

ORIGINAL

IN THE SUPREME COURT OF OHIO
CASE NO. 2009-0953

AMY PRATTE	:	ON APPEAL FROM THE GREENE
	:	COUNTY COURT OF APPEALS
Plaintiff-Appellant	:	
	:	SECOND APPELLATE DISTRICT
vs.	:	
	:	
RODNEY STEWART	:	COURT OF APPEALS
	:	CASE NO. 2008CA0095
Defendant-Appellee	:	

BRIEF OF AMICI CURIA THE NATIONAL ASSOCIATION TO PREVENT THE
SEXUAL ABUSE OF CHILDREN (NAPSAC), THE SURVIVORS' NETWORK OF
THOSE ABUSED BY PRIESTS (SNAP), AND THE NATIONAL CENTER
FOR VICTIMS OF CRIME (NCVC) ON BEHALF OF THE APPELLANT

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TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES	ii
I. STATEMENT OF INTEREST OF THE <i>AMICI CURIA</i>	1
II. STATEMENT OF THE CASE AND FACTS	1
III. LAW AND ARGUMENT	2
<u>Proposition of Law No. 1:</u>	2
Repressed Memory Is a Valid and Common Psychiatric Condition For Victims of Trauma That Is Recognized By Most States To Toll The Statute of Limitations On Childhood Sexual Abuse Claims.	
A. Repressed Memory is a Valid Psychiatric Condition	2
That Appears in the DSM-IV	
B. Repressed Memory is a Common Psychiatric Condition	3
For Victims of Trauma	
C. Ohio’s Exception for Trauma Victims Who Experience	6
Repressed Memory is Consistent with Most States	
<u>Proposition of Law No. 2:</u>	7
Interpreting R.C. 2305.111(C) To Overrule <i>Ault v. Jasko</i> Would Violate The Ohio Constitution By Depriving Those Who Recover Memories of Their Sexual Abuse After Age 30 From Access to Ohio Courts.	
CONCLUSION	9

TABLE OF AUTHORITIES

CASES:	<u>PAGE</u>
<i>Arbino v. Johnson & Johnson</i> (2007), 116 Ohio St. 3d 468, 2007 Ohio 6948	8
<i>Ault v. Jasko</i> (1994), 70 Ohio St. 3d 114, 637 N.E.2d 870	7, 8, 9
<i>Bertram v. Poole</i> , 597 N.W.2d 309 (Minn. Ct. App. 1999)	7
<i>Brennaman v. R.M.I. Co.</i> (1994), 70 Ohio St. 3d 460, 1994 Ohio 322, 639 N.E.2d 425	8
<i>Doe v. Archdiocese of New Orleans</i> , 823 So.2d 360 (La Ct. App. 2002)	7
<i>Doe v. Roe</i> , 955 P.2d 951 (Ariz. 1998)	7
<i>Doe v. Shults-Lewis Child and Family Services, Inc.</i> , 718 N.E.2d 738 (Ind. 1999)	7
<i>Gaines v. Preterm-Cleveland, Inc.</i> (1987), 33 Ohio St. 3d 54, 514 N.E.2d 709	8
<i>Hardy v. VerMeulen</i> , (1987), 32 Ohio St. 3d 45, 512 N.E.2d 626	8
<i>Hearndon v. Graham</i> , 767 So.2d 1179 (Fla. 2000)	7
<i>Hoult v. Hoult</i> , 792 F.Supp. 143 (D. Mass. 1992)	7
<i>Moriarty v. Garden Sanctuary Church of God</i> , 511 S.E.2d 699 (S.C. Ct. App. 1999)	7
<i>Olsen v. Hooley</i> , 865 P.2d 1345 (Utah 1993)	7
<i>Pedigo v. Pedigo</i> , 292 I.App.2d 831 (Ill. Ct. App. 1997)	7
<i>Peterson v. Huso</i> , 552 N.W.2d 83 (N.D. 1996)	7
<i>Sheehan v. Sheehan</i> , 901 S.W.2d 57 (Mo. 1995)	7

CONSTITUTIONAL PROVISIONS; STATUTES:

Section 16 of the Ohio Constitution	8, 9
R.C. 2305.11	7
R.C. 2305.111	8, 9

I. STATEMENT OF INTEREST OF THE *AMICI CURIAE*

Amici are several non-profit organizations: the National Association for the Prevention of the Sexual Abuse of Children (“NAPSAC”); the Survivor’s Network of Those Abused by Priests (“SNAP”); and the National Center for Victims of Crime (“NCVC”). *Amici* are separate organizations that perform different functions and approach the issue of sexual abuse and childhood sexual abuse from different perspectives; however, all are dedicated to providing support for victims of sexual abuse, working to prevent the sexual abuse of children, and educating the public about the pervasiveness and impact of childhood sexual abuse in society.

