

No. A09-1728

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STATE OF MINNESOTA  
IN SUPREME COURT

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Mary Lickteig,

Appellant,

vs.

Robert Kolar, Jr.

Appellee.

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REPLY BRIEF OF APPELLANT MARY LICKTEIG

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## **SUMMARY AND WAIVER OF ORAL ARGUMENT**

Appellant, Mary Lickteig, relies on and incorporates herein by reference, her Statement of the Issues, Statement of the Case, Statement of the Facts, Statement of the Standard of Review and Summary of the Argument set forth in her initial Brief filed in this matter, except where necessary to correct, clarify or explain any facts or assertions made by Appellee Robert Kolar.

Appellant believes that these issues have been sufficiently briefed for the Court, and that oral argument would not be of further assistance to the Court. Accordingly, Appellant waives oral argument.

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## ARGUMENT

### I. MINNESOTA RECOGNIZES A CAUSE OF ACTION FOR SIBLING SEXUAL ABUSE

#### A. The Question Posed by the Eighth Circuit Court of Appeals is Whether Minnesota Recognizes a Cause of Action for Sibling Sexual Abuse

The first question posed by the Eighth Circuit to this Court is “[w]hether Minnesota law recognizes a cause of action by one sibling against another sibling for ‘sexual abuse’ that allegedly occurred when they were both minor children; and, if so, what are the elements of that cause of action.” Addendum, p. 12. The question is not, as suggested and briefed by Kolar, “[w]hether a tort involving alleged sexual misconduct was a new tort created by the Courts and legislature, or whether it was merely a species of the common-law tort of assault.” Kolar Brief, p. 4. Accordingly, the vast majority of Kolar’s argument is simply irrelevant.

As previously argued by Lickteig, there is no question that Minnesota recognizes a cause of action for sexual abuse, and has for some time. *See e.g. D.M.S. v. Barber*, 645 N.W.2d 383 (Minn. 2002) (plaintiff sued foster parent for sexual abuse); *Brett v. Watts*, 601 N.W.2d 199, 203 (Minn. Ct. App. 1999) (patient sued physician for sexual abuse); *Bertram v. Poole*, 597 N.W.2d 309 (Minn. Ct. App. 1995) (sisters sued uncle for sexual abuse); *W.J.L. v. Bugge*, 573 N.W.2d 677 (Minn. 1998) (plaintiff sued teacher for sexual abuse); *K.E. v. Hoffman*, 452 N.W.2d 509 (Minn. Ct. App. 1990) (plaintiff sued teacher for sexual abuse).

Not one of these cases held that suit was precluded because a cause of action for sexual abuse does not exist. Indeed, Kolar concedes that such a cause of action exists in

Minnesota, stating “Mr. Kolar and the Eighth Circuit acknowledge that a cause of action in tort for sexual abuse now exists in Minnesota.” Kolar Brief, p. 5. Kolar further admits that “a cause of action in tort for sexual abuse has always existed in Minnesota where the sexual abuse was a battery.” *Id.*

Further, there has never been any limitation as to which victims of sexual abuse can bring such a lawsuit. Minnesota law has never specified that only victims of rape who are strangers to their attackers can bring suit. Rather, Minnesota law has recognized suits between family members. *See e.g. Bertram*, 597 N.W.2d 309 (sisters sued uncle for sexual abuse). As such, there can be no argument that simply because Lickteig and her perpetrator were siblings, that she is somehow precluded from bringing suit. The only restrictions regarding which sexual abuse perpetrators can be sued exist by way of some immunity. As discussed in Lickteig’s previous brief, and further explained below, no such immunity exists to protect Kolar from a suit by his sister.

For all these reasons, it is clear that Minnesota recognizes a cause of action for sexual abuse, and it is equally clear that there is no limitation on who is entitled to bring that cause of action and that there is no immunity from suit. Accordingly, the Eighth Circuit’s first question must be answered in the affirmative: Minnesota recognizes a cause of action for sibling sexual abuse.

