

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
11/6/2017 12:21 PM  
BY SUSAN L. CARLSON  
CLERK

No. 94529-2

---

SUPREME COURT  
OF THE STATE OF WASHINGTON

---

HBH; SAH; and TREY HAMRICK,  
litigation guardian ad litem on behalf of  
KEH, JBH, and KMH,

Respondents,

v.

STATE OF WASHINGTON,

Petitioner,

and

TOWN OF EATONVILLE,

Defendants.

---

RESPONDENTS' SUPPLEMENTAL BRIEF

---

Lincoln C. Beauregard  
WSBA #32878  
Julie A. Kays  
WSBA #30385  
Connelly Law Offices  
2301 North 30<sup>th</sup> Street  
Tacoma, WA 98403  
(253) 593-0377

Nelson C. Fraley II  
WSBA #26742  
Faubion, Reeder, Fraley & Cook, P.S.  
5316 Orchard Street West  
University Place, WA 98467  
(253) 581-0660

Philip A. Talmadge  
WSBA #6973  
Sidney C. Tribe  
WSBA #33160  
Talmadge/Fitzpatrick/Tribe  
2775 Harbor Avenue SW  
3<sup>rd</sup> Floor, Suite C  
Seattle, WA 98126  
(206) 574-6661

Attorneys for Respondents

TABLE OF CONTENTS

	<u>Page</u>
Table of Authorities .....	ii-iv
A. INTRODUCTION .....	1
B. STATEMENT OF THE CASE.....	1
C. ARGUMENT .....	6
(1) <u>The State Has a General Duty to Protect Children Whose Abuse Is Being Investigated from Harm and a Specific Duty to Children in Its Care from Harm</u> .....	6
(2) <u>In Its <i>Parens Patriae</i> Capacity and Under Applicable Statutes, the State Had a Special Relationship with the Children and a Duty to Them under § 315 of the <i>Restatement (Second) of Torts</i></u> .....	12
(3) <u>The Children Adduced Substantial Evidence at Trial of the State’s Breach of Its Duty to Them</u> .....	19
D. CONCLUSION.....	21
Appendix	

TABLE OF AUTHORITIES

Page

Table of Cases

Washington Cases

*Albertson v. State*, 191 Wn. App. 284, 361 P.3d 808 (2015).....8

*Babcock v. State*, 116 Wn.2d 596, 809 P.2d 143 (1991) .....8

*Boone v. State*, \_\_ Wn. App. \_\_, \_\_ P.3d \_\_,  
2017 WL 4543678 (2017).....7

*Bowers v. Marzano*, 170 Wn. App. 498, 290 P.3d 134 (2012).....19

*Braam v. State*, 150 Wn.2d 689, 81 P.3d 851 (2003) .....14

*Carrera v. Sunheaven Farms*, 196 Wn. App. 240,  
383 P.3d 563 (2016), *aff'd*, \_\_ Wn.2d \_\_,  
401 P.3d 304 (2017).....9

*Caulfield v. Kitsap Cty.*, 108 Wn. App. 242, 29 P.3d 738 (2001) .....17

*C.J.C. v. Corp. of the Catholic Bishop of Yakima*,  
138 Wn.2d 699, 985 P.2d 262 (1999)..... 9-10

*C.L. v. State*, \_\_ Wn. App. \_\_, 402 P.3d 346 (2017) .....10

*Davis v. Baugh Indus. Contractors, Inc.*, 159 Wn.2d 413,  
150 P.3d 545 (2007).....9

*Davis v. Microsoft Corp.*, 149 Wn.2d 521, 70 P.3d 126 (2003).....2

*Faust v. Albertson*, 167 Wn.2d 531, 222 P.3d 1208 (2009) .....21

*Gregoire v. City of Oak Harbor*, 170 Wn.2d 628,  
244 P.3d 924 (2010).....15

*Hendrickson v. Moses Lake Sch. Dist.*, 199 Wn. App. 244,  
398 P.3d 1199 (2017).....17

*Hertog, ex rel. SAH v. City of Seattle*, 138 Wn.2d 265,  
979 P.2d 400 (1999).....19

*Hopkins v. Seattle Public Sch. Dist. No. 1*, 195 Wn. App. 96,  
380 P.3d 583, *review denied*, 186 Wn.2d 1029 (2016).....17

*In re Dependence of Schermer*, 161 Wn.2d 927,  
169 P.3d 452 (2007).....14

*Jackson v. City of Seattle*, 158 Wn. App. 647, 244 P.3d 425 (2010).....9

*Lesley for Lesley v. Dep’t of Soc. & Health Servs.*,  
83 Wn. App. 263, 921 P.2d 1066 (1996),  
*review denied*, 131 Wn.2d 1026 (1997).....8

*Lewis v. Whatcom Cty.*, 136 Wn. App. 450, 149 P.3d 686 (2006) .....8

*McLeod v. Grant Cty. Sch. Dist. No. 128*, 42 Wn.2d 316,  
255 P.2d 360 (1953).....15, 17

<i>M.H. v. Corp. of Catholic Archbishop of Seattle</i> , 162 Wn. App. 183, 252 P.3d 914, review denied, 173 Wn.2d 1006 (2011).....	10
<i>Munich v. Skagit Emergency Commc'n Ctr.</i> , 175 Wn.2d 871, 288 P.3df 328 (2012) .....	7
<i>M.W. v. Dep't of Soc. &amp; Health Servs.</i> , 149 Wn.2d 589, 70 P.3d 954 (2003).....	10
<i>Niece v. Elmview Group Home</i> , 131 Wn.2d 39, 929 P.2d 420 (1997).....	15, 17
<i>Nivens v. 7-11 Hoagy's Corner</i> , 133 Wn.2d 192, 943 P.2d 286 (1997).....	16
<i>N.K. v. Corp. of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints</i> , 175 Wn. App. 517, 307 P.3d 730, review denied, 179 Wn.2d 1005 (2013).....	10, 16
<i>N.L. v. Bethel Sch. Dist.</i> , 186 Wn.2d 422, 378 P.3d 162 (2016).....	16
<i>Osborn v. Mason County</i> , 157 Wn.2d 18, 134 P.3d 197 (2006).....	7
<i>Potter v. Wash. State Patrol</i> , 165 Wn.2d 67, 196 P.3d 691 (2008).....	11
<i>Quynn v. Bellevue Sch. Dist.</i> , 195 Wn. App. 627, 383 P.3d 1053 (1016).....	17
<i>Rodriguez v. Perez</i> , 99 Wn. App. 439, 994 P.2d 874, review denied, 141 Wn.2d 1020 (2000).....	8
<i>Sheikh v. State</i> , 156 Wn.2d 441, 128 P.3d 574 (2006) .....	14
<i>Sing v. John L. Scott, Inc.</i> , 134 Wn.2d 24, 948 P.2d 816 (1997).....	2
<i>Terrell C. v. Dep't of Soc. &amp; Health Servs.</i> , 120 Wn. App. 20, 84 P.3d 899, review denied, 152 Wn.2d 1018 (2014).....	14
<i>Tyner v. Dep't of Soc. &amp; Health Servs.</i> , 141 Wn.2d 68, 1 P.3d 1148 (2000).....	8
<i>Volk v. DeMeerLeer</i> , 187 Wn.2d 241, 386 P.3d 254 (2016) .....	16
<i>Washburn v. City of Federal Way</i> , 178 Wn.2d 732, 310 P.3d 1275 (2013).....	7, 16
<i>Yonker v. Dep't of Soc. &amp; Health Servs.</i> , 85 Wn. App. 71, 930 P.2d 958, review denied, 132 Wn.2d 1010 (1997).....	8

Federal Cases

<i>Henry A. v. Wilden</i> , 678 F.3d 991 (9th Cir. 2012).....	18
<i>Lipscomb by and through DeFehr v. Simmons</i> , 962 F.2d 1374 (9th Cir. 1992) .....	18
<i>Tamas v. Dep't of Soc. &amp; Health Servs.</i> , 630 F.3d 833 (9th Cir. 2010) ....	18

Statutes

RCW 4.04.010 .....	11
RCW 13.34.020 .....	7, 14
RCW 13.34.030(5).....	14
RCW 26.44.010 .....	7
RCW 26.44.040 .....	7
RCW 26.44.050 .....	7, 9, 11, 20
RCW 43.43.830 .....	7
RCW 74.13.010 .....	15
RCW 74.13.031 .....	7
RCW 74.13.031(3).....	5
RCW 74.13.031(6).....	15

Other Authorities

<i>Restatement (Second) of Torts</i> § 315 .....	12
--	----

A. INTRODUCTION

The Court of Appeals applied well-established Washington common law principles to determine that the trial court erred in granting the State's CR 50 motion dismissing the action of KMH, HBH, SAH, KEH, and JBH ("the children") against the State for its negligent placement of the children with foster parents Scott and Drew Anne Hamrick. Those foster parents viciously abused the children physically, sexually, and psychologically before ultimately adopting them, a step that allowed the Hamricks to further abuse the children.

