STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

[Filed: December 13, 2016]

NEIL PROVORSE, INDIVIDUALLY; DOROTHY PROVORSE, INDIVIDUALLY; NEIL PROVORSE AND DOROTHY PROVORSE, AS PARENTS AND NEXT FRIEND OF TANYA PROVORSE, A MINOR	:	
VS.	:	**C.A. NO. PC-2003-4268**
STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS; DONALD L. CARCIERI, IN HIS OFFICIAL CAPACITY AS GOVERNOR FOR THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS; DEPARTMENT OF CHILDREN, YOUTH AND FAMILIES; JAY LINDREN, IN HIS OFFICIAL CAPACITY AS DIRECTOR OF THE DEPARTMENT OF CHILDREN, YOUTH AND FAMILIES; JOHN DOE STATE AGENCY NOS. 1-5; JOHN DOE NOT-FOR-PROFIT CORPORATION NOS. 1-5; JOHN DOE CORPORATION NOS. 1-5; MICHAEL MORETTI, ALIAS; MAUREEN ROBBINS, ALIAS; TARA SLATTERY, ALIAS; JOHN DOE NOS. 1-10; AND JANE DOES NOS. 1-10	:	

DECISION

LICHT, J. This matter came before the Court for an evidentiary hearing to determine the accrual date of Plaintiffs' Dorothy and Neil Provorse (Plaintiffs or the Provorses) claims for

wrongful adoption of their daughter, Tanya Provorse[1] (Tanya). For the reasons set forth below, this Court finds that Plaintiffs' cause of action for wrongful adoption accrued on or after August 31, 2000. Therefore, this Court finds that those portions of Plaintiffs' Amended Complaint, which allege claims for wrongful adoption, i.e., Plaintiffs' causes of action sounding in negligence, are preserved by the discovery rule, and thus, not barred by the relevant three-year statute of limitations.[2]

[1] Although also a named plaintiff, Tanya's claims are preserved by G.L. 1956 § 9-1-38, which tolls the statute of limitations for minors, and thus, her claims were timely filed and will not be addressed in this Court's opinion.

[2] In Plaintiffs' Amended Complaint and during final argument before this Court, Plaintiffs argued, in the alternative, that if the Court did not find that the three-year statute of limitations was not tolled by the discovery rule, that the Court could find that the running of the statute of limitations for Plaintiffs' claims was tolled by Defendants' fraudulent concealment of their cause of action pursuant to § 9-1-20. Section 9-1-20 states:

> "If any person, liable to action by another, shall fraudulently, by actual misrepresentation, conceal from him or her the existence of the cause of action, the cause of action shall be deemed to accrue against the person so liable at the time when the person entitled to sue thereon shall first discover its existence." Sec. 9-1-20.

Given that the Court finds that Plaintiffs' various claims for negligence, and the applicable statute of limitations thereof, are preserved by the discovery rule, the Court need not address Plaintiffs' alternative argument for fraudulent concealment.

I

Facts and Travel

A

Procedural History

1

Summary Judgment

This matter came on for hearing in front of Justice Montalbano[3] on the State's Motion for Partial Summary Judgment on October 3, 2014. The State argued, inter alia, that Plaintiffs' claims were barred by the relevant three-year statute of limitations as set forth in § 9-1-25,[4] and thus, all causes of action brought by them—rather than Tanya—should be dismissed as a matter of law. Hr'g Tr. (Tr.) 52:7-16, Oct. 3, 2014. The State asserted that Plaintiffs' claims accrued on November 14, 1994, the date that they adopted Tanya, making the filing of the complaint on August 15, 2003 untimely. Id. at 51:25-52:4. In the alternative, the State argued that, even if the discovery rule[5] applied, Plaintiffs' claims are barred by the three-year statute of limitations because Plaintiffs knew or should have known of their cause of action on January 21, 1999,

[3] My esteemed colleague, Justice Montalbano, will be referred to herein as the "hearing justice."

[4] Section 9-1-25 provides:

> "When a claimant is given the right to sue the state of Rhode Island, any political subdivision of the state, or any city or town by a special act of the general assembly, or in cases involving actions or claims in tort against the state or any political subdivision thereof or any city or town, the action shall be instituted within three (3) years from the effective date of the special act, or within three (3) years of the accrual of any claim of tort. Failure to institute suit within the three (3) year period shall constitute a bar to the bringing of the legal action."

[5] As discussed infra, the discovery rule will toll the statute of limitations when the claim is inherently undiscoverable or unknowable.

when Tanya was diagnosed with Major Depressive Disorder, or on June 7, 1999, when Plaintiffs allegedly learned of Tanya's biological family history. Id. at 52:9-16.

To stave off the State's motion, Plaintiffs argued that the discovery rule tolled the three-year statute of limitations until August 31, 2000, when Plaintiffs finally had access to the full medical history of Tanya's biological family and, as such, their claims were timely filed. Id. at 52:17-20. Upon conclusion of oral argument, the hearing justice rendered a bench decision and found that, because "the injury was unknown to the plaintiffs at the time of Tanya's adoption[,]" the discovery rule applied and "toll[ed] the statute of limitations" on Plaintiffs' claims. Id. at 55:4-8. Further, the hearing justice found that "if a person exercising reasonable diligence would not have been aware of the injury until he or she knew that DCYF had more information about a history of mental illness in Tanya's biological family than they disclosed prior to Tanya's adoption then the [State]'s motion for summary judgment would have to be denied -- in this case, partial summary judgment." Id. at 58:1-8. The hearing justice noted that, although the State relied heavily on Rowey v. Children's Friend and Service, 2003 WL 23196347 (R.I. Super. Dec. 12, 2003) (Darigan, J.), the instant matter, "present[ed] a distinguishable fact pattern" and that the Rowey decision "[was] instructive at best and [was] not precedential authority." Id. at 58:15-17; 59:13-14; 60:3-4.

Ultimately, the hearing justice denied the State's Motion for Partial Summary Judgment stating that "a reasonable person would not necessarily have known that Tanya's mental health issues and the injuries they caused to both her and her adoptive parents were potentially predictable from a biological family medical history that DCYF did not disclose at the time of Tanya's adoption." Id. at 61:23-62:3. The hearing justice noted that "the test [was] not what the Provorses knew but what a reasonable person should have known in similar circumstances." Id.

at 62:19-63:3 (citing 51 Am. Jur. 2d Limitations of Actions § 158 at 621-22 (2011) (stating that when dealing with the discovery rule, "the question is not whether the particular plaintiff actually knew that he or she had a claim, but is whether the circumstances of the case would put a plaintiff of common knowledge and experience on notice that some right of his or hers has been invaded[.]").

2

State's Motion for an Evidentiary Hearing

Following the hearing justice's denial of its Motion for Partial Summary Judgment, the State petitioned this Court for an evidentiary hearing to determine the specific accrual date of Plaintiffs' claims. After extensive briefing from both parties, this Court heard argument and rendered its decision on August 4, 2015. This Court found that the law of the case, as stated by the hearing justice in his October 3, 2014 bench decision, was that "the discovery rule applies in a wrongful adoption matter" and that "there's a genuine issue of material fact as to when the plaintiffs, in the exercise of reasonable diligence, should have discovered the injury or their claim." Tr. 4:3-5; 8-11, Aug. 4, 2015 (Licht, J.).

This Court granted the State's motion for an evidentiary hearing and stated that "the decision as to what the accrual date under the discovery rule is, is a matter of law." Id. at 38:1-2. Relying on Sharkey v. Prescott, 19 A.3d 62, 67 (R.I. 2011), this Court stated that the accrual date should be determined "at a preliminary evidentiary hearing at any time in advance of trial in determining when reasonable diligence would have put a person on notice that a potential claim existed." Id. at 38:14-17; see also Doe v. LaBrosse, 588 A.2d 605, 606–07 (R.I. 1991) (trial justice should conduct a preliminary hearing and make a factual determination regarding the specific date that the plaintiffs' claim accrued); Cikan v. ARCO Alaska, Inc., 125 P.3d 335, 339

(Alaska 2005) ("[W]hen a factual dispute precludes entry of summary judgment the dispute must ordinarily be resolved by the court at a preliminary evidentiary hearing in advance of trial."); Lopez v. Swyer, 300 A.2d 563, 567, 62 N.J. 267, 274-75 (N.J. 1973) (holding that the application of the discovery rule to toll a plaintiff's claims is a matter to be resolved by the judge at a preliminary hearing because "the question as to the application of the statute of limitations is ordinarily a legal matter and as such is traditionally within the province of the court[,]" and the "interplay of the conflicting interests of the competing parties must be considered" and is thus, "more than a simple factual determination[.]"). Additionally, cognizant of its non-precedential effect, this Court found the trial justice's analysis in Rowey of "all the affidavits and depositions and other evidence" in determining the accrual date of the plaintiffs' claims instructive. Tr. 38:25, Aug. 4, 2015.

3

The Evidentiary Hearing

Before commencing the evidentiary hearing, this Court reminded the parties that the State had raised the statute of limitations as an affirmative defense. Tr. 18:1, Feb. 16, 2016. As such, this Court stated that, although Plaintiffs had the initial burden of production to "say when in the exercise of reasonable diligence they actually discovered this cause of action . . . the burden remains on the state to prove that the date is earlier than" when Plaintiffs filed their claim with this Court. Id. at 18:14-18. In short, "the state has to prove by a preponderance of the evidence that that accrual date was prior to . . . August 15, 2000." Id. at 18:24-19:6. Further, this Court advised counsel that since the impending hearing was focused on a very discreet issue—the accrual date of Plaintiffs' claims—all the evidence and testimony that would be presented to this Court, regarding that date, should be narrowly focused as well. Accordingly, and after twelve

days of hearings,[6] this Court will narrowly focus its recitation of the facts and subsequent analysis to the relevant period of time when Plaintiffs, in the exercise of reasonable diligence, knew or should have known of their claims.

B

Factual History[7]

1

Pre-Adoption

Tanya was born on April 6, 1987 in Providence, Rhode Island. See Pls.' Ex. 1. At the age of three, Tanya was removed from her biological mother and placed in the State's care with the Rhode Island Department of Children, Youth, and Families (DCYF). See Pls.' Ex. 47. By 1993, the parental rights of both Tanya's biological mother and father had been terminated, and she became a ward of the State. Id. As a result, Tanya remained in DCYF's custody and was placed in the care of several foster homes. Id.

While Tanya moved from foster home to foster home, the Provorses desired to start a family of their own, and Mrs. Provorse contacted DCYF about adoption. Tr. 14:1-3, Feb. 18,

[6] This Court initially reserved four days for hearings. Although this Court strongly suggested that, as a matter of efficiency, the parties meet to discuss whether any documents or a majority thereof—e.g., Tanya's Birth Certificate, various medical records—could be agreed upon as full exhibits, keeping in mind that this Court would resolve any remaining conflicts as to exhibits if necessary while preserving counsels' right to object to certain portions of those documents, this request was ignored. Tr. 25:6-26:3, Jan. 29, 2016. This Court also implored counsel to negotiate a preliminary set of undisputed facts to further limit the time necessary to conduct the evidentiary hearing. Id. at 53:13-54:9; 56:7-9. However, this recommendation also fell on deaf ears. As a result, the evidentiary hearing usurped much more of this Court's time than was expected or was necessary to resolve this issue.

[7] The parties originally submitted three-ring binders that contained their respective premarked, proposed exhibits. The parties' nonadherence to this Court's suggestion that the parties meet to attempt to agree upon certain exhibits—i.e., exhibits that were duplicative or that the Court could take judicial notice of—led to many exhibits being introduced in contradiction to their pre-marked order, and required this Court to have exhibits marked nonsequentially so as to avoid further confusion or delays. Tr. 95:2-3, Feb. 18, 2016; Tr. 5:24-6:7, Apr. 1, 2016.

2016. Mrs. Provorse testified that Richard Prescott, an employee of DCYF, advised her that the Provorses would need to "fill out paperwork and an application for adoption" in order to begin the adoption process. Id. at 14:8-13. Included in the paperwork were an Adoption Application (the Application) and an Adoption Self-Assessment Questionnaire (the Questionnaire). See Pls.' Exs. 5, 6. Mrs. Provorse testified that the Questionnaire "was a questionnaire on my background and on the type of child that we would like so that DCYF or the Department of Children, Youth, & Families were [sic] able to match us with a child." Id. at 15:13-16.

The Application required the Provorses to give general background information about themselves: including, their home address, any previous marriages and/or biological children, employment status, and their general medical history. See Pls.' Ex. 5.

A question on the Application asked, "What is your preference regarding the child/children you would consider adopting?" Id. at 4. Specifically, the Application required the Provorses to circle the "degree of handicapping conditions [that they] would consider" and listed three categories: "Physical," "Emotional," and "Intellectual." Id. The Provorses had the option of circling "None," "Mild," "Moderate," or "Severe." Id. In the Physical handicap category, the Provorses circled "None" and "Moderate" and connected their two choices by drawing a line through "Mild." Id. In explaining what this notation meant, Mrs. Provorse testified that her choice indicated "[N]one to [M]oderate." Tr. 16:22-25, Feb. 18, 2016. The Provorses circled "Moderate" in the "Intellectual" category. Pls.' Ex. 5.

