NO. 103177-7

SUPREME COURT OF THE STATE OF WASHINGTON

CAROLYN SIOUX GREEN

Appellant,
v.

STATE OF WASHINGTON, PROVIDENCE ST. PETER HOSPITAL, OLYMPIA POLICE DEPARTMENT, THURSTON COUNTY, and DOES 1 through 1,000

Respondents.

RESPONDENT'S COMBINED ANSWER TO PETITION FOR REVIEW AND ANSWER TO MOTION TO VACATE

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I. IDENTITY OF RESPONDING PARTY

Respondent Providence St. Peter Hospital (PSPH) answers Appellant Green's Petition for Review.

II. COURT OF APPEALS DECISION

In an unpublished opinion, Division II unanimously affirmed the trial court's order granting summary judgment dismissal in PSPH's favor because the statute of limitations clearly bars Green's lawsuit. *Green v. State et al.*, No. 57429-2-II (May 14, 2024) (unpublished).[1] 19 years after her 2001 hospitalization, Green sued PSPH for medical negligence, among other unclear torts like false imprisonment. Slip Op. at 1-2. Absent tolling, Green's claims expired more than 15 years before she commenced this action. Slip Op. at 7. Division II correctly determined that no such tolling applied. Although Green's unclear briefing alluded to intentional concealment tolling, equitable tolling, and incapacity tolling, Division II appropriately appreciated that Green's conclusory, unsupported

[1] The slip opinion is attached as an appendix.

arguments did not remotely establish the criteria for tolling under any potential provision. Slip Op. 7-9.

Division II's decision thus involves straightforward statute of limitations and tolling issues that are exactly consistent with this Court's and the Courts of Appeals' decisions. It does not involve a question of constitutional magnitude nor an issue of substantial public importance to warrant this Court's review. This Court should decline review.

III. COUNTERSTATEMENT OF THE ISSUES

A. Did Division II properly exercise jurisdiction over Green's appeal of Thurston County Superior Court's summary judgment dismissal order because RAP 4.1 provides that a party seeking review of a decision of a trial court located in Thurston County "must seek review in Division Two of the Court of Appeals"?

B. Did the trial court properly grant PSPH summary judgment and dismiss Green's lawsuit as untimely when she

failed to sue PSPH within the applicable statute of limitations or establish that tolling applies?

IV. COUNTERSTATMENT OF THE CASE

A. Green's 2001 hospitalization.

On May 31, 2001, police responded to Green driving her vehicle "at a high rate of speed" in a gravel lot and doing "donuts," while waving her arms and yelling. CP 1153. The officer observed that Green was laughing and speaking nonsensically. CP 1153-54. Because Green was driving recklessly, posing a danger to herself and others, the officer transported her to the PSPH emergency department (ED) for an involuntary mental health evaluation. CP 1154.

Upon arrival to the ED, Green continued to exhibit manic behavior with tangential thoughts, intermittently laughing and screaming. CP 1823. After clearing her medically, the ED physician concluded that Green suffered from mania with psychotic features and referred her to crisis services for a mental health evaluation. *Id*. The social worker's preliminary mental

health evaluation determined that Green's judgment was impaired, her memory, recall and concentration were poor, her thought process was tangential, and her thought content was delusional, grandiose, paranoid, and depersonalized. CP 1827-28. Based on her evaluation, the social worker referred Green to a County Designated Mental Health Professional ("DMHP"). [2] CP 1828.

The DMHP observed similar symptomology as the social worker, finding Green a gravely disabled individual who presented a danger to herself and others. CP 1830-32. Green received a notice of her rights, which identified her assigned attorney, and the DMPH petitioned for and was granted emergency detention of Green under chapter 71.05, the Involuntary Treatment Act (ITA). CP 1832, 1834, 1836-38.

[2] Designated Mental Health Professionals (DMHPs) are now called Designated Crisis Responders (DCR), but the terms are used interchangeably. They are county-appointed mental health professionals who evaluate patients pursuant to the ITA. *See* RCW 71.05.020(16).

Green was subsequently diagnosed with bipolar disorder, rapidly cycling with psychosis, and potential schizoaffective disorder. CP 1842.

Because Green continued to deteriorate and refuse treatment during her hospitalization, PSPH staff petitioned for further involuntary treatment within the ITA's bounds, which a court granted following a hearing where Green was represented by counsel. CP 1821, 1845-52, 1855-79, 1881-86, 1892-98. Green did not appeal these orders. 4-2-21 RP 12-14.

During her hospitalization, staff observed that Green "was constantly involved in legal issues and making long distance phone calls, faxing materials, and having hospital administration tied up with her on many different issues." CP 1821. She ultimately agreed to be transferred to a different facility, the American Lake VA Hospital, where she received treatment for some time. CP 1821.

B. Green goes on with her life.

Following the 2001 hospitalization, Green successfully re-engaged in life: she actively participated in the legal system, divorced, volunteered, became a caregiver, obtained multiple higher education degrees, purchased a home, started a photography business, ran half marathons, registered a trademark with the U.S. Patent and Trademark Office, and self-published a book. CP 1179-81, 1800-01. She sought and received restoration of her firearms rights in 2019. CP 1231-33. Green also requested and received her PSPH medical records as early as September 2002. CP 1889.

