2006, but did not file her action until 2012.

Plaintiff has testified about the numerous ways her injuries manifest themselves. Defendant does not dispute that Plaintiff had problems with intimacy and sex during her marriage. But Plaintiff first reported problems with sexuality and inter-personal relationships due to the abuse in 2005-2006.

Defendant does not dispute that Plaintiff has had problems in her jobs, due to her difficulty staying awake, concentrating, experiencing intrusive thoughts and having nightmares. But Plaintiff first had problems sleeping, focusing, concentrating, and experienced intrusive thoughts, and nightmares as early as July 2005, as well as throughout her mental health therapy with Kelly Peck in 2005 to 2006. Moreover, Ms. Peck testified that she assessed Plaintiff's problems as severe in 2005. (CP 104)

When Plaintiff was asked if her symptoms were different now, than in 2005, she said, "Everything is pretty much the same." (CP 97) When asked if her symptoms had become more frequent, or more intense, Plaintiff said they varied, just as they varied when she treated with Kelly Peck in 2005-2006. (CP 97)

The Washington cases that have addressed the statute of limitations in childhood sexual abuse cases demonstrate that the trial

court's dismissal of Plaintiff's case was proper. In each case, where the Court held that a victim of abuse had brought their action with the expanded time frame that RCW 4.16.340(1) provides, the victim either had not made a connection between their injuries and the abuse, or the victim experienced some injury shortly after the abuse, but experienced far more serious injury later in life, often with the help of a mental health professional. Neither situation exists here.

In *Cloud v. Summers*, 98 Wn. App. 724, 991 P.2d 1169 (1999), Plaintiff was the victim of sexual abuse by his high school teacher for several years in the 1970's, when Plaintiff was age 13 to 15. Plaintiff was aware that he had been abused, but shortly after he turned 18, he fell into a psychosis that prevented him from connecting his psychological injuries to the abuse he had suffered at the hands of his teacher. These facts led the Court to conclude that under RCW 4.16.340(1), the statute of limitations was tolled until Plaintiff was able to make the connection between his childhood sexual abuse and the emotional harm he suffered many years later.

Here, Plaintiff suffered from no disability after she turned 18. Her emotional and psychological problems led her to seek treatment in 2005-2006, when she clearly connected her problems to the abuse she had suffered earlier. Therefore, RCW 4.16.340(1) required Plaintiff to

commence her action within three years after she turned 18, but she failed to do so.

In *Korst v. McMahon*, 136 Wn. App. 202, 148 P.3d 1081 (2006), the trial court dismissed Plaintiff's childhood sexual abuse claim, on the grounds that Plaintiff did not file her action within the applicable statute of limitations provided in RCW 4.16.340(1). The pertinent facts in *Korst* are as follows: Plaintiff's father had sexually abused her at age 8. When she was 14, she told her mother about the sexual abuse and her mother called CPS. In 1995, Plaintiff wrote her father a letter in which she listed a number of grievances about how her father had mistreated her. Included in those grievances was the fact that her father had raped her when she was a child. She said the rape had haunted her, disgusted her and was something that never went away. Plaintiff's letter included other grievances that had nothing to do with the sexual abuse. Nowhere in the letter did Plaintiff identify any symptoms that she was experiencing from the abuse. Notwithstanding, the trial court felt this letter established that Plaintiff recognized her injuries and connected them to her father's sexual abuse. This led the court to dismiss Plaintiff's action because she had not filed it within three years of her 1995 letter.

On the other hand, Plaintiff had introduced evidence to the trial court, from Dr. Walter Teachout, a clinical psychologist, whom Plaintiff

began seeing in 2002. Dr. Teachout diagnosed Plaintiff with post-traumatic stress disorder due to the childhood sexual abuse. He noted that Plaintiff was experiencing many physical and emotional symptoms consistent with PTSD, including (1) severe self-esteem issues, (2) shame and guilt, (3) emotional fatigue, (4) difficulty maintaining friendships, (5) early promiscuity, (6) panic attacks, (7) gastrointestinal symptoms, (8) paranoia, (9) depression, (10) anxiety, (11) nightmares, (12) flashbacks, (13) teeth grinding, (14) crying spells, (15) social withdrawal, (16) insomnia, and (17) others. Dr. Teachout believed that Plaintiff's childhood sexual abuse has caused these symptoms. Moreover, Dr. Teachout was of the opinion that before 2002, Plaintiff could not recognize her injuries, or their connection with the abuse she had suffered.

On appeal, this Court reversed and remanded the trial court's dismissal, stating that the 1995 letter did not provide substantial evidence that Plaintiff knew that her father's sexual abuse had caused her many injuries. Rather, the letter simply indicated that she resented her father for sexually abusing her, but did not mention any of the specific physical and emotional harms that the Plaintiff complained of in her lawsuit.

