**IN THE SUPREME COURT**
**STATE OF GEORGIA**

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| WALTER JACKSON "JAKE" HARVEY, JR. and CAROLE ALLYN HILL HARVEY<br>Appellant,<br>v.<br><br>JOY CAROLINE HARVEY MERCHAN,<br>Appellee. | Case No. S21A0143 |

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**Appellee Joy Caroline Harvey's Supplemental Brief**

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### 1. Appellee sufficiently alleged that acts of child sexual abuse were committed in the state of Georgia.

In the Appellee's Third Amended Complaint, Appellee alleges that the Appellants committed child sexual abuse, sexual battery, assault, and intentional infliction of emotional distress against Appellee in several locations, including the family homes in Quebec, Canada and Savannah, Georgia. R-871. Appellee's allegations of child sexual abuse, as defined under O.C.G.A. § 9-3-33.1, include rape, incest, child molestation, aggravated sodomy, and enticement of a child for indecent purposes. R 868-881. Appellee also makes a specific plea for punitive damages. R-879.

Appellee's Third Amended Complaint does not set forth the location of each individual act of child sexual abuse, sexual battery, assault, and intentional infliction of emotional distress. However, as this Court noted in its recent decision in *Atlanta Women's Specialists, LLC v. Trabue*, 850 S.E.2d 748, 752 (Ga. 2020), "Georgia is a notice pleading jurisdiction," and such specificity is not required under Georgia's Civil Practice Act. A complaint will survive a motion to dismiss "so long as the complaint admits of any conceivable set of facts which would support a recovery." *Summer-Minter & Assoc., Inc. v. Giordono*, 231 Ga. 601, 605 (1974). Here, Appellee alleged that acts of child sexual abuse as defined under

O.C.G.A. § 9-3-33.1 were committed in the state of Georgia, specifically in Savannah. Therefore, the Third Amended Complaint sufficiently alleged acts of abuse occurring in the state of Georgia to survive a motion to dismiss.

**2. Appellant's conduct constituted a series of acts which should be adjudicated together.**

During oral argument, this Court correctly noted that there is no direct authority compelling it to consider the conduct committed against the Appellee as a whole when assessing choice of law. However, there is also no direct authority mandating that the action be divided between the Quebec conduct and the Georgia conduct. In that sense, this Court faces an issue of first impression regarding how to handle a continuous, lengthy exposure to tortious conduct that starts in a separate jurisdiction, continues into Georgia, and inflicts injury until the harmful conduct is removed. Appellee respectfully urges this Court to resolve this question in favor of considering the conduct as a whole and that the final act giving rise to liability occurred in Georgia for three reasons: (1) precedential consistency, (2) judicial economy, and (3) factual analogy.

**a. Precedential consistency**

This Court has defined a continuous tort as a claim "where any negligent or tortious act is of a continuing nature and produces injury in varying degrees over a period of time." *Everhart v. Rich's Inc.*, 229 Ga. 798, 802 (1972). The continuing

tort theory may be applied in cases where personal injury is involved. *Corporation of Mercer Univ. v. National Gypsum Co.*, 258 Ga. 365 (1998). Although a cause of action for a continuous tort accrues when the harm "first produces ascertainable injury" and "the tort is then complete in the sense that it will support a claim," this Court recognizes that a tort can nevertheless be "continuous in nature" so long as the tortfeasor continues to expose the plaintiff to the harm. *Everhart*, 229 Ga. at 802. In applying the continuous tort theory, individual torts within the continuum are not considered "in isolation," but rather, as a whole. See, e.g. *Mears v. Gulfstream Aerospace Corp.*, 255 Ga. App. 636 (1997) (concluding that a series of acts allegedly causing emotional distress should be viewed cumulatively, rather than in isolation).

Admittedly, this Court's application of the continuous tort theory has been limited to cases where the continuous tort tolls the statute of limitations until "the continued tortious act producing injury is eliminated," and has not applied the continuous tort theory in a choice of law analysis. *Id*. However, the absence of application to a choice of law analysis is due to this case presenting a matter of first impression to this Court.