Regarding the level of emotional handicap that the Provorses were willing to consider, they circled both "Mild" and "Moderate." Id. Mrs. Provorse explained that this choice meant that they were willing to accept a child with a "Mild to [M]oderate" emotional handicap. Tr. 17:1-2, Feb. 18, 2016. Mrs. Provorse explained on direct examination that when she circled

"Mild to [M]oderate, I was thinking [the child] might have some emotional problems but not to the severity that I couldn't handle." Id. at 17:18-22. The last two pages of the Application listed numerous "behaviors common to children who have experienced the uncertainties of the substitute child care system and who are now waiting for permanent adoptive families" and asked the applicants to "[w]rite yes in front of behaviors which you and your family could tolerate and wok [sic] with a child toward improving[,]" and "[w]rite no in front of behaviors which you never could tolerate and which would stop you from further considering a child for adoption." Pls.' Ex. 5, 5-6 (emphasis in original). The Provorses completed this section of the Application and indicated that they could tolerate, e.g., "Tantrums (screaming, yelling, kicking, out of control), "Shows no respect (says, "shut up," mouths off, flip attitude)," and "Defiant-sullen (reticent, secretive)." Id. at 5. However, the Provorses also indicated that they could never tolerate behaviors such as: "Stealing," "Destructiveness (smashing, breaking)," or "Hurting others (kicking, biting, hitting)." Id.

In the twenty-four page Questionnaire, the Provorses were asked to provide extensive background information about themselves and their families, their marriage, and thoughts about adoption. See Pls.' Ex. 6. On page twenty of the Questionnaire, the Provorses were asked to provide, "What things, if any, in the history of a child's birth parents and/or birth grandparents would make a match with that child unacceptable to you; if you knew about them before meeting the child? (i.e. alcoholism, mental retardation, mental illness, drug addiction, Aids, etc.) Please specify and explain why this would be a deterrent to a match." Id. at 20 (emphasis in original). The Provorses responded that Aids would, because the child would [sic] live long. If in the family and the child not affected then none of the above." Id. Part two of the same question asked the Provorses, "Are there things in this category which would not cause you to say no to a

match, but may cause you to consider long and hard before saying yes? Explain." Id. To that question, the Provorses indicated that "[i]f child is extremely retarded, or has severe mental illness." Id.

The Questionnaire also required the Provorses to provide information regarding the life experiences of a child that would meet with their criteria. See id. Specifically:

> "11) What things, if any, in a child's life experience, would make a match with that child unacceptable to you, if you were told about them before meeting the child? (i.e., emotional abuse, physical abuse, sexual abuse, sex with siblings, multiple placements, repeated rejections, etc.) Please specify and explain why this would be a deterrent to a match. [Answer] None.
>
> "Are there things in this category which would not cause you to say no to a match but may cause you to consider long and hard before saying yes? Explain. [Answer] None." Id. (underline in original); see also Tr. 72:11-14, Feb. 18, 2016.

In addition to completing the Application and the Questionnaire, the Provorses were required to attend classes at DCYF. Tr. 21:14-20, Feb. 18, 2016. Pat Keogh (Ms. Keogh), who was employed by DCYF as a social worker, taught the adoption classes. Id. at 22:3-7. Mrs. Provorse testified that, after attending the classes and listening to several adoptive parents' testimonials about their experiences with adoption, she believed "[t]hat all the children would be matched with Neil and I according to our questionnaire." Id. at 22:22-25. Mrs. Provorse also testified that in the classes there was discussion about "special needs" children and it was her understanding, after listening to the discussion in the classes, "that all children that DCYF has are considered special needs because they have either been taken away or given up by their parents." Id. at 26:16-24.

Prior to placing Tanya with the Provorses in April of 1994, the Provorses had several visits with her that were supervised by Tara Slattery (Ms. Slattery), "a Rhode Island College

student working to be a social worker," who "was working with DCYF." Tr. 38:22-25, Feb. 18, 2016. Also as part of this transition, Carole Stevens (Ms. Stevens), Tanya's Volunteer Court Appointed Special Advocate (VCASA)[8] visited the Provorses' home on one occasion. Id. at 40:18-41:10. Mrs. Provorse testified that the only information that Ms. Stevens was able to provide to the Provorses was that Tanya's birth mother "was 17 when she had Tanya" and that she "was 19 when she had [Tanya's half-brother]. They [sic] were different fathers, that Tanya's birth was normal. There were no complications. Other than that, I guess just that her mother's life wasn't the greatest for the child and that's why she gave Tanya up[.]" Id. at 42:8-13.

When questioned on direct examination by the State, Ms. Stevens recounted that she first communicated with Mrs. Provorse by telephone on March 20, 1994, and then subsequently met with her in person. Tr. 50:19-23, Feb. 26, 2016. Ms. Stevens testified that she next visited the Provorses on April 16, 1994 and that Mrs. Provorse had inquired about Tanya's biological mother. Id. at 52:22-53:1; 53:11-13; see also Pls.' Ex. 59. On direct, Ms. Stevens explained that she recorded her exchange with Mrs. Provorse in one of her "Contact" notes and that she wrote "that [Mrs. Provorse] asked me about the mother, Lisa, and what the story was on her. She wanted to know if she had any mental health issues." Id. at 54:1-4. Ms. Stevens testified, that "I told her she did have some mental issues and I was not at liberty to talk to her about them, that she needed to talk to DCYF or Mike Moretti." Id. at 54:6-8. However, when pressed on cross-examination about her exchange with Mrs. Provorse, Ms. Stevens conceded that nowhere in her transcribed "Contact" note regarding that exchange did she mention making any disclosure about

[8] Ms. Stevens testified that as a VCASA it was her role to meet with foster parents to examine the child's living conditions and to make sure that they were being cared for properly. Tr. 12:21-25, Feb. 26, 2016. She further explained that it was her role to speak with the child's school counselors and other people or professionals that may have been involved in that child's life. Id. at 12:25-13:8. It was also her role to be a representative for that child in legal proceedings. Id. at 13:14-15.

Tanya's biological mother's mental health issues. Id. at 69:9-16. Ms. Stevens also admitted that she did not inform Michael Moretti (Mr. Moretti) or Maureen Robbins (Ms. Robbins), two of Tanya's social caseworkers, about her conversation with Mrs. Provorse or that she had partially disclosed some of Tanya's confidential biological family history. Id. at 71:13-25.

On May 19, 1994, DCYF officially placed Tanya in the care of the Provorses. See Pls.' Ex. 8 (DCYF, Agreement for Placement); Tr. 43:21-24, Feb. 18, 2016. Mr. Moretti brought her to the Provorses home with only two garbage bags containing all her possessions. Tr. 44:5-9, Feb. 18, 2016. Mr. Moretti's visit lasted approximately "twenty minutes to a half an hour" during which time he had the Provorses sign both "an agreement for placement" and "an adoption subsidy." Id. at 44:21-45:2. Mrs. Provorse testified that during this brief visit she asked Mr. Moretti if DCYF had any more information about Tanya's family history besides the "life book"[9] that the Provorses had received about Tanya, to which Mr. Moretti responded, "that was all they had." Id. at 47:1-7. However, during cross-examination, Mrs. Provorse clarified that when she first asked Mr. Moretti for information about Tanya's biological family history, he responded that "he would speak with his supervisor [Ms. Robbins] and they would get back to [her]." Tr. 13:13-14, Feb. 19, 2016.

During direct examination, Mrs. Provorse also testified that sometime shortly after placing Tanya with the Provorses, Mr. Moretti and Ms. Robbins returned to the Provorses' home "with two to three sheets of lined, white paper" that listed the placements "that Tanya had lived in, six homes in four years, and the names of the [f]oster parents were crossed off[.]" Tr. 47:20-

[9] The making of a "life book" appears to be a procedure used by DCYF, where both the adoptive child and the potential adoptive family each compile books about their lives, including pictures and stories about themselves, and then exchange these books with one another. Mrs. Provorse testified that Tanya's life book contained "a picture of one home and then drawings that [Tanya] actually did of the houses she lived at . . . pictures of a little child with another little child or children playing." Tr. 46:8-15, Feb. 18, 2016.

25, Feb. 18, 2016. However, when confronted on cross-examination with her answer to interrogatories regarding what DCYF employees, Mr. Moretti and Ms. Robbins, had told her about the information they had about Tanya's biological family history, Mrs. Provorse agreed that she had answered that Mr. Moretti and Ms. Robbins had told her that "they did not have any more information they could give me by law." Tr. 53:3-8, Feb. 19, 2016.

After Tanya was placed with the Provorses in May 1994, "[Tanya] had a very difficult time sleeping at night and she had tantrums." Tr. 49:3-6, Feb. 18, 2016. Her tantrums involved "screaming, yelling[,] kicking, throwing anything and everything[,]" and "would go anywhere from fifteen minutes to sometimes an hour." Id. at 49:7-12. Mrs. Provorse informed Mr. Moretti and Ms. Keogh about Tanya's behavior in or about July and August of 1994. Id. at 50:10-14. Mrs. Provorse testified that when she relayed this information to Ms. Keogh, she made a visit to the Provorses' home and "t[old] [Mrs. Provorse] to hang in there, that Tanya had had multiple placements and that she did have Attachment Disorder and that the more [they] encouraged her and told her that [the Provorses] were her family, [they] loved her, the more secure she'd be with [them] and hopefully [the tantrums] would stop." Id. at 50:19-51:2.

It was Mrs. Provorse's understanding, after speaking with Ms. Keogh and Ms. Robbins, that Attachment Disorder[10] was associated with "[s]omeone not being able to form a relationship with whoever the primary caregiver is because of having multiple placements[,]" and that Tanya "would settle down once she felt secure[.]" Id. at 53:20-54:7. Mrs. Provorse testified that she spoke with Mr. Moretti separately about Tanya's sleeping difficulties and that she was unable to sit still when seated at the table and that Mrs. Provorse "asked him if they had any other family

[10] Although Mrs. Provorse referred to the disorder as "Attachment Disorder," the medical terminology testified to by doctors and contained in Tanya's medical records is "Reactive Attachment Disorder."

history they could give me." Id. at 51:6-14. Mr. Moretti responded that "at that time they had g[iven] [Mrs. Provorse] everything they had when he and [Ms. Robbins] came to the house." Id. at 51:15-18.

During the summer of 1994, Mrs. Provorse informed Ms. Keogh that Tanya had been sexually molested in one of her previous DCYF foster care placements. Id. at 80:20-81:5. Further, Mrs. Provorse testified that she believed that it was Ms. Keogh that told her that "we [DCYF] don't have anything on that. You have to call 1-800-RI-CHILD and report it." Id. at 81:6-7. Mrs. Provorse stated that she followed Ms. Keogh's instructions and "two gentlemen came out from the agency to talk to Tanya about what had happened to her." Id. at 81:8-9. After the investigation was completed, it became Mrs. Provorse's understanding that part of Tanya's difficulty sleeping and her tantrums were, in part, caused by the sexual abuse and the "flashbacks of [the perpetrator] scaring her and molesting her." Id. at 91:10-92:8.

During this period, the Provorses assumed all the responsibilities of caring for Tanya, including her doctor's visits. Along with regular visits to her family doctor, in September of 1994, the Provorses took over bringing Tanya to see Dr. Berman, a psychiatrist at Delta Consultants, who had been treating Tanya before she came to live with the Provorses. Id. at 56:15-24; 60:6-8. When Mrs. Provorse asked Tanya's social workers, Mr. Moretti and Ms. Robbins, why she was seeing Dr. Berman, she was told that "all children within DCYF go to a psychiatrist because of leaving their parents or being taken away from their biological parents." Id. at 57:1-3. However, the Provorses were not allowed to participate in Tanya's sessions with Dr. Berman, and after speaking with Dr. Berman as to why this was the policy, it was Mrs. Provorse's understanding that because "we were adopting Tanya through the Department of Children, Youth, & Families and [that DCYF] were [sic] actually generating the meetings. I was

not generating them." Id. at 58:16-17; 59:1-4. Frustrated by being excluded from her care with Dr. Berman, the Provorses took Tanya to see Dr. Muriel Cohen (Dr. Cohen). Id. at 59:19-22.

2

1994-1998

After waiting the requisite six months, the Provorses adopted Tanya on November 14, 1994. See Pls.' Ex. 11. Following her adoption and through 1998, Tanya continued to treat with several doctors. Tr. 76:12-15, Feb. 18, 2016. During this time, she received treatment from therapist, Dr. Karen Kerman, Dr. Cohen, and a doctor at Delta Consultants. Id. at 80:3-9. Also during this time, Mrs. Provorse continued to ask DCYF, specifically Ms. Keogh, "over 20 times" whether she could get more information on Tanya's family history so that her doctors could treat Tanya properly. Id. at 86:7-15. Mrs. Provorse also testified that she spoke with Ms. Robbins "maybe three to six times" about Tanya's ongoing tantrums and that she asked Ms. Robbins for "anything on family history that [she] might be able to help Tanya better and [she] might be able to treat her better[,]" to which Ms. Robbins responded, "they gave me all they had." Id. at 88:1-89:1. Ms. Robbins advised Mrs. Provorse just "[t]o stay positive and hang in there. Reinforce that she's [their] child and she's always going to be with [Mrs. Provorse] and just keep helping her the best [Mrs. Provorse] could with loving her." Id. at 89:17-21.