**B. Lickteig Has a Valid Cause of Action Regardless of Whether it is Considered an Independent Tort or Ordinary Battery**

Even if the genesis of the tort involved here were an issue before this Court, which is expressly denied, it is still clear that Lickteig has a valid cause of action against Kolar

for the sexual abuse inflicted by him. Kolar makes two arguments in support of his assertion that Lickteig has no valid cause of action against Kolar for the sexual abuse he inflicted when the two were minors. First, he argues that the tort of sexual abuse is independent of the tort of battery, and did not come into existence until after Kolar's sexual abuse of Lickteig was committed. Second, he acknowledges that Lickteig may have a cause of action for ordinary battery, but if that is the case, the cause of action for battery is barred by the statute of limitations. Neither argument carries any weight.

### 1. Sexual Abuse is Not an Independent Tort

Kolar argues that sexual abuse is an independent tort that was newly-created when, in 1989, the Minnesota legislature enacted MINN. STAT. § 541.073, which provides in pertinent part:

An action for damages based on personal injury caused by sexual abuse must be commenced within six years of the time the plaintiff knew or had reason to know that the injury was caused by the sexual abuse.

MINN.STAT. § 541.073.

In support of his argument that section 541.073 created a new tort cause of action for "sexual abuse," Kolar argues the elements of MINN. STAT. § 609.345, which defines **criminal** sexual misconduct, are "radically different" from the "ordinary tort of battery."

Kolar Brief, p. 7. By way of example, Kolar argues:

[A]ge limitations have nothing to do with battery, and never have had. [sic] If someone of any age – or at least the age of reason – hits and hurts someone, he or she has committed a civil battery. **By contrast, the tort of sexual abuse depends critically upon the ages of the principals involved.**

Kolar Brief, p. 8 (emphasis added). While it is true that section 541.073 refers to the criminal statutes for the definition of “sexual abuse,” the obvious flaw in Kolar’s example is that criminal sexual conduct can occur regardless of the age of the perpetrator or victim.

In support of his argument that sexual abuse depends upon the ages of the perpetrator and victim, Kolar cites to MINN. STAT. § 609.345, subd. 1(a), which states that a person is guilty of criminal sexual contact, in the fourth degree, if the victim is under 13 years of age, and the perpetrator is no more than 36 months older than the victim. However, this is just one of many definitions of the crime of sexual conduct. Section 541.073 refers to section 609.342 through 609.345 for the definition of sexual abuse. Under many of the other sections omitted from Kolar’s argument, sexual abuse is in no way dependent on the ages of the perpetrator and victim.

For example, criminal sexual conduct is also defined, without regard to age, as sexual contact where “circumstances existing at the time of the act cause the complainant to have a reasonable fear of imminent great bodily harm to the complainant or another;” MINN. STAT. § 609.343, subd. 1(c). Significantly, criminal sexual conduct also occurs where “the actor causes personal injury to the complainant,” and “the actor uses force or coercion to accomplish the sexual contact.” *Id.* at subd. 1(e). Criminal sexual conduct is also defined, without regard to age, as sexual contact where “the actor knows or has reason to know that the complainant is . . . physically helpless.” MINN. STAT. §§ 609.344, subd. 1 (d) and 609.345, subd. 1(d).

In sum, sexual conduct is not defined only by reference to the ages of the perpetrator and victim. Rather, criminal sexual conduct, and therefore “sexual abuse” as referred to in section 541.073, encompasses a number of circumstances, many of which have no reference to age. Kolar’s argument that the so-called tort of sexual abuse is so radically different from battery is, therefore, wholly without merit.