Contrary to the State's attempt to change this case into a negligent investigation case, this is a negligent placement case. The State's Department of Social and Health Services ("DSHS") and/or Child Protective Services ("CPS")<sup>1</sup> had a duty to protect children dependent upon the State from placement with their abusers. The children provided ample evidence of the State's breach of that obvious duty.

B. STATEMENT OF THE CASE

The Court of Appeals correctly set forth the facts and procedure in this case. Op. at 3-7. It is troubling that the State takes issue with the Court of Appeals' discussion of the facts, particularly those pertaining to the

---

<sup>1</sup> CPS is a part of DSHS.

preadoption period, 1998-2008. Pet. at 4-9. In doing so, it supplies a truly “sanitized” version of the facts that is favorable to it, as the moving party, turning the proper CR 50 standard entirely on its head.<sup>2</sup>

When the facts are taken in a light favorable *to the children*, the record amply supports the view that abuse was vicious, pervasive, and on-going during the pre-adoption period. SAH and HBH recall being abused by both Scott Hamrick, sexually, and by Drew Anne Hamrick, physically and emotionally, immediately upon being placed in the Hamrick home. RP (2/11/15):18-51, (2/19/15):104-19. *See also*, CP 267-71, 290-94, 317-20, 330-32, 362-64. SAH described abuse including sexual touching and groping by Scott and physical and emotional abuse by Drew Anne. *Id.* HBH described physical abuse by Drew Anne including slamming her head up against the wall. *Id.* Drew Anne imposed assorted forms of physical abuse on the children as “punishment” and/or “discipline.” *Id.*

Omitted from the State’s glowing reports about the Hamricks’ pre-2008 treatment of the children is the fact that the negligent conduct of its

---

<sup>2</sup> This Court reviews a trial court’s CR 50 decision *de novo*. *Davis v. Microsoft Corp.*, 149 Wn.2d 521, 530-31, 70 P.3d 126 (2003), but a CR 50 motion is properly granted only when “viewing the evidence most favorable to the nonmoving party, the court can say, as a matter of law, there is no substantial evidence or reasonable inference to sustain a verdict for the nonmoving party.” *Id.* at 531 (quoting *Sing v. John L. Scott, Inc.*, 134 Wn.2d 24, 29, 948 P.2d 816 (1997)). “Substantial evidence is evidence sufficient to persuade a fair-minded, rational person that the premise is true.” *Id.* This Court must look to the evidence adduced at trial in the plaintiff’s case in reviewing the trial court’s CR 50 decision. *Davis*, 149 Wn.2d at 531 n.4.

caseworkers made it extremely difficult for the State to even discern the existence of abusive conduct.

The assigned caseworker for SAH and HBH was Mary Wooldridge. According to DSHS policy, Wooldridge was required to conduct regular “health and safety” visits that required a visit away from the home in a safe setting, such as a school, at least every ninety (90) days. Ex. 2. The applicable DSHS policy required that a caseworker ask the foster child “Whether they feel safe or have concerns about their home setting” and “How they are disciplined.” *Id.* If the policy is followed, the caseworker must log the visits in a “Service Episode Record.” *Id.*

There were *no* documented health and safety visits between the time that SAH or HBH were placed in the Hamrick home in October 1999 until they were adopted in October 2000; Wooldridge did not log any visits in the Service Episode Record for the children over that period.<sup>3</sup> SAH

---

<sup>3</sup> The trial court missed the critical significance of Wooldridge’s failure to conduct such visits: “I mean it really doesn’t matter whether Mary Wooldridge was or was not doing her health and safety visits...” RP (3/5/15):83. The trial court apparently did not pay careful attention to the children’s expert, Barbara Stone, on this point. She testified, for example, as to KMH, KEH, and JBH:

Q. If – with regard to either Staci or Haeli or Kayci, if home visits back in 2000 had revealed abuse on the part of the Hamrick foster parents, what would – what would have happened? Would the children have been left in the home?

A. No. If there was abuse, they would have been removed.

Q. Just the children that are being abused or all of the children?

specifically testified that these visits never occurred. RP (2/11/15):21-22, 31-32. Wooldridge *admitted* that the Service Episode Records do not reflect that she conducted the required health and safety visits. RP (2/9/11):11-13. DSHS staff and the children's GAL testified that other interactions with the children did not adequately substitute for such visits. RP (2/19/15):154-56, RP (2/25/15):132-35. The absence of such visits was a critical facet of Barbara Stone's expert testimony; she testified to a systemic breakdown. RP (2/9/15):63-64.

As noted *supra*, SAH and HBH testified to the Hamricks' abuse. During the pre-adoption period they acted out sexually, something that should have troubled caseworkers and that would have been uncovered had home and health visits occurred, as required by DSHS policy. RP (2/9/15):49-53.

Moreover, a contemporaneous counseling record from a scheduled therapy session from December 21, 1999 documented that SAH wanted to speak with an adult alone at that time. RP (2/9/15):9-10. During these counseling sessions, Scott and/or Drew Anne would typically sit right outside the counselor's door or be in the same room. CP 269, 291; RP

---

A. No. If there was sexual abuse, all the children would be removed. That is practice that if you have one child who has been sexually abused, you don't leave any of the other children to be possible victims.

RP (2/9/15):68.

(2/11/15):31. SAH explained that “I wanted someone to give me an opportunity to tell what was happening to me during the first year that I was placed in the Hamrick home.” CP 268. HBH indicated that if asked, as required by DSHS policy, she too would have disclosed being abused, including being hit with a belt and spatula as a form of discipline. CP 291; RP (2/19/15):108. If the State’s health and safety visit policy had been followed, both girls would have been spared over a decade of abuse.

CPS was also negligent when the Hamricks’ abuse of the children was reported to it. For example, on April 8, 2008, SAH disclosed to a school counselor, Mary Ann Baker, that Drew Anne had assaulted her: “Staci has a bruise on inside of her left knee – the size is bigger than a golf ball.” CP 270; RP (2/11/15):39-44. Baker documented SAH’s report and sent a formal abuse and neglect report to CPS. *Id.* The referral to CPS stated that there were several other children in the home, but CPS failed to investigate. *Id.* The intake worker elected to “screen out” the referral rather than have it addressed and investigated by a trained investigator, as required by law. *Id.*<sup>4</sup> As illustrated by Baker’s report, if CPS had investigated, SAH and/or

---

<sup>4</sup> DSHS has a statutory duty to investigate such an allegation of abuse as to dependent children. RCW 74.13.031(3). *See* Appendix.

the other Hamrick children would have disclosed the ongoing abuse within the home. Instead, CPS failed to conduct any investigation whatsoever.<sup>5</sup>

C. ARGUMENT

(1) The State Has a General Duty to Protect Children Whose Abuse Is Being Investigated from Harm and a Specific Duty to Children in Its Care from Harm

The State contends in its petition at 12-14 that it owed no duty to the children because there is “no analogous private sector conduct” that compels it to perform its child protective duties through CPS in a non-

---

<sup>5</sup> According to Pierce County Detective Deborah Heishman, the children experienced a wide array of abusive conduct at the Hamricks’ hands: (1) pervasive sexual abuse by their adoptive father, Scott Hamrick, (2) being denied food for days at a time, (3) being regularly beaten with metal spatulas, hot curling irons and other kitchen products, (4) being locked in a room for days without anything but a blanket to sleep on the floor and a bucket in which to urinate, (5) being starved to the point of unhealthy body mass, (6) disparaging and degrading comments about their bodies and abilities, (7) being forced to sleep in the woods outside of the home, (8) unusual forms of corporal punishment such as being forced to move rocks and bales of hay from one side of the yard to the other for no real reason besides punishment, (9) slashes in the face with scissors to the point of permanent scarring, (10) repeated threats of being returned to foster care, and other assorted forms of egregious abuse. RP (2/5/15):19-52.

negligent fashion.<sup>6</sup> This bizarre, and erroneous, restriction on its duty to foster children like those present here should be rejected.<sup>7</sup>

In discussing the duty owed by the State to the children, Division II applied well-established principles of Washington common law. Op. at 7-14. That court properly recognized that the State had a “Duty to Protect.” *Id.* at 7. The State, however, fundamentally *misrepresents* Washington law. It asserts that for “the first time a Washington court has gone outside the extensive statutory and regulatory framework through which the Legislature created DSHS/CPS and defined its responsibilities to the state’s foster children to impose a common law tort duty to investigate.” Pet. at 11. It

---

<sup>6</sup> This Court has *repeatedly* rejected the notion advanced here by the State that its duty in tort must mirror a private duty; that is the very foundation for a public duty doctrine. *Munich v. Skagit Emergency Comm’n Ctr.*, 175 Wn.2d 871, 887, 288 P.3d 328 (2012) (Chambers, J. concurring) (“Private persons do not govern, pass laws, or hold elections. Private persons are not required by statute or ordinance to issue permits, inspect buildings, or maintain the peace and dignity of the state of Washington.”). Nor do private persons stand in *parens patriae* to abused or neglected children. *See also, Osborn v. Mason County*, 157 Wn.2d 18, 27-28, 134 P.3d 197 (2006); *Washburn v. City of Federal Way*, 178 Wn.2d 732, 753-54, 310 P.3d 1275 (2013); *Boone v. State*, \_\_ Wn. App. \_\_, \_\_ P.3d \_\_, 2017 WL 4543678 (2017) at ¶ 39 (“Where there is no similar or corresponding private action comparable to the State’s actions, we examine whether, under the public duty doctrine, the State owes a duty to a particular plaintiff.”).