In or about November 1998, Tanya was also receiving treatment for her tantrums from Behavioral Health Specialists (BHS), during which time Mrs. Provorse signed a release of information authorizing Arlene Heiht, a social worker at BHS, to request information regarding Tanya's treatment at Bradley Hospital prior to 1994. Id. at 92:19-24; 95:14-20; see also Pls.' Ex. 13. On or about December 9, 1998, Mrs. Provorse also executed a release of information for BHS to receive information from DCYF regarding Tanya's prior psychiatric examinations,

treatment plans, and physical and social history because "the doctor or the social worker said she needed the family history in order to treat Tanya properly[.]" Id. at 97:13-14; Pls.' Ex. 14.

In response to the BHS request, on or about December 23, 1998, Cindy Wilder (Ms. Wilder), a social caseworker at DCYF, sent correspondence to BHS, which stated: "that the Department of Children, Youth, & Families is in receipt of a release of information in regards to Tanya Provorse" and explained that the contents of the enclosed letter were a summary of Tanya's background. Pls.' Ex. 15. The letter indicated the following:

> "Birth family:
> "MGM[11] – resided at Ladd School several years - ? retarded
> - history of alcohol abuse
> - pattern of suicide attempts
> - learned by birth mother that she had been hospitalized/ diagnosed Bi-polar
>
> "BIRTH MOTHER - history of physical/sexual abuse
> - history of being in DCYF care
> - drug/alcohol use starting @ age 11
> - borderline personality
>
> "PUTATIVE FATHER - history of being abusive
> - alcohol abuse[.]"

Id. The letter also indicated that "Tanya was born to a 17 year old mother" and that "[d]espite a lack of prenatal care, delivery was described as normal." Id. In addition, it contained the information that "Tanya had a history of multiple placements while in the Dpartments [sic] care" and that she had been "evaluated at Delta consultants [sic] at the age of six" and "diagnosed as PTSD and Reactive Attachment Disorder." Id.

At the evidentiary hearing, Mrs. Provorse testified that the only information that was provided to her and Mr. Provorse by DCYF between 1994 and 1998 was:

[11] During the evidentiary hearing, it was clarified that "MGM" likely meant maternal grandmother.

> "That Tanya's mother was seventeen years old, that her delivery was normal, that Tanya's mother they say had a chaotic life but they told me the mother moved around a lot, that Tanya had multiple placements while in the care of the department. I believe when [DCYF] said that she had . . . Post-Traumatic Stress Disorder and that she had been diagnosed with Post Traumatic Stress Disorder and Reactive Attachment Disorder." Tr. 99:3-11, Feb. 18, 2016.

To counter Mrs. Provorse's testimony that she had requested Tanya's biological family history from several DCYF workers essentially dozens of times, the State called Diane Savage (Ms. Savage), a twenty-two year employee who now holds the position of Assistant Administrator for DCYF, to testify. Ms. Savage explained that she had reviewed three different files to prepare for her testimony—Tanya's case record, Tanya's biological mother's records, and Mrs. Provorse's case records. Tr. 15:24-16:2, Mar. 7, 2016. Ms. Savage further explained that information regarding any contacts with the Provorses would be found in the section of the record referred to as the case activity notes (the Notes). Id. at 18:2-5. Regarding the Notes, Ms. Savage testified that "it's expected that the caseworker will enter any information into the record [or the Notes] that would record major activities such as conversations with parents, appearances at court, any other provider meetings that would happen within that timeframe." Id. at 18:8-12. Ms. Savage also stated that it is typically the caseworker assigned "to the case as the primary worker" whose responsibility it is to enter the Notes. Id. at 18:23-25.

Further, during direct examination, Ms. Savage testified about the Notes from Tanya's record spanning the period January of 1994 through August of 2000. Id. at 24:16-23; see also Defs.' Ex. D-1. Specifically, Ms. Savage testified that the Notes contained in Defs.' Ex. D-1 related to Tanya Hicks Provorse and that she knew this to be true "[b]ecause it was part of the case record that [she] examined." Id. at 25:18-24. Ms. Savage explained that after the Provorses adopted Tanya in November of 1994, the only contact that DCYF had with them was

"maintenance of the adoption subsidy" because "there was no shared custody and no legal petitions in the Family Court for the family or child." Id. at 66:23-67:3. Ms. Savage also stated that the first and only evidence in the Notes of the Provorses' request for Tanya's biological family history was documented on March 16, 2000 and March 20, 2000. Id. at 68:5-12.

On cross-examination, Ms. Savage confirmed that if Mrs. Provorse had orally requested Tanya's biological family history from Tanya's caseworker, and that caseworker had not informed Mrs. Provorse that she needed to make her request in writing, that would be a violation of DCYF's Confidentiality Policy as applied to Restricted Information. Tr. 42:22-43:10; 46:14-17, Mar. 11, 2016; see also Pls.' Ex. 62. Ms. Savage also confirmed that there was no DCYF policy that allowed a caseworker to divulge certain restricted information and refuse to release the remainder of that information. Id. at 46:18-23. Ms. Savage further confirmed that there was no evidence in the Notes that DCYF had disclosed any information regarding Tanya's biological family history to the Provorses between November of 1994 through the end of 1998. Id. at 64:6-23. Additionally, regarding Ms. Wilder's letter that had been sent to BHS on December 28, 1998, Ms. Savage conceded that it would have been against DCYF policy to share a copy of that letter with the Provorses and that there is no record of the letter ever being sent to the Provorses. Id. at 65:8-23; see also Defs.' Ex. U. Finally, Ms. Savage testified on cross-examination that there was no evidence in the DCYF record that the Provorses ever petitioned to have Tanya's adoption terminated. Id. at 66:7-15.

3

Butler Hospitalization January 1999

On or about January 2, 1999, as a result of not wanting to return to Rhode Island after a family trip to New Hampshire, Tanya began to have one of her tantrums. Tr. 100:25-101:1, Feb. 18, 2016. Although her tantrum had subsided before they left New Hampshire, while on the car

ride home, Tanya once again became "very upset and said I don't want to live anymore, I have nothing to live for and she opened the car door." Id. at 101:20-22. After reassuring Tanya that "[they] loved her" and that "[s]he had her whole life ahead of her[,]" the Provorses were able to calm her down and the rest of the trip home was without incident. Id. at 102:2-12. Nevertheless, after returning home, Tanya again "talk[ed] about not wanting to live[,]" and thus, fearing for her safety, Mrs. Provorse decided to call Bradley Hospital. Id. at 103:1-3. Because Bradley had no available beds, Mrs. Provorse called Butler Hospital, which requested that she bring Tanya in for an evaluation. Id. at 103:4-5.

During her hospitalization at Butler Hospital in January 1999, Laura Drury (Ms. Drury), a clinical social worker at Butler, conducted a Psychosocial & Discharge Planning Assessment (the Planning Assessment) of Tanya. See Pls.' Ex. 16 (Bates 5172-5174)[12]; see also Defs.' Ex. YY; Tr. 90:17-25, Mar. 11, 2016. Ms. Drury, a witness for the State, testified that, when filling out the Planning Assessment, "your job is to gather collateral information most specifically from parents at [sic] other agencies, therapists, schools and you bring what they have told you, you record that, you write it down and you bring it to the treatment team[.]" Tr. 84:1-5, Mar. 11, 2016. Regarding the several steps that she would go through to complete the form, she explained that she "would meet with the patient, ask the patient who is in [her] family" and that she "would get permission to contact the family member[.]" Id. at 87:18-21.

When asked specifically about her process for filling out the Planning Assessment for Tanya, Ms. Drury testified that the form indicated that Mr. Provorse was the "informant," but that she did not recall taking the information from him. Id. at 91:4-6. Ms. Drury also could not

[12] To promote uniformity, when available the Court will refer to medical records of various service providers, e.g., Butler Hospital, by the Bates Numbers (Bates) that were initially stamped on the medical records during the discovery process of the instant case.

recall if she interviewed Mr. Provorse over the phone or in person to collect the information. Id. at 94:1-3. Nevertheless, Ms. Drury testified that Mr. Provorse told her, and she recorded, "[t]hat the developmental history was not known. Patient has lived in multiple [f]oster homes since age 2 . . . [b]iological mother and maternal grand – [] [q]uestion of bipolar illness. Biological mother had alcohol problems." Id. at 94:8-17. However, also on direct examination, Ms. Drury testified that she would have reviewed the Butler Hospital "Child/Adolescent Psychiatric Eval" (the Psychiatric Eval) that was generated as a result of a psychiatrist's initial evaluation of Tanya prior to her admission before completing the Planning Assessment. Id. at 96:8-15; 98:17-19. Although the Psychiatric Eval stated that only Tanya's biological grandmother suffered from manic depression, Ms. Drury took it upon herself to combine that information—and what she allegedly gleaned from talking to Mr. Provorse—to state that both the biological mother and grandmother allegedly had been diagnosed and treated for Bipolar Disorder. Id. at 109:19-22; see Pls.' Exs. 16, 17 (Bates 5164-5168); Defs.' Exs. SS, YY.

However, counter to Ms. Drury's testimony, Mrs. Provorse testified that she and Mr. Provorse relayed only the information contained in Paragraph IV of the Planning Assessment because they witnessed the events that occurred in New Hampshire, namely the tantrums and Tanya's attempt to jump out of the car, which were the reasons for the Provorses bringing Tanya to Butler Hospital. See Tr. 110:17-23, Feb. 18, 2016. Mrs. Provorse also stated that although she was not the source of the information contained in Paragraph D of the Planning Assessment, she was with Mr. Provorse when the information was elicited. Id. at 111:8-10. She further testified that Mr. Provorse was not the source of information regarding Tanya's biological mother's and grandmother's alleged Bipolar Disorder diagnoses. See id. at 111:13-23. Further, Mrs. Provorse pointed out that information contained on the first page of the Planning

Assessment was inaccurate as it stated that the Provorses adopted Tanya at the age of six years old, when in fact, if Mrs. Provorse was the source of that information she "would have said seven." Id. at 111:5-6.

Next, during cross-examination, Ms. Drury confirmed that she had no recollection of filling out the Planning Assessment or whether she had even met the Provorses. Tr. 112:10-25; 113:24-114:1, Mar. 11, 2016. Ms. Drury also confirmed, as she had previously stated on direct examination, that along with Mr. Provorse giving her information about his daughter, she reviewed the Psychiatric Eval form before completing the Planning Assessment. Id. at 113:6-10. Ms. Drury further explained that where the Planning Assessment says "Acute Family Issues and there is an F with a circle around it" that that notation indicates that the following information came directly from Tanya's father, Mr. Provorse. Id. at 116:22-117:6. Ms. Drury originally stated that all the information included in the Planning Assessment was provided by Mr. Provorse, even though several sections of the form did not include the notation of an F with a circle around it. Id. at 116:21-117:9. However, when pressed by Plaintiffs' counsel, she conceded that she had reviewed other sources of information in order to complete the Planning Assessment. Id. at 117:10-21. Ms. Drury also acknowledged that when including the information in pages two and three of the Planning Assessment—including the information, which suggested that Tanya's biological mother and grandmother suffered from Bipolar Disorder—she did not use the demarcation of an F with a circle around it. Id. at 119:18-21; 125:7-13.

Further, Ms. Drury confirmed that, although the psychiatrist that had filled out the Psychiatric Eval noted that Tanya's biological grandmother was manic depressive, she interpreted the biological grandmother's medical history to indicate that there was a potential

diagnosis of bipolar illness instead. Id. at 120:4-9. Additionally, on cross-examination, Ms. Drury attested that, by looking at the Planning Assessment, there was no way to know if the Provorses ever received a copy of that form, and that she would not have given the Provorses a copy because it would be against hospital policy to do so. Id. at 120:23-121:4.

After a brief redirect examination by counsel for the State, the Court asked a few questions of Ms. Drury for clarification purposes as follows[13]:

> "THE COURT: If I walked into you and said I'm manic depressive, would you write down bipolar?
>
> "THE WITNESS: I would put down that you had said the exact words manic depressive.
>
> "THE COURT: Turning to your document, if you go to the -- what if I told you my mother was manic depressive.
>
> "THE WITNESS: I would be sorry for you. The same thing, again the same thing.
>
> "THE COURT: Turning to your document, the last page. This is really just a question that I can't really read. In IX and X, you cross something out.
>
> "THE WITNESS: Yeah.
>
> "THE COURT: Then you put something in and I don't know what you crossed out and put in. Let's take them one at a time. IX?
>
> "THE WITNESS: Coordinate post hospital plans.
>
> "THE COURT: I got that.

[13] The Court asked both parties' counsel if it could clarify a few points with the witness, and if there was any objection to this questioning. See Tr. 126:3-4, Mar. 11, 2016. Plaintiffs' counsel stated she did not have an objection and the transcript does not indicate any response by counsel for the State. Id. at 126:5. The Court then allowed counsel for the State to resume his redirect examination of the witness. Id. at 129:14-16.

"THE WITNESS: With parents. The first is Northern Rhode Island Mental Health Center. That's located in Cranston and you see the address so my hunch, and again I don't know if I'm supposed to hunch, is that --

. . . .

