

STATE OF MINNESOTA

IN SUPREME COURT

A05-45

Nancy Becker and Michael Becker, individually
and as parents and guardians for Nykkole E. Becker,
f/k/a Nykkole E. Rossini,

Appellants,

Minnesota Department of Human Services,

Appellant,

vs.

Mayo Foundation,

Respondent.

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Victor I. Vieth, *Passover in Minnesota, Mandated Reporting and the Unequal Protection of Abused Children*, 24 Wm. Mitchell L. Rev. 131 13, 15, 16

INTRODUCTION¹

The Minnesota Trial Lawyers Association (MTLA) submits this *amicus curiae* brief in support of reversing the underlying court of appeals' decision which held there was no civil cause of action under the Minnesota Child Abuse Reporting Act, Minn. Stat. § 626.556 (CARA), for failure to report suspected child abuse. This court should reverse the lower decision for several reasons. First, the court of appeals' decision is contrary to this Court's decision in *Radke v. County of Freeborn*, 694 N.W.2d 788 (Minn. 2005) (*Radke II*). The Court in *Radke II* held that abuse victims may maintain a negligence cause of action under CARA. The court of appeals in the present case, *Becker v. Mayo Foundation*, 2005 WL3527163 (Minn. Ct. App.) (unpublished opinion) (included in Appellants' Appendix at A.App.1), however, held that an abused child only has a civil claim for failure to investigate abuse, not for failure to report the abuse in the first place.

Second, the *Becker* court held that Appellants could not maintain an action because there was no special relationship between the abuse victim and the Respondent. In so holding, the court of appeals created a distinction between the rights of in-patients and those of out patients at hospitals. This position is unsupportable under both CARA and *Radke II*.

Finally, the court of appeals' decision in this case is contrary to the stated purpose of CARA and the public policy reasons behind enactment of the statute. The purpose of the statute is to protect children who are victims of abuse. The essence of this statute is mandatory reporting. Without mandatory reporting, the rest of the statute would be meaningless. The court of appeals, however, held that there was no private cause of action for failure to report, only for failure to investigate after

¹ No counsel for a party authored this brief in whole or in part. No entity other than MTLA and its members made a monetary contribution to the preparation or submission of this brief.

suspected abuse has been reported. Such reasoning is contrary to the stated purpose of CARA and the public policy behind the statute.

STATEMENT OF THE LEGAL ISSUES

- I. Should the Court reverse the court of appeals' decision in this case because it is contrary to *Radke II* in which this Court held that (1) abuse victims may bring a private cause of action under CARA and (2) there is a special relationship between the mandatory reporter and the abused child that creates a duty to act?**
- II. Should the court reverse the court of appeals' decision in this case because it is contrary to the stated purpose of CARA and the public policy reasons behind the enactment of that statute?**

ARGUMENT

- I. THE COURT OF APPEALS' DECISION IN THIS CASE SHOULD BE REVERSED BECAUSE IT IS CONTRARY TO *RADKE II* IN WHICH THIS COURT HELD THAT (1) ABUSE VICTIMS MAY BRING A PRIVATE CAUSE OF ACTION UNDER CARA AND (2) THERE IS A SPECIAL RELATIONSHIP BETWEEN THE MANDATORY REPORTER AND THE ABUSED CHILD THAT CREATES A DUTY TO ACT.**

This court, in *Radke II* held that an abuse victim may maintain a negligence cause of action under CARA. *Radke II*, 694 N.W.2d at 799. The court of appeals in *Becker*, however, has construed the *Radke* decision to apply only to some mandatory reporters under the statute and not others. The court of appeals in *Becker* held that CARA allows a private cause of action for failure to investigate abuse but not for failure to report the abuse in the first place. *Becker*, 2005 WL3527163 at *4. The lower court also held that Appellants could not maintain an action because there was

no special relationship between the abuse victim, Nykkole Becker, and Respondent Mayo Foundation's employees. *Becker* 2005 WL3527163 at *5. In so holding, the court of appeals made a distinction between the rights of in-patients and those of out-patients, *id.*,—a distinction CARA does not make. The *Becker* court's decision circumvents the logic behind this Court's decision in *Radke II* and appears to resurrect the court of appeals decision in *Radke I*, 676 N.W.2d 295 (Minn. Ct. App. 2004), which this Court overruled.