Green's appendix to this petition contains character references spanning years from 2001 to 2023. While unclear why Green references an external appendix that did not comprise the clerk's papers or report of proceedings before Division II, it, like the record below, demonstrates that Green had capacity to pursue this lawsuit much sooner than waiting nearly 20 years after her hospitalization. *See, e.g.*, *Appx. at 35* (2001 reference indicates

her approach to business was "far more organized than other entrepreneurs"); *Appx. at 32-33* (2008 references commending Green on her good grades and prioritizing education); *Appx. at 13* (describing Green in 2009 as intelligent and academically involved); *Appx. at 30* (Green's boss describing her in 2014 as "knowledgeable, adaptable and reliable to meet any challenge").

C. 19 years after the 2001 hospitalization, Green sues.

Over 19 years after Green's 2001 hospitalization, on October 8, 2020, Green sued PSPH, the State of Washington, Olympia Police Department, Thurston County, and Does 1 through 1,000. CP 1754. Green appeared to allege medical negligence and false imprisonment among other ambiguous violations. CP 1755-74.

PSPH and the other named defendants moved for CR 12(b)(6) dismissal. 4-2-21 RP 3. The trial court dismissed all named defendants[3] except for PSPH. *Id.* at 10-11 (City of

[3] Green unsuccessfully appealed this decision, this Court denied review, and the U.S. Supreme Court denied certiorari. *See Green v. Dep't of Soc. & Health Servs.*, No. 55790-8-II, 2022 Wash.

Olympia), 14-15 (Thurston County), 20-21 (State of Washington), 28-30 (PSPH). The court indicated that Green's claims against PSPH were more appropriate for summary judgment. *Id.* at 28.

D. PSPH Moves for Summary Judgment.

On February 25, 2022, PSPH moved for summary judgment because the statutes of limitations had passed on Green's claims and no tolling applied, and, separately, RCW 71.05.120(1) provided PSPH with qualified immunity absent bad faith or gross negligence, which she had not proven. CP 1797-1812.

Although the motion was not set for hearing until May 6, Green sought an extension, which the trial court denied because Green still had many days to prepare a response. 4-8-22 RP 14.

App. LEXIS 1817 (Sept. 13, 2022), *rev. denied*, 200 Wn.2d 1032 (2023), *cert. denied*, U.S. Supreme Court No. 23-7151, 2024 U.S. LEXIS 2380, __ S.Ct. __, 2024 WL 2805813 (June 3, 2024).

E. Green attempts to "remove" the lawsuit she filed in state court.

Green then filed a "Notice of Removal" on April 14, 2022, in which she purported to "remove" her case to federal court.[4] On May 13, 2022, PSPH moved for remand to state court because Green, as the plaintiff, had no authority to "remove" a case she filed in state court. The District Judge granted PSPH's motion to remand on July 7, 2022, and closed the federal case. Contrary to Green's assertion, *Pet. at 34-35*, Green has no open, active federal case to which PSPH is a party.[5]

[4] These documents are not included in the record and are provided for this Court's background information, although they would be properly subject to judicial notice of adjudicative facts.

[5] Green's unsubstantiated claims that PSPH's counsel somehow engaged in improper conduct, *Pet. at 34-35*, are similarly baseless. After considering PSPH's response and declarations from counsel disavowing any improper conduct, Division II denied her motions for sanctions and to modify the denial of sanctions, and this Court denied her subsequent motion to transfer the appeal for direct review.

F. The Court grants PSPH's summary judgment motion and dismisses Green's lawsuit.

Green eventually responded to PSPH's summary judgment motion by arguing that her medical and court records were inaccurate and reiterating her allegations against PSPH. *See* CP 2289-2298. She claimed that vague "health impairments" triggered equitable tolling, CP 2296-97, and asserted without evidence that PSPH acted in bad faith and with gross negligence such that the ITA's immunity did not apply, CP 2297-98.

After considering PSPH's reply, on September 9, 2022, the Thurston County Superior Court granted summary judgment in PSPH's favor and dismissed Green's lawsuit with prejudice. CP 2314-15.

G. Green appeals to Division II.

Green appealed to Division II. Green's opening brief spent considerable time contending without support that Division II did not have jurisdiction to decide her appeal. Largely ignoring the statute of limitations, she also raised numerous vague complaints, most of which were not at issue below and which

had unclear application to the appeal. Providing scant argument and no authority, Green attempted to invoke some kind of statute of limitations tolling, referencing at different points what Division II ultimately construed as potentially intentional concealment tolling under the medical negligence statute of limitations, equitable tolling, or incompetency.

Division II determined that it had jurisdiction because Green filed a Notice of Appeal in Division II seeking review of the Thurston County Superior Court's order dismissing her lawsuit with prejudice. Slip Op. at 3. Then, ruling solely on the dispositive statute of limitations issue, Division II affirmed dismissal, finding that the statute of limitations had passed before Green commenced this action and that Green's conclusory, unsupported assertions failed to establish tolling. Slip Op. at 5-9. Division II refused to consider Green's vague litany of constitutional claims as she had largely failed to raise them in the superior court nor were they applicable to her appeal of the summary judgment order. Slip Op. at 9, n.3. The Court did not

reach the ITA's immunity because it concluded the statute of limitations was dispositive. Slip Op. at 9, n.4.

