

NO. 45342-8

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

P.L a single male, and S.B a married but separated female,

Appellants,

v.

Washington State Department of Social and Health Services,

Respondent.

RESPONDENT'S OPENING BRIEF

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TABLE OF CONTENTS

I. INTRODUCTION.....1

II. STATEMENT OF ISSUES.....2

III. COUNTERSTATEMENT OF FACTS.....2

 A. S.B. and P.L. and Their Siblings Removed From Parents’
 Home.....4

 B. Foster Care Placement History of S.B. and P.L.....5

 1. S.B.’s Placements5

 2. P.L.’s Placements8

 C. Appellants’ Lives After Foster Care.....13

 1. S.B.13

 2. P.L.15

 D. Procedural History18

IV. ARGUMENT19

 A. Standard of Review.....19

 B. S.B. And P.L.’s Complaint Was Properly Dismissed
 Pursuant to RCW 4.16.340(c) Since They Connected
 Their Injuries More Than Three Years Prior To Filing
 Their Complaint.....20

 1. S.B. and P.L.’s Injuries Are Not Qualitatively
 Different Than Those They Had More Than Three
 Years Prior To Filing This Lawsuit.....26

 2. The Record Establishes That S.B. Connected Her
 Psychological Injury (PTSD) To Child Abuse More
 Than Three Years Prior To Filing Her Suit.....29

3.	The Record Establishes That P.L. Connected His Psychological Injury (PTSD) To Child Abuse More Than Three Years Prior To Filing His Suit	34
C.	The Trial Court Did Not Commit Legal Error Or Rely on Overruled Case Law When It Dismissed S.B. and P.L.'s Claims	36
D.	The State's Attorney Fairly and Ethically Presented Briefing and Oral Argument to the Trial Court	37
1.	Appellants Did not Preserve their Motion for CR 11 Sanctions.....	37
2.	The State's Attorney Disclosed the Pertinent Legal Authorities to the Trial Court in Briefing and Oral Argument.....	39
3.	Appellants' Allegation Of An RPC Violation Improperly Invokes The RPC's As Procedural Weapons.	41
V.	CONCLUSION	41

TABLE OF AUTHORITIES

Cases

<i>1000 Virginia Ltd. Partnership v. Vertecs Corp.</i> , 158 Wn.2d 566, 581, 146 P.3d 423 (2006).....	21
<i>American Legion Post No. 32 v. City of Walla Walla</i> , 116 Wn.2d 1, 7, 802 P.2d 784 (1991).....	38
<i>C.J.C. v. Corp. of Catholic Bishop of Yakima</i> , 138 Wn.2d 699, 712, 985 P.2d 262 (1999).....	21
<i>Carollo v. Dahl</i> , 157 Wn. App. 796, 798-799, 240 P.3d 1172 (2010).....	passim
<i>Gevaart v. Metco Const.</i> , 111 Wn.2d 499, 501, 760 P.2d 348 (1988).....	21
<i>Hanson v. Shim</i> , 87 Wn. App. 538, 551, 943 P.2d 322 (1997).....	40
<i>Hisle v. Todd Pacific Shipyards Corp.</i> 151 Wn.2d 853, 860, 93 P.3d 108 (2004).....	19
<i>Korst v. McMahon</i> , 136 Wn. App. 202, 205, 148 P.3d 1081 (2006).....	30
<i>Matter of Estates of Hibbard</i> , 118 Wn.2d 737, 744, 826 P.2d 690 (1992).....	20
<i>Owen v. Burlington Northern and Santa Fe R.R.</i> , 153 Wn.2d 780, 789, 108 P.3d 1220 (2005).....	19
<i>Raymond v. Ingram</i> , 47 Wn. App. 781, 737 P.2d 314 (1987).....	24, 25
<i>Rivers v. Washington State Conference of Mason Contractors</i> , 145 Wn.2d 674, 697, 41 P.3d 1175, 1186 (2002).....	40

<i>Ruff v. County of King</i> , 125 Wn.2d 697, 703, 887 P.2d 886 (1995).....	19
<i>Skagit County Public Hospital Dist. No. 1 v. State, Dept. of Revenue</i> , 158 Wn. App. 426, 242 P.3d 909, (2010).....	38
<i>Tyson v. Tyson</i> , 107 Wn.2d 72, 727 P.2d 226 (1986).....	23

Statutes

Laws of 1991, ch. 212, § 1.....	23
RCW 4.16.340	passim

Other Authorities

Diagnostic and Statistical Manual of Mental Disorders Am. Psychiatric Ass'n (5 th ed. 2013).....	28, 30, 31, 33
Rules of Prof'l Conduct, Preamble & Scope ¶20 (2013).....	41

Rules

CR 11	37, 38, 42
CR 56(c).....	19
RPC 3.3(a)(1).....	39

I. INTRODUCTION

This appeal involves sex abuse claims that allegedly occurred more than 20 years ago when the Appellants, S.B. and P.L., were placed in foster care by the Department of Social and Health Services (DSHS). Because of the age of these claims, many key witnesses have died and very few records exist to substantiate the veracity of Appellants' claims. The issue on appeal is whether the special tolling statute of RCW 4.16.340(1)(c) bars the Appellants' sex abuse claims. This statute tolls claims for recovery of damages for injury suffered as a result of childhood sexual abuse, requiring them to be filed "[w]ithin three years of the time the victim discovered that the act caused the injury for which the claim is brought." The trial court found that Appellants had connected their emotional injury of Post-Traumatic Stress Disorder (PTSD) to the past alleged acts of sex abuse more than three years before filing their claims. Thus, their claims were not brought within the time permitted pursuant to RCW 4.16.340 (1)(c) and were properly dismissed by the trial court.

The Court should also reject Appellants' attempt to revive a Rule 11 sanctions motion they withdrew at the trial court. This argument is not only procedurally improper but also fails on the merits, as the State's attorney presented appropriate written and oral advocacy based upon the

facts and law applicable to this case. The Court should affirm the trial court's decision.

II. STATEMENT OF ISSUES

1. Whether the trial court properly found that the Department of Social and Health Services (DSHS) established that the Appellants had connected their emotional injury to the past alleged acts of sex abuse at least three years prior to the filing of their claim?
2. Whether the trial court correctly applied RCW 4.16.340 in finding that the statute of limitation had expired?
3. Whether Appellants' claim for Rule 11 sanctions is procedurally barred because Appellants waived below and the rule does not apply to oral argument?
4. Whether Counsel's oral argument for DSHS was proper?

III. COUNTERSTATEMENT OF FACTS

Appellants' lawsuit arises from a dependency case that began in the spring/summer months of 1984. The Appellants are now grown adults (S.B. age 40¹ and P.L. age 38²) and are suing DSHS for the sex abuse they claim to have suffered in foster care many years ago. Because Appellants' claims are stale, very few records exist that help to piece together what

¹ S.B.'s date of birth is January 21, 1973. CP 43, lines 7-10.