The legal analysis of the issues in this case must start with whether a negligence cause of action may be maintained under CARA. If so, one must then prove that the defendant was, indeed, negligent. To be negligent, of course, the defendant must have had a duty to the plaintiff. *Johnson v. State*, 553 N.W.2d 40, 49 (Minn. 1996). The claim now before the Court involves one's duty to prevent a third party from injuring a child. "Generally, a person has no common law duty to prevent a third person from injuring another unless there is some kind of special relationship." *Radke II*, 694 N.W.2d at 793 (citing *Andrade v. Ellefson*, 391 N.W.2d 836, 841 (Minn. 1986) and Restatement (Second) of Torts § 315 (1965)). So, the final step of the analysis must be to determine whether there was a special relationship between Nykkole Becker and the Respondent Mayo' employees. Although the Court in *Radke II* found that CARA created a special relationship between the mandatory reporters and the abused child in that case, the *Becker* court held that there was no special relationship between the mandatory reporter and the abused child in this case. Such incongruity should be addressed by this Court.

A. As acknowledged in *Radke II*, abuse victims may bring a private cause of action under CARA.

In *Radke II*, the father of a boy who was beaten to death by the boyfriend of the child's mother brought a wrongful death action against the county and two county

A. As acknowledged in *Radke II*, abuse victims may bring a private cause of action under CARA.

In *Radke II*, the father of a boy who was beaten to death by the boyfriend of the child's mother brought a wrongful death action against the county and two county child protection workers, alleging that they had negligently investigated reports of suspected abuse of the child. *Id.* at 792. The Supreme Court held that, under CARA, the defendants owed a duty to the abused child "to act." *Id.* at 798. Under the facts in *Radke II*, the "duty to act" was the duty to investigate and act on reports of abuse. *Id.* The *Radke II* Court also held that the father could bring a wrongful death action against the defendants under CARA. *Id.* at 799.

The *Becker* court acknowledged that "[i]n *Radke II*, the Minnesota Supreme Court held that a civil cause of action is allowed under CARA" and that the "court stressed the importance of the heart of CARA, which is ensuring a safe environment for children." *Becker*, 2005 WL3527163 at *3. The *Becker* court stated: "Based upon the Minnesota Supreme Court's decision in *Radke II*, a private cause of action does exist for the failure to properly act after abuse has been reported under CARA." *Becker*, 2005 WL3527163 at *3. The *Becker* court, however limited *Radke II*'s holding to claims by abused children if the abuse has already been reported. Even though CARA is known as the Reporting Statute, the *Becker* decision would absolve all initial mandatory reporters from civil liability for not reporting.

The *Becker* court attempted to justify this by stating: "Although *Radke* and *Radke II* have similarities, there is a difference between affirmative negligence, the failure to report abuse after it has been reported, and omission, the failure to report abuse." *Becker*, 2005 WL3527163 at *3 (emphasis added). So, under that logic, there is no liability if the abuse is

never reported. The effect of the *Becker* court's holding is that mandatory reporters do not have civil liability for not initially reporting but, if someone does report the abuse, the next person in the chain of reporting now does have liability. That would eviscerate the Mandatory Reporting Statute.

As for the court's reference to "affirmative negligence," this concept clearly does not apply to CARA. *Prosser* provides the following explanation of affirmative negligence: "If there is no duty to go the assistance of a person in difficulty or peril, there is at least a duty to avoid any affirmative acts which make his situation worse." *Prosser and Keeton on Torts* § 56 p. 378. (5th ed. 1984) CARA places a duty to act on all mandatory reporters. Inasmuch as there is a statutory duty to act in the first place, the concept of affirmative negligence cannot apply.

