NO. 102899-7

SUPREME COURT OF THE STATE OF WASHINGTON

M.R., an individual,

Petitioner,

v.

STATE OF WASHINGTON, YAKIMA VALLEY COMMUNITY COLLEGE, a public corporation; CODY BUTLER, and individual, at al.,

Respondents.

RESPONDENTS' ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

The Court of Appeals correctly determined that the special childhood sexual abuse statute of limitations in RCW 4.16.340 applies only to allegations of sexual abuse that occur in childhood, and not to allegations of sexual abuse that occur in adulthood. *M.R. v. State*, 29 Wn. App. 2d 1002, 2023 WL 8598272, at *1, 7 (Dec. 12, 2023) (unpublished). In reaching that conclusion, the court adhered to the plain meaning of the statute and the Legislature's stated intent: to provide an expanded opportunity for victims of childhood sexual abuse to bring suit for their injuries because a minor's age impedes understanding their childhood trauma.

To evade the Legislature's focus on childhood sexual abuse and undermine the Court of Appeals' decision, M.R. distorts both. M.R.'s proffered interpretation of RCW 4.16.340 requires incorporating sexual abuse as an adult—a separate cognizable action with specific element requirements—into the meaning of the statutory phrase "injury

suffered as a result of childhood sexual abuse." RCW 4.16.340(1). This would create an absurd result in which subsequent adult sexual abuse – regardless of perpetrator or passage of time – would fall under the childhood sexual abuse statute of limitations if the victim has experienced childhood sexual abuse. The Court of Appeals properly rejected that interpretation, and M.R. has not shown that its Opinion meets any criteria under RAP 13.4(b). This Court should deny M.R.'s petition for review.

II. COUNTERSTATEMENT OF THE ISSUES

1. Did the Court of Appeals correctly interpret the plain language of RCW 4.16.340(1) to apply the special statute of limitations for childhood sexual abuse to only acts of abuse that occur when a person is a minor?

2. Did the Court of Appeals engage in fact finding when it analyzed and rejected M.R.'s legal argument that would incorporate all acts of sexual abuse, regardless of the victim's

age, into the meaning of "injury suffered as a result of childhood sexual abuse"?

III. COUNTERSTATEMENT OF THE CASE

A. M.R. Testified to a Single Incident of Alleged Childhood Sexual Abuse

M.R. first met Cody Butler, the girls' basketball coach at Yakima Valley Community College (YVCC) when she was 17 at a gym in Reno, Nevada. CP 191. She traveled to Reno to participate in a basketball tournament at a gym owned by Matt Williams. CP 191. During the tournament, M.R. alleges that Williams and Butler gawked at her and commented on her body. CP 191-92. At one point, Butler placed his hand on her stomach and slid his hand down to the top of her shorts to the fringe of her pubic area. CP 192. This is the extent of M.R.'s interactions with and allegations of physical contact against Butler as a minor.

The next year, M.R. accepted Butler's invitation for a recruitment visit to YVCC. CP 124-25. During that visit, Butler did nothing that made M.R. feel uncomfortable. CP 126. M.R. had turned 18 by this visit. CP 125.

M.R. later accepted a scholarship offer and committed to playing basketball at YVCC on Butler's team. CP 127, 128. M.R. alleges that, as soon as she arrived as a student at YVCC, Butler engaged in a pattern of unwanted and abusive, harassing behavior toward her. CP 57-58, 127, 129.

During her time at YVCC, M.R. began skipping practice because she "didn't want to be around [Butler]." CP 127. M.R. did not complain about Butler's alleged behavior to him, any other YVCC officials, her friends, or her teammates. CP 130.

M.R. alleges that eventually her teammates complained about the inappropriateness of her relationship with Butler to YVCC's then-athletic director, who called a team meeting to address the issue. CP 60-61. M.R. claims that during this team meeting, Butler announced that he was not sleeping with her and that she felt "mortified" when he made the announcement. CP 62. She testified that the whole team "hated" her because of her relationship with Butler. CP 248.

In 2003, M.R. accepted a basketball scholarship to attend the University of Montana Western. CP 132. M.R. last saw Butler when she traveled to meet him in Reno in 2004. CP 134. She alleges that they drank together and had intercourse at least twice. CP 134.

B. The Trial Court Applied the Childhood Sexual Abuse Statute of Limitations to M.R.'s Claims of Abuse as an Adult

Roughly 19 years after those events, M.R. sued the State, YVCC, and Butler (State Defendants), alleging adult sexual harassment and abuse while she was a YVCC student. CP 1-13. A conversation with a former teammate, in which M.R. learned that Williams was being investigated for sexual misconduct, precipitated M.R.'s suit. CP 1, 6, 292. During motions practice on the pleadings, M.R. submitted a declaration adding her allegation of childhood sexual abuse when she was a 17-year-old at the tournament in Reno. CP 203-05.

State Defendants filed a motion for summary judgment under the statute of limitations. CP 36. They argued that the

childhood sexual abuse statute of limitations did not apply to M.R.'s claims from adulthood, leaving her with her one remaining allegation of abuse when she was 17. CP 36-43. Further, State Defendants argued that M.R. could not prove causation of her injuries from that single remaining claim. CP 36, 43-44.

The trial court denied summary judgment after applying the childhood sexual abuse statute of limitations to all of M.R.'s allegations of abuse. CP 352-53. However, the trial court certified that the order involved a controlling question of law as to which there is a substantial ground for difference of opinion. CP 369. The Court of Appeals accepted review. *M.R.,* 2023 WL 8598272 at *8.

C. The Court of Appeals Reversed Because the Childhood Sexual Abuse Statute of Limitations Applies Only to Claims of Abuse as a Child

In an unpublished opinion, the Court of Appeals reversed the trial court's summary judgment decision and remanded to the trial court for further proceedings. *M.R.,* 2023 WL 8598272 at *8. In analyzing the plain language of RCW 4.16.340 and legislative intent, the Court of Appeals determined that "nothing in this

language suggests that the statute also applies to any acts that occurred after the plaintiff reaches the age of 18." *Id.* at *6.

The court reasoned that the statute of limitations allows:

> [A] plaintiff to seek relief for all *injuries* that are the result of an act of childhood sexual abuse, regardless of when those injuries occurred. But this does not extend the statute of limitations on *claims* arising from later acts of sexual abuse that occurred when the plaintiff was an adult.

Id. (emphases in original). Then, the court compared that reasoning to M.R.'s argument – that sexual abuse as an adult falls under the childhood sexual abuse statute of limitations as "an 'injury' caused by the childhood sexual abuse because the 2000 incident [when M.R. was 17] facilitated the later abuse." *Id.* (quoting Br. of Resp't at 2). The court rejected that argument because, although "grooming may facilitate later abusive acts, the grooming does not *cause* the subsequent abusive act. The later act is an independent intentional act. Accordingly, this argument is not persuasive." *Id.* (emphasis in original).

M.R. filed a motion for reconsideration on the same issues that she presents to this Court for review. App. 1-32. The Court of Appeals denied that motion. Pet. App. C. M.R. now seeks review from this Court.

IV. ARGUMENT WHY REVIEW SHOULD BE DENIED

This Court may grant review of a Court of Appeals' decision terminating review under four circumstances. RAP 13.4(b)(1)-(4). M.R. claims that the Court of Appeals' decision here meets all four standards because it allegedly conflicts with Supreme Court and Court of Appeals precedent, presents a significant question of law under the Washington Constitution (presumably under article I, section 21, although she does not cite it directly),[1] and involves an issue of substantial public interest. Pet. at 13, 20, 25, 29. None of her arguments

[1] In referencing a litigant's "state constitutional right to have a jury determine factual issues," M.R. cites *Haley v. Amazon.com Servs., LLC*, 25 Wn. App. 2d 207, 218, 522 P.3d 80 (2022), which cites article I, section 21 of the Washington Constitution. Pet. at 25.

provide a basis for review, and this Court should deny her petition.

A. The Court of Appeals Properly Interpreted and Applied RCW 4.16.340

The Court of Appeals properly held that the childhood sexual abuse statute of limitations does not apply to allegations of adult sexual abuse. This decision was based on the plain language of the statute and the Legislature's stated intent.

The underlying order at issue – the trial court's denial of summary judgment – is reviewed de novo, with the appellate court engaging in the same inquiry as the trial court. *Christensen v. Grant County Hosp. Dist. No. 1*, 152 Wn.2d 299, 305, 96 P.3d 957 (2004) (en banc). Furthermore, the legal issue here is a question of statutory interpretation, which is also reviewed de novo on appeal. *Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002).

In applying the plain language of the statute, the Opinion correctly interpreted the law, does not present any significant constitutional question, and is not in conflict with any

Washington Supreme Court precedent. RAP 13.4(b)(1)-(3); Pet. at 13, 20. Furthermore, the court's adherence to the legislative intent does not present any significant public interest issue that would call for review. RAP 13.4(b)(4); Pet. at 29.