"THE WITNESS: I would assume that the counselor, Dr. Hecht, the psychiatrist, may have been from Northern Rhode Island Mental Health so when I would talk with Neil Provorse, I would ask him where is your daughter getting treatment and so if I crossed it out, perhaps, I don't know, you know, we usually involve the therapist and the community in our family meetings.

"THE COURT: So you crossed that out and you wrote LD?

"THE WITNESS: Yeah, that's error. You have to.

"THE COURT: Your initials?

"THE WITNESS: That's correct.

"THE COURT: You would have done that?

"THE WITNESS: I would have done that.

. . . .

"THE COURT: Then that leads me to this question and to what your testimony was, you don't fill this out all at once?

"THE WITNESS: I can add to it.

"THE COURT: No, and you can have some of it done before you leave or it's done over several days, that's what you said over the initial description of generally of what you do when Mr. Kelly was asking you. You said you have the form and sometimes you try to get the person in that afternoon or the next day and if they can't, you fill some of it out on the phone and then you fill it out later, and you obviously looked at the other form

which you said you did because you checked it off and obviously accept that. So is it possible that you had written some of this down before Mr. Provorse came in and there was an error because he said she's not at Northern Rhode Island?

"THE WITNESS: It's possible but I don't think so.

"THE COURT: When would you determine it was an error?

"THE WITNESS: I don't know. He could have told me.

"THE COURT: If he told you that, why would it already be written down?

"THE WITNESS: I don't know.

"THE COURT: Okay.

"THE WITNESS: I can't give you an answer for that.

. . . .

Id. at 126:3-127:3; 127:8-129:7.

The Court also heard testimony from Dr. Christopher Matkovic[14] (Dr. Matkovic) regarding Tanya's hospitalization at Butler in January of 1999. Dr. Matkovic explained that during her time at Butler, Tanya exhibited such extreme behavior that she needed to be placed in a full body restraint known as a "papoose." Tr. 67:3-68:6, Apr. 22, 2016. Dr. Matkovic explained that the papoose was akin to a "velcro taco" that would be wrapped around the patient, but which also had straps—"like a blanket that has fasteners on it." Id. at 67:16-19. Dr.

[14] Dr. Matkovic is board certified in general psychiatry, child and adolescent psychiatry. Tr. 11:7-13, Apr. 1, 2016. He has also been associated with Butler Hospital since 2008 and that he had trained at Bradley Hospital as a "Child and Adolescent Psychiatry fellow." Id. at 12:11-19. The State relied on Dr. Matkovic's testimony to introduce Tanya's hospital records from various hospitals and treatment providers. While Dr. Matkovic never personally treated Tanya, Dr. Matkovic's testimony was beneficial to the Court by assisting it in deciphering the nomenclature used in the medical field, specifically in the area of psychiatry.

Matkovic further testified that "less than five to ten percent" of children that were admitted to Butler would be subjected to a restraint in a papoose. Id. at 68:7-12.

On January 21, 1999, Dr. Michael Wilberger (Dr. Wilberger), Tanya's treating physician at Butler, authorized her discharge from Butler Hospital. See Defs.' Ex. WW (Bates 5127-5131); Pls.' Ex. 18 (Discharge Summary, Jan. 1999). The January 1999 Discharge Summary listed the discharge diagnosis as: "Axis I – Major depressive disorder, posttraumatic stress disorder and attachment disorder. Axis III – chronic headaches." Id. at Bates 5127. However, Mrs. Provorse testified that it was her understanding, based on her conversations with Dr. Wilberger, that Tanya was tantruming "because she had an Attachment Disorder and also that she was sexually molested and had nightmares." Tr. 120:6-11, Feb. 18, 2016. Mrs. Provorse also stated that Dr. Wilberger did not prescribe any new medications other than those that Tanya had been taking prior to the January 1999 Butler Hospitalization. Id. at 120:12-23.

In his conclusion to the January 1999 Discharge Summary, Dr. Wilberger noted concerns about Tanya's long-term care stating, "[w]ith DCYF having been contacted and with an understanding that the patient might well require placement in residential care, it was decided that she would be discharged for further trial in the home. Defs.' Ex. WW at Bates 5131. Dr. Wilberger also noted that "[h]er parents have remained committed to her, but are overwhelmed by the severity of Tanya's difficulties. However, Tanya does have the good fortune of having been adopted by parents who appear to be quite willing to see the situation through and to remain with Tanya through her coming difficulties." Id.

4

Bradley Hospitalizations 1999 and Tanya's Post-Hospitalization Care

On January 21, 1999, the same day that Tanya was discharged from Butler Hospital, she was admitted to Bradley Hospital located in East Providence, Rhode Island for "suicidal

ideation, neurovegetative symptoms of depression and agitated behavior." See Pls.' Ex. 23 (Discharge Summary, Feb. 8, 1999). Mrs. Provorse testified that she was the one who brought Tanya to Bradley and gave the relevant intake information. Tr. 124:10-12, Feb. 18, 2016. Mrs. Provorse further recounted the reasons for bringing her to Bradley and that she did not have any biological family history about Tanya. Id. at 126:9-11.

Tanya's February 8, 1999 Discharge Summary indicates that she was admitted for the acute problems of "Problem #1: PTSD" and "Problem #2: Depressive Symptoms." Pls.' Ex. 23. According to the Discharge Summary, Tanya's Axis I "DISCHARGE DIAGNOSES[,]" as defined by the DSM IV-R, were "Post Traumatic Stress Disorder Chronic recurrent[,]" Reactive Attachment Disorder[,]" and Oppositional Defiant Disorder." Id. The Discharge Summary also shows that Tanya had a GAS[15] of 40 at the time of her discharge and that her GAS had been as high as 65 within the past year. Id. Given that Tanya had been temporarily placed in the custody of DCYF,[16] Grace Gunnip (Ms. Gunnip), a social worker from DCYF, took Tanya from Bradley Hospital, when she was discharged. See Pls.' Ex. 23; see also Tr. 129:3-6, Feb. 18, 2016. Mrs. Provorse was not present when Tanya was released from the hospital on February 8, 1999. Id. at 129:20-22. From the hospital, Ms. Gunnip transported Tanya to a children's center in Pawtucket. Id. at 133:4-7; see also Pls.' Ex. 25 (Bradley Hospital Discharge Summary, Aug. 13, 1999).

However, almost immediately upon being placed in the children's center, Tanya threatened to "kill the other children there and then kill herself" and also "that she hated herself and wanted to jump out of a window or jump out of a car." See Pls.' Ex. 25. Tanya,

[15] Dr. Matkovic explained that GAS was shorthand for a score given to a patient's global assessment of functioning and varies depending on whether the patient is able to function normally based on his or her behaviors. See Tr. 31:21-32:3, Apr. 22, 2016.
[16] The Provorses continued to be Tanya's legal guardians throughout this time period.

accompanied by Ms. Gunnip, was transported by ambulance back to Bradley Hospital, where she was quickly readmitted. See Tr. 129:23-130:1-8, Feb. 18, 2016; see also Pls.' Ex. 25. While Tanya was being evaluated during the admissions process, she attempted to escape four times and stated, "I want to die, I hate my life." Id.

While Tanya was being treated at Bradley Hospital for the second time in 1999, Mrs. Provorse, frustrated with Tanya's treatment, decided to directly request Tanya's medical records from Bradley Hospital. Id. at 143:14-21. After meeting with Mr. Wall, the president of Bradley, he gave Mrs. Provorse "Lori Dearnley's name and told [her] [she] had to put it in writing" if she wanted to obtain any Bradley Hospital records. Id. at 144:5-7. On or about May 12, 1999, Mrs. Provorse faxed Lori Dearnley (Ms. Dearnley), a correspondence secretary in the Medical Records Department of Bradley Hospital, stating that she wanted Tanya's complete file from Bradley Hospital dating back to January 21, 1999. See Pls.' Ex. 26; Defs.' Ex. RRR; see also Tr. 143:1-8, Mar. 11, 2016. Regarding this request, Mrs. Provorse testified that she did not receive any response to her faxed letter. Tr. 145:22-146:3, Feb. 18, 2016. Mrs. Provorse made a third request for Tanya's complete Bradley Hospital record on June 4, 1999. Id. at 146:25-147:3; see also Pls.' Ex. 27. Mrs. Provorse testified that she did not receive a response from Ms. Dearnley to her June 4, 1999 letter. Id. at 147:20-21.

On direct examination, Ms. Dearnley explained that if she had received a request for medical records, such as the one made by Mrs. Provorse on May 8, 1999, it was Bradley Hospital protocol to provide only the discharge summary and the psychological evaluation. Tr. 146:20-22, Mar. 11, 2016. Ms. Dearnley also explained that if she received a request for a patient's entire medical record, she "would have copied the whole medical record except for one section called outside data." Id. at 149:10-19. Ms. Dearnley clarified that "outside data" would

encompass any patient information that Bradley received from other facilities, doctors, or social workers, from which the patient may have received treatment or services. Id. at 152:24-153:2. Protocol would not allow the sharing of outside data. Id. at 153:11-12.

Ms. Dearnley further testified that it would have been her routine practice to respond to Mrs. Provorse's request of June 4, 1999 by copying Tanya's entire medical record. Id. at 150:7-11. Ms. Dearnley explained that, according to Bradley Hospital protocol, the letter addressed to Mrs. Provorse dated June 7, 1999, which indicated that attached to her response were "Enclosures: Inpatient Record 1/21/99 – 2/8/99" and "Inpatient Record 2/08/99 – Present (6/7/99)[,]" would be her response to such a request. Pls.' Ex. 28; Defs.' Ex. TTT.

Finally, on August 13, 1999, Tanya was discharged from Bradley Hospital to return home with the Provorses. See Pls.' Ex. 25. The August 13, 1999 Bradley Discharge Summary states:

> "VII. DISCHARGE DIAGNOSES
>
> | | | |
> |---|---|---|
> | Axis I (primary) | 309.81 | Posttraumatic Stress Disorder |
> | | 313.89 | Rule Out Reactive Attachment Disorder of Infancy or Early Childhood |
> | | 995.5 | Child Abuse – Neglect |
> | | 995.5 | Child Abuse – Physical |
> | | 995.5 | Child Abuse – Sexual" |

Id. The Discharge Summary also lists Tanya's GAS at the time of discharge as "50," and states that "50" was her highest GAS within the past year.[17] Id. Lastly, the Discharge Summary includes recommendations to "follow-up with Dr. Savitsky at Mental Health Services for ongoing medication management[,]" and for "individual and/or family therapy." Id. Regarding the August 13, 1999 Bradley Hospital Discharge Summary, on cross-examination Dr. Matkovic

[17] The Court notes that the Bradley Hospital discharging doctor's report of a GAS score of 50 and that it was the highest GAS within the past year is quite inconsistent with the Discharge Summary of another Bradley Hospital physician, only six months prior, that indicated that Tanya's GAS at that the time of her discharge was 65. See Pls.' Ex. 35.

testified that although the discharge summary may be done on the day the patient is discharged, the actual form is typically not generated until thirty days after the patient has left the hospital. Tr. 91:17-92:4, May 6, 2016. In his testimony he agreed that the August 13, 1999 Discharge Summary would not have been given to the Provorses because it would not have been available. Id. at 92:5-8.

As part of Tanya's post-hospitalization treatment, she was referred for outpatient services to the Children's Intensive Services (CIS) program at Mental Health Services, Inc. of Cranston, Johnston, and Northwestern, RI (MHS).[18] See Pls.' Ex. 29; see also Tr. 97:11-16, Apr. 1, 2016. Dr. David Savitsky (Dr. Savitsky), a psychiatrist on staff at MHS at the time, testified that the CIS program "was an intensive home based program," whose clinicians and therapists, would provide services to its clients in the client's home. Tr. 96:5-10, Apr. 1, 2016. Regarding the normal treatment period in the CIS program, Dr. Savitsky further testified that:

> "[t]he initial authorization was for six months and if it was needed, [MHS] could get an additional six months, three months, somewhere in that range. By and large the most severe cases would be less than -- would be a year or in that range but most people, under six months. As they stabilize, [MHS] would be discharging them." Id. at 97:17-21.

As part of the admission process for the CIS program, on August 3, 1999, Marie Abjornson (Ms. Abjornson), a licensed therapist with the program, conducted an "Initial Clinical Assessment" (Initial Assessment) of Tanya while she was in Bradley Hospital. See Pls.' Ex. 65 (Bates 8756-8761). The Initial Assessment indicates: "Provisional Diagnosis (Axis I Through V Mandatory): Axis I: ~~Depression~~ Dysthymic Disorder 300.4;[19] Axis I: PTSD 309.81; Axis II:

[18] Tanya was admitted to the CIS program on July 23, 1999, which was prior to her discharge from Bradley Hospital. See Pls.' Ex. 29.

[19] "Depression" was initially indicated as an Axis I diagnosis, but was crossed out. Furthermore, Dr. Savitsky explained that according to the DSM-IV, the features of Dysthymic Disorder are

Deferred; Axis III: none; Axis IV: problems with primary support group; Axis V: 50."[20] Id. at 8760. The Initial Assessment also indicates that Tanya's social worker, Ms. Gunnip, was involved in the case and it listed Ms. Gunnip's contact information. Id. at Bates 8758; see also Tr. 21:21-23, Apr. 15, 2016. Mr. and Mrs. Provorse's contact information was not listed in the Initial Assessment. See id.; see also Tr. 22:2-4.