² P.L.'s date of birth is April 21, 1975. CP 364.

really happened to the Appellants while they were under the supervision of DSHS. It was learned during the early stages of this lawsuit that DSHS had no records regarding S.B. (aka S.W.) and that P.L.'s records were destroyed in June 2004. CP 544, ¶5. However, it was then discovered that the Grays Harbor County Superior Court still had on file the Appellants' juvenile dependency records from the 1980s. Pursuant to this knowledge, all counsel signed and entered a Stipulated Motion and Order Re Juvenile Court Records so that the Grays Harbor Court would release its records. CP 46-49. In total the Grays Harbor Court provided 173 pages from S.B.'s dependency file and 449 pages from P.L.'s file. CP 32, ¶6. Additionally, Appellants' counsel acquired some licensing records from the Deschutes Children's Center which is one of the foster homes where P.L. briefly resided while dependent. Because there are limited records available from the 1980s relevant to the Appellants' case, references to the aforementioned documents will be substantial throughout this brief.

A. S.B. and P.L. and Their Siblings Removed From Parents' Home

In April, 1984, Child Protective Services (CPS) initiated an abuse investigation in the home of Roy and Lona Lewis. The Lewis family had five children: Jerry Buck and S.B. (Mr. Lewis' step children) and P.L., Tressa and Crystal Lewis. Mr. Lewis was the only parent present in the home at the start of the investigation because Ms. Lewis was in jail on burglary charges. CP 53. During the course of the investigation, CPS learned that Mr. Lewis was having sexual relations with his step-daughter, S.B., who was currently 11 and that sexual intercourse had been going on for quite some time.³ CP 53. CPS also discovered that Ms. Lewis knew about the sex abuse between her husband and S.B., but did nothing to prevent it. CP 67. At some point during the abuse investigation Mr. Lewis admitted to the sex abuse against S.B. This led to Mr. Lewis being sent to jail on a charge of indecent liberties to which he later plead guilty and was sentenced to 10 years in prison. CP 67.

³ According to S.B.'s deposition of July 17, 2013, the sex abuse started when she was two with fondling and eventually progressed to repeated acts of sexual intercourse by the time CPS learned of the abuse. CP 73, lines 1-17. She also asserted that her brothers were physically abused by the step-father, but denies knowing about any other sex abuse involving her brothers or younger sisters Tressa and Crystal. CP 75, lines 1-17. However, according to the record, Tressa, age three, and Crystal, age five, later disclosed in foster care that their father had sexually abused them as well. CP 67.

With both parents in jail and no one available to care for the Lewis children, all five of the Lewis/Buck children were taken into protective custody.⁴ CP 67. These children were then transferred into DSHS' custody and were placed in three separate foster homes. S.B. and Jerry were paired together in one home and Crystal and Tressa in another. P.L. was the only child that went to a foster home by himself. CP 550-51, ¶3.

B. Foster Care Placement History of S.B. and P.L.⁵

1. S.B.'s Placements

Once removed from the care of Roy Lewis, S.B. and her older brother Jerry were temporarily placed with their biological father, Edwin Lindholm and his wife, Deanna. This occurred on or about April 30, 1984. CP 79. The placement lasted until May 8, 1984, when the Lindholms decided that they could no longer tolerate the children's behavior. CP 79.

⁴ There appears to be no document that memorializes all five Lewis children being taken from their parents' care in April of 1984. However, it is undisputed by the parties that all five children were in fact removed from Mr. Lewis' care in 1984 after the CPS abuse investigation started. To corroborate this, there are dependency review hearings in 1986 that name all five Lewis children as being dependent. CP 77.

⁵ A complete and accurate history of S.B. and P.L.'s placement record is not possible due to the lack of records in this case and the fact that the Appellants have few records and/or limited memories with regard to their foster care placements. However, with the aid of the old Grays Harbor dependency records, Deschutes Children's Center records, and the Appellants' recollection, a fairly rough timeline of their placements has been reconstructed.

After a brief stay at the Lindholms, S.B. and Jerry were placed in the home of Raymond and Georgia Towns. CP 550-51, ¶3; CP 81, lines 6-8. Jerry did not like being in the Towns foster home and ran away shortly after his placement and was never found again by DSHS. S.B.'s placement with the Towns lasted for about three years. CP 91, lines 24-25; CP 92, lines 1-4.

The Towns home is where S.B. claims to have been sexually abused while in foster care and this placement is the basis for her lawsuit against DSHS. CP 94, lines 7-11. According to S.B., Mr. Towns would drive her alone to weekly counseling sessions in Aberdeen. In contrast, S.B.'s social worker, Ms. Audrey Turley, the assigned DSHS social worker for S.B., remembers driving S.B. along with her four siblings to counseling twice a week. CP 96, lines 2-13. These sessions began shortly after placement in the Towns' home, but S.B. does not remember how many weeks they lasted. CP 98, lines 19-25; CP 99, lines 4-8. The specific purpose of the counseling was to address the sexual abuse S.B. sustained at the hands of her step-father prior to her removal. CP 101, lines 1-5.

S.B. alleges Mr. Towns would molest her on the trip home from the weekly abuse counseling sessions. The alleged abuse would entail Mr. Towns French kissing S.B. and touching her vagina and breasts. S.B.

claims Mr. Towns would also make her touch his penis. CP 103, lines 3-22. S.B. admits to never making an effort to tell her counselor about the new abuse being committed by Mr. Towns despite knowing that this conduct was wrong and despite being in counseling for exactly the same behavior. CP 105, lines 11-25; CP 106, lines 1-5. Instead, S.B. told her school counselor about the abuse and alleges now she withstood the abuse for roughly two years. CP 109, lines 23-24; CP 110, lines 2-3. She asserts that she also told Ms. Turley approximately six to seven times that she was being sexually abused by Mr. Towns. CP 107, lines 17-20. According to Ms. Turley, S.B. only reported one instance of abuse in the Towns home, and S.B. was immediately removed from the placement the same day she reported it. CP 551, ¶5.

By September of 1987, S.B. had been in the Towns' home for roughly three years. CP 112-16. It was during this month that Ms. Turley and Ms. Towns became aware that S.B. had accused Mr. Towns of sex abuse. Once Ms. Turley was made aware of the abuse allegation by her supervisor, S.B. was immediately removed from the Towns foster home and placed into a receiving home. She never went back to the Towns' home. CP 551, ¶5. The allegation of abuse was investigated by both law enforcement and CPS and the allegations were not substantiated. CP 547,

¶7; CP 551, ¶6; CP 112-16. Further, Mr. Towns was never charged or convicted with a sex offense related to S.B.'s allegation.

The next placement for S.B. after the Towns was the home of Donna and Joseph Jach. CP 118, lines 12-15. Eventually the Jachs obtained guardianship over S.B. However, by July 3, 1990, difficulties between the Jachs and S.B. arose and the guardianship was terminated. CP 120-21.

The last foster home to which S.B. was sent was the home of Wilma and James Pincham, where she was living when she finally aged out of the State dependency system on January 24, 1991. CP 123.⁶ The Pincham home was the one foster home S.B. liked the best and to this day still remains in contact with Mr. Pincham.