Green now petitions this Court for review.

V. ARGUMENT WHY REVIEW SHOULD BE DENIED

A. This Court should decline review because Green has failed to cite appropriate authority.

RAP 13.4(b) allows this Court to accept review only:

> (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
>
> (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or
>
> (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or
>
> (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

Green fails to meaningfully engage with RAP 13.4(b)'s criteria. Although she mentions RAP 13.4(b)(3) and (4) once in passing, *Pet. at 41*, this conclusory mention fails to provide reasoned argument and pertinent authorities why this Court should grant review. Because this Court need not consider arguments

unsupported by authority or those without adequate analysis, it should decline to accept discretionary review. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992).

B. This Court should decline to accept review because no RAP 13.4(b) consideration applies.

Green's petition fixates on a vast litany of issues—many of which were never before the trial court or Division II, including restoration of her firearms rights and many perceived wrongs that Green believes occurred to her, *see, e.g., Pet. at 13-41*—that are not actually at issue. Green ultimately seeks this Court's review of Division II's opinion, *Pet. at 1*. Division II (1) concluded that it had jurisdiction to decide this appeal and (2) affirmed dismissal on a straightforward statute of limitations issue. Slip Op. at 3-9. Because those are the only two issues that Division II decided, PSPH confines its response to substantively addressing those two issues only. Neither merits this Court's consideration.

Having correctly determined that it had jurisdiction because Green properly filed her notice of appeal there, Division II then correctly concluded that Green's lawsuit was untimely because she filed it well beyond the statute of limitations and no tolling applied. Division II's decision is correct and consistent with this Court's and the Court of Appeals' decisions. Review under RAP 13.4(b)(1) or (2) is not warranted. Nor does this petition involve a significant constitutional question or an issue of substantial public interest to warrant review under RAP 13.4(b)(3) or (4).

1. Division II correctly determined that it had jurisdiction to decide the appeal.

As she did before Division II, here again without pertinent authorities supporting her position, Green argues, *Pet. at 9-13,* that she is somehow entitled to federal review and wants the appeal that she filed in Division II "removed" to federal court. In concluding it had jurisdiction, Division II correctly appreciated that Green sought review of a Thurston County Superior Court order and had thus appropriately designated Division II in her

Notice of Appeal. Slip Op. at 3 (citing RAP 4.1(b)(2) and RAP 2.2(a)(1)).

Division II clearly had jurisdiction of this appeal because Green filed a Notice of Appeal in Division II seeking review of the Thurston County Superior Court's order dismissing her lawsuit with prejudice. RAP 4.1 mandates that a party seeking review of a decision of a trial court located in Thurston County "**must** seek review in Division Two of the [Washington State] Court of Appeals." RAP 4.1(b)(2) (emphasis added). RAP 2.2(a)(1) establishes that "final judgments," which include orders granting summary judgment, are subject to direct review by the Washington state Court of Appeals. *Denney v. City of Richland*, 195 Wn.2d 649, 651, 462 P.3d 842 (2020) (summary judgment order resolving all substantive legal claims constitutes a "final judgment" pursuant to RAP 2.2(a)(1)).

And Green's earlier attempted removal was improper regardless. 28 U.S.C. § 1441(a) states that "any civil action brought in State court . . . may be removed by the defendant or

the defendants, to the district court … .” The statute allows only a **defendant** to remove a case. Green is the plaintiff. Although her initial attempt at “removal” automatically sent her case to federal court, the federal court appropriately appreciated that the plaintiff cannot remove her own lawsuit and properly remanded it to state court. PSPH is not a party to any active federal matter against Green. Pendent jurisdiction is inapplicable.[6]

Division II thus correctly concluded it had jurisdiction to decide this appeal. Slip Op. at 3. Not only was Division II correct, but Green also fails to link her jurisdictional argument to any RAP 13.4(b) consideration that would warrant this Court’s review.

[6] Green’s renewed request for this Court to “transfer the case to the Federal Court,” *Pet. at 11*, is unsupported. This Court’s Commissioner already denied her previous “Motion to Transfer” because Green “has not identified any authority, and I cannot find any, that gives this court authority to direct a change of venue in a superior court proceeding.” *March 15, 2024 Ruling Denying Motions to Transfer and Change Venue at 3.*

2. Division II's conclusion that the statute of limitations expired before Green sued and that no tolling applies correctly follows well-settled law.

Green provides no decision of this Court or of the Courts of Appeals that conflicts with Division II's decision. None does. Division II correctly applied a straightforward statute of limitations and tolling analysis to conclude that the statute of limitations expired before Green commenced this action in October 2020 concerning events from 2001, and that no tolling applied.