Also, as a starting point for Tanya's treatment in the CIS program, on August 15, 1999 the Provorses completed a "Child Behavior Checklist for Ages 4-18" (Behavior Checklist) about Tanya. See Pls.' Ex. 66 (Bates 8744-8747). Dr. Savitsky testified that the Behavior Checklist establishes somewhat of a baseline for the beginning of a patient's treatment at MHS and that it is used to gain information from the parents regarding the child. Tr. 44:2-6, Apr. 15, 2016. Among other pertinent information, when the Provorses completed the Behavior Checklist, they indicated that it was "somewhat or sometimes true" that Tanya talked about killing herself.[21] Pls.' Ex. 66, Bates 8747.

Specific to Tanya's treatment in the CIS program, Dr. Savitsky explained that he first examined her on September 10, 1999. Tr. 97:9-10, Apr. 1, 2016. During this initial psychiatric evaluation, Dr. Savitsky met with both Tanya and Mrs. Provorse and they discussed "Tanya's

---

similar to those of Major Depressive episodes and that Tanya's depression was associated with her PTSD diagnosis. See Tr. 26:25-27:9, Apr. 15, 2016.

[20] Dr. Savitsky explained that the Diagnostic and Statistical Manual (DSM) "divided different types of troubles along Axes so Axis I would be mental health conditions. Axis II are personality disorders and learning difficulties. Axis III are medical problems, Axis IV are psychosocial troubles. Axis V is a rating scale of severity." Tr. 28:17-29:14, Apr. 15, 2016. He further explained that the Axis V rating refers to the diagnoses and how they affect the overall person. Id. at 28:23-29:4. Dr. Savitsky also clarified that the Roman Numeral designation for each axis was not reflective of any one axis being more important than the other. Id. at 29:8-14.

[21] The Behavior Checklist asked respondents to circle which choice best describes their child's behavior within the last six months by circling "2 if the item is very true or often true of [their] child . . . 1 if the item is somewhat or sometimes true of [their] child" or "[i]f the item is not true of [their] child, circle the 0." Pls.' Ex. 66.

history of [her] present illness and her family psychiatric history." Id. at 100:15-101:2. Dr. Savitsky memorialized this evaluation in a Psychiatric Evaluation, in which he noted that Tanya displays "gross oppositional behavior including refusal to eat if directed to do so, refusal to cooperate with household expectations, and dramatic difficulty getting to bed each night." Pls.' Ex. 70; Defs.' Ex. WWW (Bates 8716-8718).

Also, regarding Tanya's past and present medications, Dr. Savitsky explained that she had been given several different stimulants, including Adderall, Dexedrine, and Ritalin; she had been prescribed Paxil to treat her anxiety; and "Thorazine as needed to deal with some of her acute difficulty." Tr. 107:15-108:15, Apr. 1, 2016. Dr. Savitsky further explained that Thorazine is typically administered as an antipsychotic; "[h]owever, on an acute basis, it's used . . . to calm somebody who is wildly out of control" as a means to "keep them out of physical restraints." Id. at 109:2-8.

In the "FAMILY PSYCHIATRIC HISTORY" section of his Psychiatric Evaluation, Dr. Savitsky noted: "Tanya's family has been informed that her biological mother and grandmother both suffered from Bipolar Disorder. No other genetic background is known." Pls.' Ex. 70; Defs.' Ex. WWW. During direct examination, when asked what information Mrs. Provorse shared with him about Tanya's family psychiatric history, Dr. Savitsky testified that "[s]he had very little information. She said that she knew that the mother and the grandmother had Bipolar Disorder." Tr. 109:17-23, Apr. 1, 2016. Dr. Savitsky explained that he knew that Mrs. Provorse was the person that had given him the information about Tanya's biological mother and grandmother's history of Bipolar Disorder because of the way he phrased it in the Psychiatric Evaluation as "Tanya's family has been informed . . ." indicating that he "got the information from the family that they had learned it from someone else." Id. at 110:2-7.

However, on cross-examination, when questioned why the language—"Tanya's family has been informed . . ."—did not indicate that Dr. Savitsky was the person that had informed Mrs. Provorse and Tanya about Tanya's biological family history of Bipolar Disorder, Dr. Savitsky denied that he was the person that reported that information to Tanya and Mrs. Provorse. Tr. 109:7-12, Apr. 15, 2016. Dr. Savitsky stated, "I can't tell you why I said it that way, why I didn't specify that the mother informed me. If I had done that, it would have been clearer, but in general that is the way I would have framed it." Id. at 109:15-18. Also, Dr. Savitsky was unable to explain why the rest of the Psychiatric Evaluation, unlike the portion of the "FAMILY PSYCHIATRIC HISTORY," directly indicated whether Tanya and/or Mrs. Provorse reported information to him, including, but not limited to: "Tanya and her mother report that she was treated initially for ADHD. . .[;]" "Family had noted a gradual decrease in communication . . .[;]" "[Tanya] was able to describe sequences of events without difficulty[;]" and "Tanya has a variety of intrusive fears associated with memories of traumatic events at around three to four years of age. She reports that these intrusive thoughts . . ." Pls.' Ex. 70; Defs.' Ex. WWW (Bates 8716, 8717).

The Psychiatric Evaluation prepared by Dr. Savitsky on September 10, 1999 concluded with:

> "DIAGNOSES:
>
> Axis I – Post Traumatic Stress Disorder
> R/O ADHD
> Major Depression
>
> Axis II – Deferred
>
> Axis III – None
>
> Axis IV – None

Axis V – Current GAF 35[22]"

Id. at 8718.

Following Dr. Savitsky's Psychiatric Evaluation of Tanya, an overall "Treatment Plan Review/Assessment Summary" (Treatment Plan) was completed. See Pls.' Ex. 68 (Bates 9042-9045). The Treatment Plan indicated the people, including Tanya and the Provorses, that would be part of Tanya's treatment team. Besides Dr. Savitsky, the treatment team consisted of Courtney Booker, a CIS case manager, Ms. Abjornson, a CIS clinician, Ms. Gunnip from DCYF, and a behavior specialist from Tanya's school. Id. at 9042. Although the Treatment Plan shows that Tanya "present[ed] with symptoms consistent with Post Traumatic Stress Disorder and Major Depression[,]" Dr. Savitsky testified that Tanya was not treated for Major Depression while in the CIS program and that the Provorses would have been aware of the contents of the Treatment Plan. Id. at 9043; see also Tr. 62:10-16, Apr. 15, 2016.

When asked on direct examination about the Provorses's commitment to Tanya, Dr. Savitsky testified that Mr. Provorse had made several negative statements regarding Tanya, including that Mr. Provorse "was thinking about sending her back, giving her back to the state." Tr. 125:6-7, Apr. 1, 2016. However, on cross-examination, Dr. Savitsky conceded that the sixty-six progress notes documenting Tanya's treatment in the CIS program showed that Mr. Provorse had taken positive steps in modifying his own behavior during the time Tanya was in the CIS program. See Tr. 69:10-23, Apr. 15, 2016. Dr. Savitsky also agreed that the notes reflected that the Provorses were committed to Tanya. Id. at 70:12-14. Further, Dr. Savitsky acknowledged that a Progress Note from December 22, 1999, reflects that the Provorses were expressing "love

[22] Dr. Savitsky explained that GAF was an abbreviation for "Global Assessment Function" and that it stood for the overall severity of a patient's condition, including Axis I through Axis V diagnoses. Tr. 118:17-119:7, Apr. 15, 2016.

and commitment to [Tanya]." Pls.' Ex. 69-D; see also Tr. 96:10-15, Apr. 15, 2016. The Provorses commitment to Tanya was also confirmed by Tanya's "Overall Treatment Rehabilitation Goals/Diagnoses/Discharge Criteria," under the heading "List Clients Strengths and Supports" where Ms. Abjornson noted that "Tanya is an intelligent girl and is involved in many activities. She has caring parents that want her to be part of the family." Pls.' Ex. 67 (Bates 8774).

After spending the typical six months in the CIS program, Tanya, Tanya's team at CIS, and the Provorses prepared to end her treatment there and transition to a less intensive program. Pls.' Ex. 69-A (Bates 8855). Dr. Savitsky testified that a Progress Note completed by Ms. Booker, Tanya's case manager, reflected a positive outcome for the Provorse family and praised them for making it through a "difficult season." Id. On February 7, 2000, Tanya was discharged from the CIS program. See Pls.' Ex. 72; Defs.' Ex. YYY (Bates 8702-8703). The MHS Discharge Summary reported:

> "Admitting Diagnosis: (Written and Coded):
> Axis I PTSD 309.81
> Axis I Dysthymic Disorder 300.4
> Axis II Deferred 799.9
> Axis III None
> Axis IV Problems with primary support group
> Axis V GAF: 35"

Id. at Bates 8702. The MHS Discharge Summary also reported:

> "Discharge Diagnoses: (Written and Coded)
> Axis I PTSD 309.81
> Axis I Major Depression 296.2
> Axis II Deferred 799.9
> Axis III None
> Axis IV Problems with primary support group
> Axis V GAF: 50"

Id. at 8703.

Although Tanya's MHS Discharge Summary indicated a Discharge Diagnosis of "Axis I – Major Depression," none of the sixty-six progress notes from Tanya's time in the CIS program contain language regarding "Major Depressive Disorder." See Tr. 78:17-24, Apr. 15, 2016. Also, regarding Tanya's somewhat unexplainable diagnosis of Major Depressive Disorder, Dr. Savitsky admitted that during the entire six months that Tanya was being treated in the CIS program, her treatment was focused on treatment for PTSD and did not include any treatment for Major Depressive Disorder. Id. at 80:24-81:3; see also Pls.' Ex. 71 (Bates 9046, 9014, 8869).

On February 21, 2000, approximately two weeks after being discharged from the CIS program, Tanya was accepted into the Children's Friend and Service program (CFS). See Defs.' Ex. LLLLL at Bates 2714. The CFS program contained a special unit referred to as the Adoption Support And Preservation Program (ASAP). See Tr. 11:11-12, May 13, 2016. Melissa Santoro (Ms. Santoro) testified that as a case manager in ASAP it was her job to "work with families who are either pre-adoptive or post-adoptive and or struggling with meeting the needs of the children, whether it be behavioral or mental health or struggling with assisting those children." Id. at 11:12-16. Ms. Santoro further testified that Ms. Gunnip was responsible for making the referral for Tanya and the Provorses to participate in the ASAP program. Id. at 17:3-5.

On direct examination, Ms. Santoro stated that she would document any meetings that she had with the Provorses and Tanya within twenty-four hours of the meeting and her case notes would indicate "DAP, Data, Assessment, and Plan[.]" Id. at 21:7-12. Ms. Santoro's case notes indicate that, as of February 7, 2000, and after speaking to Tanya's case manager at CIS, Tanya "only had 1 episode in [the] past 6mths [of] being at home" and that Tanya's "[i]ssues center around adoption & family in need of support." Defs.' Ex. LLLLL at Bates 2655. Ms. Santoro's

case notes also indicate that when she spoke with Mrs. Provorse on February 16, 2000, that Mrs. Provorse was "very interested in services" and that "her daughter ha[d] been a 'handful.'" Id. at Bates 2654. Further, Ms. Santoro's case notes that during a February 28, 2000 meeting at the Provorses home, Mr. Provorse stated that he was frustrated with all the counseling they have tried and that "nothing works." Id. at Bates 2667.

On March 15, 2000, Mr. Provorse informed Ms. Santoro that Tanya was being admitted to Bradley because of an incident that had happened at Tanya's school. See id. at Bates 2673; see also Tr. 31:11-13, May 13, 2016.

5

Bradley Hospitalization 2000

On March 15, 2000, Tanya was admitted to the Children's Program at Bradley Hospital. See Pls.' Ex. 35. At the time of admission, the acute problems that Tanya presented with were "Depression" and "Family conflict." Id. Under "Reason for Admission," the record indicates that "[r]eportedly, on the night prior to admission, mother stated that she was going to call DCYF and tell their counselor that the family couldn't keep her any longer the way that things are." Id. The Bradley record for this time period also indicates that:

> "Patient's symptoms were reported on a scale of 1 to 10 where 10 was the most severe. Patient reported depressed feelings 10/10, feelings that she may harm herself 6/10, angry 7/10, confused 10/10, poor concentration, feelings of hopelessness 9/10, sleep disturbance with frequent awakening, decreased energy, and decreased motivation. Patient could not contract for her safety." Id.

During the time that Tanya was hospitalized, on March 20, 2000, Mrs. Provorse faxed a letter to Ms. Gunnip, which stated:

"Dear Grace,

Per our conversation of late last week and at your direction, I am requesting in writing all information you have pertaining to Tanya's biological, genetic and family history. As you will recall Tanya has been admitted back to Bradley with high range of depression and suicidal behavior. I am requesting this information to assist in getting Tanya the best treatment.

Please forward as soon as possible to the address listed below.

Thanking you in advanced [sic] for your quick response.

Dee & Neil Provorse"

Pls.' Ex. 36.