1. The plain language and legislative intent support the Court of Appeals' decision

The goal of statutory interpretation is to "ascertain and carry out the Legislature's intent." *Campbell*, 146 Wn.2d at 9. If statutory meaning is clear on its face, the appellate court is to give effect to that plain language "as an expression of legislative intent." *Id.* at 9-10. Words are to be given their plain and obvious meaning, but the court may also examine the statute as a whole, giving effect to all the language used and related enactments to determine plain meaning. *Id*. at 11-12. "Under rules of statutory construction 'no part of a statute should be deemed inoperative or superfluous unless it is the result of obvious mistake or error.'" *In re Det. of Strand*, 167 Wn.2d 180, 189, 217 P.3d 1159, 1163 (2009) (quoting *Klein v. Pyrodyne Corp.*, 117 Wn.2d 1, 13, 810 P.2d 917, 817 P.2d 1359 (1991)). Only if a statute is susceptible

to two or more reasonable interpretations should a court extend its inquiry to other statutory construction principles or legislative history. *Campbell*, 146 Wn.2d at 12.

Plain language construction resolves this case. The plain language of RCW 4.16.340 provides that it only applies to claims based on sexual abuse that occurs when a plaintiff is a minor, and does not extend to claims based on subsequent adult sexual abuse. The statute first provides as follows: "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…." RCW 4.16.340(1). "[C]hildhood sexual abuse' means any *act* committed by the defendant against a complainant who was *less than eighteen years of age at the time of the act*…." RCW 4.16.340(5) (emphases added). By the statute's own words, this special limitations period applies to (a) any "claim" (b) based on intentional conduct (c) to recover for

"injury" resulting from (d) an *act* of sexual abuse that occurs when a person is under 18 years old.

The words "claim" and "injury" as used in the statute must have different meanings, otherwise one would be rendered superfluous. *See In re Det. of Strand*, 167 Wn.2d at 189. Plaintiff's proposed construction renders the latter word a nullity. *See* Pet. at 16-17. The Court of Appeals' construction avoids this result.

In addition, the court's statutory interpretation is supported by every portion of the statute that establishes the age of majority as a dividing line for its application. For instance, a parent's knowledge cannot be imputed to a person under 18. RCW 4.16.340(3). And the term "child" is explicitly defined as a person under 18. RCW 4.16.340(4).

The only section that potentially bridges childhood and adulthood is subsection (2), which addresses how to calculate the discovery rule in a continuing series of abuse that is "part of a common scheme or plan of sexual abuse or exploitation."

RCW 4.16.340(2).[2] Factually, this provision would not apply to this case because M.R. did not experience a continuous series of abuse as a minor that continued into adulthood. Rather, M.R. alleged a single touching incident as a minor separated by about a year before she began attending YVCC as an adult. CP 127, 191. And legally, as the Court of Appeals noted, subsection (2) of the statute of limitations does not save M.R.'s adult claims because it does not alter the definition of childhood sexual abuse to encompass acts of abuse in adulthood. *M.R.,* 2023 WL 8598272 at *7 ("[Subsection (2)] does not state that every act that occurs during the course of the common scheme or plan of sexual abuse that occurs after the plaintiff turns 18 qualifies as an act of childhood sexual abuse."). If the Legislature wished, it could have incorporated the "common scheme or plan" language into

[2] RCW 4.16.340(2) provides: "The victim need not establish which act in a series of continuing sexual abuse or exploitation incidents caused the injury complained of, but may compute the date of discovery from the date of discovery of the last act by the same perpetrator which is part of a common scheme or plan of sexual abuse or exploitation."

the definition of childhood sexual abuse in subsection (5). RCW 4.16.340(2), (5). It did not do so, and appellate courts presume that the omission was intentional. *State v. M.S.*, 197 Wn.2d 453, 470, 484 P.3d 1231 (2021). Instead, the statute as a whole is clear and unambiguous that the Legislature drew a line between acts of abuse that occur as a child and acts of abuse that occur as an adult.

The Court of Appeals agreed, and that holding is also consistent with the Legislature's policy choice as reflected in its intent section. In 1991, the Legislature found that "[c]hildhood sexual abuse is a pervasive problem," and that plaintiffs as minors "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." Laws of 1991, ch. 212 § 1. The expanded statute of limitations was intended to account for the particular problem of children repressing injuries or being unable to connect the abuse to their damage until after the typical statute of limitations had run. *Id.* Nothing in this stated intent

section contemplates applying the statute to abuse occurring as an adult.

The Court of Appeals' holding is consistent with this Court's precedent as well. The Legislature's "primary concern" in enacting 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 Cath. Bishop of Yakima*, 138 Wn.2d 699, 712, 985 P.2d 262 (1999). But a "broad avenue" does not mean an *unlimited* construction of the statute, one that would apply it to claims beyond its target of childhood sexual abuse.

The Court of Appeals properly held that RCW 4.16.340 applies only to that intended target: claims for sexual abuse that occur when a person is a child. *M.R.,* 2023 WL 8598272 at *7. That decision is not in conflict with any published Court of Appeals decision, this Court's precedent, or our Constitution. The Opinion's adherence to legislative intent is not in conflict

with public interest. M.R. cannot show that review is appropriate under any prong of RAP 13.4(b).

2. The Court of Appeals Opinion does not require claim-splitting

The Court of Appeals' Opinion does not institute claim-splitting, as M.R. argues. *See* Pet. at 20. Claim splitting is the practice of filing multiple suits for "personal injury damage resulting from a single tort alleged against the wrongdoer." *Landry v. Luscher*, 95 Wn. App. 779, 782, 976 P.2d 1274 (1999) (citation omitted). Nothing in the Opinion requires a plaintiff like M.R. to split a tort claim for an alleged act that constitutes sexual abuse – whether as a child or as an adult – into multiple suits. Rather, each individual act that constitutes an unwanted touching is separately subject to evaluation under the statute of limitations, as is every personal injury claim. RCW 4.16.080(2).

The Legislature reflected this common sense approach in its application of RCW 4.16.340 to only certain types of acts perpetrated on a minor victim—those that meet the definition of a crime under Washington's sex offenses statutes.

RCW 4.16.340(5) (citing RCW 9A.44 and RCW 9.68A.040). Some of those sex offenses involve sexual touching of children that, if made as to an adult, would not qualify as a sex offense under RCW 9A.44 or RCW 9.68A.040, but would, instead, qualify as an assault with sexual motivation. *See, e.g.*, RCW 9A.36.021 (assault in the second degree); RCW 9.94A.835 (special allegation – sexual motivation). Thus, the Legislature envisioned a scheme in which an expanded statute of limitations applies to some types of sexual touching but not others, depending solely on the age of the plaintiff when the acts occurred. The Court of Appeals' adherence to the Legislature's intent is not claim-splitting.

3. The Opinion is not in conflict with this Court's precedent on claim-splitting

To argue that the Opinion conflicts with this Court's precedent, M.R. relies on inapposite cases that interpreted unique causes of action not at issue here. *See* Pet. at 20-21 (citing *Antonius v. King County*, 153 Wn.2d 256, 103 P.3d 729 (2004)

and *Caughell v. Group Health Co-op. of Puget Sound*, 124 Wn.2d 217, 876 P.2d 898 (1994)). These cases do not form a basis for review. RAP 13.4(b)(1).

It is true that, for the purpose of applying the statute of limitations, a hostile work environment claim is examined as a "series of acts that collectively constitute one unlawful employment practice." *Antonius*, 153 Wn.2d at 265-66. A "'single act of harassment may not be actionable on its own,'" because the hostile work environment claim is "'based on the *cumulative effect of individual acts*.'" *Id.* at 270 (quoting *Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 115 (2002)) (emphasis added). Such a cumulative cause of action is in direct contrast to a claim based upon "discrete acts." *Id*. Likewise, a medical malpractice claim for continuing negligent treatment is not a cause of action consisting of a single act. Rather, it is based upon multiple actions constituting "an entire course of treatment." *Caughell*, 124 Wn.2d at 226 (internal quotations omitted).

But unlike a plaintiff bringing a hostile work environment or malpractice claim for continuing negligent treatment, a plaintiff like M.R. claiming sexual abuse *is* making a claim based upon "discrete acts." *Cf. Antonius*, 153 Wn.2d at 270. Such a plaintiff need not prove a series of cumulative effects or instances of misconduct to articulate a claim of sexual abuse. Even one discrete act of sexual abuse could be recoverable. *See Restatement (Second) of Torts* § 18 (battery), § 21 (assault); RCW 4.16.340(5) (defining childhood sexual abuse as an act that violates Washington's criminal code for sex offenses). And the Legislature's repeated emphasis on "*an* act" in the childhood sexual abuse statute of limitations supports this basic feature of claims for sexual abuse. *E.g.,* RCW 4.16.340(5) (emphasis added). Thus, M.R.'s attempt to graft her theory of legal causation onto her argument that sexual abuse claims are like hostile work environment or medical malpractice is contrary to the legal definitions that give rise to her claims in the first place. *See* Pet. at 24 (arguing the Opinion deprives plaintiffs a remedy

for "the most severe form of 'injury suffered as a result of childhood sexual abuse"—continuing and escalating sexual abuse—even when it is *proximately caused by* … childhood sexual abuse" (emphasis added)). Sexual abuse is not like a hostile work environment or continuing negligent medical treatment because each *discrete act* of abuse is a new claim and not a continuous series of events falling under a single claim.

In sum, the Court of Appeals' holding that the childhood sexual abuse statute of limitations applies only to claims based on abuse that occurs in childhood adheres to Court of Appeals' and Supreme Court precedent. *See* RAP 13.4(b)(1), (2).