Contrary to the *Becker* court's interpretation, CARA does not place more duty on some members in the reporting chain than others. In fact, under CARA, every person in the chain of reporting faces the same criminal penalty for failure to report or act. Minn. Stat. § 626.556, subd. 6. The legislature did not deem people further down the chain more culpable than the initial reporters. Accordingly, there is no legal basis for the *Becker* court to do so.

As Appellants note in their Brief, in addition to the clear language in *Radke II*, CARA, itself, clearly contemplates civil liability for mandatory reporters. (*See* Appellants' Brief at pp. 15-18.) The Act specifically grants immunity from both civil and criminal liability for mandatory reporters who do report abuse. Minn. Stat. § 626.556, subd. 4(a). The mention of civil liability would be meaningless unless the legislature contemplated civil claims under the statute.

In *Becker*, the court of appeals appears to attempt to reinstate much of its overturned *Radke I* decision. In *Radke I*, the court based its decision that there was no civil cause of action for failure to act under CARA upon two primary things: (1) the statute does not mention or imply a civil cause of action, *Radke I*, 676 N.W.2d at 298; and (2) the court in *Hoppe v. Kandiyohi County*, 543 N.W.2d 635 (Minn. 1996) found no special relationship existed and thus there could be no civil cause of action under the Vulnerable Adults Reporting Act (VARA), Minn. Stat. § 626.557, an act very similar to CARA. *Radke I*, 676 N.W.2d at 299-301. In overruling *Radke I*, the *Radke II* court disposed of both of these reasons. First, this Court held that that a civil cause of action may be maintained under CARA. *Radke II*, 694 N.W.2d at 799. Second, *Radke II* found that a special relationship did exist between the reporter and the abuse victim under CARA and the court overruled the *Hoppe* decision. *Radke II*, 694 N.W.2d at 799.

Although both reasons for the decision in *Radke I* had been eliminated by the Supreme Court, the *Becker* court clung to the same reasoning. First, the court held that there could be no civil cause of action under CARA because “there is yet no Minnesota caselaw [*sic*] finding that common law created a cause of action for failure to report abuse.” *Becker*, WL 3527163 at *4. This is similar to the *Radke I* reasoning that the statute does not say the cause of action exists, so it must not. Second, the court held that there was no special relationship between the abused child and the mandatory reporter. This, of course flies directly in the face of the *Radke II* ruling that a mandatory reporter and an abused child to have a special relationship under CARA. The *Becker* court has created controversy where none existed under this Court’s clear holding in *Radke II*. We ask the court to put these issues permanently to rest.

B. As acknowledged in *Radke II*, a mandatory reporter has a special relationship with the abused child under CARA.

Inasmuch as CARA does allow for civil claims, one must then look at whether the mandatory reporters in *Becker* had a special relationship with Nykkole Becker which would allow the Appellants to pursue a negligence cause of action under the statute.² The *Becker* court erred as a matter of law in finding that there was no special relationship between Nykkole Becker and Respondent Mayo. Such a finding contradicts this Court's holding in *Radke II*.

In *Radke II*, the Court noted that “the existence of a statute or ordinance is not sufficient to create a special duty; instead a special duty of care arises only when ‘there are additional indicia that the [governmental unit] has undertaken the responsibility of not only protecting itself, but also undertaken the responsibility of protecting a particular class of persons from the risks associated with a particular harm.’” *Id.* at 793 (quoting *Cracraft v. City of St. Louis Park*, 279 N.W.2d, 801, 806). The *Radke II* court noted that “CARA was adopted to ensure the safe environment for children.” *Radke II*, 694 N.W.2d at 796.

