

**IN THE SUPREME COURT
STATE OF GEORGIA**

WALTER JACKSON “JAKE”
HARVEY, JR. and CAROLE
ALLYN HILL HARVEY

Appellants,
v.

JOY CAROLINE HARVEY
MERCHAN,

Appellee.

Supreme Court No. S21A0143

**AMICUS CURIAE BRIEF OF THE GEORGIA TRIAL LAWYERS
ASSOCIATION IN SUPPORT OF APPELLEE CAROLINE MERCHAN**

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**I. STATEMENT OF IDENTITY AND INTEREST OF
*AMICUS CURIAE***

The Georgia Trial Lawyers Association (“GTLA”), comprised of over 2,000 members of the State Bar of Georgia, is dedicated to the civil justice system and the principle of full compensation for the victims of intentional torts and negligence. It submits the following brief in support of the Appellee’s position.

II. SUMMARY OF THE ARGUMENT

The heart of GTLA’s concern in this case is to clarify the proper application of Georgia’s choice-of-law rules where a civil tort action is brought in a Georgia court for recovery of damages for injuries suffered in Georgia resulting from tortious conduct committed in an out-of-state jurisdiction.

III. ARGUMENT AND CITATION TO AUTHORITY

**A. Under Georgia’s Well-Established Choice-Of-Law Principles,
Georgia Law Applies in Georgia Civil Tort Actions Based on
Extraterritorial Tortious Conduct When Injury Occurs in Georgia.**

When a Georgia citizen brings a civil action in Georgia for an injury suffered in Georgia due to the tortious conduct of another, Georgia law applies, even when the alleged act is committed in an out-of-state jurisdiction. Georgia courts customarily apply the substantive law of the state where the tort was committed and

the procedural law of the forum state.¹ *Auld v. Forbes*, No. S20G0020, 2020 WL 5753317, at *2 (Ga. Sept. 28, 2020). “[F]or over 100 years, the state of Georgia has followed the doctrine of *lex loci delicti* in tort cases, pursuant to which ‘a tort action is governed by the substantive law of the state where the tort was committed.’” *Bullard v. MRA Holding, LLC*, 292 Ga. 748, 750 (1) (2013) (quoting *Dowis v. Mud Slings, Inc.*, 279 Ga. 808, 809 (2005)). To illustrate:

The place where the tort was committed, or, the *locus delicti*, is the place where the injury sustained was suffered rather than the place where the act was committed, or, as it is sometimes more generally put, it is the place where the last event necessary to make an actor liable for an alleged tort takes place.

Auld, 2020 WL 5753317, at *2 (quoting *Bullard*, 292 Ga. at 750-751 (1)). Accordingly, because Georgia tort actions are governed by the substantive law of the forum state where the “last event necessary” to make the defendant liable for the alleged tort takes place, Georgia law applies to civil actions seeking relief for any injury suffered in Georgia as a result of the tortious conduct of another, no matter where the tortious acts occurred.

The Appellants argue that this case involves “a series of of independent torts all of which were completed as they occurred.” (Appellants Reply Br. p. 3).

¹ For reference, “a substantive law creates rights, duties, and obligations while a procedural law prescribes the methods of enforcing those rights, duties, and obligations.” *New Cingular Wireless PCS, LLC v. Dep't of Revenue*, 308 Ga. 729, 731 (2020).

However, this interpretation confuses the nature of the Appellee's cause of action. This is a tort action for childhood sexual abuse. The abuse is long and far reaching, presenting a continuous set of circumstances involving tortious conduct, all occurring during childhood, and all of which give rise to the cause of action. All of the conduct must be taken together and subsumed under the cause of action, and in that instance, the last, most recent, place where *any* injury sustained is suffered is the place where the action should be brought, and the laws of that forum apply. *See Mullins v. M.G.D. Graphics Sys. Grp.*, 867 F. Supp. 1578, 1582 (N.D. Ga. 1994) (“Georgia law directs that the place of the injury governs here and not the law of the place where acts which allegedly caused the injury took place.”).²

Under the Appellants' interpretation, victims of any tort would be forced to travel to the forum where the first act occurred to pursue any civil action, even when Georgia is the forum where the last, and most recent, harm occurred.³ This would lead to an absurd result, even without considering the obvious detriments to judicial economy and efficiency. An abuse, or other tort, victim cannot be expected to bring a civil action against his or her abuser in a state where neither reside. The Appellants'

² The Supreme Court of Georgia has cited favorably to *Mullins* in continuing to apply *lex loci delicti*. *Dowis*, 279 Ga. at 809 (applying Georgia law when a Tennessee resident working for a Missouri corporation suffered an injury in Georgia).