On March 20, 2000, Tanya was discharged from Bradley Hospital, and her Discharge Diagnoses[23] included:

"Axis I:	(primary)	296.32	Major Depressive Disorder, Recurrent, Moderate
		309.81	Posttraumatic Stress Disorder, Chronic
		314.01	Attention Deficit Hyperactivity Disorder, Combined Type
		313.81	Oppositional Defiant Disorder
		V61.20	Parent/Child Relational Problem
"Axis II:	(primary)	799.9	Deferred
"Axis III:		493.90	Exercise Induced Asthma
"Axis IV:		Problems with:	Primary Support Group
			Social Environment
			Educational Problems
"Axis V:		GAS:	Current 50
		GAS:	Highest Past Year Unknown"

Id. Mrs. Provorse testified that she picked up Tanya from Bradley on March 20, 2000. Mrs. Provorse further testified that on that same day, she would have called Ms. Gunnip to update her about Tanya's progress and she had asked to get more of "Tanya's family history." Tr. 158:24-159:7, Feb. 18, 2016.

[23] These diagnoses came from the DSM IV, which was the current edition of the DSM at the time of this hospitalization. See Pls.' Ex. 35.

During and after Tanya's hospitalization, Ms. Santoro continued to work with Tanya and the Provorses through the ASAP program. See generally Defs.' Ex. LLLLL. During this time, Ms. Santoro's case notes show that Mrs. Provorse had communicated to Ms. Santoro that Tanya had been having "flash backs" to her past sexual abuse likely due to the kids in school discussing sex. Id. at Bates 2674, 2687.

On March 22, 2000, Tanya was readmitted to Bradley Hospital and was discharged from the same on March 28, 2000. See Pls.' Ex. 37. Mrs. Provorse stated that as part of Tanya's March 28, 2000 discharge from Bradley Hospital she signed several medical release forms authorizing information from Bradley to be shared with DCYF, specifically Ms. Gunnip. Tr. 171:1-6, Feb. 18, 2016; see also Pls.' Ex. 40.

On April 6, 2000, the Provorses took Tanya to Bradley Hospital. A preliminary "RI Hospital Psychiatric Evaluation Summary" indicated that Tanya's biological family psychiatric history was "Not Available" and that the family "requested info from DCYF." Pls.' Ex. 80.

6

Butler Hospitalization 2000

On April 16, 2000, Tanya was again admitted to Butler Hospital and was accompanied by Ms. Gunnip. Pls.' Ex. 44; see also Tr. 177:16-20, Feb. 18, 2016. Tanya's April 16, 2000 Butler Hospital admission indicated that she had Axis I diagnoses of "PTSD" and "Adjustment Disorder." Pls.' Ex. 44. A Butler Hospital Psychiatric Evaluation also indicates that the "Family History" was "Unknown h/o biol. Parents," which was explained as likely indicating that the family history was unknown. Pls.' Ex. 94.

Ms. Santoro continued to work with the Provorses and Tanya during her admission to Butler Hospital and she noted that Tanya's doctor indicated that Tanya had completed the first task for [her] recovery, but that she faced many more issues stemming from her past abuse. See Defs.' LLLLL at Bates 2744. Ms. Santoro also noted that Tanya may need placement in a

residential community in order to "work on PTSD, self identity & social immaturity." Id. Further, Ms. Santoro documented that "Neil & Dee visit Tanya everyday [at Butler Hospital] and 2X on Sat/Sun." Id. at Bates 2739. Ms. Santoro's case note also states that the Provorses "keep reinforcing they aren't going anywhere" and that "Neil told Tanya 'You're stuck w/us forever.'" Id.

On August 28, 2000, after six months in the program, the Provorses terminated their family's treatment with ASAP. Id. at Bates 2727. The ASAP Termination Summary indicates that the family had made "Slight Progress" in the areas of "Parenting" and "Attachment/Bonding[;]" "Moderate Progress" in the areas of "Child Mental Health" and "Communication[;]" "Good Progress" in the areas of "Child Behavior" and "Stress Management[;]" and "Goal Achieved" in the area of "Accessing Community Resources." Id. at Bates 2728. The ASAP Termination Summary also categorized the Provorse family's overall progress in addressing its problems as "Good." Id.

Approximately one week after terminating treatment with ASAP, but more notably more than five months after Mrs. Provorse had sent a fax to Ms. Gunnip asking for all the information DCYF had about Tanya's biological family history, Ms. Gunnip responded to Mrs. Provorse's request. See Pls.' Ex. 47. Ms. Gunnip's letter stated, in pertinent part:

> "Dear Mr. & Mrs. Provorse,
>
> This letter is in response to your request for information pertaining to Tanya's birth family. Following is a summary in regards to the background of Tanya.
>
> Tanya's biological mother is the youngest of four siblings. Prior to Tanya's mother's birth, her mother was placed at Ladd School for eight years . . . Mother's birth family has a history of alcohol/drug abuse; a pattern of suicide attempts; poor parenting skills; sexual/physical abuse, homelessness; truancy and domestic violence. Criminal activity included arrests for disorderly conduct;

> breaking and entering; possession of marijuana and stolen goods. Mental health disorders include diagnosis' [sic] of Adjustment Disorder with Depressed Mood and Mixed Substance Abuse; Major Depression. Health problems include mild conductive hearing loss and dysplasia (precancerous cells of the cervix).
>
> Information regarding Tanya's father's side of the family reports a history of domestic violence and alcohol abuse . . .
>
> Tanya was born to a seventeen year old mother. Despite a lack of prenatal care, delivery was described as normal. Mother had a history of alcohol/drug abuse. It is unknown if mother ingested drugs or alcohol during her pregnancy . . . Mother and father were physically abusive toward Tanya.
>
> This family has been involved with the Department since 9/88. On 8/22/90 mother signed a voluntary and Tanya was placed in care . . . Parental rights were voluntarily terminated as to mother on 10/15/92 and putative father's rights were terminated on 1/28/93.
>
> Tanya had a history of multiple placements while in the Department's care . . . she received a number of services . . . evaluations at the Child Development Center, Bradley Hospital and Delta Consultants. At the age of four Tanya was evaluated at the Child Development Center at which time they recommended R/O Post Traumatic Stress Disorder and/or sexual abuse. She was seen for an outpatient evaluation at Bradley Hospital at the age of five due to extreme behavioral difficulties. Tanya was evaluated at Delta Consultants at the age of six. At this time she was diagnosed as PTSD and Reactive Attachment Disorder.
>
> I hope this information is helpful and will assist in Tanya's treatment. . . ." Id.

Mrs. Provorse testified that there were many pieces of information regarding Tanya's family history that she had learned for the first time upon receiving Ms. Gunnip's letter. Notably, Mrs. Provorse testified that she was not aware, before receiving Ms. Gunnip's letter, that "prior to Tanya's mother's birth, her mother was placed at Ladd School for eight years." Tr. 184:12-16, Feb. 18, 2016. She also testified that it was the first time that she became aware that, regarding Tanya's mother's birth family, "mental health disorders include, diagnosis of

Adjustment Disorder with Depressed Mood and Mixed Substance Abuse, Major Depresssion." Id. at 185:18-22. Mrs. Provorse further testified that it was the first time that she was learning that Tanya's birth mother did not have prenatal care while pregnant with Tanya because Mr. Moretti and Ms. Robbins had informed her to the contrary. Id. at 186:20-187:1. Essentially, Mrs. Provorse explained that all the information included in Ms. Gunnip's letter regarding Tanya's biological family was new to her except that Tanya's mother was seventeen years old when she had Tanya; that Tanya "was exposed to mother's chaotic lifestyle"; that "Tanya had a history of multiple placements while in the Department's care;" that Tanya had been diagnosed with PTSD and Reactive Attachment Disorder. Id. at 184:7-190:9.

II

Analysis

As a threshold matter, the Court notes that Plaintiffs, along with Tanya, have filed multiple claims against the State and several other defendants. This Court's opinion is limited to Plaintiffs' claims for wrongful adoption; more specifically, Plaintiffs' claims for negligent misrepresentation and negligence.

A

Law of the Case

As a preliminary matter, this Court will set forth what it considers to be the law of the case. The State attempts to reargue that the discovery rule does not apply to the instant case because the hearing justice's finding that the discovery rule applied was merely dicta in his decision denying the State's Motion for Partial Summary Judgment. The State's argument is a nonstarter.

"The law of the case doctrine holds that, 'after a judge has decided an interlocutory matter in a pending suit, a second judge, confronted at a later stage of the suit with the same

question in the identical manner, should refrain from disturbing the first ruling.'" Chavers v. Fleet Bank (RI), N.A., 844 A.2d 666, 677 (R.I. 2004) (quoting Paolella v. Radiologic Leasing Assocs., 769 A.2d 596, 599 (R.I. 2001)) (citation omitted); see also Salvadore v. Major Elec. & Supply, Inc., 469 A.2d 353, 355-56 (R.I. 1983) (citations omitted). Our Supreme Court has stated that the law of the case doctrine is "one that generally ought to be adhered to for the principal reason that it is designed to promote the stability of decisions of judges of the same court and to avoid unseemly contests and differences that otherwise might arise among them to the detriment of public confidence in the judicial function." Salvadore, 469 A.2d at 356 (citing Payne v. Superior Court, 78 R.I. 177, 184, 80 A.2d 167 (1951)).

After a thorough and careful analysis of both parties' arguments, the hearing justice found that the discovery rule applied to toll Plaintiffs' wrongful adoption claims until, in the exercise of reasonable diligence, the Provorses knew or should have known they were injured and that the withholding of Tanya's complete biological family history was the wrongful conduct that allegedly caused their injury. Tr. 55:1-8, Oct. 3, 2014. Mindful of the hearing justice's decision and the need "to promote the stability of decisions of judges of the same court[,]" Salvadore, 469 A.2d at 356, this Court unequivocally stated that the law of the case in the instant matter "is that the discovery rule applies in a wrongful adoption matter" and that "there's a genuine issue of material fact as to when the plaintiffs, in the exercise of reasonable diligence, should have discovered the injury or their claim." Evid. Hr'g Tr. 4:3-4; 4:8-11, Aug. 4, 2015. Therefore, in spite of the State's attempts to argue to the contrary, the discovery rule applies to the instant case and, as such, tolls Plaintiffs' claims beyond the three-year statute of limitations as set forth in § 9-1-25.

B

The Discovery Rule

There is a fundamental dispute between the parties as to when a cause of action accrues under the discovery rule. Plaintiffs argue that the statute of limitations is tolled until a party knows of both his or her injury ***and*** the wrongful conduct of the defendant. Thus, Plaintiffs assert that, although a reasonable person in similar circumstances may have been aware that DCYF had placed a child with them for adoption that did not fulfill their specifications of a "Mild to Moderate" emotional handicap, the Gunnip letter proved that DCYF had failed to disclose Tanya's pertinent and revealing biological history, and thus, was the first indication that their injury was a result of DCYF's wrongful conduct.

The State contends that Plaintiffs only needed to know of either their injury ***or*** Defendants' wrongful conduct. In other words, the State submits that the tolling of the statute of limitations under the discovery rule is an "either/or" test. Accordingly, the State argues that Plaintiffs' cause of action accrued in 1999 during which time Tanya was hospitalized on several occasions for extended periods of time.

In short, this Court must determine whether the applicable conjunction, when applying the discovery rule, is "and" or "or." An examination of Rhode Island case law analyzing the application of the discovery rule leads this Court to the inexorable conclusion that "and" is the operative conjunction in this context. A plaintiff's knowledge of an alleged injury, alone, is insufficient to start the running of the statute of limitations. One must also be aware of the wrongful conduct of the defendant that arguably caused his or her injury.

Decades ago, our Rhode Island Supreme Court recognized exceptions to the harsh effects of the statute of limitations in the context of tort claims. See Wilkinson v. Harrington, 104 R.I.

224, 234, 243 A.2d 745, 751 (1968). The court adopted the growing trend around the country at that time that "the statute of limitations does not commence until the plaintiff discovers or, in the exercise of reasonable diligence, should have discovered, that he has sustained an injury ***as a result of the physician's negligent treatment***." Id. (emphasis added to highlight that the seminal case on this issue required not only the discovery of the plaintiff's injury, but also the plaintiff's discovery of the alleged wrongful conduct, namely the negligent treatment).

The court "ha[s] explained that [t]he discovery date is the date that the plaintiffs knew or should have known of the ***'wrongful act'*** that is the basis of their lawsuit." Bustamante v. Oshiro, 64 A.3d 1200, 1204 (R.I. 2013) (emphasis added) (quoting Hanson v. Singsen, 898 A.2d 1244, 1249 (R.I. 2006)) (citation omitted) (internal quotation marks omitted); see also Kendall v. Hoffman-La Roche, Inc., 36 A.3d 541, 552, 209 N.J. 173, 191–92 (N.J. 2012) ("Critical to the running of the statute is the injured party's awareness of the injury ***and the fault of another***. The discovery rule prevents the statute of limitations from running when injured parties reasonably are unaware that they have been injured, or, although aware of an injury, do not know that the injury is ***attributable to the fault of another***." (emphasis added) (citation omitted). "Any analysis under the discovery rule employs an objective standard: 'If a reasonable person in similar circumstances should have discovered that ***the wrongful conduct of the defendant*** caused [his or] her injuries as of some date before the plaintiff alleged that [he or] she made this discovery, then the earlier date will be used to start the running of the limitations period.'" Bustamante, 64 A.3d at 1204 (emphasis added) (quoting Hanson, 898 A.2d at 1249) (quoting Martin v. Howard, 784 A.2d 291, 300 (R.I. 2001)) (citation omitted).