In determining whether a special relationship exists, the *Radke II* court noted that “CARA requires that certain persons, including medical professionals . . . who know or have reason to believe that child abuse or neglect is occurring, report such information immediately. Minn. Stat. § 626.556, subd. 3(a).” *Radke II*, 694 N.W.2d at 796. The *Radke II* Court's analysis was within the framework of the four-element test of *Cracraft* that

² As to whether there is a separate *common law* duty giving rise to a common law cause of action, this issue is thoroughly briefed by Appellants and we defer to their discussion on this issue. See Appellant's Brief at pp. 28-34.

applies to claims against governmental entities. The third element of that test as applied to CARA was found to be persuasive by the *Radke II* Court and is equally applicable here. That element is whether the statute sets forth mandatory acts clearly for the protection of a particular class of persons rather than the public as a whole. *Radke II*, 694 N.W.2d at 794 (citing *Cracraft*, 279 N.W.2d at 806-07). The *Radke II* Court stated as follows:

The statute clearly and repeatedly requires the performance of mandatory acts. These mandatory acts prescribed by the statute are for the protection of a particular class of persons—children who are identified as abused or neglected. In fact, the express public policy set forth in the statute is “to protect children whose health or welfare may be jeopardized through physical abuse, neglect, or sexual abuse.” *Id.* at subd. 1. The statute further emphasizes that

it is the policy of this state to require the reporting of neglect, physical or sexual abuse of children in the home, school, and community settings; to provide for the voluntary reporting of abuse or neglect of children; to require the assessment and investigation of the reports; and to provide protective and counseling services in appropriate cases.

Id. Based on these declared public policy goals, we conclude that the acts mandated in CARA are not for the protection of the public or even children in general, but are mandated for the protection of a particular class of persons—children who are identified in suspected abuse or neglect reports received by the county. [Footnote omitted.] Like the class of persons in *Andrade v. Ellefson*, 391 N.W.2s 836 (Minn. 1986) the children protected by CARA are “uniquely vulnerable persons.” These children have been identified by suspected child abuse or neglect reports. They are especially vulnerable because they are alleged to have suffered abuse or neglect in the privacy of their own homes, often at the hands of a parent or other family member, and cannot protect themselves. Therefore we hold that the third factor clearly is met in this case.

Radke II, 694 N.W.2d at 797. Obviously, the same reasoning holds true for the abused child in the case at hand. Reporting is one of the “mandatory acts” required by CARA. Reporting is required “for the protection of a particular class of persons—children who are identified as abused or neglected.” In *Radke II*, that identification came through reports to the county. In cases where the initial reporting is at issue such as *Becker*, that identification comes through in the physical and emotional signs of abuse of the child as noted by the initial reporters.

As stated in *Radke II* above, CARA requires reporting, assessment, investigation as well as protective and counseling services. *Radke II*, 694 N.W.2d at 797; Minn. Stat § 626.556, subd. 1. Neither the statute nor *Radke II* state or imply that the reporting element is less important than the assessment or investigative elements. In fact, the Act suggests the opposite by its very name—“Reporting of Maltreatment of Minors.” Minn. Stat § 626.556.

After finding that *Cracraft’s* third element was satisfied under CARA, the *Radke II* court found that the county employees had a duty to act. In so holding the court stated:

From the clear language of CARA, it is manifest that the legislature intended to provide safety and protection for children in abusive and neglectful situations and for the county social services department and its child protection workers to act immediately when they receive specific reports of abuse or neglect. See Minn. Stat. § 626.556, subd. 10(a) (“[T]he local welfare agency shall immediately conduct an assessment * * *”). Given this express intent, it is incongruous to conclude that the legislature intended to impose criminal penalties on those persons who fail to report as mandated under the statute, but intended that there be no *duty* on the part of the county welfare department or its employees to investigate or act on the reports.

Radke II, 694 N.W.2d at 798 (emphasis in original). Applying that same logic to *Becker*, it is “incongruous to conclude that the legislature intended to impose criminal penalties on those persons who fail to report as mandated under the statute, but intended that there be no *duty* on the part of the” mandatory reporters to report the suspected abuse. If there was a duty to act under the facts of *Radke II*, there was a duty to act in the *Becker* case.