In contrast, here Plaintiff identified her numerous emotional, psychological and physical symptoms in 2005-2006, when she treated with Kelly Peck, all of which Plaintiff connected to the abuse that she had

suffered at the hands of Horsley. As did Dr. Teachout in *Korst*, therapist Peck noted that Plaintiff was experiencing many of the physical and emotional symptoms consistent with post-traumatic stress disorder. (CP 105, 109) But unlike the Plaintiff in *Korst* when she wrote the 1995 letter, here Plaintiff was aware of the serious emotional and psychological problems and their connection to the sexual abuse she had suffered, when she turned 18. Despite these facts, she did not file suit for more than five years.

The case of *Carollo v. Dahl*, 157 Wn. App. 796, 240 P.3d 1172 (2010), is also relevant. In *Carollo*, Plaintiff was sexually abused at bible camp by an adult camp supervisor, when Plaintiff was age 16 to 18. In 1988, Plaintiff sought counseling for emotional difficulties. He was told Defendant's molestation was the likely source of his emotional difficulties. In 1995, after two years of counseling with a different therapist, Plaintiff was diagnosed with various post-traumatic stress disorders symptoms, including depression, flashbacks and nightmares. These were diagnosed as related to Defendant's molestation of Plaintiff.

In 2008, Plaintiff's PTSD became much worse. He began experiencing regular nightmares, memory loss, dissociative periods, and became unable to accomplish even minor tasks. Plaintiff was diagnosed with panic disorder, major anxiety, major depressive disorder and

agoraphobia. Plaintiff left his employment as a counselor as a result of being unable to function. Plaintiff's counselor stated that these new diagnoses were related to the original abuse.

Plaintiff filed suit in 2008, twenty years after he first sought counseling for problems caused by the abuse, and thirteen years after he was diagnosed with PTSD. The trial court granted Defendant's Motion for Summary Judgment, based on the statute of limitations provided in RCW 4.16.340(1). On appeal, Division Three affirmed.

The Court noted that both Plaintiff and his therapist characterized his new symptoms as more severe manifestations of his underlying PTSD, which they connected to the abuse. The Court stated that, "the injury here is the psychological problems associated with PTSD. Mr. Carollo admits he was aware of these problems and connected them to Mr. Dahl's acts as early as 1988. Yet, Mr. Carollo waited for 20 years to file suit."

The Court recognized that the Legislature had liberalized the statute of limitations in favor of victims of childhood abuse, but said the statute still imposed limits. The Court said adopting Plaintiff's interpretation of the statute would be a substantial expansion, if not an outright repeal of those limits. The Carollo Court said it was the Legislature's function, not the Court's, to make such a change.

Plaintiff argues that the *Carollo* Court improperly applied RCW 4.16.340(1), and that any reliance by the trial court on *Carollo* was misplaced. Defendant disagrees.

First, Defendant believes the *Carollo* Court's holding and reasoning are sound. But Defendant submits that the facts here are more clear cut than those in *Carollo*. Here, Plaintiff did not present evidence to the trial court of new symptoms in 2012, that were either qualitatively or quantitatively different than the symptoms she reported in 2005-2006.

Rather, Plaintiff's symptoms in 2005-2006, were the same symptoms she alleged in her 2012 lawsuit. In her 2012 lawsuit, Plaintiff alleged problems with concentration, intrusive thoughts, flashbacks, and confusion about her sexuality. (CP 95) These are the same problems she had in 2005-2006, that Ms. Peck said were severe. (CP 104) Plaintiff was definitive on this point:

Q: Have you mentioned or reported problems to Mary Dietzen that were different than problems you reported to Kelly Peck?

A: Not that I can recall right now but – no, nothing comes to mind at the moment.

Q: So basically the same kinds of problems that you were having that brought you to Kelly Peck as a result of the abuse that Suzanne Horsley perpetrated on you are the same kinds of problems you've presented to Mary Dietzen?

A: Yes, the same – yeah, everything is pretty much the same.

(CP 97)

Plaintiff's argument is that because her problems have continued to manifest in her adult life, her problems are therefore more serious than they were when she was younger, thereby exempting her from having to commence her action with three years of when she recognized her injuries were caused by the abuse. Neither RCW 4.16.340(1), nor any case that has interpreted it, provides support for such a theory. Defendant acknowledges that RCW 4.16.340(1) is intended to provide victims of abuse with an expanded statute of limitations, because childhood sexual abuse is so problematic for its victims. But the statute of limitations still provides a limit, and this case presents undisputed facts that require enforcing that limit.

B. Though Plaintiff's Reference to Cases From Other Jurisdictions Do Not Control, They Support the Trial Court's Dismissal

Cases from other jurisdictions may offer guidance but are neither necessary nor controlling. Washington's Legislature and its appellate courts have addressed the issue of childhood sexual abuse. Moreover, both parties have addressed RCW4.16.340(1), as well as the Supreme Court's and appellate division cases that have analyzed the statute of limitations in childhood sexual abuse cases.