³ Georgia is also the forum where the Appellants reside.

argument asks for a ruling that would effectively prohibit any cause of action from being pursued, which is not what the legislature intended here.

Georgia law applies in the present matter because the last event necessary to establish liability, the suffering of damages as a result of childhood sexual abuse, occurred in Georgia. Under O.C.G.A. § 9-3-33.1(d)(1) (2015):

[P]laintiffs of any age who were time barred from filing a civil action *for injuries resulting from childhood sexual abuse* due to the statute of limitations in effect on June 30, 2015, shall be permitted to file such actions against the individuals alleged to have committed such acts of abuse before July 1, 2017...

Id. (Emphasis added). Here, even though a large portion of the acts constituting childhood sexual abuse occurred in Quebec, the most recent acts of abuse, and the most recent injuries suffered as a result of the abuse, occurred in Georgia, which triggers liability on the part of the abusers. In addition, because the abuse is transitory in nature, the trier of fact must consider all tortious acts contributing to the harm suffered in Georgia.

The Appellants contend that O.C.G.A. § 9-3-33.1 does not encompass any of their abusive conduct committed against the Appellee outside the state of Georgia because the definition of “childhood sexual abuse” under O.C.G.A. § 9-3-33.1(a)(1) must arise from acts that “would be in violation of” the enumerated statutes in the code section. (Appellants Br. p. 8). In addition, the Appellants allege that O.C.G.A.

§ 9-3-33.1 cannot apply here as a matter of law because all of the abuse occurred in Canada. *Id.* at p. 14.

Appellants' arguments, however, fail for several reasons. First, the last acts of abuse, and the most recent injuries, occurred in Georgia, and these actions, as described in the complaint, clearly violate the statutes enumerated under O.C.G.A. § 9-3-33.1(a)(1). Second, as previously provided, the doctrine of *lex loci delicti* determines the applicable law in Georgia tort cases, and this doctrine provides that "a tort action is governed by the substantive law of the state where the tort was committed." *Bullard*, 292 Ga. at 750 (1). Therefore, because the Appellee suffered injuries resulting from child sexual abuse in Georgia, the tort was completed in Georgia, meaning that a tort action to recover for these injuries is governed by the substantive law of Georgia.

Lastly, O.C.G.A. § 9-3-33.1(a)(1) does not say that the committed acts of childhood sexual abuse must violate any of the enumerated statutes in Georgia. Instead, the provision simply applies to "***any act***" that "***would*** be in violation of" the statutes, which is plainly the case here. O.C.G.A. § 9-3-33.1(a)(1) (Emphasis added). The definition incorporates the different types of conduct prohibited under the enumerated statutes for the purpose of defining the applicable standard of care for which relief may be sought if breached under the legislatively created cause of action, as opposed to the definition subsuming all of the purely procedural criminal

elements required to successfully prosecute and convict under these statutes. The criminal statutes in O.C.G.A. § 9-3-33.1(a)(1) operate the same as they would if Appellee brought a claim for negligence per se. *See* Hricik, GA. LAW OF TORTS, § 2:11 (2019) (“When a statute provides a general rule of conduct, the violation thereof is negligence as a matter of law, or ‘negligence per se,’ whereas in the absence of such a specific statute the jury is left to determine whether such conduct constitutes negligence.”). Accordingly, as a baseline, Georgia substantive law applies since the most recent acts of abuse, and the most recent injuries suffered as a result of the abuse, occurred in Georgia, and the enumerated criminal statutes provided under O.C.G.A. § 9-3-33.1(a)(1) simply provide the actionable conduct for which recovery may be sought. The Appellants’ numerous acts of abuse fall squarely within the conduct prohibited, and the transitory nature of the conduct does not immunize the Appellants from civil liability.

Indeed, when a tort is “transitory in nature, the place of the wrong is the place where the last event occurred necessary to make an actor liable for the alleged tort.” *Panik v. Dunes Vill. Properties, LLC*, 323 Ga. App. 345, 347 (2013) (quoting *Intl. Business Machines Corp. v. Kemp*, 244 Ga. App. 638, 640(1)(a) (2000)). This principle holds true even where Georgia law recognizes a cause of action not available in the foreign jurisdiction, provided the enforcement of the *lex loci delicti*

would not seriously contravene the established policy of the forum.⁴ *Am. Mgmt. Servs. E., LLC v. Fort Benning Family Communities, LLC*, 333 Ga. App. 664, 689 (2015). Therefore, in the absence of any material contravention in public policy, a claimant may bring a cause of action provided under Georgia law for tortious acts initiated and partially occurring outside of Georgia where the most recent injury is suffered in Georgia.