<sup>7</sup> Child *Protective Services* has a unique, overarching statutory obligation to protect children who are abused or neglected. That duty relates to children generally. RCW 26.44.010; RCW 26.44.040; RCW 26.44.050. It applies even more so where the children are under the protection of the State by court order. RCW 13.34.020; RCW 74.13.031. *See Appendix.* There is no private sector counterpart to it. However, private organizations entrusted with the care of children plainly have a duty to make sure that children in their care are not entrusted to abusers. The Legislature, for example, mandates that child caregivers be first subjected to background checks. RCW 43.43.830. Numerous cases have held private organizations liable for allowing children in their care to be abused. *See infra.*

seemingly contends that it can *never* have a common law duty to children under its care, *ever*. That is simply untrue. This Court has recognized that in addition to statutory duties to abused children, the State has common law duties to children in its care as well.

First, as this Court well knows, CPS has a *statutory* duty to investigate claims of child abuse. RCW 26.44.050.<sup>8</sup> When that statutory duty has been breached, *numerous* cases have held the State liable either to the abused child when further abuse occurs or the parents when their right to their relationship with the child has been legally invaded.<sup>9</sup> For the State to argue that common law duties on its part to properly protect children under its care by making appropriate investigation of the home in which it places an abused child is a great “expansion” of the State’s duty is baseless;

---

<sup>8</sup> This duty extends to law enforcement as well. *Rodriguez v. Perez*, 99 Wn. App. 439, 994 P.2d 874, *review denied*, 141 Wn.2d 1020 (2000) (recognizing cause of action against law enforcement for negligent investigation of child abuse); *Lewis v. Whatcom Cty.*, 136 Wn. App. 450, 149 P.3d 686 (2006) (county sheriff’s department owed child a duty to reasonably investigate allegations of sexual abuse by uncle).

<sup>9</sup> *E.g.*, *Babcock v. State*, 116 Wn.2d 596, 809 P.2d 143 (1991) (DSHS caseworkers were not entitled to immunity where they made negligent placement decision entrusting girls to the care of a relative who raped them); *Lesley for Lesley v. Dep’t of Soc. & Health Servs.*, 83 Wn. App. 263, 921 P.2d 1066 (1996), *review denied*, 131 Wn.2d 1026 (1997) (recognizing cause of action for negligent investigation of child abuse allegations arising out of RCW 26.44.050); *Yonker v. Dep’t of Soc. & Health Servs.*, 85 Wn. App. 71, 930 P.2d 958, *review denied*, 132 Wn.2d 1010 (1997) (same); *Albertson v. State*, 191 Wn. App. 284, 299-303, 361 P.3d 808 (2015) (State owed duty to protect infant during time that CPS was investigating his abuse). *See also*, *Tyner v. Dep’t of Soc. & Health Servs.*, 141 Wn.2d 68, 1 P.3d 1148 (2000) (duty to conduct non-negligent investigation of child abuse allegations extends to parents).

rather, it is inherent in its ongoing duty to children who have been found to be dependent as will be discussed *infra*.<sup>10</sup> Moreover, to hold otherwise would unwisely diminish the necessary deterrent effect of tort law for a most vulnerable population – children whose parents have already so abused or neglected them that the State has removed them from their parents.<sup>11</sup>

This Court has long held that there is a common law duty to protect children under an entity’s care from abusive treatment. In *C.J.C. v. Corp.*

---

<sup>10</sup> The State will likely continue to misrepresent this Court’s holding in *M.W. v. Dep’t of Soc. & Health Servs.*, 149 Wn.2d 589, 70 P.3d 954 (2003), as it did in its petition at 13, claiming that the *M.W.* court eliminated anything but statutorily-prescribed State duties to children generally, or to children in the State’s care specifically. The State’s obstinate effort to confine any duty it owes with regard to abuse investigations to its statutory duty under RCW 26.44.050 is undercut by the *M.W.* court’s actual opinion. *Nothing* in *M.W.* evidenced this Court’s intent to eliminate common law claims *per se* against DSHS for its negligent conduct as to foster children. In the bizarre facts of that case, CPS staff conducted an “examination” of a foster child who had allegedly been sexually abused by the child’s foster parents. CPS re-traumatized the child as well as the foster parent present for the “examination.” While the Court affirmed dismissal of the negligent statutory investigation claim, the *only* claim before the Court on appeal, *id.* at 593, this Court was quick to note that DSHS continued to have a “common law duty of care not to negligently harm children.” *Id.* at 600-01.

<sup>11</sup> The deterrent effect of tort law is well-recognized by this Court. *Davis v. Baugh Indus. Contractors, Inc.*, 159 Wn.2d 413, 419-20, 150 P.3d 545 (2007) (rejecting a common law exception to contractor liability for faulty construction). *See also, Jackson v. City of Seattle*, 158 Wn. App. 647, 657, 244 P.3d 425 (2010) (deterrent effect of holding waterline construction contractors liable for slope alterations leading to landslide); *Carrera v. Sunheaven Farms*, 196 Wn. App. 240, 259, 383 P.3d 563 (2016), *aff’d*, \_\_\_ Wn.2d \_\_\_, 401 P.3d 304 (2017) (nothing deterrent effect injured worker actions against third-party tortfeasors on “dangerous workplace conduct and conditions.”). It is particularly essential for dependent children. Tort law deters slipshod mistreatment by misplacement of such children into the clutches of potential abusers. As dependent children, they have no real voice and no real protection, absent forceful enforcement of a duty in tort for their safe placement. They are subject to the vagaries of insufficient legislative budgets for decent, safe foster care or other placements, or bureaucratic indifference to their plight.

*of the Catholic Bishop of Yakima*, 138 Wn.2d 699, 985 P.2d 262 (1999), this Court held that the Catholic Church owed a duty of reasonable care to children to prevent their foreseeable harm. In that case, a church deacon sexually abused children. The Court predicated this duty of care on the special relationship between the Church and the children of the congregation. *Id.* at 721-24. *See also, M.H. v. Corp. of Catholic Archbishop of Seattle*, 162 Wn. App. 183, 252 P.3d 914, *review denied*, 173 Wn.2d 1006 (2011) (church had protective duty to female child parishioner to prevent abuse by man a priest allowed to come into contact with the child); *N.K. v. Corp. of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints*, 175 Wn. App. 517, 307 P.3d 730, *review denied*, 179 Wn.2d 1005 (2013) (church had protective relationship with Boy Scout who was entrusted to care and custody of church-sponsored troop). Thus, for the State to claim that there are no common law counterparts to its liability in this case is simply *false*.

That the State's position on duty is baseless is only confirmed by the fact that in a case filed shortly after the filing of Division II's opinion, Division I of the Court of Appeals agreed with the duty analysis offered by the children here. *C.L. v. State*, 200 Wn. App. 189, 402 P.3d 346 (2017). Division I concluded that the State owed common law duties apart from any statutory duty on the State's part to investigate child abuse. There, DSHS

negligently placed two dependent children initially in foster care and later for adoption with a family in which one of the sons had been investigated by CRS for sexual abuse of another child. The son abused the children. A jury rendered a substantial verdict for the abused girls and Division I affirmed the judgment, rejecting the State's assertion that it had no duty:

A number of statutes and regulations direct the department to protect children by doing a careful evaluation of a foster or adoptive home before recommending placement. *See, e.g.,* RCW 26.33.010; RCW 74.15.010; WAC 388-148-1320, -1370. Statutory imperatives as well as strong public policy grounds support recognition of a cause of action in tort for prospective adoptive parents against adoption placement agencies that negligently fail to disclose pertinent information about the child. *McKinney v. State*, 134 Wash.2d 388, 397, 950 P.2d 461 (1998). The tort duty arises from the special relationship between adoption placement agencies and adopting parents. *McKinney*, 134 Wash.2d at 397, 950 P.2d 461. Logically, a tort duty also arises from the special relationship between the department as a placement agency and dependent children, allowing such children to seek a tort remedy when they are damaged by the department's negligent failure to uncover pertinent information about their prospective adoptive home.