In any event, the Court has made clear that the intention of section 541.073 was not to create a new cause of action, but to create a new statute of limitations for an existing cause of action, where the root of the tort was sexual abuse. The Minnesota Court of Appeals in *Brett* explained:

A general statute of limitation does not condition rights, but “simply prescribes the time within which rights may be enforced.” The supreme court has stated that it views the language of section 541.073 as “simply a legislative pronouncement that ‘personal injury caused by sexual abuse,’ as opposed to personal injury caused by any other activity, is entitled to a different limitation period because of its uniqueness and because of the difficulties attendant on the victim's often repressed recollections.” The court has also noted in the context of a civil action that “implicit in the act of sexual abuse is personal injury.” **There is no indication that section 541.073 is anything more than a general statute of limitation, prescribing the time in which a right may be enforced, but not conditioning that right.**

*Brett*, 601 N.W.2d at 203 (internal citations omitted) (emphasis added). In so holding, the court in *Brett* quoted this Court’s opinion in *W.J.L.*, 573 N.W.2d at 680. There is nothing from the Court’s discussion of the origin of section 541.073 to indicate that the Court thought it created a new cause of action, or that it is anything other than a statute of limitations. *See id.*

Indeed, the Court in *W.J.L.*, explained that “in Minnesota, causes of action for torts resulting in personal injury are typically subject to a two-year statute of limitations.” *Id.* (citing MINN. STAT. § 541.07). If the plaintiff is under age 18 when the cause of action arises, the statute of limitation is suspended until one year after reaching the age of majority. *See id.* (citing MINN. STAT. § 541.15(a)(1)). The court further explained:

Notwithstanding MINN. STAT. §§ 541.07 and 541.15(a)(1), the Minnesota legislature enacted MINN. STAT. § 541.073 for personal injury actions based on sexual abuse. This statute provides that personal injury actions based on sexual abuse “must be commenced within six years of the time the plaintiff knew or had reason to know that the injury was caused by the sexual abuse.”

*Id.* (quoting MINN. STAT. § 541.073). In explaining the creation of this statute, the Court never refers to it as a new cause of action, or even an amendment of a cause of action. Rather, it merely explains that while causes of action for personal injury are subject to a two-year statute of limitations, when the personal injury sued upon is caused by sexual abuse, the statute of limitations is six years from the time the victim knows or had reason to know the injury was caused by the sexual abuse. *W.J.L.*, 573 N.W.2d at 679-80. Certainly, if the Court deemed this to be a new cause of action, it would have so stated. It did not.

Similarly, if the Minnesota legislature had intended to create a new cause of action, it would have, and could have, specifically stated. It also did not. Rather, the legislature meant to extend the statute of limitations for an action for personal injury that arises out of sexual abuse, a cause of action that has long been in existence. *See e.g.* *W.J.L.*, 573 N.W. 2d at 680. In *W.J.L.*, the Court explained the “underlying rationale for

the limitations period contained in MINN. STAT. § 541.073,” which was not the creation of a new cause of action:

Many sexual abuse victims, especially young children, are psychologically and emotionally unable to recognize that they have been abuse. As a result, these victims are often incapable of bringing their claims within the limitations period of MINN. STAT. §§ 541.07 and 541.15(a)(1). In enacting MINN. STAT. § 541.073, the legislature sought to address this phenomenon by giving sexual abuse victims additional time to recognize the abuse they suffered while placing a limit on when such claims may be brought.

*Id.* (emphasis added). Thus, impetus for section 541.073 was not to create a new cause of action, but to create a new statute of limitations for personal injury caused by sexual abuse.

It is therefore evident that, contrary to Kolar’s claim, the cause of action brought by Lickteig against Kolar – for personal injury – was long in existence at the time Lickteig was abused from 1974 to 1977. More importantly, however, such a cause of action, even by Kolar’s estimation, was in existence at the time Lickteig first attributed her injuries to Kolar’s abuse of her in 2005, which is when Lickteig’s cause of action arose.

There can be no question that the law in effect at the time a cause of action arose is to be applied. *See e.g. Gryc v. Dayton-Hudson Corp.*, 297 N.W.2d 727, 733 (Minn. 1980) (court applied version of Act in effect at the time cause of action arose, and not subsequently amended Act); *Carlson v. Independent School Dist. No. 623*, 392 N.W.2d 216, 220 (Minn. 1986) (court applied Human Rights Act in effect at time the plaintiffs’ causes of action arose, and refused to apply Act as amended after cause of action arose);

*Greenwaldt v. Illinois Farmers Ins. Co.*, 526 N.W.2d 202, 203 (Minn. Ct. App. 1995) (court applied 1988 version of statute, which was in effect at the time the plaintiff's cause of action arose).