To find otherwise and to accept the court of appeals’ analysis in *Becker* would be to hold that abused children are not protected under the statute until *after* a report had been filed. Thus, even if there were repeated and horrific signs of abuse to a child, all those mandatory reporters who chose to look the other way would forever be insulated from civil liability. A child could conceivably be brought to the emergency room every day of its life with obvious signs of abuse, but until the provider reported the abuse, the provider would be immune from civil liability claims under CARA.

Although the *Radke II* Court goes through a detailed analysis of the special relationship between the abused child and the mandatory reporter under CARA, the *Becker* court did not mention *Radke II’s* holding in its discussion of the special relationship issue. So, although the higher court clearly held that there is a special duty owed to abused children under CARA the *Becker* court failed to mention this in its discussion of this issue. Instead of looking to this Court for direction, the court of appeals summarily concluded:

Whether a special relationship exists here is no easy decision. Although respondent was in a position to provide immediate protection, Nykkole was not an inpatient. Cases holding that a hospital has a special relationship with a patient are limited to situations where the patient was omitted [*sic*] and harmed by others while in the custody of the hospital. [Footnote omitted.]

Here, Nykkole was not harmed while in [*sic*] custody of the hospital but was harmed while in the custody of her parents. We cannot find the special relationship.

Becker, WL 3527163 at *5.

First, CARA does not distinguish between the duty owed to in-patients and the duty owed to out-patients. *See* Minn. Stat. § 626.556. In fact, the act specifically says it applies to “facilities” as defined at Minn. Stat. § 626.556, subd. 2(i). “Facilities” includes not only hospitals and schools, but also personal care services under medical assistance, Minn. Stat. § 256B.04, subd. 16, and personal care assistant services in the home of a medical assistance recipient, Minn. Stat. § 256B.0625, subd. 19a. Accordingly, the Act imposes the duty to report upon persons in a wide variety of settings, certainly not limited to in-patient facilities.

Second, the *Becker* court says there can be no special relationship because Nykkole was not harmed while in the custody of the hospital. *Becker*, WL 3527163 at *5. In fact, the Act clearly states in its very first section that “it is the intent of the legislature under this section to strengthen the family and make the home, school, and community safe for children by promoting responsible child care in all settings . . .” Minn. Stat § 626.556, subd. 1. That same section of the Act goes on to state that “it is the policy of this state to require reporting of neglect, physical or sexual abuse of children in the home, school and community settings . . .” *Id.* (emphasis added). Thus, the act, itself, specifically imposes a duty upon reporters even when the abuse takes place outside the confines of the reporter’s facility.

Instead of citing the clear language of CARA or the holding in *Radke II*, the *Becker* court has come up with its own in-patient/out-patient test that is in direct opposition to the legal principles that govern this area of law. Such an artificial distinction, if applied, would lead to absurd results. Although

CARA deems all medical providers mandatory reporters, the *Becker* court's holding would mean that medical providers would have no special relationship with the child until the child was actually admitted to the hospital. All emergency room, medical clinic and urgent care providers would have no special relationship with the child and, thus, no civil liability for failing to report the abuse. While surgeons in regular hospital settings may have a duty, surgeons in day surgery centers may not.

The *Becker* court also did not look to *Andrade v. Ellefson*, 391 N.W.2d 836 (Minn. 1986) for guidance on the special relationship issue. The *Andrade* case also involved the duty to protect children from harm. In *Andrade*, children enrolled in a home daycare and their parents filed suit against the county for negligence in supervising, inspecting, and recommending licensing of a daycare home where children were injured. *Id.* at 837. The plaintiffs claimed there was a special relationship between themselves and the county under the Public Welfare Licensing Act, then codified at Minn. Stat. § 245.782, clearly giving rise to a special duty on the part of the county to perform its governmental function of license inspection and supervision of the daycare home with due care. *Id.*

