

ORIGINAL

Case No. 2013-0824

IN THE SUPREME COURT OF OHIO

Appeal from the Court of Appeals
Tenth Appellate District
Case No. 12AP-959

URANUS WATKINS
Plaintiff-Appellant

v.

DEPARTMENT OF YOUTH SERVICES
Defendant-Appellee

**REPLY BRIEF OF AMICUS CURIAE
THE LANDSKRONER FOUNDATION FOR CHILDREN
IN SUPPORT OF APPELLANT**

Drew Legando (0084209)
LANDSKRONER GRIECO MERRIMAN, LLC
1360 West 9th Street, Suite 200
Cleveland, Ohio 44113
P. (216) 522-9000
F. (216) 522-9007
E. drew@lgmlegal.com

Counsel for Amicus Curiae

Jill Flagg, Esq.
333 St. Main Street, Suite 200
Akron, Ohio 44308

Counsel for Appellant

Eric Walker, Esq.
Office of the Ohio Attorney General
30 E. Broad Street, 14th Floor
Columbus, Ohio 43215

Counsel for Appellee

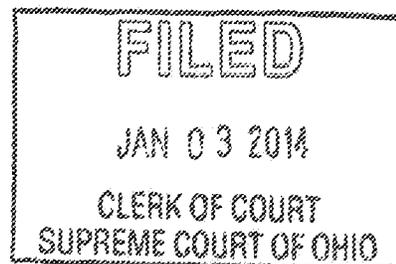
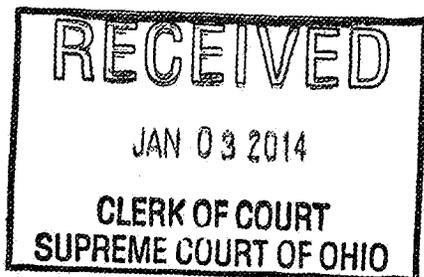


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STATEMENT OF INTEREST

The Landskroner Foundation for Children is a non-profit charitable organization established to promote positive and safe childhood development. The Foundation serves as a voice for children in need and it advocates for the rights of children who are disadvantaged or at risk. The Foundation has genuine concern over legislation that will affect children's welfare, as well as judicial decisions that may impair the ability of child victims to seek redress for physical and emotional injuries suffered as a result of corporate, governmental, or individual wrongdoing.

ARGUMENT

I. INTRODUCTION

Appellant Uranus Watkins brought a claim against the state alleging that she was a victim of childhood sexual abuse. Pursuant to R.C. 2305.111, the statute of limitations for such a claim is twelve years after the victim has reached the age of majority. The trial court, however, applied R.C. 2743.16, which provides for a two-year statute of limitations for claims brought against the state, and dismissed the appellant's claim. The court of appeals affirmed.

This Court accepted review of the appellant's proposition that the court of appeals erred because the "claims are not conclusively time-barred by the statute of limitations of a sex abuse action." Ms. Watkins' arguments for why the statute of limitations should not bar her claims are grounded in the unique legislative history of R.C. 2305.111, the science behind the psychological effects of childhood sexual abuse, and Equal Protection. The Department disagrees with Ms. Watkins' interpretation and rests its own upon the legislative history of R.C. 2743.16.

This *amicus* respectfully submits that the Department's statutory interpretation is flawed, and that proper statutory interpretation can resolve the issue, in favor of Ms. Watkins' Proposition of Law, without reaching her constitutional arguments. Therefore, the Foundation proposes this Court reach a holding that applies the statutory construction rule codified in R.C. 1.51, which it has done on many prior occasions, to find that the specific provisions in R.C. 2305.111 function as an exception to the more general provisions in R.C. 2743.16.

II. PROPOSED HOLDING

Revised Code 2305.111 is a special provision for an extended statute of limitations for victims of childhood sexual abuse, which prevails as an exception to the general statute of limitations set forth in the earlier-adopted R.C. 2743.16. R.C. 1.51 and *Summerville v. City of Forest Park*, 128 Ohio St.3d 221, 2010-Ohio-6280, applied.

“Well-established principles of statutory construction require that specific statutory provisions prevail over conflicting general statutes.” *State v. Volpe*, 38 Ohio St.3d 191, 193 (1988); *see also State ex rel. Motor Carrier Service, Inc. v. Rankin*, 135 Ohio St.3d 395, 2013-Ohio-1505, at ¶ 26 (“A well-settled principle of Ohio law is that when two statutes, one general and one specific, cover the same subject matter, the specific provision is to be construed as an exception to the general statute that might otherwise apply.”) The General Assembly has codified this canon of construction:

If a general provision conflicts with a special or local provision, they shall be construed, if possible, so that effect is given to both. If the conflict between the provisions is irreconcilable, the special or local provision prevails as an exception to the general provision, unless the general provision is the later adopted and the manifest intent is that the general provision prevail.

R.C. 1.51. This Court has consistently applied this principle: “Utilizing the rules of statutory construction contained in R.C. 1.12, 1.51, and 1.52, a specific statute, enacted later in time than a preexisting general statute, will control where a conflict between the two arises.” *Summerville v. City of Forest Park*, 128 Ohio St.3d 221, 2010-Ohio-6280, at ¶ 26, *quoting Davis v. State Personnel Bd. of Review*, 64 Ohio St.2d 102, 105 (1980) (overruled on other grounds); *see also State ex rel. Slagle v. Rogers*, 103 Ohio St.3d 89, 2004-Ohio-4354, at ¶ 14; *State ex rel. Dublin Securities, Inc. v. Ohio Div. of Securities*, 68 Ohio St.3d 426, 429, 1994-Ohio-340; *Chesapeake Exploration, LLC v. Oil & Gas Comm’n*, 125 Ohio St.3d 204, 2013-Ohio-224, at ¶ 18.