In the present case, Lickteig's cause of action against Kolar did not arise until 2005, when Lickteig first knew or had reason to know that her injuries were caused by Kolar's abuse. Lickteig previously argued, without any response from Kolar, that her cause of action arose; not when the abuse occurred, but when she discovered that the abuse was the cause of her injuries. *See* Lickteig's Initial Brief, p. 14 n.3. Thus, even if a cause of action for sexual abuse was not in existence until 1989 when MINN. STAT. § 541.073 was enacted, which is expressly denied, it was nevertheless in existence long before Lickteig's cause of action arose in 2005.

## 2. Any Cause of Action for Battery is Timely

As an alternative argument to defeat Lickteig's claim, Kolar admits that Lickteig "might still have a cause of action under ordinary battery if Mr. Kolar's abusive behavior also constituted a battery," but that such a claim would be barred by the statute of limitations. Kolar Brief, p. 6. First, to suggest that Kolar's sexual abuse of Lickteig may not constitute a battery is ludicrous – Lickteig was a mere eight years old when her brother sexually abused her. There can be no question that this constitutes an "intentional and unpermitted contact." *See 4 Minnesota Practice CIVJIG 503 (1986)* (defining battery as "an intentional and unpermitted contact by defendant upon the person of the plaintiff.").

If Kolar's second argument were true and Lickteig's claim were considered an "ordinary" claim for battery, it is also timely. Kolar argues that if "Ms. Lickteig's cause of action is in battery, it is clearly barred by the statute of limitations," citing MINN. STAT. § 541.07 subd. (1) and 541.15, the general limitations period for torts. The flaw in this reasoning is that obviously, neither of those statutes of limitations applies in the case where the "battery" was caused by sexual abuse. Thus, MINN. STAT. § 541.073 applies, whether Kolar labels Lickteig's cause of action as "sexual abuse" or "battery," because under either title, Lickteig's injuries were caused by the sexual abuse. The legislature created the statute of limitations found in section 541.073 specifically for the cause of action alleged by Lickteig. Kolar's assumption that some other statute of limitations would apply merely because he labels Lickteig's cause of action as battery is without authority and contrary to the express purpose of section 541.073.

In sum, regardless of the label applied to the cause of action, Minnesota law clearly allows for a victim of sexual abuse to bring suit against her perpetrator for the personal injuries inflicted upon her. This is not a new cause of action, created by section 541.073, which sets forth a special statute of limitations for suits for personal injury caused by sexual abuse. Whether Lickteig's cause of action is called "battery" or "sexual abuse," there is no question that section 541.073 applies, and gave Lickteig six years from the time she knew or had reason to know her injuries were caused by Kolar's sexual abuse of her. On the facts before the Court, Lickteig first knew or had reason to know her injuries were caused by Kolar's abuse of her in 2005. Her institution of this lawsuit in 2007 is, therefore, timely.

## II. SECTION 541.073 WAS INTENDED TO BE RETROACTIVE AND APPLIES TO LICKTEIG'S CAUSE OF ACTION

Kolar next argues that the statute of imitations expired before the Minnesota Legislature passed section 541.073. In so arguing, Kolar completely overlooks or disregards the fact that the Legislature intended that section 541.073 be applied retroactively, so as to revive any claims that may have otherwise been stale.

In support of his argument, Kolar cites to *Winkler v. Magnuson*, 539 N.W.2d 821 (Minn. Ct. App. 1995), and claims the court there held “that a claim against a church with regard to a sexual abuse action was barred by the statute of limitation for battery.” Kolar misconstrues the court’s opinion in *Winkler*, and in fact, *Winkler* is supportive of Lickteig’s position.