All of the out of state cases Plaintiff relies on involve victims of childhood sexual abuse who were unable to make a causal connection between their injuries and the abuse they suffered earlier. Under these circumstances, the statute of limitations under Washington law would not begin to run until the victim was able to make that connection.

For example, Plaintiff cited *Clarke v. Abate*, --- A.3d ---, 2013 WL 4034238 (S. Ct. Vermont, Aug. 9, 2013), a 2013 Vermont Supreme Court case where Plaintiff, a 16 year old girl, injured her hip and was being treated by Defendant doctor for groin pain. The Defendant sexually abused Plaintiff during her treatment. Plaintiff first began having concerns about Defendant's conduct when she learned through the media that Defendant had been charged with assaulting other women in similar matters.

In *Clarke*, Plaintiff suspected Defendant was sexually assaulting her early on, but did not acknowledge the abuse until much later. Initially, Plaintiff believed the Defendant doctor was doing his job and her family did not react to her concerns about her treatment with him. Plaintiff only became aware that Defendant's conduct was wrongful and had injured her after she learned that other women were assaulted in similar ways. Under these facts, the *Clark* court concluded that when Plaintiff discovered the connection was a fact question. The court also stated that the court may

determine the accrual date rather than the jury, “when there is no legally sufficient evidentiary basis for a reasonable jury to find for the nonmoving party on that issue.” That is precisely the situation in our case.

Plaintiff also cited *Sellery v. Cressy*, 48 Cal. App. 4th 538, 55 Cal.Rprt.2d 706 (1996). In *Sellery*, Plaintiff, who was born in 1955, was abused by her mother and father when she was a child. In 1991, she began therapy and only then connected her psychological ailments to her parents’ abuse. In 1992, when Plaintiff was 37 years old, she sued her parents. Plaintiff’s experts testified that dissociation of the childhood abuse made Plaintiff unable to fully understand and remember the abuse. The court held when Plaintiff discovered the connection between her abuse and injuries was a question of fact for the jury.

Under Washington law, our courts would likely have held that the statute of limitations would have only begun to run in the *Sellery* case in 1991, even though the California court decided the issue was a fact question for the jury. In contrast, in our case Plaintiff has stated that she knew of her injuries and knew they were caused by Horsley’s abuse, as early as 2005/06. This is undisputed. Therefore, there is no question of fact for a jury to decide.

In sum, the cases Plaintiff cites from other jurisdictions present facts where each Plaintiff was unclear or confused about when they

discovered their injuries were due to their childhood sexual abuse. In our case, Plaintiff identified her numerous symptoms during her therapy in 2005-2006, and stated she knew they were caused by Horsley's abuse. Nevertheless, Plaintiff failed to commence her action for more than five years after she turned 18, and therefore, failed to comply with the statute of limitations for victims of childhood sexual abuse in Washington.

C. Discovery of the Connection Between Injuries and Childhood Sexual Abuse May be a Question of Fact, But Not Under the Facts of This Case.

In her brief, Plaintiff argues that when she discovered her injuries and connected them to the abuse should be left for a jury to decide. Defendant agrees that when the facts are in dispute and reasonable minds could differ on that issue, a jury question exists.

On the other hand, when the facts are undisputed, and when reasonable minds could reach only one conclusion, the issue is no longer one for a jury. Here, Plaintiff was clearly aware of the injuries that she claims in her lawsuit when she turned 18, but failed to commence her action for more than five years. Therefore, her action was not brought with the applicable statute of limitations.

V. CONCLUSION

In 2005-2006, Plaintiff identified the serious problems she was experiencing and connected them to the childhood sexual abuse by Horsley.

Moreover, Plaintiff's symptoms in 2012 were the same as those she reported and treated for in 2005-2006. In 2012, she said they varied in intensity and frequency, as she said they did in 2005-2006. Therefore, the statute of limitations began to run in 2006, when Plaintiff turned 18. Plaintiff did not file her action until 2012, in violation of RCW 4.16.340(1).

The Trial Court's granting of Summary Judgment to Defendants should be affirmed.

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By 

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Attorneys for Defendants

CERTIFICATE OF SERVICE

I certify that I served a copy of the BRIEF OF RESPONDENT upon all parties of record on the 23rd day of October, 2013, via email and ABC Legal Messenger as follows:

Attorney for Plaintiff:

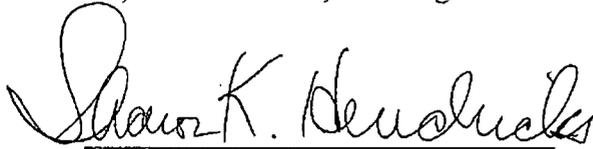
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I certify under penalty of perjury, under the laws of the State of Washington, that the foregoing is true and correct.

DATED this 23rd day of October, 2013 at Seattle, Washington.



Sharon K. Hendricks,
Legal Assistant

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DIVISION II
2013 OCT 23 PM 3:27
STATE OF WASHINGTON
BY DEPUTY