B. The Court of Appeals Properly Rejected M.R.'s Attempt to Incorporate Adult Sexual Abuse into the Meaning of "Injury" Resulting from Childhood Sexual Abuse

Each of M.R.'s arguments for review depend on her faulty reading of a phrase in RCW 4.16.340(1): "All claims or causes of action based on intentional conduct … for recovery of *damages for injury suffered as a result of childhood sexual*

abuse…" (emphasis added). M.R. posits that adult sexual abuse is an "injury" that *results from* childhood sexual abuse, and therefore she should be able to recover damages for both because Butler allegedly sexually abused her a single time when she was under 18. *See, e.g.*, Pet. at 16-17.

Essentially, M.R. advocates that she can prove an "injury" resulting from childhood sexual abuse by proving the elements of another, future intentional tort: an assault or battery as an adult. *See Restatement (Second) of Torts* § 18 (battery), § 21 (assault). Thus, M.R. seeks to nest one tort claim within another. If allowed, *any* alleged act of sexual abuse during childhood would transform *all* subsequent adult sexual abuse into recoverable damages subject to the childhood sexual abuse statute of limitations.

Following M.R.'s argument, adult sexual abuse would be counted twice in a plaintiff's claims: once as an injury of childhood sexual abuse and again as its own claim of assault or battery. Although here M.R.'s alleged perpetrator is the same

individual across her claims, her argument has no guardrails. Ostensibly, any time a plaintiff has experienced sexual abuse as a child, any defendant of a claim based on that abuse could be subject to the plaintiff's claims for future adult sexual abuse perpetrated by anyone at any time because, as social science teaches us, childhood abuse makes a person statistically more likely to experience abuse as an adult. *See* Pet. at 30-31.

Furthermore, M.R. also suggests that grooming – which does not meet the statutory definition of childhood sexual abuse in RCW 4.16.340(5) – might also tie the childhood sexual abuse statute of limitations to adulthood injuries. Pet. at 30. This, too, would stretch the statute beyond its plain meaning, as only crimes that fall under RCW 9A.44 or 9.68A.040 statutorily qualify as childhood sexual abuse so as to trigger the special statute of limitations. RCW 4.16.340(5).

All of these implications from M.R.'s nesting argument stretch the special statute of limitations beyond its plain meaning and intended purpose, as discussed above. The Court of Appeals

properly rejected M.R.'s argument in reversing the trial court's denial of summary judgment. To poke holes in the panel's decision, M.R. employs two faulty arguments: that the Court of Appeals exceeded its authority as an appellate court, and that the parties have already agreed on causation. This Court should reject both by denying her petition for review.

1. The Court of Appeals did not violate the Washington Constitution by rejecting M.R.'s primary legal argument

M.R. asks this Court to accept review because she claims the Court of Appeals violated her article I, section 21 constitutional right to a jury. Pet. at 25. But she can only make this claim by mischaracterizing the Opinion as engaging in fact finding as an appellate court. Pet. at 25. M.R. twists the Court of Appeals' reasoning to suit her primary argument that an "injury" of childhood sexual abuse is future abuse as an adult. In examining that argument and rejecting it, the Court of Appeals did not engage in fact finding.

After reaching its conclusion that the childhood sexual abuse statute of limitations applies only to acts of abuse that occur during childhood, the Court of Appeals examined M.R.'s arguments. *M.R.,* 2023 WL 8598272 at *6. First, it restated M.R.'s nesting argument: "M.R. contends that '[t]he only limitation [the statute] imposes is that the 'injury' for which recovery is sought must be caused by childhood sexual abuse' and that 'Butler's sexual abuse of M.R. after she turned 18' qualifies as an 'injury' caused by the childhood sexual abuse because the 2000 incident facilitated the later abuse." *Id.* (alteration in original).

Then, the court evaluated that argument: "[E]ven though an act of grooming may facilitate later abusive acts, the grooming does not *cause* the subsequent abusive act. The later act is an independent intentional act." *Id.* (emphasis in original). Finally, the court rejected that argument: "Accordingly, this argument is not persuasive." *Id.* Failing to address any of the court's surrounding analysis or why the Court of Appeals used the word

"cause," M.R. claims that the Court of Appeals' acted as a fact finder because it made a conclusion about causation. Pet. at 25.

That characterization is plainly untrue, and M.R. can only deploy it by wholly omitting the context of the "two sentences" that she criticizes. Pet. at 25. Nowhere in that section of the Opinion does the Court of Appeals mention or analyze any fact specific to M.R.'s case. *Id.* Nor do those two sentences constitute any holding about superseding cause—or causation at all—which M.R. attempts to conjure out of whole cloth. At best, these sentences represent dicta that has limited impact on the holding of an unpublished opinion with no precedential value beyond this case. Contrary to M.R.'s argument for review, the Court of Appeals evaluated M.R.'s *legal* theory of the case and rejected it.

Furthermore, M.R. filed a motion for reconsideration following the Court of Appeals' decision, and she argued that the court engaged in fact finding. App. 21. If the court had actually

done as M.R. accused, the panel of judges could have corrected the opinion. Instead, the court denied her motion. Pet. App. C.

M.R. has not presented a basis for review under RAP 13.4(b)(3). Her targeted two sentences do not violate her constitutional right to a jury in article I, section 21 of the Washington State Constitution because the Court of Appeals did not "determine" any factual issue. Pet. at 25 (citing *Haley v. Amazon.com Servs., LLC*, 25 Wn. App. 2d. 207, 218, 522 P.3d 80 (2022)). Rejecting a party's argument on appeal is squarely within the Court of Appeals' ambit, and it did not err in doing so.

2. M.R. misconstrues the record to twist the Court of Appeals' opinion

Additionally, M.R. relies on an inaccurate recitation of the record to further her argument that the Court of Appeals impermissibly reached the issue of causation. She is wrong on the record and on her characterization of the Opinion.

First, M.R. is incorrect that proximate cause was "undisputed." *E.g.*, Pet. at 27. Far from not disputing causation,

State Defendants argued that summary judgment was appropriate because of M.R.'s lack of proximate cause evidence. CP 43-44; Br. of Appellant at 30. The Court of Appeals did not reach that issue. *M.R.,* 2023 WL 8598272 at *7.

Second, M.R. misconstrues the testimony of State Defendants' expert witness, Dr. Elizabeth Ziegler. *See* Pet. at 22. Dr. Ziegler agreed that a touch that "appears kind of innocent" can "progress into more inappropriate touching." CP 291. But this was an opinion statement about grooming in general, not a definitive opinion about the facts of this case, let alone a concession on legal causation. Likewise, Dr. Ziegler agreed that M.R. experienced a "totality of adverse events" in her life that produced her injuries. CP 321. Part of that totality was "other very traumatic events in [M.R.'s] life" that M.R.'s expert omitted from her report and opinion about M.R.'s injuries. CP 321-22.

Third, M.R. even misconstrues her own expert's testimony to shoehorn an opinion about grooming into her "nesting" legal argument. *See* Pet. at 22. Phoebe Mulligan, M.R.'s expert,

testified that, in her opinion, Butler's touch of M.R.'s abdomen when she was 17 made her unable to distinguish "between healthy and abusive dynamics in the player/coach relationship. The grooming and sexual touching continued all the way until M.R. was twenty-one years old…." CP 200. Dr. Ziegler, State Defendants' expert agreed. CP 321. But Ms. Mulligan's opinion does not constitute a conclusion about *legal causation*—that the touch when M.R. was 17 *caused* Butler's intentional acts in M.R.'s adulthood. M.R.'s expert may have characterized M.R.'s interactions with Butler as a "one continuous, negative event," *see* Pet. at 22, but that is not the same as a legal conclusion about proximate cause.

And finally, M.R. misconstrues the Court of Appeals' characterization of Butler's behavior. Pet. at 22 (stating that the Opinion "conceded that the sexual abuse was a 'continuing course of conduct'"). The Court of Appeals' statement about a "continuing course of conduct" was not specific to Butler's behavior and was made in the context of addressing and rejecting

M.R.'s argument about *Wolf v. State*, 2 Wn.3d 93, 534 P.3d 822 (2023). *M.R.,* 2023 WL 8598272 at *6 (noting "*Wolf* is not helpful here because it does not address a continuing course of conduct occurring over a time period during which the plaintiff was both a minor and an adult"). It too does not address causation.

None of M.R.'s misstatements about the record or the Court of Appeals' opinion justifies review under RAP 13.4. Her arguments should be rejected.

V. CONCLUSION

The Court of Appeals correctly interpreted the childhood sexual abuse statute of limitations under applicable precedent. Its unanimous, unpublished opinion adheres to the Legislature's intent to protect the claims of childhood victims of sexual abuse. The opinion is not precedential under GR 14.1, and it does not violate article I, section 21 of the Washington Constitution because it does not engage in fact finding. For those reasons,

M.R. cannot demonstrate that review is appropriate under RAP 13.4. M.R.'s petition should be denied.

This document contains 5,000 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 24th day of May 2024.

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CERTIFICATE OF SERVICE

I certify that on the date below I caused to be electronically filed the **RESPONDENTS' ANSWER TO PETITION FOR REVIEW** with the Clerk of the Court using the electronic filing system which caused it to be served on the following electronic filing system participant as follows:

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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.

EXECUTED this 24th day of May 2024, at Tacoma, Washington.

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APPENDIX

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No. 56781-4-II

COURT OF APPEALS, DIVISION TWO
OF THE STATE OF WASHINGTON

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Respondent,

vs.