Green filed her lawsuit against PSPH nearly 20 years after the care at issue. Green has never realistically disputed that she filed her lawsuit well outside the applicable statute of limitations. She brings claims, including specifically for medical negligence, arising from the healthcare she received at PSPH in May and June 2001.[7] The medical negligence statute of limitations, RCW

[7] Division II correctly appreciated that any of Green's other claims it might infer from her complaint are also time-barred. Slip Op. at 5, n.1. False imprisonment has a two-year statute of limitations under RCW 4.16.100(1) such that Green's false imprisonment claim expired on June 12, 2003. Other claims for

4.16.350(3), thus applies. *See Fast v. Kennewick Pub. Hosp. Dist.*, 187 Wn.2d 27, 36, 384 P.3d 232 (2016) (RCW 4.16.350(3) applies to "all cases alleging medical negligence"). Applicable here, RCW 4.16.350(3) requires plaintiffs to commence actions for injuries arising from healthcare within three years of the allegedly negligent act or omission, which occurred in 2001.[8] Because Green failed to do so, her action is untimely unless tolling applies. Division II correctly determined that none does.

Like her petition, *see Pet. at 15-18,* Green provided scant argument and no pertinent authority before Division II to support her tolling argument, making it difficult to even ascertain which

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personal injury or emotional distress are subject to a three-year statute of limitations, and thus, like her medical negligence claims, are time-barred as of June 12, 2004.

[8] Green has never invoked RCW 4.16.350(3)'s discovery provision. She now for the first time appears, *Pet. at 14-15*, to attempt to claim that she can bring some new cause for restoration of her firearms rights based on a one-year discovery rule, but this appeal does not concern restoration of firearms rights. And Green in fact successfully restored her firearms rights in 2019. CP 1231-33.

type of tolling she sought to invoke. Yet it was her burden to prove that tolling applied. *See Cortez-Kloehn v. Morrison*, 162 Wn. App. 166, 172, 252 P.3d 909 (2011), *rev. denied*, 173 Wn.2d 1002 (2011) (plaintiff asserting exception to statute of limitations bears burden of proving that tolling applies). As which tolling provision she even sought to invoke was not apparent from her briefing, Division II could have appropriately denied her conclusory tolling arguments for that reason alone.[9] *See Saunders v. Lloyd's of London*, 113 Wn.2d 330, 345, 779 P.2d 249 (1989) (disregarding arguments not supported by adequate, cogent argument and briefing).

[9] Green cites, *Pet. at 16-17*, several federal cases on complaint pleading standards to incorrectly suggest that she was entitled to a lower standard of adequately supporting her arguments, but Washington "[c]ourts hold pro se litigants to the same standards as attorneys." *In re Vulnerable Adult Pet. for Winter*, 12 Wn. App. 2d 815, 844, 460 P.3d 667 (2020), *rev. denied*, 196 Wn.2d 1025 (2020) (citing *In re Marriage of Olson*, 69 Wn. App. 621, 626, 850 P.2d 527 (1993)). In any event, despite her lack of supported argument, Division II did endeavor to ascertain and substantively consider various conceivably applicable tolling provisions, but correctly concluded none applied. Slip Op. at 7.

Division II nevertheless substantively considered and properly rejected the various tolling provisions that could conceivably apply based on Green's vague allegations: intentional concealment, equitable tolling, and mental incapacity tolling. *See* Slip Op. at 7-9. In so doing, Division II followed well-settled decisions from this Court and the Court of Appeals.

First, considering RCW 4.16.350(3)'s tolling for fraud or intentional concealment, Division II correctly determined that "Green offers no evidence to show that PSPH committed fraud or attempted to conceal any negligence from Green." Slip Op. at 8. Division II appreciated that RCW 4.16.350(3)'s intentional concealment tolling "'requires more than just the alleged negligent act or omission forming the basis for the cause of action. The proviso is aimed at conduct or omissions intended to prevent the discovery of negligence or of the cause of action.'" *Breuer v. Presta*, 148 Wn. App. 470, 478, 200 P.3d 724, 728, (2009), *rev., denied*, 169 Wn.2d 1029 (2010) (quoting *Gunnier v. Yakima Heart Ctr., Inc*., 134 Wn.2d 854, 867, 953 P.2d 1162

(1998)). A plaintiff must "prove that the doctor knew he had committed a negligent act or omission and then intentionally made a material misrepresentation or failed to disclose material information which impeded the discovery of negligence." *Gunnier*, 134 Wn.2d at 867. Division II correctly concluded that Green offered no evidence whatsoever to show that PSPH was negligent, knew it was negligent, or attempted to intentionally hide any negligence from Green. Green thus failed to invoke RCW 4.16.350(3)'s intentional concealment tolling.

Next, Division II considered and rejected equitable tolling. Equitable tolling is an "extraordinary form of relief because the rules at issue generally reflect the public policy of the state as enacted by the legislature" and "statutes of limitation reflect the importance of finality and settled expectations in our civil justice system." *Fowler v. Guerin,* 200 Wn.2d 110, 118, 515 P.3d 502 (2022) (citations omitted). Washington law authorizes equitable tolling when

> (1) the plaintiff has exercised diligence, (2) the defendant's bad faith, false assurances, or deception has interfered with the plaintiff's diligent efforts, (3) tolling is consistent with (a) the purpose of the underlying statute and (b) the purpose of the statute of limitations, and (4) justice requires tolling the statute of limitations.