2. P.L.'s Placements

Unlike S.B.'s placement history, there is very little evidence documenting P.L.'s foster care history during his dependency. Additionally, P.L. in the past has related several differing accounts of his placement history, most containing a high degree of embellishment. For example on January 6, 1999, P.L. claimed to have been in 48 foster homes during a six year period. CP 128-32. In September 2001, during a

⁶ Although S.B. clearly believes she was emancipated by the Court at age 16 or 17. CP 125, lines 24-25; CP 126, line 1.

comprehensive psychological evaluation, P.L. told Dr. Krueger that he had been in 127 foster homes. CP 135. On February 15, 2008, he claimed to have been in 97 foster homes in five years. CP 264. Then again on May 25, 2010, he claimed to have been raped by a woman in foster care for two weeks and then bounced through 115 foster homes in three years. CP 143. Now, during this lawsuit, P.L. claims to have been in only eight different homes during his dependency. CP 145-48.

Notwithstanding P.L.'s claims regarding placement, the Grays Harbor County dependency file and the Deschutes Children's Center documents appear to provide the best evidence (although incomplete) of where P.L. lived while in foster care. P.L. was initially placed in foster care (name unknown) on April 13, 1984. CP 67. He continued to reside with that foster family until being placed with his paternal grandmother, Lorraine Ebert on July 1986⁷ after several trial pre-placements in April and May. CP 67.

The available records document P.L.'s behavior while living with his grandmother included lying, stealing, sexually acting out and killing and mutilating small animals. Subsequently, P.L. underwent a psychological evaluation and began therapy. The therapy helped to

⁷ Other parts of the Grays Harbor dependency record state that P.L. went to his grandmother in June of 1986. CP 67.

alleviate the aforementioned problems and he appeared to adjust well to his grandmother's home. CP 67. By March 5, 1987, Ms. Ebert was appointed as the guardian for P.L. CP 151-53. Soon after P.L.'s birthday on April 12, 1987, he began to significantly decompensate. He was expelled from the school bus for the remainder of the year and his acting out increased. At one point P.L. broke into his grandmother's house and vandalized it with spray paint and pop. He tore everything up causing damage to furniture, lamps and carpets. P.L. was then placed at a Crisis Residential Center where his severe acting out continued by urinating on walls, trashing the house, and threatening other children. CP 67. Due to P.L.'s behavior, his grandmother determined that she could no longer care for him. Ms. Turley and DSHS decided that P.L. was more appropriate for a group home rather than foster care. CP 67. As a result, Ms. Ebert's guardianship was revoked and P.L. was sent to the Deschutes Children's Center. CP 67.

P.L. was transferred to the Deschutes Children's Center on September 1, 1987 where he remained until December 21, 1987. CP 155. It was during this placement that P.L. claimed to have been sexually abused by two boys. According to P.L., one of those boys anally raped him on one day in December 1987 and then the very next day forced him to give oral sex. CP 159, lines 21-25; CP 160, lines 1-13. P.L. also says

that he told Ms. Turley about the anal rape the day it happened, but that she did not believe him and that action led to the forced oral sex the next day. CP 159, lines 21-25; CP 160, lines 1-13. P.L. asserts that because of Ms. Turley's response, P.L. decided not to tell his counselor, Pat Pincham, about the abuse despite his view of Mr. Pincham as a protector.⁸ CP 162, lines 9-23. Ms. Turley denies that this conversation ever took place or that she knew P.L. was sexually assaulted. CP 552, ¶8.

One week after being allegedly raped in the Deschutes Children's Center, P.L. was placed with Bill Beckham on December 21, 1987. CP 162, lines 9-23; CP 164. This placement lasted for approximately one year.

The last foster placement for P.L. was the home of Ned and Jeanette Lacy. CP 166, lines 19-23. P.L. claims to have been sexually and physically abused⁹ by other boys in this home. According to P.L., Mr. Lacy would have him fight other foster children in the home just for sport. These other children were much older than P.L., as old as 16, 17, or 18. One day P.L. had enough of all the fighting and decided to run away, but

⁸ P.L. in his deposition indicates that Mr. Pincham was someone he could trust because he along with Mr. Beckham "saved" him from further abuse at Deschutes. CP 168, lines 12-13.

⁹ P.L.'s lawsuit initially included both sex abuse and physical abuse claims. However, during the August 30th summary judgment argument, P.L. conceded that the physical abuse claim was barred by the statute of limitations. CP 510.

first he stole \$40 to \$60 from Ms. Lacy's purse. With this money he decided to go to the mall and buy a wallet. However, after buying the wallet, Mr. Lacy and other foster boys met him at the mall. Mr. Lacy ordered the boys to beat him up. After being beaten and arriving back at the Lacy home, Ms. Turley showed up and took P.L. to juvenile hall where he stayed for a short time. P.L. was then returned back to the Lacy's. P.L. then ran away again with his girlfriend. Unfortunately they were caught by Mr. Lacy and other foster boys in a field of tulips. P.L. was again beaten up by his foster brothers along the road by the tulip field. When P.L. got back to the Lacy home, one of the foster boys called P.L. into a back room and offered to protect P.L. if only he would suck his penis. At this point, P.L. willingly complied with Joe's request. The next day, P.L. ran away from the Lacy home and never returned to foster care. CP 170, line 1 - CP 173, lines 7-10. This occurred when P.L. was 14 years of age.¹⁰ CP 170, line 1 - CP 173, lines 7-10. The oral sex with the one foster boy is the only sex abuse P.L. is alleging occurred in the Lacy home.

¹⁰ P.L. was 14 in 1989.

C. Appellants' Lives After Foster Care

1. S.B.

After S.B.'s dependency was dismissed in 1991, she dropped out of high school and obtained her GED in September of that year. CP 36, ¶44; CP 176, lines 24-25. She then married Duane Woodson in 1991 and has one child with him named Rick. CP 178. This marriage ended in divorce in November 1994. CP 178. On October 12, 2002, she married Robert Vernon Buck, whom she met while they were both in prison. CP 178; CP 180, lines 10-20; CP 181, lines 17-24. She is currently married to Mr. Buck but they have been separated since 2007 and she does not know where Mr. Buck resides. CP 180, lines 10-20; CP 181, lines 17-24.

S.B. is currently on Social Security disability for PTSD, depression and some medical issues. S.B. testified that she has had depression all her life and it was because of the sex abuse she sustained as a child. CP 195, lines 19-21. Her disability status was granted in 2011, but the application for disability started 43 months prior to the award, in 2008. CP 183, lines 8-13; CP 184, line 5. Prior to becoming disabled, S.B. had worked for several employers that included: Fred Meyer, Briggs Nursery, Mervyn's, and Little Creek Casino. These were all full-time jobs. CP 186, lines 3-23. However, after being raped in 2008 by a friend, Daniel Stole Cunningham, she never worked again. CP 188, lines 4-15. It was at this

stage in her life that S.B. decided to pursue a disability claim through the Social Security Administration for PTSD. CP 190-91.