Each individual act of child sexual abuse can be considered a completed tort; however, in cases where a plaintiff suffers repeated and frequent abuse on a weekly, if not daily, basis over a period of nearly two decades, the abuse is

continuous in nature. Appellee is the biological child of Appellants. R-870. She resided with her parents from birth and until she left home at the age of 22. *Id*. During that time, she was subjected to continuous, repeated and frequent child sexual abuse. *Id*. No person, much less a child, would be able to remember each and every individual act of abuse that occurred repeatedly and frequently, on a weekly, if not daily, basis over the period of 22 years. Rather, the abuse runs together as one continuous tortious act, and should be considered as such by this Court.

Under Georgia's rule of lex loci delicti, Georgia courts apply the law of "the place where the last event necessary to make an actor liable for an alleged tort takes place," which is "the place where the injury was suffered." *Bullard v. MRA Holdings, LLC*, 292 Ga. at 750-51 (quoting *Risdon Enter., Inc. v. Colemill Enter, Inc.*, 172 Ga. App. 902, 903 (1) (1984)). As argued in Appellee's Principle Brief, here, Georgia is the primary and final place "where the injury was suffered." *Bullard*, 292 Ga. at 750-51. Similar to this Court allowing for a statute of limitations to be tolled "until such time as the continued tortious act producing injury is eliminated," this Court should find that the law of the place where the last event necessary to make an actor liable" for an alleged continuous tort is the place where the "continued tortious act producing injury is eliminated," meaning where the final injury occurred. *Bullard* 292 Ga. at 750; *Everhart*, 229 Ga. at 802.

Applying the continuous tort theory to this case would be limited in application. This is a rare case and would not apply to cases like *M.H.D. v. Westminster Schools*, 172 F.3d 797 (11th Cir. 1999) or *Hickey v. Askren*, 198 Ga. App. 718 (1991) where the plaintiffs were abused four times or fewer within a matter of months. Furthermore, by finding that the alleged abuse in this case constitutes a continuous tort would not turn every child sexual abuse claim into a continuous tort. Rather, as with all continuous tort cases, the determination of whether a continuous tort exists requires a factual analysis on a case-by-case basis.

Finally, finding that the facts alleged in this case constitute a continuous tort would not require this Court to find that cases where a survivor of child sexual abuse who has continuing psychological damages after the final injury is a continuous tort. Rather, this Court would be making a finding specific to the facts alleged in this case—that when tortious acts of child sexual abuse and its injuries continue in a frequent and repeated manner over a period of 22 years on a weekly, if not daily, basis, the tortious acts are continuous in nature and must be considered as a whole, and that the injury to the plaintiff does not end until the harm is eliminated.

Therefore, in finding that the case before this Court involves a continuous tort that was not eliminated until the plaintiff and defendants were all in the state of Georgia, that the final injury giving rise to liability occurred in Georgia, and that

the laws of the state of Georgia should be applied, this Court would be making a finding that is consistent with its precedent and that will allow for predictability for future claims.

**b. Judicial economy**

In *Dowis v. Mud Slingers Inc.*, this Court chose to keep the principle of *lex loci delicti* due to its "relative certainty, predictability, and ease of . . . application . . . ." 279 Ga. 808, 816 (2005). Specifically, when comparing this principle to other choice of law approaches, this Court found *lex loci delicti* "preferable to the inconsistency and capriciousness that the replacement choice-of-law approaches have wrought." *Id.* This policy consideration would not be served by separating the tortious conduct in this case.

Separating each tortious act which could constitute a tort would create difficult questions for trial courts to consider, including, but not limited to: (1) how should punitive damages be allocated between the acts, particularly when the laws governing the acts treat punitive damages differently? (2) how should causation be established where the injury resulted from a culmination of all of the acts? and (3) do the doctrines of res judicata or collateral estoppel prevent the assertion of earlier claims that may have occurred in a different jurisdiction? Requiring such inquiries

of lower courts will create "the inconsistency and capriciousness" that this Court has sought to avoid. *Id*.

**c. Factual analogy**

Although this Court has not yet been asked to consider continuous and frequent acts of child sexual abuse occurring in more than one jurisdiction as a whole in a civil case, Georgia courts and the legislature have already recognized that certain types of crimes, including child molestation, should be considered as a whole for evidentiary or jurisdictional purposes.