Id. at 113 (citations omitted). Division II correctly observed that "Green fails to provide any meaningful evidence or analysis showing bad faith, deception, or false assurances on the part of PSPH or that she acted with reasonable diligence." Slip Op. at 8.

Finally, Division II correctly found incapacity tolling inapplicable. As with other tolling, Green likewise bore the burden of proving it applied. *See Rivas v. Overlake Hosp. Med. Ctr.*, 164 Wn.2d 261, 267, 189 P.3d 753 (2008). RCW 4.16.190 may toll the statute of limitations if a person is "incompetent or disabled to such a degree that he or she cannot understand the nature of the proceedings, such incompetency or disability as

determined according to chapter 11.130 RCW."[10] Among other criteria, this tolling requires that the individual

> lack[] the ability to meet essential requirements for physical health, safety, or self-care because the respondent is unable to receive and evaluate information or make or communicate decisions, even with appropriate supportive services, technological assistance, or supported decision making[.]

RCW 11.130.265 (1)(a)(i).

Division II correctly determined that the "evidence Green presented in the superior court does not support her claim that she had a mental disability that prevented her from understanding the nature of the proceedings at any time between May 2001 and 2020 or otherwise establish incompetence for purposes of RCW 4.16.190." Slip Op. at 8. In this petition, *Pet. at 17-18*, Green again makes the same vague brain damage claims without substantiating them as she did before Division II. No evidence supports that Green was mentally incapacitated, let alone unable

[10] Former RCW 4.16.190 (2006) was in effect when Green filed her complaint, but because the changes to the statute are not material to the analysis here, the current version is used.

to understand the nature of the proceedings for nearly 20 years until she filed her lawsuit.

To the contrary, Division II recognized that

> [F]ar from demonstrating that Green lacked "the ability to meet essential requirements for physical health, safety, or self-care," the evidence shows that during the period between her involuntary commitment and the filing of her complaint, Green attained several impressive achievements—she graduated with honors from Pierce College in 2010 and graduated from the University of Washington Tacoma with a degree in environmental science in 2014.

Slip Op. at 8-9.

Indeed, she did. Green obtained her GED. She then went to Pierce College and UWT where she excelled and obtained multiple degrees. CP 1179-80, 1800, 2206. She started her own business, bought a home, registered a trademark with the U.S. Patent and Trademark Office, and volunteered in her community among other things. CP 1179-81. In 2019, Ms. Green self-published a book and began working on a second. CP 1181. On August 14, 2019, Ms. Green undertook legal action, pro se, to restore her firearm rights. CP 1231-33. Even in 2001 during the

hospitalization at issue, Green was pursuing numerous legal matters. *See* CP 1821. Green's successful endeavors over the past two decades demonstrate her capacity to diligently pursue this lawsuit well before October 8, 2020. The delay was demonstrably not the result of incapacity that would trigger RCW 4.16.190's incapacity tolling.

Consistent with all Washington authorities, Division II thus properly considered and rejected each potential tolling provision, and properly affirmed dismissal on the statute of limitations. Not only has Green failed to demonstrate that Division II erred in its analysis, but she has also failed to establish that any RAP 13.4(b) factor applies under which this Court should accept review.

3. Division II properly did not reach Green's remaining claims or constitutional assertions, and neither should this Court.

Ignoring that Division II followed well-settled authorities in concluding only that the statute of limitations barred her untimely lawsuit, Green's petition raises a vague litany of

purported constitutional issues, many of which were not at issue before the trial court, *see* Slip. Op. at 9, n.3, or Division II, including restoration of her firearms rights, *Pet. at 13-15*, and that "the statute of limitations for involuntary treatment needs to be extended," *Pet. at 20*. These issues are not properly before the Court, and none merits judicial consideration.

Even Green's claims about her 2001 ITA detention are conclusory, without law or sufficient facts supporting them. PSPH complied with chapter 71.05 RCW, the ITA, in all its interactions with Green during her 2001 hospitalization.[11]

[11] The ITA squarely applies to PSPH's actions here. Police brought Green to the ED for an involuntary mental health assessment, which necessitated PSPH's staff medically clearing Green and providing her with a mental health evaluation. CP 1153-54. Providers determined that Green presented an imminent danger because of grave disability and concerns about a threat to her safety and the safety of others such that they detained her and notified the DCR. CP 1823, 1827-28, 1842. The DCR determined that detention under the ITA was thus warranted, and provided the requisite notifications to Green. CP 1830-32, 1834, 1836-38. PSPH then appropriately sought court permission for 14-day and 90-day holds, which the court granted after hearings at which Green was represented by counsel. CP 1821, 1845-47, 1849-52, 1855-86, 1892-98, 2208. Green takes

Nevertheless, Division II did not reach the ITA's application because it decided this appeal on the dispositive statute of limitations issue, concluding Green's lawsuit was time-barred because she filed it 19 years after the events at issue and tolling did not apply.