NAPSAC is a national organization dedicated to ending childhood sexual abuse through awareness, education and the advocacy of children's rights. SNAP is the nation's largest, oldest and most active support group for women and men wounded by religious authority figures. NCVS is the nation's leading resource and advocacy organization for crime victims and those who serve them. Each of these organizations understands that the psychiatric condition of repressed memory is more common in victims of sexual abuse and other traumas than any other segment of the population. These organizations believe that it will be helpful to the Court to provide a brief summary of the vast science surrounding repressed memory as well as a summary of how other states treat cases of repressed memory in sexual abuse cases. Accordingly, NAPSAC, SNAP and NCVS submit their brief.

II. STATEMENT OF THE CASE AND FACTS

Plaintiff/Appellant Amy Pratte (“Pratte”) is an adult female born July 13, 1974. (Complaint, ¶1). On at least three occasions during Pratte’s childhood, Defendant/Appellee Rodney Stewart (“Stewart”) sexually assaulted and molested her. (Complaint, ¶3). Following the incidents, and

throughout her minority and early adulthood, Pratte completely and involuntarily repressed the memories of the sexual abuse until April 20, 2007, when a traumatic national news event triggered the recovery of the memories. (Complaint, ¶4). Pratte filed her Complaint April 14, 2008, within one year of the recovery of her memories.

III. LAW AND ARGUMENT

PROPOSITION OF LAW NO. 1: Repressed memory is a valid and common psychiatric condition for victims of trauma that is recognized by most states to toll the statute of limitations on childhood sexual abuse claims.

A. Repressed Memory is a Valid Psychiatric Condition That Appears in the DSM-IV

The Diagnostic and Statistical Manual of Mental Disorders, 4th Edition (“DSM-IV”), the official manual of the American Psychiatric Association (“APA”), is the authoritative guide or “Bible” of diagnoses of psychiatric disorders. The APA is the national association for psychiatrists with members from many diverse interests in psychiatry, psychology, social work and nursing. ¹

Before a diagnosis appears in the DSM-IV, it must be firmly rooted in the peer-reviewed scientific research. DSM-IV diagnoses are based upon a firm base of both clinical and research evidence.² The process used by the DSM-IV Work Groups in deciding whether a diagnosis should be in the DSM-IV involves three stages: (1) comprehensive and systematic reviews of the published literature, (2) re-analyses of already-collected data sets, and (3) extensive issue-focused field trials.³

1. DSM-IV, p. xxiii

2. DSM-IV pp.xxiii, xxvi

3. DSM-IV, p.xxvi

In fact, the “goal of the DSM-IV literature reviews was to provide comprehensive and unbiased information and to ensure that DSM-IV reflects the best available clinical and research literature.”⁴

The psychiatric condition of repressed memory is found in the DSM-IV as the diagnosis of Dissociative Amnesia, as follows:

**300.12 Dissociative Amnesia (formerly Psychogenic Amnesia)
Diagnostic Features**

The essential feature of Dissociative Amnesia is an inability to recall important personal information, usually of a traumatic or stressful nature, that is too extensive to be explained by normal forgetfulness (Criterion A). This disorder involves a reversible memory impairment in which memories of personal experience cannot be retrieved in a verbal form (or, if temporarily retrieved, cannot be wholly retained in consciousness)

* * *

Dissociative Amnesia most commonly presents as a retrospectively reported gap or series of gaps in recall for aspects of the individual's life history, These gaps are usually related to traumatic or extremely stressful events. . .⁵

B. Repressed Memory is a Common Psychiatric Condition for Victims of Trauma

Many studies have been conducted by the scientific community to determine how prevalent repressed memory is. One study conducted by James Chu, M.D. *et al.* (1999) in the prestigious *American Journal of Psychiatry*, evaluated ninety inpatients in the trauma unit at Maclean Hospital for amnesia.⁶ The study found that 25 of the 90 patients had been sexually abused and at one time experienced complete amnesia for the abusive events. *Id.* Similarly, studies by Briere and Conte evaluated 450 adults who were being treated by sexual abuse and found 59.3% of those subjects

4. DSM-IV, pp. xxiii, xxvi.

5. DSM-IV, p. 520.

6. Chu, J., Frey, L., Ganzel, B. (1999). Memories of Childhood Abuse: Dissociation, Amnesia and Corroboration. *American Journal of Psychiatry*, 156(5), 749-755.

experienced repressed memory.⁷ Also, Carlson, *et al.* in a 1997 study interviewed 217 psychiatric inpatients and found 41% of those persons who had been sexually abused also experienced repressed memory.⁸ Finally, Elliott from UCLA Medical Center reported findings in 1997 that of 724 individuals responding to a questionnaire, 32% experienced repressed memory.⁹ These studies are just a few examples of the robust body of scientific research finding that repressed memory is common in trauma populations.¹⁰

In addition, clinical research studies conducted on inpatient or other groups that were not specifically trauma patients have found that repressed memory is present in those populations,

7. Briere, J., & Conte, J. (1993). Self-reported Amnesia For Abuse in Adults Molested As Children. *Journal of Traumatic Stress, 6*, 221-231.

8. Carlson, E., Armstrong, J., & Loewenstein, R. (1997). Reported Amnesia For Childhood Abuse and Other Traumatic Events in Psychiatric Inpatients. In D. Read and S. Lindsay (Eds.) *Recollections of Trauma: Scientific Evidence and Clinical Practice*. (pp. 395-401). New York: Plenum Press.