The test "is not whether the particular plaintiff actually knew that he or she had a claim[,]" but rather what a reasonable person in similar circumstances should have known. 51

Am. Jur. 2d, Limitations of Actions, § 158, supra. "In keeping with the remedial spirit of the rule, this Court draws 'all reasonable inferences' in [the] plaintiff's favor to determine whether, in the exercise of reasonable diligence, [the] plaintiff should have discovered the ***alleged act of malpractice***." Bustamante, 64 A.3d at 1204 (quoting Canavan v. Lovett, Schefrin and Harnett, 862 A.2d 778, 784 (R.I. 2004)) (citation omitted) (emphasis added to show the need for a plaintiff to also discover the defendant's alleged wrongful act in addition to his or her injury, namely malpractice).

Although the application of the discovery rule to the tort of wrongful adoption has yet to be addressed by our Supreme Court,[24] several jurisdictions have previously recognized its aptness in this context. See Mohr v. Commonwealth, 653 N.E.2d 1104, 1109 (Mass. 1995) ("[t]he discovery rule 'prescribes as crucial the date when a plaintiff discovers, or any earlier date when she should reasonably have discovered, that she has been harmed or may have been harmed by ***the defendant's conduct***.'") (emphasis added) (quoting Bowen v. Eli Lilly & Co., 408 Mass. 204, 205-06, 557 N.E.2d 739 (1990)); Wolford v. Children's Home Soc'y of West Virginia, 17 F. Supp. 2d 577, 585 (S.D.W.Va. 1998) ("under the discovery rule, the statute of limitations does not begin to run until 'the plaintiff knows, or by the exercise of reasonable diligence, should know (1) that the plaintiff has been injured, (2) the identity of the entity who owed the plaintiff a duty to act with due care, and who may have engaged in conduct that breached that duty, and (3) ***that the conduct of that entity has a causal relation to the injury***.'")

[24] Although our Supreme Court has not yet recognized the application of the discovery rule in this context, "[s]ince the holding in Wilkinson, th[e] [c]ourt has extended the application of the discovery rule to certain, narrowly defined, factual situations." Kougasian v. Davol, Inc., 687 A.2d 459, 460 (R.I. 1997); see, e.g., Anthony v. Abbott Labs., 490 A.2d 43 (R.I. 1985) (drug product liability); Lee v. Morin, 469 A.2d 358 (R.I. 1983) (improvements to real property); Doe v. LaBrosse, 588 A.2d 605 (R.I. 1991) (sexual abuse of minors).

(emphasis added) (quoting Gaither v. City Hosp., Inc., 199 W.Va. 706, 487 S.E.2d 901, 909 (1997)); Price v. State, 980 P.2d 302, 308, 96 Wash. App. 604, 613 (Wash. App. Div. 2, 1999); see also Rowey v. Children's Friend and Service, No. C.A. 98-0136, 2003 WL 23196347, at *9 (R.I. Super. Dec. 12, 2003). In short, this Court concludes that the statute of limitations is tolled until, through the exercise of reasonable diligence, a plaintiff knows or should have known of ***both*** his or her alleged injury and the defendant's wrongful conduct.

C

The Accrual Date of Plaintiffs' Claims

1

The Discovery of Plaintiffs' Injuries

Plaintiffs contend that their injury is that they adopted a child with "a level of emotional handicap" greater than "mild" to "moderate."

Defendants repeatedly assert that prior to adoption, the Provorses knew that Tanya's tantrums and long-term counseling were evidence that "even before the adoption the Provorses knew Tanya had extreme behavior and mental health needs." Defs.' Post-Hr'g Mem. Law 2. This argument is belied by Mrs. Provorse's testimony that she discussed these tantrums, which involved kicking, throwing and screaming, with Mr. Moretti and Ms. Keough. Ms. Keough visited the Provorse home and told them that Tanya had Attachment Disorder from the multiple placements. Ms. Keough encouraged them to hang in there and tell Tanya that they loved her and everything would be all right. Tr. 50:19-51:2, Feb. 18, 2016.

Defendants also point to the comments of the Provorses, particularly, Mr. Provorse, that they might return Tanya to DCYF as evidence that they were aware of Tanya's injury long before receiving the letter from Ms. Gunnip. The Court finds that these comments can be

attributed to the frustration most parents would have had if they had observed their children exhibiting behavior similar to Tanya's and the understandable feelings of hopelessness due to the inability to help their child. The record is replete with the efforts of the Provorses to obtain the appropriate treatment for Tanya and to be involved in her treatment. Tr. 59:19-22, Feb. 19, 2016. For instance, Mrs. Provorse was constantly advocating for Tanya. Ms. Santoro, Tanya's case manager at ASAP, testified "that Dee was pretty resourceful. She was a good advocate and was able to locate lots of supportive services for her family." Tr. 113:17-19, May 13, 2016. The progress notes from the CIS program on December 22, 1999 state "Cl's [Tanya's] parents are expressing love and commitment to Cl." Pls.' Ex. 69-D at Bates 8873. Other statements about the Provorses' commitment to their daughter are sprinkled throughout the record. For example, "she (Tanya) has caring parents that want her to be part of the family." Pls.' Ex. 67. The Court found no evidence of any serious intention to return Tanya to DCYF. In any event, the Provorses made no such attempt.

However, the inquiry is not about Plaintiffs' attitude or intentions but rather what a reasonable person should have known under similar circumstances. Bustamante, 64 A.3d at 1204. On January 2, 1999, the Provorses had a harrowing ride returning from New Hampshire. Tr. 101:20-22, Feb. 18, 2016. Tanya tried to jump out of the car and told her parents she did not want to live any more. The tantrum was apparently markedly more intense than previous ones because the Provorses immediately sought to hospitalize her. From January 2, 1999 to August 13, 1999, Tanya was hospitalized first at Butler with two subsequent admissions to Bradley. During this period, she was diagnosed as having suicidal ideations and she exhibited destructive behavior. See Pls.' Ex. 25. She threatened to harm others. She did harm to herself on a number of occasions, which required treatment at Hasbro Children's Hospital for her physical injuries.

Tr. 19:1-19-20:19, May 6, 2016. The Court also heard testimony from Dr. Matkovic who testified extensively about locked seclusion, six-point restraint, and the use of a papoose to deal with Tanya's behavior. Tr. 67:3-68:6, Apr. 22, 2016. From February 8 to April 23, "there were over 100 orders for "either locked stimulus environment, locked seclusion, restraints, and a papoose or a six-point restraint . . . entailing approximately 25 discreet episodes of agitation." Tr. 5:12-16, May 6, 2016. In addition, Benadryl and Thorazine were used as a "form of behavioral management and emotional management." Id. at 8:16-9:13.

The Provorses, as good parents, were carefully monitoring Tanya's treatment and they knew these treatment methods were being employed. The records show that the Provorses even objected to the use of the above-mentioned restraints, so they were aware of their use.

Mrs. Provorse, after persistent efforts on her part, received the Bradley records in June 1999. While they may not have been completely up to date, there was a great deal of information about Tanya's actions and treatment.

The Court finds that a person in circumstances similar to Plaintiffs'—aware that his or her child was continuously hospitalized for mental health treatment for over eight months; aware that his or her child's behavior was harmful towards herself and others; and further cognizant of the intensive treatment plan that was employed to control that child's behavior—should have known that the child's emotional handicap was greater than mild to moderate. Therefore, the Plaintiffs knew of their injury before August 15, 2000.

2

The Discovery of Defendants' Wrongful Conduct

The Court's inquiry does not end with the determination that the Provorses knew or should have known of their injury—that Tanya had more than a mild to moderate emotional handicap. As discussed above, the Court must now deduce when, through the exercise of reasonable diligence, the Provorses knew or should have known that DCYF's wrongful conduct was the cause of their injury. Wolford, 17 F. Supp. 2d at 585.

Plaintiffs assert that the wrongful conduct of Defendants constituted withholding of Tanya's full biological family history. Plaintiffs further assert that not only did Defendants fail to disclose Tanya's entire biological family history, but they also made several partial and/or misleading disclosures. Plaintiffs aver that they were told several times that DCYF had given them all the information that it had about Tanya's biological family history and that there was nothing more.

Defendants contend that Plaintiffs knew or should have known all along about Tanya's biological history. In support of this contention, Defendants argue that Plaintiffs should have known that Defendants were the only possible source of this information. Defendants proffer that Plaintiffs' continued efforts to attempt to get more of Tanya's biological family history from DCYF serves as an inference that Plaintiffs knew that Defendants' alleged wrongful conduct was the cause of their injury. Based on its review of the evidence, the Court finds Defendants' argument unpersuasive.

a

Request of DCYF Staff

Mrs. Provorse testified that on May 19, 1994, Mr. Moretti brought Tanya two trash bags containing her life to the Provorses' home. Tr. 44:5-8, Feb. 18, 2016. She testified that on that day she asked Mr. Moretti if he had any information on Tanya's family. Id. at 47:1-7. Mrs. Provorse also testified that Mr. Moretti told her that he would follow through with Ms. Robbins to inquire whether there was any more information regarding Tanya's biological family history. Tr. 13:13-14, Feb. 19, 2016. Mrs. Provorse stated that Ms. Robbins and Mr. Moretti subsequently came to the Provorse home "with two or three sheets of lined, white paper" that provided the information "that Tanya lived in, six [foster] homes in four years," but that "the names of the [f]oster parents were crossed off [.]" Tr. 47:20-25, Feb. 18, 2016. Mrs. Provorse testified that Mr. Moretti and Ms. Robbins reiterated that at the time of Tanya's birth, her mother was seventeen and that she had normal checkups and it was a normal birth.

From 1994 to 1998, Tanya continued to have tantrums and exhibit disruptive behavior. Mrs. Provorse was taking her to doctors for treatment, and everywhere she went she was asked about family history. During that period, she testified that she asked Mr. Moretti (one or two times), Ms. Robbins (3-6 times), Ms. Keough (20 times), and later Ms. Gunnip (10 times) about Tanya's biological family history. Tr. 88:1-3; 51:6-18; 86:13-15; 159:6-8, Feb. 18, 2016. Defendants contend that there are no notations of these requests in the DCYF's case activity notes and that standard procedure requires caseworkers to record all such conversations. However, the Defendants produced no such notes from November 14, 1994 through October 20, 1998 and October 30, 1998 through January 3, 1999 that indicate any conversations between DCYF employees and the Provorses regarding Tanya's family history. However, as discussed

above, Ms. Stevens, Defendants' own witness, testified that she told Mrs. Provorse that Tanya's mother had mental health problems and that Mrs. Provorse should ask Mr. Moretti or DCYF for the information because she was not at liberty to discuss this sensitive information with the Provorses. Tr. 54:6-8, Feb 26, 2016. Yet, an examination of her notes shows no mention of such a conversation. Id. at 69:9-16. The Court can infer from these facts that the absence of case activity notes regarding Mrs. Provorse's requests for Tanya's biological family history is not evidence that Mrs. Provorse failed to diligently inquire about the issue of Tanya's family history.

The Court finds credible Mrs. Provorse's testimony about repeatedly asking for the biological family history. While the precise number of times cannot be verified, Mrs. Provorse was a persistent and resourceful advocate for Tanya. She was exasperated in her efforts to find the proper treatment for Tanya. It is logical, as each provider would ask about family history, that Mrs. Provorse would naturally be prodded to continue to ask DCYF if it had any additional information. Mrs. Provorse showed tenacity in seeking Bradley Hospital's records. The Court also notes that when Ms. Gunnip finally told Mrs. Provorse that she needed to put her request for Tanya's biological family history in writing, she did so almost immediately. See Pls.' Ex. 36. The Court finds that Mrs. Provorse exercised reasonable diligence by repeatedly requesting information from DCYF about Tanya's biological family history. Whether she was told that there was none or that DCYF could not legally provide such information to the Provorses, the Court finds that there was nothing more a reasonable person in similar circumstances should have done than to repeatedly request this information.

Defendants also argue that Plaintiffs signed releases that authorized DCYF to provide information in its files to various medical providers and that Plaintiffs could have acquired the information that they sought by following through with these providers. Defendants contend that

Plaintiffs could have obtained what they were seeking by requesting the DCYF records from any of those medical providers. This contention falls short. First, Defendants produced thousands of pages of records and painstakingly had witnesses testify about them for the Court. Yet, except in only one instance, which will be discussed below, not one witness testified about any of the medical providers' records containing information provided directly by or attributed to DCYF or DCYF's records regarding Tanya's biological family history. Secondly, there is no evidence that, even if the Provorses had requested records from Tanya's medical providers, that they would have received DCYF records. In fact, Defendant's own witness, Ms. Dearnley, the Correspondence Secretary in the Medical Records Department of Bradley Hospital, testified that when she sent out medical records, she would not include any information received from outside sources. Tr. 152:14-153:1-4, Mar. 11, 2016. When asked by the Court about Bradley Hospital's policy regarding "outside data," she replied, "It's not ours to give." Id. at 154:7. Consequently, when Mrs. Provorse finally received the Bradley records in June 1999, they did not include any information from DCYF.