Green's tangential foray into various constitutional provisions without clear application to the present matter fails to raise a significant constitutional question nor an issue of substantial public interest. *See State v. Johnson*, 119 Wn.2d 167, 171, 829 P.2d 1082 (1992) ("Parties raising constitutional issues must present considered arguments to this court"); *In re Pers. Restraint of Rhem*, 188 Wn.2d 321, 328, 394 P.2d 367 (2017) ("'naked castings into the constitutional sea'" are insufficient "'to command judicial consideration and discussion'") (citation omitted).

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issue with PSPH's decision to medicate her, but administering antipsychotic medications is a decision and action that RCW 71.05.120(1) expressly covers. *See also Brief of Respondent PSPH at 36-46.*

C. This Court should decline to consider Green's motion to vacate because it is not properly before this Court.

At the end of her petition for review, Green includes a conclusory "Motion to Vacate," in which she asks this Court to vacate the 2001 involuntary treatment she underwent at PSPH. This Court should decline to consider this motion. Green fails to provide authority that the Court procedurally should consider a motion never raised below, much less reasoned argument, authority, and facts substantively supporting it. As discussed above, *see Note 11*, *infra*, and thoroughly detailed in PSPH's Division II brief, PSPH complied with the ITA in all its interactions with Green. No grounds for vacating the 2001 psychiatric hospitalization exist, even had Green raised this issue previously, which she did not.

VI. CONCLUSION

No RAP 13.4(b) consideration applies to warrant this Court accepting review. Division II's decision constitutes a straightforward application of the statute of limitations, affirming dismissal because Green filed her lawsuit 19 years

after the events at issue and she wholly failed to demonstrate that tolling applied. This Court should decline review.

This document contains 4,695 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 17th day of July, 2024.

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APPENDIX

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May 14, 2024

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

CAROLYN SIOUX GREEN, Appellant, v. STATE OF WASHINGTON, PROVIDENCE ST. PETER HOSPITAL, OLYMPIA POLICE DEPARTMENT, THURSTON COUNTY, and DOE'S 1 through 1,000, Respondents.	No. 57429-2-II UNPUBLISHED OPINION

PRICE, J. — In 2001, Carolyn Sioux Green was involuntarily detained at Providence St. Peter Hospital (PSPH). Over 19 years later, Green brought a suit against PSPH. The superior court granted summary judgment in favor of PSPH and dismissed Green's claims with prejudice. Green appeals.

Because Green's lawsuit was barred by the statute of limitations, we affirm.

FACTS

In May 2001, Green was admitted to the PSPH emergency department for a mental health evaluation. A county designated mental health professional evaluated Green and authorized her detention for 72 hours. Thereafter, PSPH filed a petition for 14 days of involuntary treatment. The superior court granted PSPH's petition and ordered an additional 14 days of treatment.

The following week, PSPH petitioned the superior court for an additional 90 days of involuntary treatment, claiming that Green had not cooperated with treatment and displayed escalating psychosis. The superior court granted the request. A few days later, Green was transferred to American Lake Veterans Administration Hospital.

Many years later, in October 2020, Green filed a complaint against PSPH and several other parties. Green appeared to allege claims of medical negligence and potentially false imprisonment against PSPH.

In February 2022, PSPH moved for summary judgment. PSPH argued, among other things, that Green's complaint was barred by the applicable statute of limitations. PSPH also argued that even if the statute of limitations did not bar Green's complaint, PSPH was protected by qualified immunity under the "Involuntary Treatment Act" (ITA), ch. 71.05 RCW. Green responded by claiming that the statute of limitations was tolled due to unspecified "health impairments" and that qualified immunity did not apply under the egregious circumstances of her detention. Clerk's Papers (CP) at 2297. The superior court granted PSPH's motion for summary judgment, dismissing Green's claims with prejudice.

Green appeals.

ANALYSIS

Green appears to make two general arguments in her appeal—jurisdictional and substantive on the merits. First, Green challenges this court's jurisdiction to hear her appeal. Second, related to the merits of the superior court's dismissal, Green reiterates her arguments made below that her claims were not barred by the statute of limitations due to tolling and that qualified immunity under the ITA did not apply.

I. JURISDICTION

Green first asserts that we do not have jurisdiction over her appeal. She appears to argue that she is entitled to federal review of the superior court's order and wants this appeal removed to federal court. We disagree.

A party seeking review of a decision of a trial court located in Thurston County, "must seek review in Division Two of the [Washington State] Court of Appeals." RAP 4.1(b)(2). A "final judgment," such as an order granting summary judgment, is subject to direct review by the Court of Appeals. RAP 2.2(a)(1); *Denny v. City of Richland*, 195 Wn.2d 649, 651, 462 P.3d 842 (2020) (summary judgment order resolving all substantive legal claims constitutes a "final judgment" pursuant to RAP 2.2(a)(1)).

Here, Green is seeking review of an order of the Thurston County Superior Court and, appropriately, designated Division Two in her notice of appeal. Green cites to no authority that this court lacks jurisdiction or that she is entitled to removal to federal court under these circumstances. Thus, Green's jurisdictional argument fails. *See DeHeer v. Seattle Post-Intelligencer*, 60 Wn.2d 122, 126, 372 P.2d 193 (1962) ("Where no authorities are cited in support of a proposition, the court is not required to search out authorities, but may assume that counsel, after diligent search, has found none.").