*Id.* at 197.

In sum, *common law* claims are available to child victims of abuse against the State, apart from RCW 26.44.050.<sup>12</sup> The State's placement duty

---

<sup>12</sup> In the absence of an express intent by the Legislature to abrogate any common law duties, the State's common law duties are concurrent with any statutory duties it has to protect the children from harm. RCW 4.04.010; *Potter v. Wash. State Patrol*, 165 Wn.2d 67, 76, 196 P.3d 691 (2008). The State has not pointed to such an express legislative intent.

as to foster children is not a “new” common law duty to investigate. It is a well-recognized common law duty to properly protect vulnerable children under the State’s care by placing them only in a decent, safe setting. Division II correctly articulated that duty here.

(2) In Its Parens Patriae Capacity and Under Applicable Statutes, the State Had a Special Relationship with the Children and a Duty to Them under § 315 of the Restatement (Second) of Torts

As the necessary predicate for the specific common law duty to the children in this case, Division II determined that there was a special relationship between the State and the children for purposes of the *Restatement (Second) of Torts* § 315. Op. at 12-14.<sup>13</sup> Contrary to the State’s argument that it has no special relationship with foster children, pet. at 14-22, Washington law is unambiguously to the contrary and supports the Court of Appeals’ analysis.

The State argues that no special relationship existed between CPS and the children because a “special relationship duty requires substantial control over the plaintiff’s environment and notice of foreseeable harm

---

<sup>13</sup> § 315(b) states in particular that an actor has a duty to another as to harm where “a special relation exists between the actor and the other which gives to the other a right to protection.” Moreover, § 314A of the *Restatement* specifically notes that a special relationship is present as to one “who is required by law to take or who voluntarily takes the custody of another under circumstances such as to deprive the other of his normal opportunities for protection is under a similar duty to the other.” See also, § 320 (duty of person having custody to control the conduct of another). A dependent child falls well within these provisions of the *Restatement*, as Division II recognized. Op. at 9-10.

giving rise to entrustment to the defendant's case, and a demonstration of an historic obligation to provide protection from third parties." Pet. at 15. It cites *no authority* for this contention. Nor can it. Unlike a circumstance under the statutory duty to investigate possible child abuse, the State here unambiguously has statutory/common law control over *dependent* children, like the children here, for whom the State has a clearly established legal protective obligation.

In order to make its duty argument, the State must misrepresent the actual nature of its duty to the children and foster children generally. It seeks to truncate its responsibility to one of "investigation" alone. But the duty owed by the State to the children here was not simply to "investigate," but rather to properly protect them, as vulnerable minors under the State's protection, by placing them in an appropriate care setting. Certainly in doing so, the State had an obligation to ensure that such a setting was *safe*. The children's position is well-recognized in Washington law and not "novel."

Critically, the State is obtuse to the reasons why it had authority over the children at all. *The State terminated the children's parents' rights*. It could only do so where the children's physical or mental health was so seriously jeopardized by parental deficiencies that could not be corrected that they became "dependent," and the children became the State's

responsibility. RCW 13.34.030(5). The State has a broad *parens patriae* responsibility to intervene and protect a child under such extreme circumstances. RCW 13.34.020; *In re Dependence of Schermer*, 161 Wn.2d 927, 941-42, 169 P.3d 452 (2007). As this Court noted “the State has an interest in protecting the physical, mental, and emotional health of children” and it is “well established that when a child’s physical or mental health is seriously jeopardized by parental deficiencies,” the State has the right and the duty to intervene on behalf of the child. *Id.* at 941.

This broad, ongoing duty to dependent children who arrive in foster care was confirmed in detail in this Court’s landmark decision in *Braam v. State*, 150 Wn.2d 689, 81 P.3d 851 (2003).<sup>14</sup> In that case, this Court held that foster children have substantive due process rights the State is bound to respect. “Washington’s foster care system is charged with the sad duty of caring for children whose families are unable to do.” *Id.* at 694. Central to

---

<sup>14</sup> The State cited *Sheikh v. State*, 156 Wn.2d 441, 128 P.3d 574 (2006) in a footnote. Pet. at 20 n.7. That case does not detract from the children’s argument that the State has a special protective relationship as to foster children. There, the question was whether the State had a *Restatement* § 319 “take charge” duty over foster children who then assaulted the plaintiff. This Court found that foster care did not result in sufficient control over the day-to-day actions of foster children to create an actionable duty to third persons. This Court cited with approval the observation in *Terrell C. v. Dep’t of Soc. & Health Servs.*, 120 Wn. App. 20, 29, 84 P.3d 899, *review denied*, 152 Wn.2d 1018 (2014): “Any on-going relationship between the social worker and the child is *to prevent future harm to that child, not to protect members of community from harm.*” *Id.* at 450. (emphasis added). That statement properly distinguishes between the State’s duty to the children here, to protect them from harm, and the State’s “take charge” duty to third persons.

that substantive due process right is a foster child’s right to protection from unreasonable risk of harm and a right to reasonable safety while under the State’s care and supervision. *Id.* at 699. Thus, as Division II noted, “foster children have a constitutional substantive due process right to be free from unreasonable risks of harm and a right to reasonable safety.” *Op.* at 12.<sup>15</sup>

The State’s position is also belied by special relationship cases that are not confined to physical custodial situations, but extend to situations where one actor has a special obligation to protect another from foreseeable harm. There is little question that a special relationship exists in the custodial setting that requires protection of a plaintiff from harm occasioned by third persons. *E.g.*, *McLeod v. Grant Cty. Sch. Dist. No. 128*, 42 Wn.2d 316, 255 P.2d 360 (1953) (school child under the care and custody of school district); *Niece v. Elmview Group Home*, 131 Wn.2d 39, 929 P.2d 420 (1997) (nursing home resident). A special relationship may also require protection of the plaintiff from the custodian or himself/herself. *E.g.*, *Gregoire v. City of Oak Harbor*, 170 Wn.2d 628, 244 P.3d 924 (2010) (inmate’s special relationship with jailer requires jailer to ensure inmate’s “health, welfare, and safety” so that city was liable for inmate’s suicide).

---

<sup>15</sup> This right to protection while under the State’s *parens patriae* authority is articulated in RCW 74.13.010. *See* Appendix. *See also*, RCW 74.13.031(6) (DSHS ongoing duty to monitor placement to ensure child safety consistent with RCW 74.13.010). RCW 74.13.330 also notes the duty of protection owed by foster parents, chosen by the State, to the children under their care. *See* Appendix.

It is not the existence of actual physical control, however, that dictates whether a special relationship is present, as the State contends. This Court squarely rejected the analogous argument that the location of the victim's injury controlled in *N.L. v. Bethel Sch. Dist.*, 186 Wn.2d 422, 378 P.3d 162 (2016) (special relationship existed as to student–district even though student was raped far away from campus by another student who was a registered sex offender). This Court has also rejected the notion that a § 315(a) special relationship is confined to situations of physical control over the defendant in cases like *Volk v. DeMeerLeer*, 187 Wn.2d 241, 386 P.3d 254 (2016) (recognizing that a professional takes charge over an outpatient who harms others). This Court has also determined that a special relationship duty exists even when there is no “custodial” relationship at all. *E.g., Nivens v. 7-11 Hoagy's Corner*, 133 Wn.2d 192, 943 P.2d 286 (1997) (business has special relationship with customers invited to premises). *See also, Washburn v. City of Federal Way*, 178 Wn.2d 732, 310 P.3d 1275 (2013) (city has *Restatement* § 281 duty to protect harassment victim who made complaint from her harasser).

The scope of any special protective relationship duty is determined by the foreseeability of the harm. As the Court of Appeals noted in *N.K.*, the existence of a duty based on take charge liability requires only that the harm be in the *general field of danger*. 175 Wn. App. at 526 (citing

*McLeod*, 42 Wn.2d at 321). Foreseeability limits the scope of duty. *Id.* at 530. Foreseeability is a *question of fact* for a jury. *Id.* See also, *Niece*, 131 Wn.2d at 50.<sup>16</sup> The children were within the general field of danger when the State placed them with abusive foster parents who then abused them physically, sexually, and psychologically.