As in *Radke II*, the *Andrade* court found that the decisive factor in determining whether a special relationship existed was the third *Cracraft* factor—whether the statute sets forth mandatory acts clearly for the protection of a particular class of persons rather than the public as a whole. *Andrade*, 391 N.W.2d at 842. The *Andrade* court held that the Public Welfare Licensing Act mandated “that small children in a licensed day care facility are a particular protected class.” *Andrade*, 391 N.W.2d at 842. Similarly, in our case, under CARA, abused children are a particular protected class. The *Andrade* court went on to note: “Clearly the government here is doing more

than benefiting the general public and its immediate concern is for the children.” *Id.* Likewise, the government’s immediate concern in CARA is for the children. The *Andrade* court held that the plaintiff could maintain a negligence cause of action against the county under the licensing statute because of that special relationship. *Id.* at 843. Appellants in our case should be afforded the same rights under CARA.

We ask this court to apply the holding in *Radke II* and the clear language of CARA to the facts of this case and reverse the decision of the court of appeals.

II. THE COURT OF APPEALS’ DECISION IN THIS CASE IS CONTRARY TO THE STATED PURPOSE OF CARA AND THE PUBLIC POLICY REASONS BEHIND THE ENACTMENT OF THAT STATUTE.

“Child abuse has been described as evil, a mutilation of the spirit, and as a footprint on the heart.”³ CARA was intended to serve the laudable purpose of protecting children from child abuse and the Act, itself, sets out the public policy that prompted its passage. The Act begins with the following language:

Subdivision 1. Public policy. The legislature hereby declares that the public policy of this state is to protect children whose health or welfare may be jeopardized through physical abuse, neglect, or sexual abuse. While it is recognized that most parents want to keep their children safe, sometimes circumstances or conditions interfere with their ability to do so. When this occurs, families are best served by interventions that engage their protective capacities and address immediate safety concerns and

³ Victor I. Vieth, *Passover in Minnesota, Mandated Reporting and the Unequal Protection of Abused Children*, 24 Wm. Mitchell L. Rev. 131, 167.

ongoing risks of child maltreatment. In furtherance of this public policy, it is the intent of the legislature under this section to strengthen the family and make the home, school, and community safe for children by promoting responsible child care in all settings; and to provide, when necessary, a safe temporary or permanent home environment for physically or sexually abused or neglected children.

In addition, it is the policy of this state to require the reporting of neglect, physical or sexual abuse of children in the home, school, and community settings; to provide for the voluntary reporting of abuse or neglect of children; to require a family assessment, when appropriate, as the preferred response to reports not alleging substantial child endangerment; to require an investigation when the report alleges substantial child endangerment; and to provide protective, family support, and family preservation services when needed in appropriate cases.

The legislature went even further to ensure that mandatory reporters do, indeed, fulfill their duty to report. As this court noted in *Radke II*, the duty to act “is further supported by CARA’s statutory provision granting immunity to ‘person[s] with responsibility for performing duties under the statute *if* the person is ‘acting in good faith and exercising due care.’ See Minn. Stat. § 626.556, subd. 4(b). This language suggests that the subject of the statute had a duty to act.” *Radke II*, 694 N.W.2d at 798-99. In addition, the legislature left no doubt that medical providers have an absolute duty to report. This is evidenced by the fact that they are listed in the statute under the heading: “persons mandated to report,” Minn. Stat. § 626.556, subd. 3 (emphasis added). There is nothing equivocal in the “mandate” from the legislature.