Revised Code 2743.16 sets forth a two-year statute of limitations for all “civil actions against the state.” This provision was first enacted in 1975 and last amended in 1991.

Revised Code 2305.111 sets forth a twelve-year statute of limitations for a narrow class of cases: “action[s] for assault or battery brought by a victim of childhood sexual abuse.” The

statute also provides that the cause of action does not accrue until the victim reaches the age of majority. These provisions were an integral part of Senate Bill No. 17 (2005) and became law in 2006.

Three things should be abundantly clear. First, the statutes are in conflict: no court can impose two different statutes of limitations upon the same claim. Second, R.C. 2305.111 is the later-enacted statute, and, as such, must be interpreted as an exception to any earlier-enacted general statute with which it conflicts.¹ Third, R.C. 2743.16 is a more general statute than R.C. 2305.111.

It is only this last point that could be subject to any debate. On the one hand, a statute providing victims of childhood sexual abuse a special statute of limitations is more specific than a general statute of limitations which applies to all claims brought against the state. That is, R.C. 2305.111 is specific to a narrow class of plaintiffs (victims of childhood abuse) and a limited type of claim (actions arising from childhood sexual abuse), whereas R.C. 2743.16 applies generally to all classes of plaintiffs and all types of claims.

On the other hand, one could argue that R.C. 2743.16 is itself an exception to the general statute of limitations for tort claims. This argument is partially correct, but fails to engage in a complete analysis of the levels of generality at work in the context of childhood sexual abuse cases. At the highest level of generality are the various statutes of limitations for tort claims. *See, inter alia*, R.C. 2305.09(A) (four years for trespassing); R.C. 2305.11(A) (one year for libel, slander, false imprisonment); R.C. 2305.113(A) (one year for medical malpractice); R.C. 2305.10(A) (two years for negligence and product liability). At the intermediate level of analysis are special statutes of limitations that are based on the identity of the defendant. *See, inter alia*, R.C. 2744.04(A) (two years for actions against a political subdivision); R.C. 2743.16(A) (two years for actions against the state). Thus, when there is a conflict between a general statute of

¹ It would be unnecessary and inappropriate to determine whether R.C. 2743.16 contains a “manifest intent” to prevail over more specific provisions, since this analysis is only to be undertaken when the general statute is “later adopted,” which is not the case here.

limitations for a certain tort claim (or the tolling provisions which apply to that statute) and a statute of limitations specific to a certain type of defendant (e.g., a political subdivision), the shorter time period will apply.

But there is a third level of generality in this case. Revised Code 2305.111 is the most specific statute—providing an exception from the general statute for all tort actions and the intermediate statute based on the identity of the defendant—and, given the legislature’s manifest intent to provide special protection to victims of childhood sexual abuse, only applies to a specific type of plaintiff bringing a specific type of claim.

This Court has made some suggestion that the laws regarding the tort liability of governmental entities are general in nature. See, e.g., *Riffle v. Physicians & Surgeons Ambulance Serv.*, 135 Ohio St.3d 357, 2013-Ohio-989, at ¶ 22 (“R.C. 2744.02(A)(1) established a general grant of immunity to political subdivisions...”); cf. *State ex rel. Motor Carrier Serv.*, 2013-Ohio-1505, at ¶ 29 (the Public Record Acts provides for the general regulation of governmental behavior, such that “the General Assembly is permitted to establish an exception or partial exception”).

Indeed, the General Assembly could have written R.C. 2305.111 in such a way so as to avoid a conflict and preserve the general statute of limitations contained in R.C. 2743.16. For example, when the legislature wrote R.C. 2305.111 in 2005, it could have said: “Subject to R.C. 2743.16, an action for assault or battery brought by a victim of childhood sexual abuse ... shall be brought within twelve years after the cause of action accrues.” That the legislature chose not to include this language evidences an intent to make R.C. 2305.111 an exception to any applicable statute of limitations, including those which are based on the identity of the defendant.

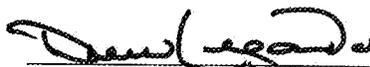
CONCLUSION

In the absence of any statutory language which would except R.C. 2743.16 from the application of the special statute of limitations and tolling provisions of R.C. 2305.111—or any language in R.C. 2305.111 which would condition its application on R.C. 2743.16—canons of

statutory construction require that the later-enacted R.C. 2305.111 be interpreted as an exception to the general statute of limitations against the state.

The appellant's general proposition of law, as expounded upon by this *amicus curiae's* proposed holding, should be accepted and the court of appeal's decision sustaining the trial court's decision dismissing the plaintiff's claims as time-barred should be reversed.

Respectfully submitted,



Drew Legando (0084209)
LANDSKRONER GRIECO MERRIMAN, LLC
1360 West 9th Street, Suite 200
Cleveland, Ohio 44113
P. (216) 522-9000
F. (216) 522-9007
E. drew@lgmlegal.com

*Counsel for Amicus Curiae The Landskroner
Foundation for Children*

CERTIFICATE OF SERVICE

A copy of this brief was sent by regular mail to the following counsel of record on
January 2, 2014:

Jill Flagg, Esq.
333 St. Main Street, Suite 200
Akron, Ohio 44308

Counsel for Appellant

Eric Walker, Esq.
Office of the Ohio Attorney General
30 E. Broad Street, 14th Floor
Columbus, Ohio 43215

Counsel for Appellee



Drew Legando (0084209)