Thus, Washington courts have expressly recognized that public caregivers owe a duty to persons placed under a government's responsibility. In *Caulfield v. Kitsap Cty.*, 108 Wn. App. 242, 29 P.3d 738 (2001), Caulfield was a vulnerable adult who "suffered from Multiple Sclerosis and needed 24 hours care." *Id.* at 245. Caulfield was placed with a caregiver and the placement was monitored by DSHS, and later Kitsap County, caseworkers. The caseworkers failed to monitor the placement and "never performed a reassessment of Caulfield or had any contact with Caulfield." *Id.* at 247. Caulfield's condition deteriorated and went undetected, resulting in his severe injuries. Based on the caseworkers' failure to conduct visits and ensure Caulfield's safety by a licensed care provider, Caulfield prevailed at trial. On appeal, DSHS and the County

---

<sup>16</sup> See also, *Hopkins v. Seattle Public Sch. Dist. No. 1*, 195 Wn. App. 96, 380 P.3d 583, review denied, 186 Wn.2d 1029 (2016) (reversing verdict for district in absence of instruction on district special relationship with student foreseeability of harm); *Quynn v. Bellevue Sch. Dist.*, 195 Wn. App. 627, 383 P.3d 1053 (1016) (reversing trial court judgment for district in school bus harassment case because jury instruction on foreseeability failed to focus on general field of danger); *Hendrickson v. Moses Lake Sch. Dist.*, 199 Wn. App. 244, 398 P.3d 1199 (2017) (same).

tried to argue that it owed Caulfield no duty under the existing law. Division II determined that the nature of the relationship, and Caulfield's vulnerability and reliance upon the social worker for safety, mandated that DSHS and the County owed Caulfield a duty of care. It is no different here.

The Ninth Circuit in *Tamas v. Dep't of Soc. & Health Servs.*, 630 F.3d 833 (9th Cir. 2010) similarly held that foster children sexually abused by the friend of their foster parents stated claims against DSHS because the children had a substantive due process right to be free from harm inflicted by a foster parent.<sup>17</sup> Such a federal constitutional right is clearly established. *Id.* at 846-47. *See also, Henry A. v. Wilden*, 678 F.3d 991, 1000 (9th Cir. 2012).<sup>18</sup>

These facts document and support the existence of a special relationship here between the State and the children, who were dependent and under the State's protection. In the absence of a duty of care in tort on the State's part, who else will enforce the statutory and substantive due process right of these children to be free of unreasonable risks of harm and

---

<sup>17</sup> "Once the state assumes wardship of a child, the state owes the child, as part of that person's protected liberty interest, reasonable safety and minimally adequate care..." *Lipscomb v. Simmons*, 962 F.2d 1374, 1379 (9th Cir. 1992).

<sup>18</sup> The Court noted that this has long been the position of the Ninth Circuit. *Lipscomb by and through DeFehr v. Simmons*, 962 F.2d 1374, 1379 (9th Cir. 1992) ("Once the state assumes wardship of a child, the state owes the child; as part of that person's protected liberty interest, reasonable safety and minimally adequate care and treatment appropriate to the age and circumstances of the child.").

to be safe? They have no parents. The State must fulfill its *in parens patriae* duty to them. The Court of Appeals did not err in determining that a special relationship was present as a basis for the State's duty to the children in their placement.

(3) The Children Adduced Substantial Evidence at Trial of the State's Breach of Its Duty to Them

The State also contends that there is "no evidence" of a breach of duty. Pet. at 22-24. This is but a resurfacing of its argument on reconsideration in the Court of Appeals rejected by that Court.<sup>19</sup> It is essentially a *factual* argument that meets none of the RAP 13.4(b) criteria. In any event, it is well-recognized that breach of duty is a fact question for the jury. *Hertog, ex rel. SAH v. City of Seattle*, 138 Wn.2d 265, 275, 979 P.2d 400 (1999); *Bowers v. Marzano*, 170 Wn. App. 498, 506, 290 P.3d 134 (2012). The trial court erred in taking that issue from the jury by its CR 50 decision, as Division II correctly recognized.

Contrary to the State's contention, pet. at 22-24, there is ample evidence to support the jury's verdict on its breach of duty as to all of the children.

---

<sup>19</sup> The State's central contention in section B of its Court of Appeals motion for reconsideration was that because Wooldridge was assigned only to SAH and HBH, her failure to properly conduct required health and safety checks as to those children would not have resulted in the disclosure of sexual abuse of the other children, KMH, KEH, or JBH. Division II rejected the State's position in denying reconsideration.

First, the Court's opinion at 16-17 clearly documents the evidence supporting the jury's verdict as to SAH and HBH. Wooldridge's failure to conduct the requisite health and safety checks as to those two children proximately resulted in the failure to uncover their physical, emotional, and sexual abuse during the pre-adoption period. The State's position assumes that Wooldridge was faultless as to the health and safety checks for SAH and HBH, but that, of course, is unsupported here. Op. at 16-17. As Division II discerned, had Wooldridge properly performed her responsibilities, the Hamricks' abuse of SAH/HBH would have been discovered.

Second, it is *inconceivable* that had Wooldridge discovered SAH and HBH were being abused by the Hamricks that all the children would not have been removed from that abusive home. To keep children in a home where abuse was rampant is utterly illogical, defying the central role of Child *Protective Services*. In *Lewis, supra*, Division I found the County liable when its sheriff's department failed to investigate the plaintiff's sexual abuse of another child by that uncle and learned of the plaintiff's possible abuse. That discovery should have prompted the sheriff's department to investigate. RCW 26.44.050. The logic of the *Lewis* court is no less compelling here.

The record here also supports the logic that all of the children would have been removed from the home upon the revelation of abuse of SAH and HBH. Barbara Stone, a 33-year DSHS veteran who served as a frontline caseworker and ultimately as its director of the Division of Licensed Resources, RP (2/9/15):5-20, testified that all of the children would have been removed upon a determination that one of the kids was being abused. RP (2/9/15):65-67. Expert testimony on breach, like other conflicting evidence, must be treated in a light most favorable to the children in a CR 50 decision. *Faust v. Albertson*, 167 Wn.2d 531, 538, 222 P.3d 1208 (2009). In addition to the testimony of HB and SAH referenced *supra*, Stone's testimony, as an eminently qualified expert, established the requisite causal connection as to KMH, KEH, and JBH, as the Court of Appeals properly concluded in denying the State's motion for reconsideration on similar grounds.

The Court of Appeals correctly determined that there was evidence of the State's breach of its duty to the children.

#### D. CONCLUSION

Division II faithfully applied this Court's well-developed common law principles to confirm that the State, given its *parens patriae* relationship with the children and statutory directives, had a duty to the children to protect them from harm when it placed them with their abusers. The children, who were repeatedly abused sexually, physically, and

psychologically by their foster parents before their adoption due to the State's negligence, are entitled to their day in court. This Court should affirm Division II's conclusion that the State owed the children a duty. Costs on appeal should be awarded to the children.

DATED this 6th day of November, 2017.

Respectfully submitted,



Philip A. Talmadge, WSBA #6973  
Sidney C. Tribe, WSBA #33160  
Talmadge/Fitzpatrick/Tribe  
2775 Harbor Avenue SW  
3rd Floor, Suite C  
Seattle, WA 98126  
(206) 574-6661

Lincoln C. Beauregard, WSBA #32878  
Julie A. Kays, WSBA #30385  
Connelly Law Offices  
2301 North 30<sup>th</sup> Street  
Tacoma, WA 98403  
(253) 593-0377

Nelson C. Fraley II, WSBA #26742  
Faubion, Reeder, Fraley & Cook, P.S.  
5316 Orchard Street West  
University Place, WA 98467  
(253) 581-0660

Attorneys for Respondents  
HBH, SAH, and Trey Hamrick,  
litigation guardian ad litem on behalf of  
KEH, JBH, and KMH

# APPENDIX

RCW 13.34.020

The legislature declares that the family unit is a fundamental resource of American life which should be nurtured. Toward the continuance of this principle, the legislature declares that the family unit should remain intact unless a child's right to conditions of basic nurture, health, or safety is jeopardized. When the rights of basic nurture, physical and mental health, and safety of the child and the legal rights of the parents are in conflict, the rights and safety of the child should prevail. In making reasonable efforts under this chapter, the child's health and safety shall be the paramount concern. The right of a child to basic nurturing includes the right to a safe, stable, and permanent home and a speedy resolution of any proceeding under this chapter.

RCW 26.33.010:

The legislature finds that the purpose of adoption is to provide stable homes for children. Adoptions should be handled efficiently, but the rights of all parties must be protected. The guiding principle must be determining what is in the best interest of the child. It is the intent of the legislature that this chapter be used only as a means for placing children in adoptive homes and not as a means for parents to avoid responsibility for their children unless the department, an agency, or a prospective adoptive parent is willing to assume the responsibility for the child.

