Courts in N.J. 'friendly' to suits alleging memory repressed sexual abuse

By Rocco Cammarere

They have made headlines for the past few years. They are adults who suddenly remember being molested as children.

The accusations are against parents and priests. And the accusations can come through any cathartic event such as a song, a taste, through media attention or with the help of a psychologist, lawyers have said.

Ventnor attorney Stephen Rubino, who has made a practice of representing children and adult survivors of sexual abuse, said the so-called "repressed memory syndrome" accounts for probably only 2 percent of the plaintiffs he represents. Many of the cases, he said, involve adults who fail to understand that the childhood abuse is the cause of their current problems.

He likens the damage, and the access the alleged victims should have to the court system, to a toxic tort.

"I think a toxic insult to internal organs is no different than a toxic insult to the psyche of a child," Rubino said of psychological damage that manifests as these children become troubled adults.

New Jersey courts and the Legislature have created a friendly environment for victims who claim repressed memory syndrome and want to file suit.

But, Lloyd D. Levenson of Atlantic City said a "cottage industry" has emerged in psychological circles around what he calls a fad.

Media reports of these cases, he said, have "unwittingly given credibility to a host of other cases whose memories are being jogged by this cottage industry."

Levenson said in some instances, even though patients insist they have no memories, therapists will claim the denial indicates abuse occurred.

"I think the New Jersey Legislature has spoken very clearly on this," Rubino said. "I don't think this is a fad."

The proof, he said, is in the Legislature's codification of the holding in the Appellate Division's 1990 *Jones v. Jones* decision in which the court said the

Continued on page 48

Courts 'friendly' to suits alleging sex abuse repressed by memory

Continued from page 1

mental trauma of sexual abuse can toll the statute of limitations.

The False Memory Syndrome Foundation, a Philadelphia-based support group for people who claim they have been falsely accused by family members citing repressed memories, says there are 158 such families in New Jersey. Pamela Freyd, the foundation's executive director, said New Jersey's total is small, compared to 2,000 families in California.

Freyd said the number of cases being filed nationally has risen dramatically. The increase has been fueled mainly by the national exposure of such prominent people as Roseanne Barr. The television actress claimed she discovered while in therapy that she had been abused as a child.

Levenson and Rubino recently argued this type of case in the Appellate Division in a lawsuit charging Levenson's client with molesting his two daughters when they were children.

"I think this is a fad," Levenson said. "And fads in psychology are ephemeral."

The two women Rubino represents claim their father raped and forced them to perform other sexual acts beginning as early as 1963 while on camping trips at Bodine's Field in Egg Harbor Township and Wharton State Park. "Due to this trauma, memory of these incidents and understanding of their cause of action did not occur until late 1990," Rubino wrote in his brief opposing Levenson's motion in *V.B. v. D.D.M.* to dismiss the complaint because of *forum non conveniens*.

Rubino explained the trigger that releases the repressed memory can be anything from a television news special on sexual abuse to a song or a specific taste.

"Clients have come to me literally after they have seen a special on a type of abuse," Rubino said. "Go back through your life and concentrate on your memories. As an adult you will have many more good memories than bad," he said.

Remembering only good things is the mind's way of disassociating itself from the bad memories, Rubino said.

However, the psychology of memory therapy is not fully accepted in the medical community, Freyd said. The American Medical Association has issued a warning of the dangers of misusing the therapy.

But the years are passing for those claiming injury and wanting to file lawsuits. However, not all jurisdictions are amenable to relaxing the short statute of limitations.

Rubino gets very passionate about this issue. He is forming a partnership with Westmont attorney Edward Ross so Rubino can concentrate on representing survivors of abuse. Calling the abusers "predators," Rubino passionately explained there should be no statute of limitations in these cases.

In the *V.B.* case the daughters charged their father with sexual molestation, false imprisonment, and intentional infliction of emotional distress. They spent their youth in Ossining, N.Y., and vacationed in New Jersey.

One of the women's memory was triggered by visiting a location that reminded her of the sexual assault, Rubino said. He described the memory as a flashback.

The daughters had argued New York does not toll the statute of limitations for repressed memory cases and they should be allowed to pursue their lawsuit in New Jersey.

The appeals court also found New York does not recognize a discovery rule in sexual abuse cases. But, New Jersey has a plaintiff-friendly statute.

"We have held that mental trauma resulting from a pattern of incestuous sexual abuse may constitute insanity under N.J.S.A. 2A:14-21, so as to toll the statute of limitations in a daughter's action against her parents based on her father's alleged sexual abuse over an extended period of time," Judges Michael Patrick King, James M. Havey and Arnold M. Stein wrote in *V.B.*

Citing *Jones*, the court remanded *V.B.* for a plenary hearing to determine the plaintiffs' state of mind and whether the two-year statute of limitations should be tolled.

The law is clear in New Jersey, Rubino said. But, what is not clear is how juries see these cases. A vast majority, Rubino said, settle before trial. NJL

Arbitration guidelines announced

Continued from page 3

"Of course, no stay was sought before the Supreme Court because we were the prevailing party," Wiss said. He said he will discuss with the mayor and council whether to move for reconsideration.

The justices also did not go as far as the Appellate Division in requiring that the arbitrators must presume every factor to be relevant and to require the production of evidence on each factor.

"An arbitrator should not deem a factor irrelevant, however, without first considering the relevant evidence," Pollock wrote. "We believe we come closer to satisfying the legislative intent by requiring arbitrators to identify and weigh the relevant factors and to explain why the remaining factors are irrelevant."

Trimboli said he would have preferred the court to uphold more of the Appellate Division ruling. That would have sent a stronger message, he said.

Arbitrators, however, have changed the way they decide a case based on the lower court's ruling.

"I don't think any arbitrator is going to be under the impression that they can dismiss all eight factors cavalierly," Trimboli said.

Gerald L. Dorf of Rahway, the labor relations counsel to the New Jersey State League of Municipalities, had filed an *amicus* brief and argued before the court Jan. 3. He said that although the court's decision "reverses the judgment of the Appellate Division and reinstates the arbitration awards, the court accepts, with modifications, the basic reasoning of the Appellate Division regarding the obligations of arbitrators to properly consider and evaluate all of the factors in the law in rendering interest arbitration awards and to take into greater account the interests of the public — a position for years advocated by the league."

Dorf said the Senate was expected to have introduced a bill May 19 to amend the Compulsory Interest Arbitration Act to cover areas addressed in the court's decision as well as other areas not covered. NJL