II. STATUTE OF LIMITATIONS

Green's substantive argument relates to tolling of the statute of limitations and the inapplicability of the ITA's qualified immunity to PSPH. As for tolling, Green argues that the statute of limitations was tolled based on three different theories—fraud or intentional concealment under the medical negligence statute, equitable tolling, and incompetency. As for the ITA's

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qualified immunity, Green argues that PSPH cannot rely on immunity when the alleged circumstances of her detention were so egregious. Because the statute of limitations is dispositive if it applies, we address Green's "tolling" arguments first.

A. STANDARD OF REVIEW

We review a superior court's grant of summary judgment de novo. *Crisostomo Vargas v. Inland Wash., LLC*, 194 Wn.2d 720, 728, 452 P.3d 1205 (2019). Summary judgment may be granted if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. CR 56(c); *Meyers v. Ferndale Sch. Dist.*, 197 Wn.2d 281, 287, 481 P.3d 1084 (2021). A genuine issue of material fact exists if reasonable minds could disagree on the conclusion of a factual issue controlling the outcome of the litigation. *Sartin v. Estate of McPike*, 15 Wn. App. 2d 163, 172, 475 P.3d 522 (2020), *review denied*, 196 Wn.2d 1046 (2021). When determining whether to grant summary judgment, we view all facts and inferences in the light most favorable to the nonmoving party. *Id*. We may affirm the trial court's order granting summary judgment on any ground supported by the record. *Martinez-Cuevas v. DeRuyter Bros. Dairy, Inc.*, 196 Wn.2d 506, 514, 475 P.3d 164 (2020).

B. LEGAL PRINCIPLES

In general, medical negligence claims must be brought within three years of the act or omission alleged to have caused injury.[1] RCW 4.16.350(3). However, there are several ways in which the three-year statute can be tolled. For example, the medical negligence statute itself provides that the three-year statute can be tolled by fraud or intentional concealment. *Id.* The statute provides, in pertinent part, that each claim

> shall be commenced *within three years* of the act or omission alleged to have caused the injury or condition . . . PROVIDED, That the time for commencement of an action is tolled upon proof of *fraud*, [or] *intentional concealment* . . . until the date the patient or the patient's representative has actual knowledge of the act of fraud or concealment . . . the patient or the patient's representative has one year from the date of the actual knowledge in which to commence a civil action for damages.

RCW 4.16.350(3) (emphasis added).

The intentional concealment provision of the medical negligence statute is aimed at conduct or omissions intended to prevent the discovery of negligence. *Breuer v. Presta*, 148 Wn. App. 470, 478, 200 P.3d 724 (2009), *review denied*, 169 Wn.2d 1029 (2010). It demands more than merely the alleged negligent act or omission forming the basis for the cause of action. *Id.* For the intentional concealment tolling provision to apply, the plaintiff must "prove that the doctor knew [they] had committed a negligent act or omission and then intentionally made a material

[1] At times in Green's briefing, she appears to allege that PSPH's actions in 2001 amounted to kidnapping. To the extent that Green's argument can be construed as an allegation that PSPH committed the tort of false imprisonment, her claim would be subjected to a two-year statute of limitations, even shorter than that for medical negligence. RCW 4.16.100; *State Farm Fire & Cas. Co. v. Justus*, 199 Wn. App. 435, 452, 398 P.3d 1258, *review denied*, 189 Wn.2d 1026 (2017). Thus, if her medical negligence claims are barred by the statute of limitations, it follows that any false imprisonment claims are similarly barred. Therefore, to the extent Green is alleging that PSPH's actions in 2001 amounted to kidnapping, we do not separately address it.

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misrepresentation or failed to disclose material information which impeded the discovery of negligence." *Gunnier v. Yakima Heart Ctr., Inc.*, 134 Wn.2d 854, 867, 953 P.2d 1162 (1998).

Another type of tolling which may apply is equitable tolling. Equitable tolling can apply when (1) justice requires, (2) bad faith, deception, or false assurances on the part of the defendant occurred, (3) the plaintiff acted with reasonable diligence, and (4) it is consistent with both the purpose of the statute providing the cause of action and the statute of limitations. *Fowler v. Guerin*, 200 Wn.2d 110, 119, 515 P.3d 502 (2022). The party asserting equitable tolling has the burden of proving its applicability. *Price v. Gonzalez*, 4 Wn. App. 2d 67, 75, 419 P.3d 858 (2018). Equitable tolling is an extraordinary form of relief because the time limit contained in the statute of limitations reflects the public policy of the state as enacted by the legislature. *Fowler*, 200 Wn.2d at 118.

> Finally, another form of tolling involves incompetency. By statute, if a person is
>
> incompetent or disabled to such a degree that he or she cannot understand the nature of the proceedings . . . the time of such disability [as determined according to chapter 11.130 RCW] shall not be a part of the time limited for the commencement of action.

