

ARGUMENT AND CITATION TO AUTHORITY

A. The Georgia Trial Lawyers Association arguments are flawed.

1. The Georgia Trial Lawyers Association mischaracterizes the results of the Appellants position.

The Georgia Trial Lawyers Association (hereinafter “GTLA”) asserts in their amicus brief, that 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. This contention is clearly incorrect and indicates a lack of understanding of the Appellants’ position.

The Appellants have never contested venue in this matter. The Appellants do contend that as an action for childhood sexual abuse, the timeliness of the Appellee’s cause of action is governed by O.C.G.A. § 9-3-33.1. The definition of “childhood sexual abuse” set forth in O.C.G.A. § 9-3-33.1(a)(1) does not encompass claims arising from acts occurring outside the State of Georgia. Consequently, the Appellee’s claims were not revived by O.C.G.A. § 9-3-33.1(d)(1). This argument hinges on the plain meaning of the language used in O.C.G.A. § 9-3-33.1 not on venue. The statute does not by definition apply to acts which occurred outside of Georgia.

In an effort to save her cause of action, the Appellee argues that her case occurred in Georgia and was therefore revived by O.C.G.A. § 9-3-33.1(d)(1). (Brief of Appellee p. 15). In addition, the Appellee argues that the acts that give rise to liability in this case were transitory in nature, occurring continuously and repeatedly in Quebec, and continuing after the Appellants moved to Georgia. (Brief of Appellee p. 15). In support of the argument regarding the transitory nature of the claim, the Appellee cites to several cases dealing with the question of what law is to be used when a civil tort action is brought in a Georgia court for a harm that was sustained in an out-of-state jurisdiction. See e.g. *Auld v. Forbes*, No. S20G0020, 2020 WL 5753317, at *2 (Ga. Sept. 28, 2020); *Bullard v. MRA Holding, LLC*, 292 Ga. 748, 750 (1) (2013); *Risdon Enterprises, Inc. v. Colemill Enterprises, Inc.*, 172 Ga. App. 902, 903 (1984).

GTLA continues this line of thinking by arguing, “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. (Appellee Amicus Brief p. 3).

Both the Appellee and GTLA miss the point. The Appellants do not contest

the applicability of Georgia law nor do they contest venue. “[S]tatutes of limitations are generally procedural and are therefore governed by the ‘lex fori’ or the law of the forum state.” *Auld*, 2020 WL 5753317 at *3 (citing *Taylor v. Murray*, 231 Ga. 852, 853 (1974)). Appellants simply contend the Appellee’s claims do not fit the definition of what claims are revived by O.C.G.A. § 9-3-33.1(d)(1).

This argument is narrow in application and does not have the far reaching application feared by GTLA. Furthermore, both the Appellee and GTLA use cases determining choice of law to support the contention that the Appellee’s claim should be considered to have occurred in Georgia. The doctrine of *lex loci delicti* has never been used to interpret O.C.G.A. § 9-3-33.1 nor for any other purpose outside of the choice of law. It has no application to venue.

In fact, it is the argument of GTLA, if adopted, that would lead to disastrous result. GTLA would make Georgia law apply to every case where the Plaintiff resides in Georgia. GTLA argues 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. In support of the argument, GTLA cites to *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. (Appellee Amicus Brief p. 8). Furthermore, they claim the instant case is similar to *Bullard* because Georgia is where the Appellees most recent injuries occurred.

GTLA's comparison is inapposite. Despite thorough questioning and ample opportunity, the Appellee did not describe a single act of sexual abuse taking place in Georgia. In addition, at numerous points in their depositions, the Appellee and her sister describe being sexually abused as children in Canada. (R. 571-572, 575, 577, 580, 592-593, 596, 634-635 and 639)(R. 749-751, 602,604). Both testified they moved from Canada to an address on Kensington Avenue in Savannah, Georgia. (R. 560-561). Neither the Appellee or her sister stated that they were sexually abused in Georgia. In contrast, the plaintiff in *Bullard* **lived and attended school in Georgia** (emphasis added) when her image was distributed. *Bullard* at 751.

Assuming *arguendo* that the Appellee was sexually assaulted in Canada, the conduct was actionable when that occurred. Appellee admits no abuse occurred in Georgia. Thus, applying GTLA's reasoning is akin to applying Georgia law to an automobile accident that occurs in another State. Even if the plaintiff continues to

suffer from her injuries in Georgia the substantive law of the other state should apply. GTLA would have every potential plaintiff injured out of state arguing Georgia law should apply.

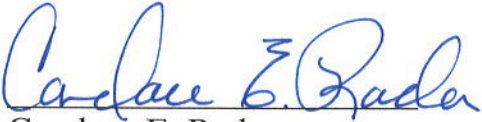
CONCLUSION

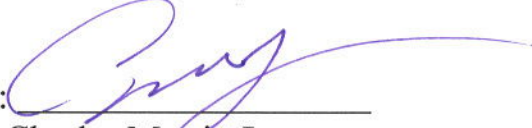
For all the foregoing reasons, Appellants ask that the Court reverse the trial court's Order Denying Defendants' Motion to Dismiss dated November 4, 2019 and reverse the trial court's Order Denying Defendants' Motion for Summary Judgment dated November 4, 2019.

Respectfully submitted, this the 23rd day of November, 2020.

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CERTIFICATE OF SERVICE

I do hereby certify that I have this day served a copy of the above and foregoing APPELLANTS' REPLY BRIEF IN RESPONSE TO THE AMICUS CURIAE BRIEF OF THE GEORGIA TRIAL LAWYERS ASSOCIATION, upon the opposing party by regular mail with proper postage attached, to-wit:


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This the 23rd day of November, 2020.

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