S.B. has a criminal record and history of substance abuse. In 1997, S.B. was charged and convicted of vehicular homicide and sentenced to 68 months in prison. CP 193. S.B. was the driver of the vehicle in which two of her friends died as well as the driver of the other vehicle that was involved in the crash that S.B. hit head-on. CP 197, lines 1-7. A test of S.B.'s blood after the accident showed the presence of methamphetamine. CP 199. To this day, S.B. denies being high on drugs at the time of the 1997 accident.¹¹ CP 201, lines 4-9.

Since being molested by her stepfather at an early age, S.B. has consistently received substantial mental health treatment for a variety of trauma in her life. This treatment has come in the form of counseling and medication. According to S.B., she has suffered from depression her whole life because of the abuse of her childhood. CP 207, lines 19-21. Other events in her life that she acknowledges have impacted her mental health include allegedly being sexually abused by a foster parent, witnessing a friend being decapitated as a result of a car accident in

¹¹ S.B. later told a psychiatrist at the Department of Corrections (DOC) that at sentencing on her vehicular homicide charge, the judge said that he was setting an example about drug use and thus gave her the maximum sentence of 68 months. CP 203-05.

1989,¹² the death of two friends from the 1997 vehicular homicide case, and being raped in 2008 by a friend. All of these events resulted in S.B. going to counseling. However, she in the end chose not to complete counseling. This trauma has also led her to attempt suicide four times. The first attempt occurred when S.B. was 16. The reason she has stated for this attempt was past sexual abuse.¹³ CP 209, lines 4-18. The second, third, and fourth attempts came much later in S.B.'s life. She again made attempts to end her life by slitting her wrists in 2007, 2008, and January 2013. According to S.B.'s admission, the 2007 and 2008 attempt was because of past sex abuse. CP 214, lines 20-25; CP 215 lines 1-11.

2. P.L.

P.L.'s dependency was dismissed on January 24, 1991 because it was determined that he was living in Oregon with his mother. CP 217-18. Since that time, P.L. dropped out of high school after finishing the ninth grade and never obtained his GED. CP 220-24. Currently, P.L. is on Social Security disability and has six DNA confirmed children; however, only three are within his custody. CP 226, lines 4-20.

¹² CP 211, lines 15-25; CP 212, lines 1-6.

¹³ This suicide attempt came after S.B. left the Towns' home and was based on past sexual abuse experiences that certainly would have included abuse by Mr. Towns if true.

Prior to being declared disabled on July 30, 2003,¹⁴ P.L. had no long term employment history. The most he was able to work was three months at a time unless he was on work release through the jail. CP 228, lines 1-14. He represented to the Social Security Administration that he could not work because of the following conditions: attention deficit hyperactivity disorder, borderline personality disorder with strong antisocial features, dysthymia, avoidant personality disorder, major depressive disorder with psychotic features and intermittent explosive disorder. CP 220-24.

Since becoming an adult, P.L. has amassed a lengthy criminal record. He has spent one and a half years in prison in Virginia on a conviction for breaking and entering. CP 135. He also has at least twelve convictions for driving on suspended license, two counts of felony eluding, one conviction for impersonating an officer, and one bad check conviction. CP 239.

P.L. admits to attempting suicide three times in the past. The first attempt occurred when he was seventeen and involved him intentionally crashing his car into a tree. The second attempt happened a few weeks later and involved him jumping off an overpass in Tumwater. P.L.

¹⁴ See Social Security Administration notice of decision - fully favorable. CP 230-37.

acknowledges that this attempt was brought about because of the abuse he sustained in foster care. The final attempt at suicide was when P.L. swallowed a bottle of codeine.¹⁵ CP 251.

P.L. has a long history of mental health counseling which has continued to this day since he turned 18. CP 251. Interspersed throughout his counseling, P.L. has undergone numerous psychological evaluations. For example, in P.L.'s Social Security Administration record, there are nine evaluations recorded. CP 261. In an additional evaluation, the evaluating doctor, Dwight Bushue, diagnosed him with PTSD and major depression (severe). In the report dated January 6, 1999, Dr. Bushue says, "According to the client's history, he comes from a very dysfunctional, abusive home and was placed in foster homes for a majority of his adolescence. This caused him to eventually become involved with substance abuse and now he finds himself suffering from chronic depression with suicidal ideation." CP 128-32. In another evaluation dated February 15, 2008, P.L. discloses being sexually abused in foster care six different times. CP 263-65. At the end of this evaluation, P.L. was again diagnosed with PTSD and depression (severe). CP 263-65.

¹⁵ The record does not indicate the date of this suicide attempt.

D. Procedural History

On August 30, 2013, the Honorable H. Christopher Wickham granted DSHS's Motion for Summary Judgment and found that the statute of limitations had run on S.B. and P.L.'s sex abuse claims. CP 494-495. That afternoon, Appellants' filed a Motion for Reconsideration and the motion was set to be heard on September 13, 2013. CP 474-476. On September 5, 2013, Appellants also filed a Notice of RPC Violation and Motion for Terms Under CR 11 and scheduled it to be heard on the same day as the Motion for Reconsideration. CP 567-572. DSHS responded to both of the Appellants' pleadings on September 11, 2013. CP 521-535. On September 11, 2013, Judge Wickham's Judicial Assistant informed all counsel that the trial court was striking Appellants' Motion for Reconsideration and that the trial court will rule without oral argument. Shortly thereafter, Appellants' counsel requested to strike/withdraw their pending Notice of RPC Violation and Motion for Terms Under CR 11. The permission to strike/withdraw said motion was granted. Then, Judge Wickham denied the Appellants' Motion for Reconsideration later that afternoon of September 11, 2013. CP 536. This appeal followed.

IV. ARGUMENT

A. Standard of Review

This court reviews summary judgment orders *de novo* and generally performs the same inquiry as the trial court. *Hisle v. Todd Pacific Shipyards Corp.*, 151 Wn.2d 853, 860, 93 P.3d 108 (2004). It examines the pleadings, affidavits, and depositions before the trial court and “take[s] the position of the trial court and assume[s] facts [and reasonable inferences] most favorable to the nonmoving party.” *Ruff v. County of King*, 125 Wn.2d 697, 703, 887 P.2d 886 (1995) (citing *Hartley v. State*, 103 Wn.2d 768, 774, 698 P.2d 77 (1985)). Affirming the trial court’s award of summary judgment is proper if the record before the trial court establishes “that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” CR 56(c). “A material fact is one that affects the outcome of the litigation.” *Owen v. Burlington Northern and Santa Fe R.R.*, 153 Wn.2d 780, 789, 108 P.3d 1220 (2005). “Questions of fact may be determined as a matter of law ‘when reasonable minds could reach but one conclusion.’” *Id.* at 788.

B. S.B. And P.L.’s Complaint Was Properly Dismissed Pursuant to RCW 4.16.340(c) Since They Connected Their Injuries More Than Three Years Prior To Filing Their Complaint

The events upon which this lawsuit is brought all allegedly occurred between the dates of 1984 to 1989. On August 30, 2013, the Honorable H. Christopher Wickham correctly dismissed Appellants’ claims that were more than twenty years old. CP 494-495. The decision was affirmed on September 11, 2013 after Appellants filed a Motion for Reconsideration. CP 536.