RCW 4.16.190.[2]

Among other criteria, for this type of tolling, a person is considered incompetent or disabled to such a degree they cannot understand the nature of the proceedings if they

> lack[] the ability to meet essential requirements for physical health, safety, or self-care because the respondent is unable to receive and evaluate information or make or communicate decisions, even with appropriate supportive services, technological assistance, or supported decision making[.]

[2] Former RCW 4.16.190 (2006) was in effect at the time that Green filed her complaint. However, because the changes to the statute are not material to our analysis, we refer to the current version of the statute.

RCW 11.130.265(1)(a)(i). The party asserting entitlement to this type of tolling has the burden of proving it applies. *See Rivas v. Overlake Hosp. Med. Ctr.*, 164 Wn.2d 261, 267, 189 P.3d 753 (2008).

C. APPLICATION

Green's complaint, filed in 2020, related to events that occurred during her involuntary detention at PSPH in May and June of 2001. Consequently, absent any tolling, the statute of limitations for her claims expired more than 15 years before she filed her complaint. RCW 4.16.350(3).

Green appears to argue that the statute of limitations was tolled for three reasons. First, she references the fraud or intentional concealment provision of the medical negligence statute, RCW 4.16.350(3). Second, she suggests equitable tolling prevented the running of the statute of limitations. And third, she appears to suggest that she was mentally incompetent under RCW 4.16.190 during the period between her involuntary commitment and the filing of her complaint. We disagree.

Green's first argument is that the statute of limitations was tolled because of the fraud or intentional concealment provision of RCW 4.16.350. We are unpersuaded. The rationale for this tolling provision is that a plaintiff cannot be expected to obtain the facts necessary to realize they have a medical negligence claim when the defendant is misleading the plaintiff into believing that they do not have a claim. *Cox v. Oasis Physical Therapy, PLLC*, 153 Wn. App. 176, 187-89, 222 P.3d 119 (2009) (plaintiff failed to show defendant intentionally concealed the inappropriateness of his physical exam where alleged facts did not bear on their treatment); *Gunnier*, 134 Wn.2d at 867 (fraud or intentional concealment provision did not apply where

plaintiff failed to allege facts suggesting the defendant hampered discovery of possible negligence). Here, Green offers no evidence to show that PSPH committed fraud or attempted to conceal any negligence from Green. Accordingly, Green has failed to show that the fraud or intentional concealment tolling provision applies.

Similarly unpersuasive is Green's second argument for equitable tolling. To establish equitable tolling, Green must show, among other things, bad faith, deception, or false assurances on the part of PSPH and that she acted with reasonable diligence in bringing her claim. *Fowler*, 200 Wn.2d at 119. Like her argument under RCW 4.16.350(3), Green fails to provide any meaningful evidence or analysis showing both bad faith, deception, or false assurances on the part of PSPH and that she acted with reasonable diligence. Accordingly, Green has not met her burden of demonstrating that equitable tolling applies.

Finally, to the extent Green alleges that her claims should be tolled based on alleged disability or incompetence pursuant to RCW 4.16.190, her argument also fails. The evidence Green presented in the superior court does not support her claim that she had a mental disability that prevented her from understanding the nature of the proceedings at any time between May 2001 and 2020 or otherwise establish incompetence for the purposes of RCW 4.16.190. *See Harris v. Groth*, 99 Wn.2d 438, 449, 663 P.2d 113 (1983) ("expert testimony is required when an essential element in the case is best established by an opinion which is beyond the expertise of a layperson"). In fact, far from demonstrating that Green lacked "the ability to meet essential requirements for physical health, safety, or self-care," the evidence shows that during the period between her involuntary commitment and the filing of her complaint, Green attained several impressive

achievements—she graduated with honors from Pierce College in 2010 and graduated from the University of Washington Tacoma with a degree in environmental science in 2014.[3]

Therefore, we hold that the superior court did not err when it dismissed Green's complaint with prejudice based on the statute of limitations.[4]

CONCLUSION

We affirm the superior court's order dismissing Green's complaint with prejudice.

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.

PRICE, J.

We concur:

CRUSER, C.J.

LEE, J.

[3] Throughout her briefing to this court, Green also cites various constitutional provisions and laws, including the Americans with Disabilities Act, due process, the freedom of speech, religious freedom, and the right to bear arms. However, it is unclear how these authorities, many of which she did not raise to the superior court below, are applicable to Green's appeal of the superior court's order. We do not consider arguments made unsupported by references to the record or argument. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992) (we will not consider issues that are not supported by references to the record or argument).

[4] Because our resolution of the statute of limitations issue is dispositive of this appeal, we do not address Green's second argument that ITA qualified immunity does not apply to PSPH.

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that on the 17th day of July, 2024, I caused a true and correct copy of the foregoing document, "Respondent's Combined Answer to Petition for Review and Answer to Motion to Vacate," to be delivered in the manner indicated below to the following counsel of record:

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Dated this 17th day of July, 2024, at Seattle, Washington.

s/Carrie A. Custer
Carrie A. Custer, Legal Assistant

FAVROS LAW

July 17, 2024 - 11:12 AM

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