For instance, in *Bullard v. MRA Holding, LLC*, this Court ruled that Georgia law applied in a civil action where nude images taken in Florida of a fourteen-year-old girl were subsequently distributed nation-wide, including Georgia, where the girl resided. *Bullard*, 292 Ga. at 749. This Court reasoned that even though the act of capturing the plaintiff's image had taken place in Florida, Georgia law applied because the plaintiff "lived and attended school in Georgia," which is "where she would have sustained any injury that resulted from the distribution of her image."

⁴ Georgia recognizes a "public policy exception to the doctrine of *lex loci delicti*," which discharges the duty of Georgia courts to apply the law of foreign states, even if the tort occurred in another state, only if extra-territorial application would conflict with Georgia's public policy. *Auld*, 2020 WL 5753317, at *3; *Bailey v. Cottrell, Inc.*, 313 Ga. App. 371, 373 (2011) (noting that because the rule of *lex loci delicti* is applied as a courtesy or comity, the doctrine will not be enforced where foreign laws contravene Georgia's public policy); *see also* O.C.G.A. § 1-3-9.

Id. at 752. In other words, Georgia law controlled because “Georgia is the state where the injury sustained was suffered[.]” *Id.* (internal punctuation omitted).⁵

Here, similar to the tortfeasor in *Bullard* who took the nude image of the plaintiff in Florida, which was disseminated in Florida, the Appellants first engaged in acts constituting childhood sexual abuse against the Appellee in Quebec, Canada. Accordingly, just like in *Bullard* where this Court found that Georgia substantive law applied because Georgia was the place where the plaintiff suffered injuries stemming from the wrongful distribution of her image, the Court here must also find that Georgia law is similarly implicated since the most recent acts of abuse, and the Appellee’s most recent injuries suffered as a result of the abuse, occurred in Georgia.

Lex loci delicti (the law of the place where the injury was sustained) dictates that Georgia substantive law applies, and because Appellee brought this action in Georgia, under lex fori (the law of the forum state), Georgia procedural law also

⁵ Numerous Georgia courts have uniformly held the same in transient tort actions where two or more forums are implicated. *See, e.g., Rigby v. Flue-Cured Tobacco Coop. Stabilization Corp.*, 339 Ga. App. 558, 561 (2016) (applying Georgia, rather than North Carolina, law in breach of fiduciary duty action where injuries of appellants, all Georgia residents, were suffered in Georgia); *Mut. Ins. Co. v. Roark*, 297 Ga. App. 612, 614 (2009) (applying Georgia workers’ compensation law where Tennessee resident employed by Tennessee corporation where injury was sustained and suffered in Georgia in course and scope of his employment); *Hines v. Railserve, Inc.*, 326 Ga. App. 681, 691 (2014) (applying Kansas law in negligence case against Georgia company in Georgia court because injuries stemming from a pipe bomb explosion occurred, and were suffered, in Kansas).

governs. *Auld*, 2020 WL 5753317, at *2. Under Georgia law, “statutes of limitations are generally procedural and are therefore governed by the ‘lex fori’ or the law of the forum state.” *Id.* at *3; *see also Hunter v. Johnson*, 259 Ga. 21, 22(1) (1989) (“Statutes of limitation look only to the remedy and so are procedural.”) (internal citations omitted). Since Georgia procedural law applies, the statute of limitation set forth under O.C.G.A. § 9-3-33.1(d)(1) (2015) controls as well.

In the present matter, the trial court correctly concluded that the Appellee can validly pursue a cause of action for damages, stemming from acts constituting childhood sexual abuse partially occurring in Quebec, under O.C.G.A. § 9-3-33.1(d)(1) (2015). The Georgia Supreme Court has already determined that the substantive law of the locus delicti applies, which is the place where the last event necessary to make an actor liable for an alleged tort takes place. Because the most recent event necessary to establish liability, the suffering of damages as a result of childhood sexual abuse, occurred in Georgia, Appellee is entitled to pursue her cause of action pursuant to Georgia substantive and procedural law.

IV. CONCLUSION

Amicus respectfully requests that this Court AFFIRM the trial court’s judgment regarding choice of law in accordance with the doctrines of lex loci delicti and lex fori and the holdings of *Bullard v. MRA Holding, LLC*, 292 Ga. 748

(2013) and *Auld v. Forbes*, No. S20G0020, 2020 WL 5753317, (Ga. Sept. 28, 2020).

This 12th day of November, 2020.

Respectfully Submitted.

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Certificate of Service

I certify that on this 12th day of November, 2020, I served a copy of **AMICUS CURIAE BRIEF OF THE GEORGIA TRIAL LAWYERS ASSOCIATION IN SUPPORT OF APPELLEE CAROLINE MERCHAN** by email on the following counsel of record:

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