RCW 26.44.010 (prior to its 2012 amendment):

The Washington state legislature finds and declares: The bond between a child and his or her parent, custodian, or guardian is of paramount importance, and any intervention into the life of a child is also an intervention into the life of the parent, custodian, or guardian; however, instances of nonaccidental injury, neglect, death, sexual abuse and cruelty to children by their parents, custodians, or guardians have occurred, and in the instance where a child is deprived of his or her right to conditions of minimal nurture, health, and safety, the state is justified in emergency intervention based upon verified information; and therefore the Washington state legislature hereby provides for the reporting of such cases to the appropriate public authorities. It is the intent of the legislature that, as a result of such reports, protective services shall be made available in an effort

to prevent further abuses, and to safeguard the general welfare of such children.

RCW 26.44.050 (prior to its 2012 amendment):

Upon the receipt of a report concerning the possible occurrence of abuse or neglect, the law enforcement agency or the department of social and health services must investigate and provide the protective services section with a report in accordance with the provision of chapter 74.13 RCW, and where necessary to refer such report to the court.

A law enforcement officer may take, or cause to be taken, a child into custody without a court order if there is probable cause to believe that the child is abused or neglected and that the child would be injured or could not be taken into custody if it were necessary to first obtain a court order pursuant to RCW 13.34.050. The law enforcement agency or the department of social and health services investigating such a report is hereby authorized to photograph such a child for the purpose of providing documentary evidence of the physical condition of the child.

RCW 74.13.010:

The purpose of this chapter is to safeguard, protect, and contribute to the welfare of the children of the state, through a comprehensive and coordinated program of child welfare services provided by both the department and supervising agencies providing for: Social services and facilities for children who require guidance, care, control, protection, treatment, or rehabilitation; setting of standards for social services and facilities for children; cooperation with public and voluntary agencies, organizations, and citizen groups in the development and coordination of programs and activities in behalf of children; and promotion of community conditions and resources that help parents to discharge their responsibilities for the care, development, and well-being of their children.

RCW 74.13.031 (prior to its 2012 amendment) (in pertinent part):

(3) The department shall investigate complaints of any recent act or failure to act on the part of a parent or caretaker that results in death, serious

physical or emotional harm, or sexual abuse or exploitation, or that presents an imminent risk of serious harm, and on the basis of the findings of such investigation, offer child welfare services in relation to the problem to such parents, legal custodians, or persons serving in loco parentis, and/or bring the situation to the attention of an appropriate court, or another community agency. An investigation is not required for nonaccidental injuries which are clearly not the result of a lack of care or supervision by the child's parents, legal custodians, or persons serving in loco parentis. If the investigation reveals that a crime against a child may have been committed, the department shall notify the appropriate law enforcement agency.

(4) The department or supervising agencies shall offer, on a voluntary basis, family reconciliation services to families who are in conflict.

(5) The department or supervising agencies shall monitor placements of children in out-of-home care and in-home dependencies to assure the safety, well-being, and quality of care being provided is within the scope of the intent of the legislature as defined in RCW 74.13.010 and 74.15.010. Under this section children in out-of-home care and in-home dependencies and their caregivers shall receive a private and individual face-to-face visit each month. The department and the supervising agencies shall randomly select no less than ten percent of the caregivers currently providing care to receive one unannounced face-to-face visit in the caregiver's home per year. No caregiver will receive an unannounced visit through the random selection process for two consecutive years. If the caseworker makes a good faith effort to conduct an unannounced visit to a caregiver and is unable to do so, that month's visit to that caregiver need not be unannounced. The department and supervising agencies are encouraged to group monthly visits to caregivers by geographic area so that in the event an unannounced visit cannot be completed, the caseworker may complete other required monthly visits. The department shall use a method of random selection that does not cause a fiscal impact to the department.

The department and supervising agencies shall conduct the monthly visits with children and caregivers to whom it is providing child welfare services.

(6) The department and supervising agencies shall have authority to accept custody of children from parents and to accept custody of children from juvenile courts, where authorized to do so under law, to provide child welfare services including placement for adoption, to provide for the routine and necessary medical, dental, and mental health care, or necessary

emergency care of the children, and to provide for the physical care of such children and make payment of maintenance costs if needed. Except where required by Public Law 95-608 (25 U.S.C. Sec. 1915), no private adoption agency which receives children for adoption from the department shall discriminate on the basis of race, creed, or color when considering applications in their placement for adoption.

(7) The department and supervising agency shall have authority to provide temporary shelter to children who have run away from home and who are admitted to crisis residential centers.

(8) The department and supervising agency shall have authority to purchase care for children.

RCW 74.13.330:

Foster parents are responsible for the protection, care, supervision, and nurturing of the child in placement. As an integral part of the foster care team, foster parents shall, if appropriate and they desire to: Participate in the development of the service plan for the child and the child's family; assist in family visitation, including monitoring; model effective parenting behavior for the natural family; and be available to help with the child's transition back to the natural family.

RCW 74.15.010:

The purpose of chapter 74.15 RCW and RCW 74.13.031 is:

(1) To safeguard the health, safety, and well-being of children, expectant mothers and developmentally disabled persons receiving care away from their own homes, which is paramount over the right of any person to provide care;

(2) To strength and encourage family unity and to sustain parental rights and responsibilities to the end that foster care is provided only when a child's family, through the use of all available resources, is unable to provide necessary care;

....

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR PIERCE COUNTY

HAELI HAMRICK; STACI CRANEY; and  
TREY HAMRICK, litigation guardian ad litem  
on behalf of KEH, JBH, and KMH,

Plaintiffs,

v.

STATE OF WASHINGTON, TOWN OF  
EATONVILLE,

Defendants.

NO. 11-2-15110-2

**DECLARATION OF BARBARA  
STONE**

I, Barbara Stone, declare as follows:

1. Attached is a copy of my CV, outlining my professional qualifications and training. In addition, I recently completed 40 hours with the National Association for Child-Centered Forensic Interviewing. I was tested and certified and I am now on a national registry as a child forensic interviewer. I was accepted and enrolled in a master's program in Psychology starting in June 2012 and will graduate on March 14, 2014. I am the former State Director for all of foster care, group care, and child care licensing in the Children's Administration, an agency within DSHS. During my 33 year career with DSHS, I worked as a social worker and supervisor in specializing in the sexual abuse of children.

DECLARATION OF BARBARA STONE - 1 of 10  
(Cause No. 11-2-15110-2)

**CONNELLY LAW OFFICES, PLLC**  
2301 North 30th Street  
Tacoma, WA 98403  
(253) 593-5100 Phone - (253) 593-0380 Fax

1           2.     I was continuously employed by the Washington Department of Social and  
2 Health Services ("DSHS") from 1968 until mid-1990's in various capacities, as reflected in  
3 my CV. I began as a caseworker in 1968 and continued to work on cases in some capacity  
4 until I retired the end of 2000. In the time period relevant to this matter, the late-1980's, I was  
5 a supervisor of a specialized child sexual abuse investigative unit in the Division of Children  
6 and Family Services of DSHS. I supervised thirteen social workers who specialized in sexual  
7 abuse investigations for ten years. During this same time period I was the regional  
8 representative for the Sexually Aggressive Youth Program. It was my responsibility to do  
9 outreach with social workers and make sure youth were appropriately identified and received  
10 treatment.  
11

12           3.     Beginning in December 1992, I became the Children's Administration state-  
13 wide program manager for child sexual assault. I was responsible for development of new  
14 legislation, new programs to serve youth, acted as a consultant to regions on sexual assault  
15 cases, administered Children's Justice Grant funds, and served as the state administrator for  
16 the Sexually Aggressive Youth program. It was also at this time that I developed and  
17 facilitated the Children's Justice Conference on child sexual abuse. I continued this position  
18 until November of 1995 when I became the assistant to the head of Washington State  
19 Children's Administration. I continued in that position until July 1, 1998 when I became  
20 Director of the Division of Licensed Resources which was responsible for all foster care,  
21 group care and child care licensing and child protection investigations in all licensed or  
22 certified facilities within the State. I have testified as an expert on DSHS issues for both  
23 DSHS and plaintiffs on multiple occasions in King, Kitsap, Snohomish, Thurston, Yakima,  
24  
25  
26

DECLARATION OF BARBARA STONE - 2 of 10  
(Cause No. 11-2-15110-2)

**CONNELLY LAW OFFICES, PLLC**  
2301 North 30<sup>th</sup> Street  
Tacoma, WA 98403  
(253) 593-5100 Phone - (253) 593-0380 Fax

1 and Spokane counties.