In that case, the plaintiff alleged he was abused by his pastor from 1968 to 1971, when the plaintiff was 13 years old. *Id.* at 823. It was not until 1991, however, that the plaintiff connected the abuse he endured to the psychological problems he experienced. *Id.* at 823-24. In 1994, the plaintiff filed suit against both the pastor and the church, under a theory of respondeat superior. *Id.* On appeal from the trial court’s summary judgment against the plaintiff, the court of appeals applied section 541.073 to the plaintiff’s claims against the pastor. *Id.* There was no issue or question that section 541.073, enacted after the abuse occurred, applied to the plaintiff’s claims against the pastor. *Id.* at 825. Rather, the only issue with respect to the claims against the pastor was whether the plaintiff knew or should have know that his injuries were caused by the pastor’s sexual abuse. *Id.* The court of appeals held the evidence on that issue was

“inconclusive,” and that the trial court erroneously entered summary judgment against the plaintiff. *Id.*

Additionally, the court of appeals in *Winkler* addressed the church’s claim that section 541.073 did not apply to the plaintiff’s claim against the church under a theory of respondeat superior. *Id.* at 827. It was only as to this claim against the church that the court of appeals held the two-year statute of limitations under MINN. STAT. § 541.07, subd. 1 applied. *Id.* In the present case, Lickteig has not asserted any claim under a theory of respondeat superior. Accordingly, *Winkler* is simply not supportive of Kolar’s argument, and in fact, offers further support for Lickteig’s position that section 541.073 applies to her claim against Kolar.

While this Court has apparently never had occasion to address this precise issue – whether section 541.073 applies retroactively – the Minnesota Court of Appeals in *K.E. v. Hoffman*, 452 N.W.2d 509, 511 (Minn. Ct. App. 1990), addressed this very argument. In that case, the plaintiff alleged he was abused by his teacher on two occasions during 1975. *Id.* The plaintiff had no memory of the abuse until he was enlisted in the Navy, sometime between 1983 and 1986, and brought suit against the teacher and the school for the abuse in 1988. *Id.*

As in this case, the defendants in *K.E.* argued plaintiff’s claims were barred by the two-year statute of limitations set forth in MINN.STAT. § 541.07(1). *Id.* The trial court granted the defendants’ motion for summary judgment and concluded the two-year statute of limitations applied, but that the running of the statute of limitations was tolled

for one year after plaintiff's discharge from the Navy. *Id.* Thus, the trial court held plaintiff had until 1987 to bring suit. *Id.*

Following the trial court's decision, and pending appeal, the Minnesota Legislature enacted MINN.STAT. § 541.073 in 1989. *Id.* The Minnesota Court of Appeals reversed the grant of summary judgment. *Id.* The court in *K.E.* held that section 541.073 was to be retroactively applied, and that such application did not deprive defendants of due process of law, as they had no private interest that was impaired by the limitations period. *Id.* at 512-13. The court also held that retroactive application of section 541.073 was not an unconstitutional hardship because the sexual abuse of plaintiff was not done "under the assumption the limitations period would continue in effect." *Id.* at 513. The court also rejected defendants' argument that section 541.073 was unconstitutional on its face, explaining:

The statute plainly reflects awareness of the difficulty sexual abuse victims have in identifying and recognizing their injuries immediately. Research shows victims of sexual abuse may repress the memory of such incidents, and not discover the actual source of their problems for many years. In acknowledging this problem, the legislature, by enacting section 541.073, limits the possibility of the general statute of limitation barring a claim of sexual abuse, and holds the sexual abuser liable for his offenses. Because we are not in the position to judge the wisdom of the legislation, where, as here, the statute has a reasonable relation to the state's legitimate purpose of affording sexual abuse victims a remedy, we reject respondents' due process claims.