State of Washington, et al.,

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RESPONDENT M.R.'S MOTION FOR RECONSIDERATION

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ATTORNEYS AT LAW

I. Moving Party's Statement of Relief Sought

Respondent M.R. moves for reconsideration of the Court's December 12, 2022 opinion (Appendix A). The Court's opinion held that RCW 4.16.340 requires plaintiffs to split their sexual abuse claims into separate claims based on each "act" of sexual abuse based on RCW 4.16.340(5)'s definition of "childhood sexual abuse." On this basis, it held that the legislature intended to "draw a line" between acts of childhood sexual abuse to which the statute applies and acts of sexual abuse after age 18 to which it does not. And it further held that M.R.'s interpretation of the statute that continuing sexual abuse proximately caused by an act of childhood sexual abuse is a recoverable "injury" under the statute was not "persuasive" because "even though an act of grooming may facilitate later abusive acts, the grooming does not *cause* the subsequent abusive act. The later act is an

independent intentional act." Slip op. at 12. These holdings are erroneous and violate Plaintiff's constitutional right to have factual disputes resolved by a jury.

The Court's opinion (1) ignores the statute's plain language and binding Supreme Court interpretations thereof—including RCW 4.16.340(5); (2) contravenes our Supreme Court's repeated admonitions to courts to liberally construe RCW 4.16.340 in favor of providing a broad remedy for survivors; (3) conflicts with our Supreme Court's interpretation of similar statutes of limitation that have rejected claims splitting requirements; (4) exceeds the Court's constitutionally and procedurally circumscribed role in reviewing a summary judgment order by disregarding the undisputed factual record on causation; (5) exceeds the Court's limited role as an appellate court reviewing a summary judgment order by reversing based on an issue *sua sponte* raised by the Court on appeal; and (6) invades the jury's constitutionally protected factfinding

role by making factual determinations regarding causation for the first time on appeal.

The numerous reversible errors committed in this opinion require reconsideration and affirmance of the trial court's order denying summary judgment.

II. Grounds for Relief and Argument

A. This Court Erred in Holding that RCW 4.16.340 Requires M.R. to Split Her Claims Between "Childhood" and "Adult" Sexual Abuse Claims

The Court first rested its opinion on its assumption that each "act" of sexual abuse under RCW 4.16.340 constitutes a separate "claim" for purposes of its limitations period. There is no support for this assumption in the statutory language, and it contravenes prior opinions from our Supreme Court (1) interpreting the statute; (2) holding that courts must interpret the statute liberally in favor of survivors; (3) prohibiting claims splitting for claims based on continuing courses of conduct; and (4) interpreting other similar statutes of limitation regarding interrelated tortious

acts.

Nothing in RCW 4.16.340 states that each "act" of sexual abuse is a distinct "claim" to which the statute separately applies. Rather, the statute's plain language states in pertinent part:

> 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:
>
> Within three years of the time the victim discovered that the act caused the injury for which the claim is brought.

RCW 4.16.34091(c). In turn, RCW 4.16.340(5) defines "childhood sexual abuse" as "any act committed by the defendant against a complainant who was less than eighteen years of age at the time of the act."

The Court relied on this definition to conclude that "[n]othing in this language suggests that the statute also applies to any acts that occurred after the plaintiff reaches

the age of 18." Slip op. at 11. But the Court misreads this provision and contradicts our Supreme Court's holding in *C.J.C. v. Corp. of Catholic Bishop of Yakima*, 138 Wn.2d 699, 711, 985 P.2d 262 (1999). Similar to the State in this case; there the defendants agued that RCW 4.16.340(5)'s language limited claims to perpetrators of childhood sexual abuse. *C.J.C.*, 138 Wn.2d at 710.

Our Supreme Court rejected this interpretation on review, instead holding:

> we read the statutory definition of 'childhood sexual abuse' as ***limiting only*** the specific predicate sexual conduct upon which all claims or causes of action must be based. Thus, the alleged sexual abuse must amount to a violation of the criminal code. If it does not, no claim of any type, against any person, lies.

Id. at 712 (emphasis added). In other words, the only limitation that this provision imposes on "claims and causes of action . . . for recovery of damages for injury suffered as a result of childhood sexual abuse" is that there must be a

predicate act of childhood sexual abuse on which the claim or cause of action is based.

Thus, contrary to this Court's opinion, nothing in RCW 4.16.340(5)'s language suggests that the statute of limitations separately applies to each "act" of sexual abuse rather than "claims or causes of action . . . for recovery of damages for injury suffered ***as a result of childhood sexual abuse***." (Emphasis added).

Nor does Washington Supreme Court precedent support this Court's interpretation. Rather, as Respondents previously explained, it "focuse[s] on the nature of the claim itself" and relevant legislative intent underlying the substantive cause of action to determine whether multiple wrongful acts constitute a single claim or multiple claims for purposes of the applicable statute of limitations. *Antonius v. King Cnty.*, 153 Wn.2d 256, 265, 103 P.3d 729 (2004); Respondents' Br. at 38-40.

For example, in *Antonius*, our Supreme Court

concluded that a Washington Law Against Discrimination hostile work environment claim must be interpreted as "a series of acts that collectively constitute one" claim for purposes of the applicable limitations period. 153 Wn.2d at 265-66. Under the defendant's interpretation that each wrongful "act" was a separate "claim" for statute of limitations purposes, some of the alleged acts would have been time barred because they occurred outside the applicable statute of limitations. 153 Wn.2d at 260.

Our Supreme Court rejected this interpretation. It reasoned that because "[s]uch claims are based on the cumulative effect of individual acts," "the nature of the hostile work environment claim strongly indicates that it should not be parsed into component parts for statute of limitations purposes." *Id.* at 268, 270. And it further reasoned that such an interpretation was compelled by the legislature's intended liberal construction of WLAD and WLAD's underlying purpose of eradicating discrimination.

Id. at 267-68. Thus, it held that "[a]s a unitary whole, the claim is not untimely if one of the acts occurs during the limitations period because the claim is brought after the practice, as a whole, occurred and within the limitations period." *Id.* at 266.

As Respondent raised at oral argument, our Supreme Court's statutory interpretation in *Antonious* is consistent with its approach of considering the nature of a claim and relevant legislative intent rather than simply concluding multiple acts constitute multiple "claims" for purposes of applicable limitations periods. For example, in *Caughell v. Grp. Health Co-op. of Puget Sound*, 124 Wn.2d 217, 226, 876 P.2d 898 (1994), it addressed whether multiple negligent acts in a continuing course of medical treatment constituted multiple claims under former RCW 4.16.350 (1988), the medical malpractice statute of limitations. The legislature used language very similar to RCW 4.16.340 in that statute. *Compare* former RCW

4.16.350(1) (“Any civil action for injury occurring as a result of health care . . .), *with* RCW 4.16.340 (“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 . . . .).

Like the defendants in *Antonius*, the defendant in *Caughell* argued that because each wrongful “act” was a separate “claim” for statute of limitations purposes, some of the alleged acts would have been time barred because they occurred outside the applicable statute of limitations. 124 Wn.2d at 222.

As in *Antonius*, our Supreme Court rejected this interpretation. 124 Wn.2d at 230. Consistent with its subsequent approach in *Antonius*, it reasoned that it had previously recognized that “the unique characteristics of medical malpractice require[d] . . . reaffirmed rules crafted from the common law.” *Id.* at 232.

Specifically, it reasoned that it already had

recognized a 'distinction between malpractice claims and other torts: that injury could result from a series of interrelated negligent acts—a negligent course of treatment—rather than from a single act of negligence." *Id.* at 224. Indeed, in *Caughell* it was not possible to "segregate the damages" caused by negligent acts within the limitations period and acts outside the limitations period. *Id.* at 222. And it recognized that, under previous versions of the statute, it had overruled precedent "which insisted that each act of negligence, whether interrelated or not, represented a separate claim of malpractice." *Id.* at 225.

Under the version of the statute in effect, it reaffirmed that "malpractice claimants have the right to allege the entire course of continuing negligent treatment as one claim." *Id.* at 229-30. It reasoned, given that "malpractice can occur in a series of interrelated negligent acts," "[t]o shoehorn this continuing negligent treatment into a single

negligent act . . . deprives claimants of the chance to prove the full extent of negligence *in one claim*." *Id.* at 230 (emphasis in original).

Further, it reasoned that "[t]he law should not require plaintiffs to split their claims," and nothing in the statute's legislative history supported an intent to require plaintiffs to split multiple, related wrongful acts into separate claims. *Id.* at 227, 230. Finally, it reasoned that "splitting claims has the practical and unfair effect of insulating health care professionals from liability" for wrongful conduct outside the limitations period even where it was interrelated with wrongful conduct within the period and was a cause of the plaintiff's damages. *Id.* at 230.

Like the hostile work environment and medical malpractice claims at issue in *Antonius* and *Caughell*, the nature of Plaintiff's tort claims based on childhood sexual abuse and RCW 4.16.340's plain language, legislative intent, and underlying purpose prohibit an interpretation

that each "act" of sexual abuse is a separate "claim" under the statute. First, the undisputed factual record in this case is that childhood sexual abuse can constitute a series of interrelated acts all contributing to M.R.'s injuries; the childhood sexual abuse caused the continuing sexual abuse past age 18; her injuries were the result of the cumulative effects of individual acts; she experienced the sexual abuse as one continuous, negative event; and her damages cannot be segregated between any single "act" as the sole cause. CP 199-200, 277, 291, 311-12, 315-17, 321, 330, 332-33. When the nature of the claim is such, Washington courts must treat the series of related acts as a single claim rather than requiring claims splitting. *Accord Antonius*, 153 Wn.2d at 268, 270; *Caughell*, 124 Wn.2d at 222, 224-25.