2 4. I have been retained to provide opinions regarding the care provided by DSHS  
3 and CPS to the Hamrick children in this case. In formulating these opinions, I have reviewed  
4 assorted materials including the depositions of the assigned social workers, the declarations of  
5 the Hamrick girls, select police reports, assorted DSHS documents, and the adoption records  
6 pertaining to the Hamrick home including the CPS referral history. Based upon this  
7 information, I am able to offer the opinions contained within this declaration.  
8

9 5. There were assorted breakdowns of the oversight and care that were provided  
10 to the Hamrick children. Notably, after Staci and Haeli were placed in the Hamrick home in  
11 October of 1999, the assigned social worker, Mary Woolridge, failed to follow DSHS's own  
12 policy with regard to health and safety visits. Under DSHS policy 4421, Ms. Woodridge was  
13 required to conduct visits away from the presence of the Hamrick foster parents of both Staci  
14 and Haeli at least every ninety (90) days until the time that they were legally adopted in  
15 October of 2000. If the policy were followed, these visits were supposed to be documented in  
16 the Service Episode Records.  
17

18 6. I have been provided the available records from that timeframe, and there does  
19 not appear to have been any documentation of any health and safety visits. As I reviewed the  
20 files, I noted that the last recorded home visit was July 3, 1997. However, no interview was  
21 recorded with either girl. Based upon the absence of documentation, and the assertions of  
22 Staci and Haeli, it is my impression and understanding that these health and safety visits did  
23 not occur. These health and safety visits were vital, and particularly so early during a  
24 placement such as the Staci and Haeli into the Hamrick home. As has been asserted by Staci  
25  
26

DECLARATION OF BARBARA STONE - 3 of 10  
(Cause No. 11-2-15110-2)

**CONNELLY LAW OFFICES, PLLC**

2301 North 30<sup>th</sup> Street

Tacoma, WA 98403

(253) 593-5100 Phone - (253) 593-0380 Fax

1 and Haeli, both girls began suffering abuse immediately upon being placed in the Hamrick  
2 home. And both girls describe a willingness and desire to report the abuse if provided the  
3 opportunity.

4 7. It is not just my opinion, but a matter of fact according to Staci and Haeli, that  
5 the abuse in the Hamrick home would have been discovered if proper health and safety visits  
6 had been conducted according to policy. If the abuse of Staci and Haeli had been discovered,  
7 the other Hamrick girls, Jessica, Kaeli, and Kayci, would have been removed from the home  
8 and never would have been adopted and subsequently abused.

9 8. As a general matter, health and safety visits are important to provide for the  
10 safety of foster children as those same children rarely have anyplace else to turn. By virtue of  
11 the fact that a child has been placed in foster care means that there are no responsible adults  
12 willing to care for the child. Early on during a new foster care placement, and prior to  
13 forming attachments and fears in relation to the foster placements, young foster children are  
14 often much more willing and able to disclose newly experienced abuse. My experience  
15 indicates that a foster child is far more willing to report abuse that was perpetrated by  
16 someone prior to forming parental-like attachments as compared to those same foster parents  
17 after an extended period of residence. Unfortunately, in this case, Staci and Haeli were not  
18 provided this opportunity because the health and safety visits do not appear to have been  
19 conducted.

20 9. I do understand that on one single day, May 16, 2000, the adoption social  
21 worker, Shannon Nelson, indicated having spoken with Staci and Haeli on the lawn outside of  
22 the home pertaining to being adopted. At that point, Staci and Haeli had been in the Hamrick  
23  
24  
25  
26

DECLARATION OF BARBARA STONE - 4 of 10  
(Cause No. 11-2-15110-2)

**CONNELLY LAW OFFICES, PLLC**

2301 North 30<sup>th</sup> Street

Tacoma, WA 98403

(253) 593-5100 Phone - (253) 593-0380 Fax

1 home for approximately seven (7) months and repeatedly subjected to Drew Anne's assorted  
2 forms of harsh punishment and treatment. By that point, the assigned social worker, should  
3 have already conducted multiple visits at the home and at least two visits away from the  
4 home, but evidently did not do so.

5  
6 10. Ms. Nelson reports that the children did not disclose any abuse and indicated a  
7 desire to be adopted. In this regard, it is important to note that an adoption interview on the  
8 yard that occurs seven (7) months after a child has been placed within a home is very different  
9 from a health and safety visit that is supposed to occur every ninety (90) days with a familiar  
10 social worker. An interview by an adoption social worker is not the same as a health and  
11 safety review. A properly conducted health and safety visit requires very specific inquiries  
12 about whether or not a child feels safe. And the reinforcement effect of repeating these  
13 inquiries with regularity encourages a child to build familiarity and trust with a familiar social  
14 worker thereby facilitating disclosures of any concerns. By contrast, an interview by an  
15 adoption social worker typically involves an inquiry of a child whether or not they want to  
16 have a permanent family in this case at an age, 10 years old, which Staci and Haeli likely had  
17 no understanding as to any alternative. Moreover, an adoptive foster parent would likely be  
18 able to predict an interview by an adoptive case worker such as Shannon Nelson and stop the  
19 abuse during that timeframe, or threaten the children about making a disclosure.

20  
21  
22 11. In addition to failing to conduct proper health and safety visits, CPS failed to  
23 properly investigate a succession of abuse and neglect referrals concerning the Hamrick  
24 home. Specifically, on April 8, 2008, CPS received a written referral (Intake ID 1901319)  
25 from a concerned high school counselor, Mary Ann Baker, indicating that Staci had suffered  
26

1 serious injuries in the Hamrick home during a physical conflict with Drew Anne Hamrick.  
2 Staci was the originator of the report to Ms. Baker. Despite the fact that the written report  
3 indicated that Staci has suffered serious injuries including a "golf ball" sized bruise, and that  
4 there were other children within the home, the CPS referral was designated "screen out" and  
5 no investigation was ever conducted.

6  
7 12. The CPS referral never should have been screened out and should instead have  
8 been investigated. According to the written report, Staci had suffered visible injuries and  
9 there were other children within the home. The report was originated by the victim, Staci, and  
10 provided cause enough for concern that a high school counselor documented and conveyed  
11 the report to CPS. Staci has indicated that the report was somewhat of a cry for help, and that  
12 had she been interviewed in a safe setting, that she would have described the terrible abuse  
13 ongoing with in the Hamrick home. As with most children, Staci wanted to protect not just  
14 herself, but her siblings too. It should be noted that children are typically far more willing to  
15 make a disclosure to protect siblings versus themselves. Because CPS never investigated, this  
16 disclosure never occurred.

17  
18 13. CPS also failed to properly investigate and/or handle another referral (Intake  
19 ID 2139766) dated November 2, 2009. That particular referral indicated that Scott Hamrick  
20 had "sexually assaulted" an underage neighbor girl and that there were multiple adopted  
21 children within the Hamrick home. Records reflect that CPS referred the investigation to law  
22 enforcement, the Eatonville Police Department and/or the Pierce County Sheriff's  
23 Department, but there is no indication that CPS ever followed up about the report. Based  
24 upon the fact that DSHS had previously licensed the Hamrick home for foster children and  
25  
26

1 placed children in the home for adoption, CPS should have taken steps to ensure that there  
2 was a final disposition of the investigation. This should have been followed up at the time of  
3 any new referral and certainly during the investigation of 2010.

4 14. I have seen no files and/or documentation indicating that the loop was ever  
5 closed. DSHS/CPS would need this information on file in the event that there were future  
6 referrals and/or additional attempts on the part of the Hamricks to have their home licensed as  
7 a child care facility. And CPS would have been involved in removing the Hamrick children  
8 from the home in event it was discovered by law enforcement that Scott Hamrick was a child  
9 molester. This collaboration process between law enforcement and CPS did take place, but  
10 not until the children were removed in June of 2011.

11 15. CPS also negligently investigated another referral (Intake ID 2208649) dated  
12 March 16, 2010. That referral alleged that Kacyi Hamrick was being subjected to serious  
13 abuse and neglect that included being locked in her room for days on end and being denied  
14 food as punishment. Rather than conducting a surprise visit to the home to investigate  
15 whether or not Kayci was being locked within her bedroom, on March 17, 2010, the CPS  
16 investigator called ahead and let Drew Anne Hamrick know that the home was under  
17 investigation.

18 16. Prior to the CPS investigator's appearance the following day, Drew Anne had  
19 coordinated the removal of the bedroom locks and remediation of the signs of abuse within  
20 the home. When the CPS investigator arrived on the following day, March 18, 2010, all of  
21 the children had been coached to say that there were no problems within the home.  
22 According to all of the Hamrick girls, they were interviewed by the CPS investigator(s) in  
23  
24  
25  
26

DECLARATION OF BARBARA STONE - 7 of 10  
(Cause No. 11-2-15110-2)

**CONNELLY LAW OFFICES, PLLC**  
2301 North 30<sup>th</sup> Street  
Tacoma, WA 98403  
(253) 593-5100 Phone - (253) 593-0380 Fax

1 direct proximity to Scott and Drew Anne Hamrick during the CPS investigator's visit. And  
2 the CPS investigator described the Hamrick family as having been awkwardly "negative"  
3 about Kayci during the interviews.