In *Vaughn v. State*, 352 Ga. App. 32 (2019), the Georgia Court of Appeals held that evidence of child molestation of one victim was inextricably intertwined with the evidence of child molestation against two other victims. In its reasoning, the Court explained that "[e]vidence of other acts is 'inextricably intertwined' with the evidence regarding the charged offense if it forms an integral and natural part of the witness's accounts of the circumstances surrounding the offenses for which the defendant was indicted." *Id*. at 35-36. The Court in *Vaughn* explained that, "[e]vidence is admissible as intrinsic evidence when it is (1) an uncharged offense arising from the same transaction or series of transactions as the charged offense; (2) necessary to complete the story of the crime; or (3) inextricably intertwined with the evidence regarding the charged offense." *Smith v. State*, 302 Ga. 717, 725

(4), 808 S.E.2d 661 (2017). The Court recognized that separate acts of child molestation may be so inextricably intertwined that they must be considered together in order to "complete the story of the crime." *Id*.

Although the case before this Court does not involve a question of admissibility of prior acts of child molestation, the reasoning used in *Vaughn* serves as a helpful analogy when determining whether to consider separate acts of child molestation as one continuous tort. Here, the acts of child sexual abuse that occurred in Quebec and Georgia involved the same parties—the same plaintiff and the same defendants. All parties lived under the same roof, whether that roof was in Quebec or in Georgia. The acts of abuse were frequent, continuous, repeated, and similar in nature. The abuse constituted a series of similar transactions that cannot be separated. The abuse began in Quebec and continued as the defendants moved the plaintiff, a minor at the time and their legal dependent, to Georgia. For a jury to hear the complete story, all of the acts—those in both Quebec and Georgia—must be considered together, as one continuous tort, with multiple, frequent harms and injuries occurring until the final injury took place when the plaintiff was an adult and could leave her parents' Georgia home.

Therefore, this Court should find that the substantive and procedural laws of Georgia must be applied to all acts of abuse within the continuous tort alleged in this case, from Quebec and into Georgia.

### 3. To the extent that this Court applies Quebec's substantive law, Quebec's statute of limitations should also apply.

Although this Court has examined cases where either the foreign or the Georgia statute of limitations has expired, and therefore the plaintiff was seeking to use the unexpired statute of limitations, it has yet to examine a case where both jurisdictions' statutes of limitations were available to the plaintiff when the claim was filed. The inquiry, then, is if this Court finds that Quebec substantive law should be applied to the underlying acts, should Quebec's statute of limitations also be applied as a substantive provision? As set forth in Appellee's Principle Brief and as presented during oral argument, the answer is yes. This Supplemental Brief will not restate the arguments made in Appellee's Principle Brief, and will instead clarify questions brought up by this Court during oral argument related to the statute of limitations in Quebec.

Presumably, one of the Court's underlying reasons behind the rule set forth in *Taylor v. Murray*, 231 Ga. 852, 853 (1974) and *Auld v. Forbes*, No. S20G0020, 2020 WL 5753317 (Ga. Sept. 28, 2020) is to prevent plaintiffs from circumventing limitations periods that serve as a "qualification or condition" upon the cause of action. Appellee in this case filed her original Complaint for Damages on June 28, 2017 in the Superior Court of Carroll County, in the State of Georgia. R-342. At that time, survivors of child sexual abuse of any age, regardless of when the abuse

occurred, could file a civil complaint in Georgia. Also at that time, survivors of child sexual abuse had 30 years from when they discovered the abuse caused the resulting damages to file a civil complaint in Quebec. See Quebec Civil Code, c. 8, s. 2926.1 (2015). Here, the Appellee was well within both statutes of limitation, regardless of where she filed the claim. Furthermore, she is not circumventing a substantive statute of limitations or engaging in forum shopping, particularly where her move to Georgia was the choice of the Appellants, and not her own, as she was their dependent child at the time. Therefore, this Court should apply the *Taylor* exception as written, and should apply the shorter, specific, civilly-created, and substantive Quebec statute of limitation.

For the foregoing reasons, and the reasons set forth in the Appellee's Principle Brief, we ask this Court to affirm the trial court's orders in this case.

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## CERTIFICATE OF SERVICE

I hereby certify that I have this date served a true and correct copy of the foregoing *Appellee Joy Caroline Harvey's Supplemental Brief* by depositing a true and correct copy of same via electronic service and in the U.S. Mail addressed as follows:

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This 9th day of March, 2021.

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