Second, nothing in RCW 4.16.340's plain language demonstrates that the legislature intended to require claims splitting between multiple "acts" of sexual abuse.

Washington law has prohibited claims splitting since 1926 at the latest, and courts must presume the legislature knew this existing law when it enacted the statute. *Wynn v. Earin*, 163 Wn.2d 361, 371, 181 P.3d 806 (2008) ("The legislature is presumed to know the law in the area in which it is legislating, and statutes will not be construed in derogation of the common law absent express legislative intent to change the law."); *Sprague v. Adams*, 139 Wash. 510, 515, 247 P. 960 (1926) ("It is well settled law . . . that a claimant will not be permitted to split a single claim or cause of action which he may possess").

Nothing in RCW 4.16.340(5) demonstrated that the legislature intended to override the common law prohibition by imposing a claims splitting requirement. As *C.J.C.* held, the only requirement that this provision imposes on claims is that they must be based on at least one predicate act of childhood sexual abuse. 138 Wn.2d at 712. Further to the contrary, RCW 4.16.340(2) expressly recognizes that

when a "series of continuing sexual abuse or exploitation incidents caused the injury complained of," the plaintiff is not required to segregate or "establish which act" caused their injuries when the acts are "part of a common scheme or plan of sexual abuse or exploitation." In other words, the legislature did not require plaintiffs to split their claim "for recovery of damages for injury suffered as a result of childhood sexual abuse" into separate claims for each act or incident of sexual abuse.[1] RCW 4.16.340(1). Nor did that plain language exclude subsequent acts of sexual abuse as a recoverable "injury suffered as a result of childhood sexual abuse."

Third, nothing in RCW 4.16.340's legislative history

[1] Notably, RCW 4.16.340(2) does not distinguish between "childhood sexual abuse" and sexual abuse occurring after the age of 18. Rather, it applies to "a series of ***continuing sexual abuse*** or exploitation incidents . . . which [are] part of a common scheme or plan of sexual abuse or exploitation." Emphasis added.

demonstrates legislative intent to require plaintiffs to claim split based on each "act" of sexual abuse or exclude sexual abuse past age 18 as a recoverable "injury suffered as a result of childhood sexual abuse." The Court's focus on the fact that the legislature's 1991 legislative findings expressly mention only "childhood sexual abuse" ignores our Supreme Court's binding holdings on the legislative intent expressed by the findings as a whole. *C.J.C.* held, as expressed through these findings, that the legislature's "primary concern 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 limitations." 138 Wn.2d at 712. Additionally, it observed the 1991 amendments were enacted "specifically" to supersede "a line of cases that had strictly applied the discovery rule in cases involving childhood sexual abuse." *Id.* at 713. "Given this context," it held that "the legislature intended a broad reading and application of the statute."

Id. at 713.

In other words, like WLAD's express mandate of liberal construction in *Antonius*, the legislature intended liberal construction of RCW 4.16.340. And our Supreme Court has consistently applied that broad, liberal construction in favor of survivors of childhood sexual abuse, regardless of the issue or provision before the Court. *Wolf v. State*, 2 Wn.3d 93, 534 P.3d 822, 832 (2023) (applying "the underlying purpose of RCW 4.16.340—to provide broad protection for victims of childhood sexual abuse" in interpreting the term "act" as meaning the particular wrongful conduct on which a particular claim is based); *C.J.C.*, 138 Wn.2d at 709, 713-14 (applying legislative intent of "a broad reading and application of the statute" in interpreting term "based on intentional conduct" as including negligence claims). This Court's narrow interpretation of the statute to require plaintiffs to claims split based on each act of sexual abuse and to exclude

continuing sexual abuse caused by childhood sexual abuse as a recoverable "injury" contravenes the required liberal construction. Moreover, like the claims splitting interpretation rejected in *Caughell*, the Court's claims splitting interpretation here insulates defendants from liability for the most severe form of "injury" resulting from childhood sexual abuse—continuing and escalating sexual abuse—even when it is proximately caused by, or to use this Court' term, "facilitated" by, childhood sexual abuse. *See Tingey v. Haisch*, 159 Wash.2d 652, 664, 152 P.3d 1020 (2007) (a statutory interpretation "that produces absurd results must be avoided)." This interpretation conflicts with the legislature's intent "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 limitations." *C.J.C.,* 138 Wn.2d at 712; *see also In re Cross*, 99 Wn.2d 373, 382, 662 P.2d 828 (1983) (statutes must be interpreted consistent with their

underlying purpose).

The Court's interpretation of the statute conflicts with its language, intent, and history, and with binding Supreme Court precedent interpreting all three. M.R.'s interpretation harmonizes them all. The Court should hold that acts or incidents of sexual abuse in a series of acts or incidents beginning during the victim's childhood and continuing past when the child reaches the age of majority are recoverable when they are proximately caused by the childhood sexual abuse. This interpretation is consistent with our Supreme Court's holding in *C.J.C.* that the sole limitation imposed by RCW 4.16.340(5) on actionable claims is that they must involve at least one predicate act of childhood sexual abuse. The statute still would be inapplicable to claims where the only "sexual abuse" as defined by the statute occurred after age 18. This interpretation is also consistent with the legislature's use of the broad term "injury," the absence of any exclusions from that broad term, and

ordinary dictionary definitions. *Accord* Wolf, 534 P.3d at 830 ("RCW 4.16.340(1)'s broad language is critical to its interpretation."); *C.J.C.*, 138 Wn.2d at 709 (using ordinary dictionary meanings to define "based on" in RCW 4.16.340(1)); Respondent's Br. at 36 (dictionary definitions of "injury" include "[a]ny harm or damage," including "bodily injury" and "an act that damages, harms, or hurts"). It is also consistent with the legislature's recognition in RCW 4.16.340(2) that childhood sexual abuse may constitute a series of continuing acts that are part of a common scheme or plan of abuse or exploitation. And it is further consistent with our legislature's intent to provide a broad avenue of redress to survivors of childhood sexual abuse who might lack a remedy under ordinary limitation periods and our Supreme Court's holding that courts must give the statute a broad reading and application favoring survivors.

B. The Court Erred in Finding for the First Time on Appeal that Butler's Continuing Sexual Abuse of M.R. Past Age 18 was Not Caused by and Was Independent of the Childhood Sexual Abuse

The Court further rested its holding on its conclusion that M.R.'s interpretation of the statue as including subsequent sexual abuse as a recoverable injury was not "persuasive" because "even though an act of grooming may facilitate later abusive acts, the grooming does not *cause* the subsequent abusive act." Slip op. at 12.

Respectfully, this undisputed factual issue was not an issue of "persuasion" for an appellate court reviewing a summary judgment order. In two sentences the Court violated its limited role under RAP 9.12 and the state constitution as an appellate court reviewing a summary judgment order by (1) ignoring the ***undisputed*** factual record in this case that the childhood sexual abuse caused the continuing abuse; (2) reversing the trial court's summary judgment order on a ground never raised before

the trial court and contrary to the undisputed record; (3) functionally raising and determining for the first time on appeal that Butler's subsequent acts were a superseding cause of M.R.'s injuries contrary to law and the undisputed summary judgment record; and (4) making factual findings for the first time on appeal.

The constraints placed on the role of courts in the summary judgment procedure flow from litigants' state constitutional right to have factual issues decided by a jury. *Haley v. Amazon.com Servs., LLC*, 25 Wn. App. 2d 207, 218, 522 P.3d 80 (2022). These constraints require trial courts to "consider all admissible evidence presented to it," "view all facts and reasonable inferences therefrom in the light most favorable to the nonmoving party," and refrain from "resolv[ing] issues of material fact." *Haley*, 25 Wn. App. 2d at 217, 220.

Washington law extends this constitutional right to appellate litigants by imposing the duty on appellate courts

to "engage[] in the same inquiry as the trial court." *Tanner Elec. Co-op. v. Puget Sound Power & Light Co.*, 128 Wn.2d 656, 668, 911 P.2d 1301 (1996). This requires reviewing "the same record that was available to the trial court." *Tanner Elec. Co-op.*, 128 Wn.2d at 668. RAP 9.12 further effectuates this right by restricting the Court's review of summary judgment orders to "'only evidence and issues called to the attention of the trial court.'" *Wolf*, 2 Wn.3d at 832 (quoting RAP 9.12).

Here, it was undisputed on the summary judgment record before the trial court that Butler's childhood sexual abuse of M.R. proximately caused the continuing sexual abuse of M.R. past age 18. 200, 291, 321-22/ This Court was required both to consider that same record and construe it in the light most favorable to M.R., as the nonmoving party. The Court's holding to the contrary violates both of these limitations on the Court's role and authority, as well as M.R.'s state constitutional rights.

Second, under RAP 9.12 "[i]ssues and contentions neither raised by the parties nor considered by the trial court when ruling on a motion for summary judgment may not be considered for the first time on appeal." *Cano-Garcia v. King Cnty.*, 168 Wn. App. 223, 248, 277 P.3d 34 (2012). The State never contended before the trial court that Butler's childhood sexual abuse was not a cause of the continuing sexual abuse or that Butler's subsequent acts of sexual abuse were "independent" of the childhood sexual abuse. It could not so contend on the undisputed record before the trial court. By sua sponte raising this issue and determining it for the first time on appeal in contravention of the summary judgment record, the Court further violated its limited role and authority in this appeal.