The State Supreme Court has observed that stale claims may be spurious and generally rely on untrustworthy evidence, and that society benefits when it can be assured that a time comes when one is freed from the threat of litigation. *Matter of Estates of Hibbard*, 118 Wn.2d 737, 744, 826 P.2d 690 (1992). The *Hibbard* Court further recognized that the remedial goal of the justice system requires that “when an adult person has a justiciable grievance, [that person] usually knows it and the law affords [the person] ample opportunity to assert it in the courts.” *Id.* (citation omitted). That goal is balanced by the recognition that compelling one to answer a stale claim is in itself a substantial wrong. *Id.* When an appellant reasonably suspects that a wrongful act has occurred, he or she is deemed to be on notice that legal action must be taken and must, from that point, exercise due diligence to learn of any further facts necessary to initiate a

lawsuit. *1000 Virginia Ltd. Partnership v. Vertecs Corp.*, 158 Wn.2d 566, 581, 146 P.3d 423 (2006).

Ordinarily, a cause of action accrues, and the statute of limitations begins to run at the time the challenged act or omission occurred. *Gevaart v. Metco Const.*, 111 Wn.2d 499, 501, 760 P.2d 348 (1988). However, not all claims accrue at the moment a wrongful act occurs. This is particularly true in childhood sex abuse cases where the alleged tortious conduct occurred years earlier, but now the claimant is beyond the age of twenty-one. The Legislature crafted RCW 4.16.340 to help address such situations where childhood claims of sex abuse arise years later. The Legislature's primary concern in creating RCW 4.16.340 "was to provide a broad avenue of redress for victims of childhood sexual abuse who too often were left without a remedy under previous statutes of limitation." *C.J.C. v. Corp. of Catholic Bishop of Yakima*, 138 Wn.2d 699, 712, 985 P.2d 262 (1999). Stated another way, the Legislature realized that victims of childhood sex abuse were not put on notice that they had a tort claim as a result of the abuse they suffered as a child until in some cases, many years later after reaching the age of majority. This resulted in later-discovered injuries being barred by the typical statute of limitations that ended at age twenty one. RCW 4.16.340 provides in relevant part that:

All claims or causes of action based on intentional conduct brought by any 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;

. . . 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 is tolled for a child until the child reaches the age of eighteen years.

In 1991 the Legislature issued the following findings of intent to

RCW 4.16.340:

(1) Childhood sexual abuse is a pervasive problem that affects the safety and well-being of many of our citizens.

(2) Childhood sexual abuse is a traumatic experience for the victim causing long-lasting damage.

(3) The victim of childhood sexual abuse may repress the memory of the abuse or be unable to connect the abuse to any injury until after the statute of limitations has run.

(4) The victim of childhood sexual abuse may be unable to understand or make the connection between childhood sexual abuse and emotional harm or damage until many years after the abuse occurs.

(5) Even though victims may be aware of injuries related to the childhood sexual abuse, more serious injuries may be discovered many years later.

(6) The legislature enacted RCW 4.16.340 to clarify the application of the discovery rule to childhood sexual abuse cases. At that time the legislature intended to reverse the

Washington supreme court decision in *Tyson v. Tyson*, 107 Wn.2d 72, 727 P.2d 226 (1986).

It is still the legislature's intention that *Tyson v. Tyson*, 107 Wn.2d 72, 727 P.2d 226 (1986)¹⁶ be reversed, as well as the line of cases that state that discovery of any injury whatsoever caused by an act of childhood sexual abuse commences the statute of limitations. The legislature intends that the earlier discovery of less serious injuries should not affect the statute of limitations for injuries that are discovered later.

Laws of 1991, ch. 212, § 1.

In order for the statute of limitations to accrue under RCW 4.16.340(c), a victim of sex abuse must make a causal link/connection between the past sex abuse and a present injury for which the suit is brought. *Korst v. McMahon*, 136 Wn. App. 202, 208, 148 P.3d 1081 (2006). But as quoted earlier from the legislative findings, a causal link to “any injury whatsoever” is not the focus of this statute. The injury connected must be a “serious injury” as opposed to a “less serious injury.”

¹⁶ In *Tyson*, the Court was confronted with whether the discovery rule applied to a suppressed memory case involving sex abuse where the Plaintiff was now age 26. Plaintiff alleged that she had suppressed the memory of her childhood until recently when she entered psychological therapy. The Plaintiff filed suit within one year of recalling her past sex abuse. The Court held that the “discovery rule does not apply to an intentional tort claim where the plaintiff has blocked the incident from her conscious memory during the period of the statute of limitations.” *Tyson* at 80.

In addition to *Tyson* being superseded by statute, this case and all others like it are not relevant to the pending matter because S.B. and P.L. have not alleged a claim that involves suppressed memory. All suppressed memory cases fall within paragraph (b) of RCW 4.16.340.

(See *supra* legislative findings to RCW 4.16.340). Unfortunately the Legislature has not given any clear direction as to what it meant by “less serious injuries” and no case in Washington has defined such a term in relationship to a sex abuse case. To evaluate what the Legislature considered a “less serious injury” that should not trigger the start of the statute of limitations, a review of some of the cases superseded by statute with regard to the discovery of sex abuse injuries may be instructive. One such case is *Raymond v. Ingram*, 47 Wn. App. 781, 737 P.2d 314 (1987). In that case, the Plaintiff alleged making a recent connection between her *insomnia* and *stomach problems* (stomachaches) to her past abuse. After the Court concluded that such an allegation triggered the statute of limitations, the legislature added an intent section focusing on the seriousness of the discovered injury. By applying a common sense definition to “less serious injury,” it is reasonable to infer that injuries like *insomnia* and *stomachaches* could be what the Legislature meant by less serious. These injuries are certainly less serious than PTSD.

In the present matter, Appellants assert that the relevant statute of limitations under RCW 4.16.340 is tolled until “all of the injuries” are connected to the prior child sex abuse. Appellant’s Br. at 19. Appellants identify 15 conditions suffered by S.B. and another 14 conditions suffered by P.L. as a result of the alleged abuse. These conditions include PTSD,

but also a number of symptoms of PTSD including: continuing shame, continuing guilt, trust issues, and sleep disturbances. *Id.* at 20. Appellants contend that DSHS bears the burden of showing the precise point at which S.B. and P.L. made the causal connection between each of the 29 symptoms and the alleged abuse. In effect this approach would render Washington's statute of limitations for sex abuse cases almost meaningless because a plaintiff could continue to experience new symptoms of their injury and continuously restart the statute of limitations. Had the Legislature intended to in effect eliminate the statute of limitations for sex abuse cases, it could have done so, but it did not.