In spite of the clearly stated public policy of CARA to protect abused children, Judge Randall in *Becker*, while denying the Appellants’ right to pursue a claim against the mandatory reporter, noted that “[t]he tragic facts

of this case are hard to swallow. Nykkole is a child who ‘slipped through the cracks.’” *Id.* at *3. Similarly, in Judge Randall’s court of appeals decision in *Radke v. County of Freeborn*, 676 N.W.2d 295 (Minn. Ct. App. 2004) (*Radke I*), he stated:

We are not unsympathetic toward appellant. At times Makaio’s mother’s explanation for each new set of bruises on his body “boggles the mind;” e.g., her explanation that Makaio’s leg injuries were caused by “hoof and mouth disease.” Her continuous line of explanations and rationalizations should not have been considered credible by anyone with minimal training in child abuse. We understand appellant’s frustration and his firm belief that if the county and its agents had done their job properly, Makaio would not have remained accessible to the predatory Guitierrez and might well be alive today.

Id. at 300. In both cases, the court of appeals indicated it was cognizant of the abuse. In both cases, the court, in effect, intimated it could do little about it—rendering CARA impotent in the civil context. This court in *Radke II* held to the contrary. The *Radke II* court found that a civil remedy does exist. That remedy was clearly spelled out before the *Becker* court’s decision. The *Becker* court, however, instead of applying the remedy set out in *Radke II* and instead of acting in accordance with the clear public policy behind CARA, allowed Nykkole Becker to continue to “slip through the cracks.”

As has been noted, “[p]rotection of the child . . . is dependent on the authorities receiving an initial report of abuse. Absent a report, there will be no investigation leaving the abused child without hope of protection, save the unlikely mercy of his perpetrator.”⁴ In addition, “[f]ailure to act guarantees other children will suffer at the hands of the perpetrators remaining in the

⁴ Victor I. Vieth, *Passover in Minnesota, Mandated Reporting and the Unequal Protection of Abused Children*, 24 Wm. Mitchell L. Rev. at 133.

community.”⁵ Thus, the duty to make that initial report of abuse is arguably the most important of all the duties enumerated in the Act. Without the initial reporting, the system to help these abused children does not just break down, it ceases to exist.

Another public policy consideration in this case is the monetary cost of abuse to our society. One of the Appellants in this case is the Minnesota Department of Human Services. The Department is a party to this case because it must pay for the Nykkole Becker’s medical care. [Trial Transcript at 345.] At the time of trial, the State of Minnesota had thus far paid \$152,252.92 on Nykkole Becker’s behalf. [Trial Transcript. at 348.] Expert testimony at the time of trial indicated that the future cost of care for Nykkole Becker will be between \$3,003,920 and \$4,545,680. [Trial Transcript at 401-402.] This permanently disabled child will need for constant medical care for the rest of her life. This cost could have been prevented if the initial abuse had been reported. If the damaged party is able to pursue a civil cause of action under CARA against those reporters who failed to protect him or her, this would relieve the citizens of this state from having to pay the exorbitant costs of caring for many of these abused children. The initial mandatory reporter is in the best position to prevent the repeated abuse and, therefore, prevent the need for additional medical treatment and medical expenses.

CONCLUSION

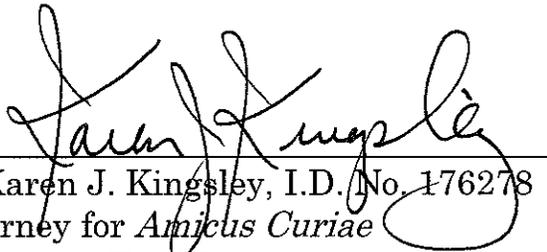
For these reasons, *amicus curiae* Minnesota Trial Lawyers Association respectfully requests this court to reverse the court of appeals and find that

⁵ Victor I. Vieth, *Passover in Minnesota, Mandated Reporting and the Unequal Protection of Abused Children*, 24 Wm. Mitchell L. Rev. at 167.

an abuse victim may pursue a negligence action under CARA and that there was a the special relationship between Respondent's employees and Nykkole Becker that gave rise to a duty to act.

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CERTIFICATION OF BRIEF LENGTH

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subds 1 and 3, for a brief produced with a proportional 13-point Century Schoolbook font. The length of this brief is 430 lines, 4,969 words. This brief was prepared using Microsoft Word 2002 word processing software.

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Respectfully Submitted,



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