Lastly, the final discharge summary presented to the Court was from Butler Hospital dated August 8, 2000, just a month prior to receipt of the letter from Grace Gunnip. That summary stated "FAMILY HISTORY: Unknown history of biological parents or any siblings." Pls.' Ex. 97. Thus, if a treating hospital with access to all of Tanya's prior records and a stay of over four months could not unearth Tanya's biological history, the Court cannot conclude that the Provorses or any reasonable parents similarly situated should or could have discovered that history.

b

The Cindy Wilder Letter

Defendants point to a letter dated December 23, 1998 addressed to Behavioral Health Specialists from Ms. Wilder, a DCYF social caseworker. Pls.' Ex. 15. That letter details some of the background regarding the mental health issues of Tanya's biological family. See id. Defendants assert that they are entitled to an inference that either Ms. Wilder or Ms. Hecht, Tanya's social caseworker at BHS, communicated this information to Tanya's parents. The Court cannot find any basis on which to reach such a conclusion. Ms. Savage, a DCYF caseworker for twenty-two years, testified about her familiarity with respect to the policies and practices of DCYF pertaining to recordkeeping and its maintenance of those records. Under cross-examination, the following interchange took place between Ms. Savage and Plaintiffs' counsel concerning Ms. Wilder's letter.

> "Q. And so I'm going to refer you now to Defendants' Exhibit U, the letter dated December 23, 1998, you see that?
>
> A. I do.
>
> Q. And so this is the letter that you testified to from Cindy Wilder, correct?
>
> A. Yes.
>
> Q. So it's your understanding from reading this letter that this letter is responsive to the response that was signed in 1998, correct?
>
> A. Yes.
>
> Q. This letter under DCYF policy would never have been sent to the Provorses, correct?
>
> A. Yes.

Q. And there is no evidence in the record that it was ever sent to them, correct?

A. Correct.

Q. And there is no evidence in the records that any of the information in this letter was known to the Provorses at any time prior to December 23, 1998, correct?

A. Correct."

Tr. 65:8-25; 66:1-2, Mar. 11, 2016.

Defendants argue that Plaintiffs signed an authorization to permit DCYF to send information to BHS and therefore, Mrs. Provorse is charged with the knowledge of what was contained in the information sent to BHS because she should have asked to see it. That argument is without merit. First, if BHS had the same policy as Bradley, no information from outside sources was shared with patients or guardians. Secondly, if Mrs. Provorse was repeatedly told by DCYF that there was no additional information, it defies logic that a reasonable person in circumstances similar to that of the Provorses would expend what was left of their limited time and resources asking BHS if they had any additional information from DCYF. This letter was sent on December 23, 1998, just nine days before Tanya began her eight-month hospitalization. There is no evidence that Tanya continued to treat with BHS after she was hospitalized. No reasonable person in the Provorses' position—dealing with the care and treatment of Tanya in a hospital setting where she exhibited extreme behavioral problems—would be expected to request the information from BHS. Consequently, looking at the evidence in the light most favorable to the Plaintiffs and drawing all reasonable inferences in their favor, the Court finds that the Provorses had no knowledge of Ms. Wilder's letter.

c

Bipolar References

Defendants contend that there are two references in the medical records that imply that Mr. and Mrs. Provorse knew that Tanya's maternal grandmother had bipolar disorder and that her mother had alcohol abuse problems. This assertion is made notwithstanding Mrs. Provorse's testimony, both at the hearing and also at her deposition, that she was aware of familial alcohol problems but not about a history of bipolar disorder. Tr. 5:14-7:5, Feb. 25, 2016.

The first reference of bipolar disorder is in the Butler Hospital Child/Adolescent Psychosocial and Discharge Planning Assessment dated January 4, 1999. See Defs.' Ex. YY. Ms. Drury testified that she filled out the report and that in Section VI-D she wrote, "bio mother and mat. grandm? of bipolar illness bio mother had alcohol problems." Tr. 109:19-22; Mar. 11, 2016. On direct examination, she testified that she obtained this information from Mr. Provorse. Id. at 91:4-10. She also testified that prior to filling out the form she reviewed the Child/Adolescent Psychiatric Evaluation dated January 2, 1999, which is a form she did not fill out. That document stated in the section on Family History, "biol grand(M) → manic depression biol(M) → ETOH." Id. at 96:8-15; 98:17-19. She further testified that she wrote bipolar disorder because it is the more current terminology for manic depression. Id. at 95-96.

A review of the cross-examination and questioning by the Court reveals that Ms. Drury's testimony is, at best, contradictory, and at worst, unreliable. Understandably, she had no present-sense recollection of the Provorses given that many years have passed since her interaction with them and Tanya. Id. at 112. She admitted that she filled out this type of form at different times and at different places. Id. at 115-116. On the form, in some places, she put an F with a circle around to indicate that the father was the source of the information. Id. at 116. Yet, in section

IV-D, there is no such F encompassed by a circle. She also referred to the psychiatric evaluation as a source of the information, but she testified to substituting questionable bipolar disorder for notations that indicated manic depression. Id. at 120:4-9. For clarifications purposes, the Court asked Ms. Drury if someone had told her that if he or his mother was diagnosed as "manic depressive" would she instead write "bipolar disorder" and she said she would write what she was told. Id. at 126. Yet, that is not what she did in this instance. Exhibit SS used the term manic depressive, yet she wrote bipolar. She also wrote on the form that there was a question of bipolar as to both Tanya's biological mother and grandmother. Yet, Exhibit SS refers only to the grandmother.

Defendants also called Dr. Savitsky, who treated Tanya at Mental Health Services, a Gateway Healthcare provider, from August 1999 through February 2000 as part of the Children Intensive Services. MHS was an intensive home based program for children with a high risk of hospitalization. In his Psychiatric Evaluation dated September 10, 1999 he stated, "Tanya's family has been informed that her biological mother and grandmother both suffered from Bipolar Disorder; no other genetic background is known." Pls.' Ex. 70; Defs.' Ex. WWW. On direct examination, Dr. Savitsky testified that Mrs. Provorse was the source of this information. Tr. 110, Apr. 1, 2016. On cross-examination, Dr. Savitsky stuck by his belief that Mrs. Provorse informed him of this fact notwithstanding the passive way in which he wrote the entry.

Interestingly, although there were several other treatment providers and hospitalizations, no others refer to bipolar disorder in the family history. For example, in the Initial Nursing Assessment at Bradley Hospital dated January 21, 1999, the entry for "Family History Psychiatric Illness" was "not available." Pls.' Ex. 19. On April 6, 2000, the Rhode Island Hospital Lifespan Child and Adolescent Psychiatry Evaluation Summary was filled out and

under Family Psychiatric History the "Not Available" box was checked with the notations "adoptive parents have requested info from DCYF." Pls.' Ex. 80. Further, on April 16, 2000, on the Child/Adolescent Psychiatric Evaluation for Butler Hospital, the section on "Family History" was filled out "Unknown h/o biol. parents." Pls.' Ex. 44. As stated above, a similar entry was made four months later in the discharge summary.

While it is unclear whether the Provorses actually stated that Tanya's biological family had a history of bipolar disorder, it is immaterial to the Court's analysis of the instant matter. First, the Plaintiffs assert that DCYF's wrongful conduct was withholding information until they received Ms. Gunnip's letter. It is noted by the Court that Ms. Gunnip's letter never refers to bipolar disorder. More importantly, prior to receiving Ms. Gunnip's letter, Tanya had never been diagnosed or treated for bipolar disorder.

Additionally concerning to the Court, regarding Ms. Gunnip's letter, is its reference to Tanya's biological grandmother's attendance at the Ladd School for eight years prior to her giving birth to Tanya's mother. While the Court did not hear specific testimony about the daily functions of the Ladd School, historically, this school was "a custodial institution for the children and adults with intellectual and developmental disabilities"[25] that was founded in 1908 and later abandoned in 1994. This information regarding Tanya's biological family history was directly relevant to Mrs. Provorse's repeated—but denied—requests for biological family information that could both explain Tanya's maladies and aide in her treatment. In particular, the second part of Question 10 of the Adoption Self-Assessment Questionnaire (set forth verbatim at page 9 above) asked "Are there things in this category which would not cause you to say no to a match, but may cause you to consider long and hard before saying yes"? The Provorses responded: "If

[25] http://theladdschool.com

child is extremely retarded, or has severe mental illness." Pls.' Ex. 6. And more importantly to the matter now before this Court was information that DCYF had in its records—information that serves as an inference that Tanya had or would develop more than a "Mild to Moderate" emotional handicap—that was withheld from the Provorses for more than six years. The withholding of this critical information is but one of the several instances that made it nearly impossible for the Provorses to discover "the ***'wrongful act'*** that [would be] the basis of their lawsuit." Bustamante, 64 A.3d at 1204 (emphasis added). Although Plaintiffs were aware or should have been aware that they had suffered an injury—that Tanya had more than a mild to moderate emotional handicap—this Court finds that their rebuffed requests for this critical information regarding ***their*** daughter was an impediment to them knowing that their injury was "attributable to the fault of another." Kendall, 36 A.3d at 552, 209 N.J. at 192.

Additionally, although Tanya's medical diagnoses continued to change from hospitalization to hospitalization she was never diagnosed with bipolar disorder. The Butler Discharge Summary dated January 21, 1999 identified, "Major depressive disorder, posttraumatic stress disorder and attachment disorder[,]" Pls.' Ex. 18, which were all previously assigned diagnoses. The Bradley Discharge Summary dated February 8, 1999 identified, "Posttraumatic Stress Disorder Chronic recurrent, Reactive Attachment Disorder, Oppositional Defiant Disorder" as the Axis I diagnosis. Pls.' Ex. 23. Then on August 13, 1999, the next Bradley Discharge Summary identifies as Axis I diagnosis, "Posttraumatic Stress Disorder, Rule out Reactive Attachment Disorder of Infancy or Early Childhood, Child Abuse-Neglect, Child Abuse-Physical, Child Abuse-Sexual." Pls.' Ex. 25. The Discharge Summary of Mental Health Services, Inc. dated February 7, 2000 had an Axis I discharge diagnosis of "PTSD, Major Depression." Pls.' Ex. 29. The record is replete with statements that Tanya's problems related

to her fears of being sent back to her biological mother and her memories of sexual abuse in one of Tanya's many foster homes. The Court finds that reasonable people facing the same or similar circumstances and aware of the same facts as the Provorses would have no reason to believe that DCYF withheld information which led to the Plaintiffs' injury.

III

Conclusion

The Court finds that the Defendants have not sustained their burden of proof that Plaintiffs' cause of action accrued, pursuant to the discovery rule, prior to early September 2000 when they received the Grace Gunnip letter dated August 31, 2000. That letter is the discovery of the wrongful conduct which allegedly caused the Plaintiffs' injury. As previously stated, the Court's decision relates only to the accrual date of Plaintiffs' claims related to the tort of wrongful adoption. The Court makes no finding as to whether the Provorses would not have adopted Tanya if these facts had been disclosed prior to adoption. The Court makes no findings as to causation between the Defendants' failure to meet its duty to disclose and the Plaintiffs' injury. Those issues are to be determined at trial. Counsel shall present an Order consistent with this decision.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	Neil Provorse, et al. v. State of Rhode Island, et al.
CASE NO:	PC-2003-4268
COURT:	Providence County Superior Court
DATE DECISION FILED:	December 13, 2016
JUSTICE/MAGISTRATE:	Licht, J.
ATTORNEYS:	
For Plaintiff:	Diane Messere Magee, Esq.; Thomas M. Dickinson, Esq.
For Defendant:	*SEE ATTACHED LIST

Neil Provorse, et al. v. State of Rhode Island, et al.
C.A. No. 2003-4268

Plaintiffs:

- Diane Messere Magee, Esq.
  (401) 245-8550
  Dmmageelaw@aol.com

- Thomas M. Dickinson, Esq.
  (401) 490-8083
  tmd@appealRI.com

State of Rhode Island:

- Rebecca J. Partington, Esq.
  (401) 274-4400
  RPartington@riag.ri.gov

- Anne T. Turilli, Esq.
  (401) 274-4400
  aturilli@riag.ri.gov

- Neil F.X. Kelly, Esq.
  (401) 274-4400, ext. 2284
  nkelly@riag.ri.gov

DCYF:

- Anne T. Turilli, Esq.
  (401) 274-4400
  aturilli@riag.ri.gov

- Kelly Ann McElroy, Esq.
  (401) 274-4400
  kmcelroy@riag.ri.gov

- David J. Strachman, Esq.
  (401) 351-7700
  djs@mtlesq.com

Jay Lindgren
Michael Moretti
Maureen Robbins:

- Anne T. Turilli, Esq.
  (401) 274-4400
  aturilli@riag.ri.gov

Interested Parties:
Butler Hospital; Laura Drury

- Andrew S. Tugan, Esq.
  (401) 274-2000
  atugan@hinckleyallen.com

Bradley Hospital
Gateway Mental Health Services and CIS

- Kathryn M. Rattigan, Esq.
  (401) 709-3357
  krattigan@rc.com