A more reasonable reading of RCW 4.16.340 is that the statute of limitations begins upon the discovery that the abuse caused the serious injury and that subsequent symptoms of such injuries do not restart the statute of limitations period. This is consistent with the plain language of the statute and the legislature's intent reflected in the finding section: "The legislature intends that the earlier discovery of less serious injuries should not affect the statute of limitations for injuries that are discovered later." If the Appellants' position were accepted, a claimant could presumably sue over the same alleged wrongful act throughout the course of his or her life alleging the discovery of a "new injury," even if such an "injury" were a symptom of an injury for which the plaintiff had long ago made the

causal connection to the alleged abuse. Such an approach could open the flood gates to newly alleged symptoms based upon old injuries that had long ago been connected to the subject childhood abuse. This would undermine the purpose of statutes of limitations, even lengthy ones, which provide defendants with some level assurance that alleged victims of sex abuse will diligently pursue their claims upon discovery of the connection between the abuse and the injury at issue.

1. S.B. and P.L.’s Injuries Are Not Qualitatively Different Than Those They Had More Than Three Years Prior To Filing This Lawsuit

S.B. and P.L.’s claims are similar to those alleged in *Carollo v. Dahl*, 157 Wn. App. 796, 798-799, 240 P.3d 1172 (2010), and this Court should affirm consistent with that opinion.

In *Carollo*, the statute of limitations applied to preclude a claim brought in 2008 by a church intern who alleged sexual abuse by a camp counselor. In 1988, the plaintiff had sought “counseling for emotional difficulties” and had been told that the “molestation was likely the source of his psychological difficulties.” *Id.* at 798. In 1995, the plaintiff went to additional counseling and was diagnosed with symptoms of PTSD including depression, flashbacks, and nightmares. *Id.* at 798-799. Later, in 2008, the plaintiff was diagnosed with worsened PTSD symptoms, “experiencing regular nightmares, memory loss, dissociative periods, and

became unable to accomplish even minor tasks.” *Id.* at 799. He was also diagnosed with panic disorder, major anxiety, major depressive disorder, and agoraphobia. His counselor stated that these were diagnoses related to the sexual abuse. *Id.* The plaintiff had also left his employment because he was unable to function. *Id.*

In applying the statute of limitations to preclude the plaintiff’s claims brought based on the alleged “discovery” of a connection in 2008, the court observed that there are two circumstances in which the RCW 4.16.340(c) permits a claim to be brought: “(1) where there has been evidence that the harm being sued upon is *qualitatively* different from other harms connected to the abuse which the plaintiff had experienced previously, or (2) where the plaintiff had not previously connected the recent harm to the abuse.” *Id.* at 801 (emphasis added). There must be a “different” injury, not just new or worsened symptoms, in order to fall within RCW 4.16.340(c). *Id.* at 802.

An increase in the severity of symptoms or recurrence of previously existing symptoms is not a new “discovery” of injury to permit a claim to be brought outside the three year statute of limitations from the time the abuse occurred. *Carollo v. Dahl*, 157 Wn. App. 796, 803, 240 P.3d 112 (2010).

Here like in *Carollo*, the Appellants' psychological injury of PTSD is not a new qualitative injury sufficient to fall within the ambit of RCW 4.16.340(c). They were diagnosed with this condition years ago (S.B. in 1998 (CP 203-205) and P.L. in 1999 (CP 128-132)). Further, they have suffered symptoms related to PTSD for years and connected these symptoms to childhood sex abuse more than three years prior to filing their lawsuit. The most obvious symptom they connected to childhood sex abuse is depression. For instance, S.B. testified that she had been diagnosed with depression all her life and knew that such diagnosis was connected to her abuse as a child. CP 195. Also, P.L. admits that he has suffered "severe emotional turmoil" over the course of his lifetime and has purposely misled a counselor about the facts of his childhood abuse because he was ashamed of his past. CP 442-443. As a result of the psychological trauma in the Appellants' lives, both have attempted suicide. S.B. testified that her first attempt was at age 16. CP 209. P.L. admitted that his first suicide attempt occurred at age 17. CP 251. Suicide attempts like those admitted by the Appellants are symptoms of one who suffers from PTSD.¹⁷

¹⁷ See Diagnostic And Statistical Manual of Mental Disorders AM. Psychiatric Ass'n (5th ed. 2013) (DSM-5) pages 274-276.

In an effort to bolster their claims, the Appellants have listed new symptoms from which they claim to have suffered as a result of the past sex abuse (*see* Appellants' brief, pages 20-21). Essentially Appellants argue that the past sex abuse has caused more symptoms to arise and therefore they should be compensated. The *Carollo* court observed that the worsening of a condition is not compensable under RCW 4.16.340(c) because "the statute says nothing about quantity of harm, it speaks of 'injury' and connection of 'injury' to 'acts.'" *Carollo* at 802. Accordingly, Appellants' listing of symptoms is nothing more than a "quantitative" difference to their PTSD manifestations as opposed to a "qualitatively" different injury. The Appellants have failed to demonstrate that they are suffering from any new injury other than PTSD and the symptoms associated with such an injury. This Court should affirm the trial court's decision consistent with *Carollo*.

2. The Record Establishes That S.B. Connected Her Psychological Injury (PTSD) To Child Abuse More Than Three Years Prior To Filing Her Suit

S.B. alleges that DSHS failed to prove she subjectively connected the following alleged injuries to childhood sex abuse prior to April 3, 2009: (1) aggravated pre-existing traumatized state, (2) continuing shame, (3) continuing guilt, (4) continuing rage, (5) feelings of being dirty, (6) lack of interpersonal trust, (7) reenactment of situations involving betrayal

and violence, (8) avoidant traits, (9) social isolation, (10) chronic anxiety, (11) sexual dysfunction, (12) self-cutting, (13) PTSD, (14) substance abuse, and (15) lack of employability. (Appellants' Br. at 20). Although S.B. claims to have suffered multiple injuries from past sex abuse, these are all physical and emotional symptoms of one "psychological injury" which is PTSD.¹⁸ The remaining alleged injuries are merely physical and emotional symptoms that are a result of one suffering from PTSD. However, it is through these symptoms that many claimants first connect how they have been damaged through past sex abuse and S.B. is no different in this regard. RCW 4.16.340 does not require that sex abuse victims be advised by a medical professional that they suffer from a psychological condition and tell them the medical term for such a condition before the statute starts to run. The fact that Dr. Wynne placed an official label on S.B.'s psychological injury does not start the clock

¹⁸ See Diagnostic and Statistical Manual of Mental Disorders Am. Psychiatric Ass'n (5th ed. 2013) (DSM-5) pages 274-276. See also *Korst v. McMahon*, 136 Wn. App. 202, 205, 148 P.3d 1081 (2006) (symptoms consistent with PTSD include: severe self-esteem issues, shame and guilt, emotional fatigue, difficulty maintaining friendships, early promiscuity, panic attacks, gastro-intestinal symptoms, paranoia, depression, anxiety, nightmares, flashbacks, and social withdrawal) and *Carollo v. Dahl*, 157 Wn. App. 796, 798-799, 240 P.3d 1172 (2010) (PTSD symptoms included depression, memory loss, dissociative periods, panic disorder, and unable to accomplish minor tasks).

under RCW 4.16.340.¹⁹ As discussed below, the record contains ample circumstantial evidence to demonstrate that S.B. made the necessary connection between her symptoms that relate to her PTSD injury and the past sex abuse, but failed to sue within three years of making that connection. Accordingly, RCW 4.16.340(c) bars her claim and the trial court's dismissal should be affirmed.