Third, the Court's holding that Butler's subsequent acts of sexual abuse were "independent" of the childhood sexual abuse was a determination as a matter of law that they were a superseding cause of M.R.'s injuries. "A

superseding cause is a new independent cause that breaks the chain of proximate causation" between a defendant's act and a plaintiff's injury. *Albertson v. State*, 191 Wn. App. 284, 294, 361 P.3d 808 (2015). Again, the State did not argue before the trial court that Butler's subsequent, intentional acts of sexual abuse were sufficiently independent of the childhood sexual abuse arising from the State's negligence so as to constitute a superseding cause breaking the chain of causation. It could not on this summary judgment record.

Further highlighting the impropriety of this Court's overreach on this issue, it has been long established in Washington that it is reversible error for a trial court to instruct a jury on superseding cause where, as here, it is unsupported by the factual record. *Albertson*, 191 Wn. App. at 297 (citing *Campbell v. ITE Imperial Corp.,* 107 Wn.2d 807, 813, 733 P.2d 969 (1987)). An intervening, independent act is not superseding and does not break the

chain of causation unless it (1) "brings about a different kind of harm that would have otherwise resulted from the defendant's" tortious conduct; (2) was extraordinary or its consequences were extraordinary"; and (3) "operated independently of a situation created by the defendant's" tortious conduct. *Albertson*, 191 Wn. App. at 297. None of these requirements are met in child abuse cases because "further child abuse by the abuser" is "precisely the kind of harm that would ordinarily occur" through a defendant's negligent failure to protect against child abuse or a perpetrator's earlier grooming and sexual abuse. *Id.* at 298; *see also Matter of Phelps*, 190 Wn.2d 155, 161, 167, 410 P.3d 1142 (2018) (it is "within the common knowledge" that "grooming" is the manipulative process of how a relationship between the perpetrator and a survivor "began, developed, and expanded," that it is a 'constant process happening all of the time," and that its purpose is to "desensitize" a survivor to "escalating sexual

advances").

The Court's determination that Butler's acts of subsequent abuse were, as a matter of law, a superseding cause that broke the causal chain, contradicts this long-established precedent.[2] M.R.'s expert testified that the

[2] Additionally, the Court's reasoning that the childhood sexual abuse was not a cause of the subsequent abuse because "the later act is an independent intentional act" erroneously focuses exclusively on Butler's ***intent*** during both acts. It is true that Butler's intentional act of sexually abusing M.R. was the immediate proximate cause of the subsequent abuse. But that does not address whether the childhood sexual abuse was ***also*** a proximate cause. On the undisputed summary judgment record, it was, as it made M.R. more susceptible to the more frequent and severe sexual abuse she later experienced. CP 200, 291, 321-22. This Court's own reference to the childhood sexual abuse as "grooming" necessarily concedes this. As our Supreme Court has observed, it is; within the common knowledge" that "grooming" is the manipulative process of how a relationship between the perpetrator and a survivor "began, developed, and expanded," that it is a 'constant process happening all of the time," and that its purpose is to "desensitize" a survivor to "escalating sexual advances." *Phelps*, 190 Wn.2d at 161, 167, 410 P.3d 1142 (2018).

childhood sexual abuse made her more susceptible to the continuous, escalating sexual abuse because it impacted her ability to "distinguish[] between healthy and abusive dynamics in the context of the player/coach relationship." CP 200. Likewise, the State's expert that she agreed with M.R.'s expert on this point. CP 321. She further testified that the childhood sexual abuse "could progress into more inappropriate touching, which could then be desensitized by the prior issues." CP 291. Relating this opinion to M.R.'s case, she further testified that she agreed with M.R.'s expert that the totality of Butler's sexual abuse, including the act occurring before age 18, had "resulted" in M.R.'s injuries and damages. CP 322.

Finally, issues of proximate cause ordinarily are factual findings for a jury to make, not courts. *Turner v. Washington State Dep't of Soc. & Health Servs.*, 198 Wn.2d 273, 295, 493 P.3d 117 (2021). The same is true for the issue of superseding cause, even where the law and

evidence supports consideration of the issue. *Pacheco v. United States*, 200 Wn.2d 171, 194, 515 P.3d 510 (2022); *McCoy v. Am. Suzuki Motor Corp.*, 136 Wn.2d 350, 359, 961 P.2d 952 (1998).

Appellate courts are not fact-finding courts. *Dalton M, LLC v. N. Cascade Tr. Servs., Inc.*, 2 Wn.3d 36, 53, 534 P.3d 339 (2023). They commit reversible error when they *sua sponte* raise and decide a case on a factual issue not raised before the trial court. *Dalton M*, 2 Wn.3d at 56. Although an appellate court can base its decision on findings of fact inferred from other findings and the underlying facts, it may do so "'if—but only if—all the facts and circumstances in the record . . . clearly demonstrate that the omitted finding was *actually intended, and thus made*, by the trial court.'" *Dalton M*, 2 Wn.3d at 54 (emphasis in original) (quoting *In re Welfare of A.B.*, 168 Wn.2d 908, 921, 232 P.3d 1104 (2010)). Where the trial court "did not make any findings at all" about the issue,

appellate courts cannot "conclude that an omitted finding . . . 'was actually intended, and thus made, by the trial court.'" *Dalton M*, 2 Wn.3d at 55 (quoting *A.B.*, 168 Wn.2d at 921).

Here, the issue of whether Butler's subsequent acts constitute a superseding cause is a factual issue left unaddressed by the trial court.[3] The issue was never raised before the trial court[4], nor did the trial court make

[3] Contrary to any attempt to find or "infer" such facts, the trial court orally ruled that the "parties agree[d] that the experts have said from a standpoint of harm, it's impossible to segregate harm from a series of events that all contribute to potential harm"; that it was appropriate" to apply RCW 4.16.340 "in the context of a series of events by the same alleged perpetrator . . . that began when the plaintiff was under 18; and that "with experts agreeing that it's impossible to segregate the harm, the court thinks of this as a continuous series of events and believes that it's prudent to apply the childhood sex abuse statute of limitations to the events." CP 352-354; RP 35-36. As discussed above, the trial court's observations necessarily flowed from the undisputed record that the childhood sexual abuse was a proximate cause of the continuous sexual abuse past age 19.

[4] That the State never raised this issue in moving for

any findings on it. Thus, the Court's holding that Butler's subsequent acts of sexual abuse were "independent," superseding acts breaking the chain of causation both violated M.R.'s state constitutional right to have factual determinations made by a jury and was an impermissible factual finding for the first time on appeal. For both reasons, it is reversible error. *Accord Dalton M*, 2 Wn.3d at 56; *Haley*, 25 Wn. App. 2d at 234.

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summary judgment is an additional reason the Court's opinion reversibly erred in *sua sponte* raising and deciding the issue as a matter of law for the first time on appeal. On summary judgment the moving party bears the burden of raising all issues on which they seek summary judgment. *R.D. Merrill Co. v. State, Pollution Control Hearings Bd.*, 137 Wn.2d 118, 148, 969 P.2d 458 (1999); *White v. Kent Med. Ctr., Inc., P.S.*, 61 Wn. App. 163, 168, 810 P.2d 4 (1991). Courts reversibly err when they resolve a summary judgment motion based on issues never raised by the moving party. *R.D. Merrill Co.*, 137 Wn.2d at 148; *White*, 61 Wn. App. at 169.

III. Conclusion

Binding Washington Supreme Court precedent, the state constitution, and the Court's own controlling rules require the Court to reconsider its opinion and affirm the trial court's summary judgment order.

Respectfully submitted this 28th day of December 2023.

The undersigned certifies that this brief consists of 4,900 words in compliance with RAP 18.17.

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CERTIFICATE OF SERVICE

Katie Hedger, being first duly sworn upon oath, deposes and says:

I am a citizen of the United States of America and of the State of Washington, over the age of twenty-one years, not a party to the above-entitled matter and competent to be a witness therein.

That on December 28, 2023, I delivered via Email a true and correct copy of the above document, directed to:

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DATED this 28th day of December 2023.

/s/ Katie Hedger
Katie Hedger
Legal Assistant

APPENDIX A

Filed
Washington State
Court of Appeals
Division Two

December 12, 2023

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

M.R., an individual, Respondent, v. STATE OF WASHINGTON; YAKIMA VALLEY COMMUNITY COLLEGE, a public corporation; CODY BUTLER, an individual; Petitioners.	No. 56781-4-II UNPUBLISHED OPINION

CRUSER, J. — In 2019 MR sued the State of Washington, Yakima Valley Community College, and Cody Butler (collectively the State) for a variety of claims arising from sexual abuse she alleged that she experienced in 2000 when she was 17 years old and from 2001 to 2003 when she was 18 years old or older. The State moved for summary judgment based on the statute of limitations. The trial court denied the motion for summary judgment after concluding that the childhood sexual abuse statute of limitations, RCW 4.16.340, applied to all of MR's claims, including those based on acts that occurred after MR turned 18.

The trial court certified the issue of whether RCW 4.16.340 applies to claims based on sexual abuse that began when MR was under 18 and continued after she turned 18 for immediate review under RAP 2.3(b)(4). A commissioner of this court granted discretionary review of the certified issue.

The State also argues that if the summary judgment order is reversed, then (1) the common law discovery rule does not apply to MR's claims based on the alleged acts that occurred after she turned 18 because she failed to make further diligent inquiry to ascertain the scope of the actual harm, and (2) MR's remaining claim of child sexual abuse fails because she fails to establish causation.