*Id.* at 513-14. The court also held section 541.073 was not "special legislation," finding it "applies to all individuals who claim damages for injuries arising out of sexual abuse" and "the distinction between victims of sexual abuse and victims of other torts is not arbitrary or fanciful." *Id.* at 514. The court explained:

Sexual abuse victims are more likely to repress the memory of the abusive incident, and the psychological injuries caused by sexual abuse are different than for victims of other torts. . . . These differences reasonably justify the legislature's decision to entitle sexual abuse victims to a specific statute of limitations. Finally, sexual abuse victims benefit from the discovery rule of section 541.073 because memory of the abusive incident is sometimes repressed, and consequently their claims are barred by the general statute of limitations.

*Id.* (internal citations omitted). Significantly, further review of *K.E.* was denied. *See Sletto v. Wesley Const., Inc.*, 733 N.W.2d 838, 842 (Minn. Ct. App. 2007) (citing *K.E.*, 452 N.W.2d 509, and indicating review denied).

It is, therefore, evident that the six-year statute of limitations set forth in section 541.073 is retroactive and constitutional. Consequently, section 541.073 is applicable to Lickteig's claims of sexual abuse against Kolar, and Lickteig's action against Kolar was timely.

In further support of his argument that section 541.073 does not apply to Lickteig's claims against him, Kolar goes to great lengths to attempt to debunk repressed memories, even going so far as to call it "junk science." Kolar Brief, pp. 17, 20-25, 27-35 and n.8. In addition Kolar presents a number of unsupported hypotheticals and irrelevant presuppositions. *See* Kolar Brief, p. 28-31. In light of this Court's and the Minnesota Legislature's express recognition that sexual abuse victims may suffer from repressed memories as a result of sexual abuse, *see e.g. W.J.L.*, 573 N.W.2d at 680 and n.5, no further comment on Kolar's unfounded and unsupported statements are necessary.

In sum, section 541.073 was intended to apply retroactively, in order to provide those abuse victims with an avenue of relief where, as here, the victims repressed

memories of the abuse, and were unable to bring an action prior to learning that the abuse was the cause of their injuries. There is no question that section 541.073 applies to Lickteig's cause of action against Kolar, and that Lickteig, therefore, timely brought suit against him.

### **III. INTRAFAMILIAL IMMUNITY DOES NOT APPLY TO LICKTEIG'S SUIT AGAINST KOLAR**

#### **A. Intrafamilial Immunity Has Never Applied to Suits Between Siblings**

As argued to the Eighth Circuit Court of Appeals and to this Court, there is simply no authority to suggest that the intrafamilial immunity doctrine has ever applied to suits between siblings. *See e.g. Smith v. Somera*, 389 So.2d 1080 (Fla. Ct. App. 1980); RESTATEMENT (SECOND) OF TORTS § 895H (1977); 81 A.L.R.2d 1155. Kolar provides no response or authority contradicting Lickteig's argument.

#### **B. Kolar Admits that Intrafamilial Immunity Was Abrogated Entirely by 2005, the Relevant Year**

Kolar begins his argument on this issue with an admission that "interfamilial [sic] tort immunity would likely not be held to be good law by this Court in 2009." Kolar Brief, p. 35. Kolar claims, however, that the status of intrafamilial immunity in 1980 is what is relevant. *Id.* As noted above, Kolar's abuse of Lickteig occurred from 1974 to 1977, and Lickteig first remembered the abuse in 2005. The year 1980 is wholly irrelevant.

As previously argued, the law in effect at the time Lickteig's cause of action is to be applied. *See e.g. Gryc*, 297 N.W.2d at 733 (court applied version of Act in effect at the time cause of action arose, and not subsequently amended Act); *Carlson v*, 392

N.W.2d at 220 (court applied Human Rights Act in effect at time the plaintiffs' causes of action arose, and refused to apply Act as amended after cause of action arose);

*Greenwaldt*, 526 N.W.2d at 203 (court applied 1988 version of statute, which was in effect at the time the plaintiff's cause of action arose). In Minnesota, a cause of action for sexual abuse accrues at the time of "discovery," when the abuse victim "knew or had reason to know that the injury was caused by the sexual abuse," which in this case was in 2005. *See* MINN. STAT. § 541.073. Thus, the state of the intrafamilial immunity doctrine, as it existed in 2005 when Lickteig's cause of action accrued, is what is relevant here. Unquestionably, and as acknowledged by Kolar, no form of intrafamilial immunity existed by 2005.