In 1998 S.B. underwent a psychological evaluation and was diagnosed with PTSD while serving a prison sentence for vehicular homicide. CP 203-205. During the course of the evaluation, S.B. disclosed to the psychiatrist that she was sexually abused by her stepfather and then later a foster parent. CP 203-204. The psychiatrist notes in her report that S.B. has an “. . . early history of severe sex abuse . . . along with abuse in foster placements.” CP 205. Several years after release from prison, S.B. was again diagnosed with PTSD. This time the diagnosis was made while seeking disability through the Social Security Administration in the early 2000s. CP 183. PTSD does not arise on its own. It is triggered by a traumatic event or events in one's life.²⁰ Here, the alleged traumatic event at issue is childhood sex abuse. To a

¹⁹ Dr. Wynne interviewed S.B. on February 15 and May 13, 2013. He drafted a preliminary psychological opinion of S.B. on May 17, 2013. CP 333.

²⁰ See Diagnostic and Statistical Manual of Mental Disorders Am. Psychiatric Ass'n (5th ed. 2013) (DSM-5) pages 274-276.

reasonable person, it is wholly unreasonable to accept that S.B. would know she was diagnosed with PTSD and at the same time fail to realize it was caused by childhood abuse. This is especially true when S.B. freely disclosed her childhood abuse to a prison psychiatrist in 1998 and was then diagnosed with PTSD. CP 203-204. In addition to that, she claimed disability due partially to PTSD.

Although S.B. was diagnosed with PTSD much later in her life, she understood early on how sex abuse impacted her life. The first recognition of injury through sex abuse came as a result of her step-father's abuse. According to a dependency court document dated May 12, 1988, S.B. was considered to have "serious social and identity problems which relate to the severe sex abuse she suffered." CP 116. As a result, DSHS sent her to specialized sex abuse counseling for a period of two years to help her learn and deal with the damage caused to her by her step-father's actions. CP 203. Because of this extensive counseling, a jury could reach but one conclusion that S.B. understood the harm caused to her through sex abuse and in general the harmful effects of sex abuse.

Even though the aforementioned counseling addressed the step-father's abuse, S.B. knew that she was also being injured by the alleged actions of Mr. Towns. For instance, S.B. admitted in a declaration that she told Ms. Turley that ". . . Mr. Towns was touching me the same way that

my step father had touched me.” CP 436. She also admitted knowing that the abuse by Mr. Towns was wrong. CP 105. Also, when S.B. was between the ages of 14 to 20 (long after her sex abuse counseling ended), she admits to having daily homicidal ideation about Audrey Turley because Ms. Turley allegedly left her in the Towns home to be abused. CP 471. This certainly would be an example of the “continuing rage” S.B. alleges to have suffered. Dr. Russell Vandenberg, DSHS’s expert, also opined that this feeling illustrates that S.B. knew she was being “emotionally affected” by the abuse of Mr. Towns. CP 472.

One of the most striking examples that S.B. directly connected a symptom of PTSD to childhood sex abuse was when she was 16. S.B. admitted during her deposition that she attempted suicide²¹ when she was 16 because she was “hurting inside” and “feeling like I was no good” and that the reason for this attempt was the sex abuse she sustained as a child. CP 209. In addition to this suicide attempt, she also attempted suicide in 2007 and 2008 because of her history of sex abuse. CP 214-215. These examples of suicide attempts are the most compelling evidence that S.B. connected “a serious injury” to past sex abuse. Here S.B. demonstrated

²¹ The Diagnostic and Statistical Manual of Mental Disorders Am. Psychiatric Ass’n (5th ed. 2013) (DSM-5) recognizes that a suicide attempt is a symptom of PTSD. (See pages 274-276).

that her mental wellbeing was so depressed that she was willing to end her life because of the damage of sex abuse.

S.B. would like the Court to accept her argument that she did not connect her present injury of PTSD to past sex abuse until speaking with her lawyer and then being evaluated by her expert, Dr. Wynne in 2013. This proposition is untenable in light of S.B.'s significant treatment for sex abuse and attempts at suicide along with the evidence in psychological records and other admissions that illustrate that she failed to bring her cause of action within a timely manner. Based upon the forgoing, DSHS has demonstrated substantial circumstantial evidence to prove that S.B. connected her current symptoms flowing from PTSD to the prior sex abuse and that it should be barred by RCW 4.16.340.

3. The Record Establishes That P.L. Connected His Psychological Injury (PTSD) To Child Abuse More Than Three Years Prior To Filing His Suit

Like S.B., P.L. also lists multiple alleged "injuries" on page 20 and 21 of the Appellants' brief and claims DSHS offered no evidence to prove P.L. connected these injuries to foster care sex abuse. Again, these injuries are symptoms of P.L.'s PTSD.

P.L. has definitely connected his injury to the past sex abuse he claims to have suffered in foster care. Just like S.B., P.L. was placed into sex abuse counseling shortly after being placed in foster care. CP 551-

552. Because of the length of time that has passed, the record is not clear as to how long P.L. remained in counseling, but it is known that P.L. did go to sex abuse counseling with S.B. twice a week for a period of time. CP 551. This counseling without question brought P.L. to the awareness of the harmful effects of sex abuse that occurred in his home primarily to his sister, S.B.

In addition to counseling, P.L.'s suicide attempt at age 17 is evidence that he connected a psychological injury to past sex abuse. At P.L.'s independent medical exam before DSHS's medical expert, Dr. Russell Vandenberg, on May 30, 2013, P.L. disclosed attempting suicide at age 17 by jumping off a freeway overpass. CP 251. He "stated that the suicide ideation was because of his abuse in foster care" CP 251. Additionally, P.L. in a relatively short period of time had at least nine psychological evaluations from March 1997 to September 2001. CP 261. During some of these evaluations, P.L. freely expounds upon the number of times he was sexually abused in foster care and the number of homes he was placed into while in foster care. CP 128, 135, 143, 146-147, and 264. No reasonable person could conclude that P.L. would have no idea how or what impact sex abuse had on him after going through nine psychological

evaluations, especially with at least two evaluations stating that he suffers from PTSD among other things.²² CP 132 and 265.

Again similar to S.B., P.L. expects the Court to disregard his history with sex abuse counseling and his later suicide attempt that P.L. declared was a result of foster care sex abuse. With this history one could only conclude that P.L. had connected his emotional injury to past sex abuse, decades earlier. The circumstantial evidence in the record supports the trial court's finding that P.L.'s claim was barred by the statute of limitations.