4 17. Under the circumstances, the CPS investigator should have conducted an  
5 unannounced visit to the Hamrick home rather than alerting Drew Anne ahead of time thereby  
6 allowing the abusive environment to be remediated. Moreover, the CPS investigator should  
7 have interviewed the Hamrick children away from the home and in an environment that was  
8 safe. At the time, it is my understanding that Staci and Haeli were both living outside of the  
9 home and could have been contacted and interviewed in a safe and secure setting. Staci has  
10 also indicated having provided multiple disclosures, including to her high school counselor  
11 and an Eatonville Police officer, about the abuse in the home. Jessica had previously  
12 disclosed directly to an Eatonville Police officer. According to Staci and Haeli, if provided  
13 the right opportunity, they would have disclosed the ongoing abuse within the Hamrick home.  
14 If the allegations regarding Kayci were properly investigated, the ongoing abuse could have  
15 been discovered and curtailed.

16 18. The CPS investigator negligently categorized the March 16, 2010 referral as  
17 "unfounded" for acts of abuse or neglect. This categorization and conclusion was  
18 unwarranted because even the undisputed information indicated that Kayci was being abused  
19 in the form of being locked in her bedroom and food being used as a carrot and stick.  
20 Moreover, Scott and Drew Anne Hamrick had indicated that Kayci's physician, Dr. Jootsen,  
21 had recommended locking Kayci in her room and the misuse of food. When the CPS  
22 investigator contacted Dr. Jootsen, he denied ever making such a recommendation and  
23  
24  
25  
26

DECLARATION OF BARBARA STONE - 8 of 10  
(Cause No. 11-2-15110-2)

**CONNELLY LAW OFFICES, PLLC**  
2301 North 30<sup>th</sup> Street  
Tacoma, WA 98403  
(253) 593-5100 Phone - (253) 593-0380 Fax

1 encouraged further CPS enquiry. Dr. Jootsen also had not seen Kayci as a patient for a  
2 number of years indicating that Kayci has been being locked in her room for years.

3 19. The CPS investigator also learned that Kayci was acting out in assorted  
4 extremely unhealthy ways that included allegedly killing animals and talking sexually about  
5 "jumping orgasms." That same CPS investigator claimed to have properly checked the CPS  
6 referral history and learned that the earlier referral pertaining to Scott Hamrick's "sexual  
7 assault" of an underage neighbor had never been fully investigated. Instead of taking steps to  
8 learn what had ever happened in relation to the allegations against Scott Hamrick, the CPS  
9 investigator ignored the lack of a final disposition and was unable to identify any further  
10 efforts in that respect when deposed. The entire Hamrick home history should have been  
11 taken into consideration including the prior referral from 2008 related to Staci being beaten,  
12 and the 2009 referral related to Scott Hamrick molesting a neighbor.

13  
14  
15 20. Given the seriousness of the abuse allegations pertaining to Kayci and the open  
16 history of sexual assault claims against Scott Hamrick, a forensic interview should have been  
17 conducted. Kayci was a young child at the time and had been recognized as speaking out  
18 sexually about orgasms. The conduct which had been admitted by Scott and Drew Anne  
19 Hamrick constituted abuse and there were clear indications that Kayci was in danger, and also  
20 possibly being sexually abused. The March 16, 2010 referral should not have been rendered  
21 "unfounded" unless and until the sexual assault allegations against Scott Hamrick from four  
22 (4) months earlier on November 2, 2009 had been fully investigated. And it is my  
23 understanding that Scott Hamrick's other sexual assault victim, Alexis Latimer, freely  
24 disclosed being molested when a proper forensic examination was finally conducted in June  
25  
26

DECLARATION OF BARBARA STONE - 9 of 10  
(Cause No. 11-2-15110-2)

CONNELLY LAW OFFICES, PLLC  
2301 North 30<sup>th</sup> Street  
Tacoma, WA 98403  
(253) 593-5100 Phone - (253) 593-0380 Fax

1 of 2011. An interview of Staci Hamrick about the 2008 referral also should have occurred.

2 21. DSHS and CPS dropped the ball on multiple occasions at which the abuse and  
3 neglect within the Hamrick home could have been detected and curtailed. If the health and  
4 safety visit policy had been followed, DSHS could have discovered that Staci and Haeli were  
5 being abused as of late 1999 when they were first placed within the Hamrick home. The  
6 succession of CPS referrals from 2008, 2009 and 2010 provided multiple opportunities to  
7 conduct proper forensic interviews of the Hamrick children and discover the abuse that was  
8 occurring. According to each of the Hamrick girls, if they had been provided a safe  
9 environment to do so, each would have disclosed the abuse. If anyone of these girls had  
10 actually disclosed the abuse at any given time, the Hamrick girls would have been removed  
11 from the home and subsequent abuse would have been avoided.  
12  
13

14  
15 I declare under penalty of perjury under the laws of the State of Washington that  
16 the foregoing is true and correct.  
17

18 Signed this 15<sup>th</sup> day of February, 2014 at Kirkland, Washington.  
19

20  
21 By: Barbara Stone  
22 BARBARA STONE  
23

24  
25  
26  
DECLARATION OF BARBARA STONE - 10 of 10  
(Cause No. 11-2-15110-2)

CONNELLY LAW OFFICES, PLLC  
2301 North 30<sup>th</sup> Street  
Tacoma, WA 98403  
(253) 593-5100 Phone - (253) 593-0380 Fax

DECLARATION OF SERVICE

On said day below, I electronically served a true and accurate copy of the *Respondents' Supplemental Brief* in Supreme Court Cause No. 94529-2 to the following parties:

Lincoln C. Beauregard  
Julie A. Kays  
Connelly Law Offices  
2301 North 30<sup>th</sup> Street  
Tacoma, WA 98403

Nelson C. Fraley II  
Faubion, Reeder, Fraley & Cook, P.S.  
5316 Orchard Street West  
University Place, WA 98467

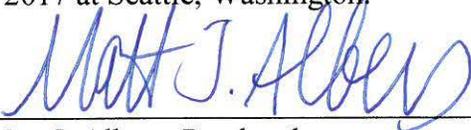
Peter J. Helmberger  
Assistant Attorney General  
Office of the Attorney General  
P.O. Box 2317  
Tacoma, WA 98402

Gregory G. Silvey  
Assistant Attorney General  
Office of the Attorney General  
P.O. Box 40126  
Tumwater, WA 98501

Original e-filed with:  
Washington Supreme Court  
Clerk's Office

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

DATED: November 6, 2017 at Seattle, Washington.

  
\_\_\_\_\_  
Matt J. Albers, Paralegal  
Talmadge/Fitzpatrick/Tribe

**TALMADGE/FITZPATRICK/TRIBE**

**November 06, 2017 - 12:21 PM**

**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 94529-2  
**Appellate Court Case Title:** HBH; SAH; and Trey Hamrick v. State of Washington, et al.  
**Superior Court Case Number:** 11-2-15110-2

**The following documents have been uploaded:**

- 945292\_Briefs\_20171106121339SC747684\_6654.pdf  
This File Contains:  
Briefs - Respondents Supplemental  
*The Original File Name was Respondents Supplemental Brief.pdf*
- 945292\_Motion\_20171106121339SC747684\_9118.pdf  
This File Contains:  
Motion 1 - Overlength Brief  
*The Original File Name was Motion for Leave to File Overlength Supplemental Brief.pdf*

**A copy of the uploaded files will be sent to:**

- TorTacEF@atg.wa.gov
- atgmitortacef@atg.wa.gov
- bmarvin@connelly-law.com
- gregorys1@atg.wa.gov
- jkays@connelly-law.com
- lincolnb@connelly-law.com
- matt@tal-fitzlaw.com
- mfolsom@connelly-law.com
- nfraley@alliance1g.com
- peterh@atg.wa.gov
- sidney@tal-fitzlaw.com

**Comments:**

Motion for Leave to File Over-Length Supplemental Brief; Respondents' Supplemental Brief

---

Sender Name: Matt Albers - Email: matt@tal-fitzlaw.com

**Filing on Behalf of:** Philip Albert Talmadge - Email: phil@tal-fitzlaw.com (Alternate Email: matt@tal-fitzlaw.com)

Address:  
2775 Harbor Avenue SW  
Third Floor Ste C  
Seattle, WA, 98126  
Phone: (206) 574-6661

**Note: The Filing Id is 20171106121339SC747684**