We hold that the plain language of RCW 4.16.340 demonstrates that the childhood sexual abuse statute of limitations applies only to claims based on acts of childhood sexual abuse occurring before the plaintiff turns 18. Accordingly, we reverse the summary judgment order and remand to the trial court for further proceedings.

FACTS[1]

I. BACKGROUND

In the summer of 2000, just before starting her senior year in high school, 17-year-old MR participated in a club basketball tournament with hopes of being recruited to play college basketball. While at the gym, the club director introduced MR to Cody Butler, an assistant women's basketball coach from Yakima Valley Community College (YVCC).

The club director and Butler began to make comments about MR's body, including her abs, buttocks, and chest. After the director commented about MR's abdominal muscles, Butler put his hand on MR's stomach and "trace[d] his hand down the line of the V on [her] stomach to the top of [her] public [sic] area, the top of [her] basketball shorts." Clerk's Papers (CP) at 53.

[1] Because we are addressing a summary judgment motion, we recount the facts in the light most favorable to the nonmoving party, MR. *Lakey v. Puget Sound Energy, Inc.*, 176 Wn.2d 909, 922, 296 P.3d 860 (2013).

MR did not consent to Butler touching her, and she found the men's comments and the touching uncomfortable and confusing. But because the men acted as if their behavior was normal and she wanted a basketball scholarship, she tolerated it.

MR turned 18 in October 2000. In 2001, sometime before her high school graduation, Butler invited MR to visit the YVCC campus.

During this visit, MR attended practice, and Butler commented about the other players' appearances. These comments included comments about the other players' "ass[es]" and "tits." *Id.* at 126. She had some physical contact with Butler during practice, and he placed his hand on the small of her back while she was on the sideline to make her feel more comfortable. At the time, this contact did not make MR feel uncomfortable.

Butler also gave one of the team members some money and told her to "make sure that [MR] had a good time that night." *Id.* at 124. The team member used Butler's money to buy alcohol and took MR to a party at the "baseball house." *Id.* Because MR wanted to impress the basketball team, she did not feel like she could say no, and she drank until she blacked out. The next day Butler noticed that she was hungover and joked about it with the other team member, stating that they had shown MR a really good time and that she would certainly now choose to come to YVCC.

MR did not feel uncomfortable during this visit. But she later came to believe that Butler's contact with her and encouraging her to drink was inappropriate.

Butler offered MR a basketball scholarship a week after her visit to YVCC. MR accepted the offer and arrived at the school in August 2001. MR attended YVCC and was a member of the basketball team until 2003. During this time, Butler spent time alone with MR, and, according to MR, treated her differently from the other players by giving her special privileges.

According to MR, Butler would frequently engage in unwanted and inappropriate physical contact with her by pressing his erect penis into her during training and by pulling her into his lap while he had an erect penis. MR stated that she was uncomfortable with this contact, but because she was inexperienced she believed that this was "how college coaches act." *Id.* at 57.

Butler would also ask MR to give him neck massages, and he would give her massages in his office. At one point, the YVCC athletic director walked in on them in Butler's office while Butler was giving MR a neck massage at 9:00 PM. Butler would also take MR out to eat and take her to his house to eat, watch television, and practice yoga. He also provided her with alcohol on several occasions.

Butler's behavior made MR uncomfortable, and she started to skip practice to avoid him. But she never complained about his behavior to anyone while at YVCC because she "had no idea that it was wrong," and she believed that he loved her. *Id.* at 130.

MR's teammates, however, observed that MR's relationship with Butler was inappropriate and believed that Butler and MR were in an intimate relationship. Some of MR's teammates told her that her relationship with Butler was wrong and complained to the athletic director. One of MR's teammates also told her "that what [Butler] was doing was inappropriate" after walking in on MR and Butler in his office. *Id.* at 65. But MR "didn't want to listen to her," and their friendship ended. *Id.*

Apparently in response to the complaint, a team meeting was held. During this meeting, without first warning MR, Butler announced that he was not sleeping with MR. MR was "[m]ortified" by this announcement, and she believed that her relationship with Butler had damaged her relationship with the other team members. *Id.* at 62.

In 2003, MR accepted a basketball scholarship at a four-year university in Montana. In 2004, MR visited Butler in Nevada. During this visit, they drank together and had sexual intercourse at least twice.

After leaving YVCC, MR became drug and alcohol addicted, she suffered from an eating disorder, and she ended up homeless and in an abusive relationship. She was eventually incarcerated in 2009.

After her release from prison in 2012, MR earned her master's degree, married, had three children, and worked full time. MR asserted that during this time she attempted to "numb[ ] [herself] to forget about the dark chapter of [her] life." *Id.* at 192. And she asserted that a series of life stressors prevented her from being mentally or physically capable of seeking the help she knew she needed.

II. LAWSUIT

In October 2018, MR became aware that the FBI was investigating the director of the basketball club she had attended in 2001 "for sexual misconduct with a former basketball player." *Id.* This news caused her to think about what had happened between her and Butler in a new light.

"It was at this time in 2018 that [she] started thinking about [what had happened to her] with a clearer head space because [she] was no longer in a cycle of sex, drugs, eating disorders, and alcohol abuse." *Id.* at 193. She began to realize what had happened to her and started the process of learning how she had been affected and how her experiences had harmed her. In early 2019, MR started therapy, and she began to understand how Butler's abuse had affected her in ways she had never before considered.

In May 2019, MR filed suit against the State. MR alleged negligence, sexual discrimination, and negligent infliction of emotional distress claims against the State of Washington, Yakima Valley Community College, and Butler and outrage and assault claims against Butler in his individual capacity. Her initial claims were based on her contacts with Butler from 2001 through 2003. She later amended her claims to include the touching incident that occurred in 2000, when she was 17 years old.

III. SUMMARY JUDGMENT

The State moved for summary judgment. Regarding the claims related to the incidents that occurred between 2001 and 2003, they argued that the two- and three-year statutes of limitations, RCW 4.16.080(2) and RCW 4.16.100(1), barred these claims and that the common law discovery rule did not apply. Regarding MR's claims based on the 2000 incident, they argued that MR failed to establish questions of fact as to whether Butler was acting as an agent for YVCC, whether the incident was a "reportable offense," or whether the incident was a proximate cause of any damages or injuries. CP at 44.

In support of its argument that MR had failed to demonstrate that the 2000 incident was a proximate cause of any damages or injury, the State filed a partial transcript of the deposition of Phoebe Mulligan, a social worker who had conducted a forensic psychological evaluation of MR. During this deposition, the State's counsel asked Mulligan if the 2000 incident caused MR's anxiety and posttraumatic stress disorder. Mulligan responded that she did not know. Counsel also asked Mulligan if the 2000 incident had caused MR's depression, eating disorder, or substance abuse. Mulligan responded that it did not.

MR responded that the common law discovery rule applied to the incidents that occurred after she turned 18 and that RCW 4.16.340, the childhood sexual abuse statute of limitations, applied to the incident that occurred when she was 17 and to any claim or cause of action "where the gravamen of the action" was the childhood sexual abuse. *Id.* at 228. Among the several exhibits that MR filed in support of her opposition to summary judgment was a declaration from Mulligan.

Mulligan disputed the State's characterization of her deposition testimony as establishing that the 2000 incident was not a proximate cause of any damages or injuries because Mulligan was unable to say that the 2000 "grooming behavior" was the cause of any specific harm. *Id.* at 197.

Mulligan stated that when a child or young person is exposed to "a prolonged period of adverse traumatic events, in multiple forms, [they] typically react negatively to the entire prolonged period of adverse traumatic events." *Id.* at 198. They also perceive that "all trauma-producing events are . . . one continuous negative experience." *Id.* Mulligan further stated that it was "generally understood in mental health that the negative effects of trauma-producing events are cumulative" and that "each event contribut[es] additional harm or damage." *Id.* at 198-99. She asserted that to understand the impact of the sexual abuse on MR, all of the events, including "the grooming that eventually allowed the sexual abuse to materialize" must be considered." *Id.* at 199.

Mulligan then opined that MR was more probably than not "significantly impacted by [the] four continuous years of sexual abuse, including the sexual abuse when she was seventeen years old." *Id.* at 200. She further opined that no single incident caused the damages, and that "[i]t is not possible to parse out which specific trauma-producing events caused which specific ailment that M.R. now suffers from." *Id.*

The trial court denied the State's summary judgment motion after concluding that RCW 4.16.340 applied to all claims because all of the claims were based on "a series of events by the same alleged perpetrator" that began before MR was 18 and the expert witnesses had stated that it was "impossible to segregate the harm." Verbatim Rep. of Proc. at 36. The court stated that because this was "a continuous series of events," it was "prudent to apply the childhood sex abuse statute of limitations to the events." *Id.* But the court noted that if the childhood sex abuse statute did not apply, it would "be ruling the other way" because MR did not establish the reasonable diligence that was required under the common law discovery rule. *Id.* at 37.

IV. DISCRETIONARY REVIEW

The trial court granted the State's subsequent request for certification of the summary judgment order for immediate review under RAP 2.3(b)(4). Our commissioner granted the motion for discretionary review of the statute of limitations issue under RAP 2.3(b)(4), which permits review of the controlling question of law certified by the trial court.