C. The Trial Court Did Not Commit Legal Error Or Rely on Overruled Case Law When It Dismissed S.B. and P.L.'s Claims

There is no merit to the Appellants' argument that the trial court erred by relying on overruled case law in dismissing both claims. The trial court was very clear that its dismissal was based upon the record as a whole and "there's numerous points where you could conclude that the statute had run" CP 517. Furthermore, the trial court indicated to Appellants' counsel that he believed that DSHS could prove its case through circumstantial evidence that S.B. and P.L. had connected their injury to sex abuse more than three years prior to filing their lawsuit. CP

²² Unfortunately, not all of the psychological evaluations could be obtained due to the age of P.L.'s claim.

505-506. The court had before it all relevant case law to make an informed decision. CP 497-520. Appellants provided several cases interpreting the statute in its Motion for Reconsideration, and the trial court denied the motion. CP 474-476. Ultimately the trial court ruled that DSHS had shown the Appellants connected their serious injuries to the sexual abuse, and thus the statute of limitation had expired. “I can’t accept the proposition that an abuse victim has to be as insightful as the psychologist or psychiatrist interviewing them. There has to be some awareness clearly, and I think that the defense has presented a record that shows an awareness by these victims of the abuse and its implications such that a jury could not reach a different result.” CP 516. The trial court’s ruling clearly does not contain the alleged error as argued by the Appellants.

D. The State’s Attorney Fairly and Ethically Presented Briefing and Oral Argument to the Trial Court

1. Appellants Did not Preserve their Motion for CR 11 Sanctions

Appellants filed a motion for terms based on CR 11,²³ which they withdrew after the State filed a response. Accordingly, they have waived that as an issue on appeal.

²³ It should be noted that Appellants’ motion for terms filed with the trial court explicitly stated that there is nothing ethically suspect in

Appellants' motion in the trial court was so deficient factually and legally that the State's responsive pleading suggested to the Court to consider issuing an Order to Show Cause asking Appellants to explain why the filing of their motion for terms did not violate CR 11(b). Instead, Appellants withdrew their motion for terms prior to the date it was noted, and therefore there was no ruling on this issue by the trial court to which appellants could assign error, or appeal. Accordingly, appellants have waived this as an issue on appeal. *American Legion Post No. 32 v. City of Walla Walla*, 116 Wn.2d 1, 7, 802 P.2d 784 (1991) (in the absence of argument and citation to authority, an issue raised on appeal will not be considered); *see also Skagit County Public Hospital Dist. No. 1 v. State, Dept. of Revenue*, 158 Wn. App. 426, 242 P.3d 909 (2010) (a party waives an assignment of error where no citation to authority for the error is made in its brief).

defendant's summary judgment briefing; it is solely oral argument wherein they believe an ethical violation occurred. But sanctions under CR 11 addresses written pleadings and briefs, not oral argument. CR 11(a). And a motion for sanctions under CR 11 "must be made separately from any other motion and must describe the specific conduct that allegedly violates CR 11(b)."

2. The State's Attorney Disclosed the Pertinent Legal Authorities to the Trial Court in Briefing and Oral Argument

Appellants' accusations of misconduct by a bench officer and by the state's attorney are baseless, contrary to the record, and improperly invoke the Rules of Professional Conduct as a procedural weapon. The transcript of the hearing makes it plain that neither breach occurred. The oral argument by the State's attorney at the summary judgment hearing was proper advocacy based upon the facts and law applicable to this case, and well within the rules of professional ethics. The transcript itself, the RPCs, and the case law are the best evidence of the lack of any violation. CP 615, ¶10; CP 637-661. A counsel's duties at oral argument are well-summarized below:

Legal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal. A lawyer is not required to make a disinterested exposition of the law, but must recognize the existence of pertinent legal authorities. Furthermore, as stated in paragraph (a)(3), an advocate has a duty to disclose directly adverse authority in the controlling jurisdiction that has not been disclosed by the opposing party. The underlying concept is that legal argument is a discussion seeking to determine the legal premises properly applicable to the case.

Comment 4 to RPC 3.3(a)(1) (emphasis added).

The State's attorney in the trial court recognized all pertinent legal authorities in his summary judgment briefing as required by this Rule.

Within the time constraints of oral argument, the law was thoroughly discussed and served to supplement and illuminate the written briefing.²⁴ Counsel properly engaged in reasonable, good faith legal argument to assist the trial court in its ruling, arguing correctly that a potential linking of a substantial or serious injury like PTSD or major depression to his or her childhood sexual abuse ends the tolling period and begins the running of the statute of limitations.

Appellants' allegation that Mr. Knoll made a "knowingly false representation of law" is based on a belief that Appellants' interpretation of RCW 4.16.340 (and the resultant appellate opinions discussing it) is the only possible correct interpretation. But reasonable disagreements are the nature of our legal system. Appellants' view that the statute of limitations never starts to run, or that it may run and then be restarted, may or may not be correct. The State disagrees for the reasons discussed above. Lawyers disagree on legal interpretations every day, and argue their interpretations

²⁴ It should also be noted that there is no due process right to oral argument on a dispositive motion. "Oral argument [on a motion] is not a due process right." *Hanson v. Shim*, 87 Wn. App. 538, 551, 943 P.2d 322 (1997). "Due process does not require any particular form or procedure" "[It] requires only 'that a party receive proper notice of proceedings and an opportunity to present [its] position before a competent tribunal.'" *Id.* (quoting *Parker v. United Airlines, Inc.*, 32 Wn. App. 722, 728, 649 P.2d 181, review denied, 98 Wn.2d 1011 (1982)). Striking a hearing and deciding a motion without oral argument is part of the inherent power of the court. *See also Rivers v. Washington State Conference of Mason Contractors*, 145 Wn.2d 674, 697, 41 P.3d 1175, 1186 (2002), quoting above cases with approval.

in courts of law all over the country without engaging in personal attacks or accusations of misconduct.

3. Appellants' Allegation Of An RPC Violation Improperly Invokes The RPC's As Procedural Weapons.

The Preamble to the Washington Rules of Professional Responsibility clearly states in pertinent part:

The Rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. *Furthermore, the purpose of the Rules can be subverted when they are invoked by opposing parties as procedural weapons.*

Rules of Prof'l Conduct, Preamble & Scope ¶20 (2013) (emphasis added).

Appellants' allegation that an ethical violation occurred during oral argument is an attempt to bootstrap an issue that Appellants waived in the trial court. Appellants' procedural use of the RPCs is disfavored under our laws, because it subverts the purpose of the RPCs, which is to "provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies." *Id.*

V. CONCLUSION

Based on the foregoing arguments, this Court should affirm the dismissal of Appellants' claims because there is circumstantial evidence that the Appellants connected their psychological injury of PTSD to prior

sex abuse more than three years prior to filing their lawsuit. Furthermore, this Court should deny Appellants request for CR 11 sanctions for the reasons argued above.

RESPECTFULLY SUBMITTED this 19th day of December, 2013.

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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 19th day of December, 2013, at Tumwater, WA.

Jodie L. Thompson
JODIE L. THOMPSON, Legal Secretary