### **C. Intrafamilial Immunity Was Abrogated Prior to Kolar's Sexual Abuse of Lickteig**

Even if the Court were to view intrafamilial immunity as of the time of Kolar's abuse of Lickteig, which Lickteig expressly denies is the relevant time period, the Courts had abrogated such immunity prior to the beginning of Kolar's abuse of Lickteig in 1974. Kolar argues that it is not clear whether intrafamilial immunity has been abrogated "between all family members, or whether their language only applied to parent-child litigation." Kolar Brief, p. 39.

The Court's abrogation of the intrafamilial immunity doctrine began in 1966 with *Balts v. Balts*, 142 N.W.2d 66 (Minn. 1966), in which the Court held such immunity was no longer applicable to a suit by a parent against a child. Then, in *Silesky v. Kelman*, 161 N.W.2d 631, 634 (Minn. 1968), the court further abrogated the intrafamilial immunity,

with only two exceptions. In partially abrogating the intrafamilial immunity doctrine, the Court in *Silesky* stated “[s]uits are permitted among unemancipated siblings even though they remain in the family household.” *Silesky*, 161 N.W.2d 634. The *Silesky* court also discussed *Overlock v. Ruedemann*, 165 A.2d 335 (Conn. 1960), a Connecticut Supreme Court case, in which it was held that an unemancipated minor child could maintain an action against her unemancipated minor sister. *Id.*

In *Beaudette v. Frana*, 173 N.W.2d 416, 417 (Minn. 1969), the Court held immunity did not protect a husband from suit by his wife, and unequivocally stated, “[i]nterspousal immunity is the **last vestige** of the judicially established rule of intrafamily immunity in actions for tort.” *Id.* The Court in *Anderson v. Stream*, 295 N.W.2d 595, 600 (Minn. 1980), **expanded** the *Silesky* Court’s abrogation so that there were no exceptions.

Accordingly, as of 1980, this Court had ruled that immunity did not protect a child from suit by a parent, that immunity did not protect a spouse from suit by the other spouse, and that immunity did not protect a parent from suit by a child. While Kolar presents a number of unsupported scenarios that are unworthy of any response, he has not presented any legal authority indicating that immunity has been abrogated as to all family relationships except siblings. In fact, there is no such support, and all indications are that intrafamily immunity has been abrogated as between siblings, as well. There is simply no reason to hold that an adult is immune from suit by his adult sibling, particularly in light of the fact that such immunity would not even apply between a parent and child, living in the same household.

In sum, there is simply no authority that the intrafamilial immunity doctrine has ever applied in the context of siblings. In any event, intrafamilial immunity has been expressly abrogated in all other family contexts. As such, if it has not already done so, Lickteig respectfully submits that the Court should expressly hold that such immunity no longer exists and is not a bar to Lickteig's suit against Kolar.

### CONCLUSION

For all these reasons, as well as those stated in Lickteig's initial Brief, Lickteig respectfully requests that the Court conclude she has a valid cause of action against Kolar for the injuries she sustained as a result of the sexual abuse Kolar inflicted upon her, and further concluded that such cause of action was timely commenced under MINN. STAT. § 541.073.

Dated this 14th day of December, 2009.

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## CERTIFICATE OF COMPLIANCE

Pursuant to MINN. R. CIV. APP. P. 132.01, subd. 3, Dana Van Beek Palmer, one of the attorneys for the Appellant does hereby submit the following:

The foregoing brief was prepared using Microsoft Office Word 2003. The brief is 18 pages in length. It is typed in proportionally spaced typeface in Times New Roman 13 point. The word processor used to prepare this brief indicates that there are a total of 4,888 words and 24,581 characters (no spaces) in the body of the brief.

  
Dana Van Beek Palmer