ANALYSIS

I. RCW 4.16.340

The issue the commissioner accepted for discretionary review is whether RCW 4.16.340's statute of limitations applies to MR's claims based on allegations of adult sexual abuse when these acts are part of a continuing pattern of abuse that started when she was under 18. There is no case law addressing the application of RCW 4.16.340 when some of the acts of sexual abuse occurred when the plaintiff was under 18 and other acts occurred after the plaintiff turned 18. Thus, this issue is an issue of first impression.

The State argues that the trial court erred when it concluded that RCW 4.16.340's statute of limitations applied to all of MR's claims. They contend that the plain language of RCW 4.16.340 establishes that the child sexual abuse statute of limitations applies only to acts that occur before the plaintiff turns 18 even if the later "abuse was a continuation of sexual abuse that began when [the plaintiff] was a minor." State's Br. at 21.

MR argues that the plain language of RCW 4.16.340 does not limit the application of the statute to claims for acts that occurred when the plaintiff was under 18. MR contends that "[t]he only limitation [the statute] imposes is that the 'injury' for which recovery is sought must be caused by childhood sexual abuse" and, apparently, that "Butler's subsequent, continuing sexual abuse after she turned 18" amounts to an "injury" caused by childhood sexual abuse. Br. of Resp't at 2 (emphasis omitted), 35.

We agree with the State.

A. LEGAL PRINCIPLES

The interpretation of a statute is an issue of law that this court reviews de novo. *Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002). Our goal when interpreting a statute is to "ascertain and carry out the Legislature's intent." *Id.* If the meaning of the statute is plain on its face, we "must give effect to that plain meaning as an expression of legislative intent." *Id.* at 9-10. We discern a statute's plain meaning from the ordinary meaning of the language in the context of related statutory provisions, the entire statute, and related statutes. *Id.* at 9-12.

If a statute is susceptible to more than one reasonable interpretation after reviewing the plain meaning, it is ambiguous. *Id.* at 12. If a statute is ambiguous, this court may "resort to aids [of] construction, including legislative history." *Id.*

B. CHILDHOOD SEXUAL ABUSE STATUTE OF LIMITATIONS AND LEGISLATIVE FINDINGS

RCW 4.16.340 establishes the statute of limitations for claims based on acts of childhood sexual abuse. The statute provides:

> (1) 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;
>
> (b) Within three years of the time the victim discovered or reasonably should have discovered that the injury or condition was caused by said act; or
>
> (c) Within three years of the time the victim discovered that the act caused the injury for which the claim is brought:
>
> PROVIDED, That the time limit for commencement of an action under this section is tolled for a child until the child reaches the age of eighteen years.
>
> (2) The victim need not establish which act in a series of continuing sexual abuse or exploitation incidents caused the injury complained of, but may compute the date of discovery from the date of discovery of the last act by the same perpetrator which is part of a common scheme or plan of sexual abuse or exploitation.
>
> . . . .
>
> (4) For purposes of this section, "child" means a person under the age of eighteen years.
>
> (5) As used in this section, "childhood sexual abuse" means any act committed by the defendant against a complainant who was less than eighteen years of age at the time of the act and which act would have been a violation of chapter 9A.44 RCW or RCW 9.68A.040 or prior laws of similar effect at the time the act was committed.

RCW 4.16.340.

As part of its most recent amendment to RCW 4.16.340 in 1991, which added subsection (1)(c) to the statute, the legislature made the following intent findings:

> The legislature finds that:
> (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) 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.

C. ANALYSIS

RCW 4.16.340(1) states that it applies to "injur[ies] suffered as a result of childhood sexual abuse." The statute defines "childhood sexual abuse" as "any act committed by the defendant against a complainant who was less than eighteen years of age at the time of the act." RCW 4.16.340(5). This language shows that the sexual abuse at issue must be an "act" committed against a plaintiff before the plaintiff turned 18. Nothing in this language suggests that the statute also applies to any acts that occurred after the plaintiff reaches the age of 18.

RCW 4.16.340(1) permits a plaintiff to seek relief for all *injuries* that are the result of an act of childhood sexual abuse, regardless of when those injuries occurred. But this does not extend the statute of limitation on *claims* arising from later acts of sexual abuse that occurred when the plaintiff was an adult.

MR contends that "[t]he only limitation [the statute] imposes is that the 'injury' for which recovery is sought must be caused by childhood sexual abuse" and that "Butler's sexual abuse of M.R. after she turned 18" qualifies as an "injury" caused by the childhood sexual abuse because the 2000 incident facilitated the later abuse. Br. of Resp't at 2 (emphasis omitted), 36. But even though an act of grooming may facilitate later abusive acts, the grooming does not *cause* the subsequent abusive act. The later act is an independent intentional act. Accordingly, this argument is not persuasive.

MR also filed a statement of additional authorities (SAA) referring this court to *Wolf v. State*, ___ Wn.3d ___, 534 P.3d 822 (2023). MR asserts that *Wolf* demonstrates that "recoverable injuries under RCW 4.16.340 can have multiple causes," and argues that Butler's "abuse" and "conduct" in 2000 "caused his continuing sexual abuse of [MR] past age 18." SAA at 1. But as we discuss above, MR's assertion that the 2000 abuse caused the later abuse is not persuasive. And *Wolf* is not helpful here because it does not address a continuing course of conduct occurring over a time period during which the plaintiff was both a minor and an adult.

The only part of RCW 4.16.340 that could potentially be read to extend the statute to acts of sexual abuse committed against the plaintiff after the plaintiff turned 18 is subsection (2). As stated above, that subsection provides:

> The victim need not establish which act in a series of continuing sexual abuse or exploitation incidents caused the injury complained of, but may compute the date

> of discovery from the date of discovery of the last act by the same perpetrator which is part of a common scheme or plan of sexual abuse or exploitation.

RCW 4.16.340(2).

Although this subsection acknowledges that sexual abuse can occur as a series of acts taking place over a period of time, it addresses how to compute the date of discovery under such circumstances. It does not state that every act that occurs during the course of the common scheme or plan of sexual abuse that occurs after the plaintiff turns 18 qualifies as an act of childhood sexual abuse.

Had the legislature intended this result, it could have used similar language regarding an ongoing "common scheme or plan of sexual abuse or exploitation" in its definition of "childhood sexual abuse" rather than limiting the meaning of that term to "any act committed by the defendant against a complainant who was less than eighteen years of age at the time of *the act*." RCW 4.16.340(2), (5) (emphasis added).[2] The legislature certainly knew how to use language that would encompass multiple acts in a common scheme or plan, but it chose not to do so when defining the scope of "childhood sexual abuse" to which the more generous statute of limitations applies.

The conclusion that RCW 4.16.340 does not apply to acts committed after the plaintiff turns 18 that occur during the course of a common scheme or plan of sexual abuse is also consistent with the legislature's 1991 intent statement. The intent statement is specific to childhood sexual abuse; it does not mention the inclusion of any acts that might occur as part of a common scheme or plan of sexual abuse or exploitation that continues into adulthood. This suggests that the

[2] There are no cases applying this subsection in the context of continuing sexual abuse that took place over a span of time during which the plaintiff was both under and over 18 years of age.

legislature did not intend the special statute of limitations to apply outside of the context of acts committed while the plaintiff was under 18.

Additionally, the legislature's intent statement demonstrates that RCW 4.16.340 was intended to address the risks that a young person may not understand that they were abused or that a young person would not be able to connect a specific act of abuse to the resulting injury. These risks diminish as the person ages. And in enacting RCW 4.16.340, the legislature made a policy decision to draw the line regarding when this risk was sufficiently reduced to justify imposing the adult statute of limitations at 18 years of age. Interpreting RCW 4.16.340 to apply to acts that occurred when the plaintiff was 18 or older usurps the legislature's policy decision.

We hold that the plain language of RCW 4.16.340 demonstrates that the childhood sexual abuse statute of limitations applies only to claims based on acts of childhood sexual abuse occurring before the plaintiff turns 18.[3] Accordingly, the trial court erred when it concluded that RCW 4.16.340's statute of limitations applied to the claims arising out of the alleged acts of abuse that occurred after MR turned 18.

We reverse the summary judgment order, and remand for further proceedings.

II. ADDITIONAL ISSUES

In addition to the statute of limitations issue addressed above, the State argues that (1) the common law discovery rule does not apply to MR's claims based on the alleged acts that occurred after she turned 18 because she failed to make further diligent inquiry to ascertain the scope of the

[3] That is not to say that MR cannot argue to the jury that she is entitled to all damages proximately caused by the act that occurred before she turned 18. And this proximate cause inquiry must be understood in the context of the entire course of conduct, including those incidents that occurred after MR turned 18.

actual harm, and (2) MR's remaining claim of child sexual abuse fails because she fails to establish causation. We do not reach these issues.

Our commissioner granted discretionary review of the issue certified by the trial court regarding whether the statute of limitations in RCW 4.16.340 applied to all of MR's allegations of sexual abuse under RAP 2.3(b)(4). The State's additional arguments fall outside the order granting discretionary review. Because the commissioner did not grant discretionary review on any additional issues, we do not reach them. RAP 2.3(e); *Johnson v. Recreational Equip., Inc.*, 159 Wn. App. 939, 959 n.7, 247 P.3d 18 (2011) (holding that the appellate court may specify the issue or issues as to which discretionary review is granted).

We reverse the summary judgment order and remand to the trial court for further proceedings.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Cruser, J.
CRUSER, J.

We concur:

Glasgow, CJ
GLASGOW, C.J.

Price, J.
PRICE, J.

PCVA LAW

December 28, 2023 - 1:30 PM

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