9. Elliott, D. (1997). Traumatic Events: Prevalence and Delayed Recall in the General Population. *Journal of Consulting and Clinical Psychology, 65*, 811-820.

10. See, Binder, T., McNiel, D. & Goldstone, R. (1994). Patterns of Recall of Childhood Sexual Abuse As Described By Adult Survivors. *Bulletin of the American Academy of Psychiatry & the Law, 22*, 357-366; Crowley, M., (2007). Memories of Childhood Sexual Abuse: Narrative Analyses of Types, Experiences and Processes of Remembering. *Journal of Interpersonal Violence, 22*, 1095-1113; Dale, P., & Allen, J. (1998). On Memories of Childhood Abuse: A Phenomenological Study. *Child Abuse & Neglect, 22*(8), 799-812; Epstein, M., & Bottoms, B. (2002). Explaining The Forgetting and Recovery of Abuse and Trauma Memories: Possible Mechanisms. *Child Maltreatment, 7*(3), 210-225; Melchart, T. (1997). Different Forms of Childhood Abuse and Memory. *Child Abuse & Neglect, 21*(2), 125-135; Van Ommeren, M., de Jon, J., Sharma, B., Komproe, i., Thapa, S., & cardena, E. (2001). Psychiatric Disorders Among Tortured Bhutanese Refugees in Nepal. *Archives of General Psychiatry, 58*, 475-482; Williams, L. (1994). Recall of Childhood Trauma: A Prospective Study of Womens' Memories of Child Sexual Abuse. *Journal of Clinical and Consulting Psychology, 62*, 1167-1176.

however at much lower frequency. For example, in Sar *et al.*, 2007, researchers screened 43 consecutive admissions to a psychiatric emergency unit and found that 7% of these patients experienced dissociative amnesia.¹¹ In Johnson *et al.*, 2006, researchers evaluated a non-clinical/non-trauma population of 658 test subjects from upstate New York who were randomly selected to represent the typical demographics of that region.¹² Those researchers found that 1.8% of this population experienced dissociative amnesia. *Id.*

Interestingly, with the development of technology, researchers have established that there are medical changes in the body and brain caused by trauma that may explain why traumatic memories are susceptible to amnesia. In Bremner (1999), the researchers described the neurological and hormonal changes that occur as a result of trauma and the changes in portions of the brain that control memory.¹³ Further, in Bremner (2001) the researcher noted that changes in brain structures and systems mediating memory offer a possible explanation for delayed recall of childhood abuse in patients with abuse-related Posttraumatic Stress Disorder (“PTSD”).¹⁴ Brain areas affected by traumatic stress are involved in memory and the modulation of emotion. *Id.* Stress also results in acute and chronic changes in neuro-chemical systems that strengthen or weaken the laying down of

11. Sar, V., Koyuncu, A., Ozturk, E., Yargic, L., Kundakci, T., & Yazici, A. (2007). Dissociative Disorders In The Psychiatric Emergency Ward. *General Hospital Psychiatry, 29*, 45-50.

12. Johnson, J. Cohen, P., Kasen, S., & Brook, J. (2006). Dissociative Disorders Among Adults in the Community Impaired Functioning, and Axis I and II comorbidity. *Journal of Psychiatric Research, 40*, 131-140.

13 Bremner, J. (1999). Trauma Memory Lost and Found. In L. Williams and V. Banyard (Eds.) *Trauma and memory*. (pp. 217-228). Thousand Oaks, CA: Sage Publications.

14 Bremner, J. (2001). A Biological Model Ffor Delayed Recall of Childhood Abuse. *Journal of Aggression, maltreatment & Trauma, 4(2)*, 165-183.

memory traces. *Id.* Patients with PTSD have alterations in a broad range of memory functions. *Id.* PTSD patients also show changes in structure and function in brain regions mediating memory as well as in brain chemical systems involved in the stress response. *Id.*

Moreover, in Kanaan *et al.* (2007), the researchers performed functional Magnetic Resonance Imaging (“fMRI”) on a patient who had repressed traumatic memories.¹⁵ In the study, researchers conducted fMRI scans of the patient’s brain while she was thinking about a traumatic event of which she had a continuous memory and a second set of scans when the patient thought about the memories that she had recently recovered. *Id.* The results of the study revealed that different portions of the brain were stimulated when the patient thought about the continuous memory than when she thought about the recovered memories. *Id.*

To summarize, scientific research establishes that a larger percentage (32% - 59.3%) of traumatized persons experience repressed memories than did much smaller numbers of psychiatric patients (7%) and the general population (1.8%). Although more research is needed, studies suggest that repressed memories may be caused by medical changes in the neurological and hormonal changes in the body and brain induced by trauma.

C. Ohio’s Exception for Trauma Victims Who Experience Repressed Memory Is Consistent With Most States

Given nature of the significant research supporting repressed memory, it makes sense that the law should provide an exception for the condition of repressed memory. Initially, it makes sense to have an exception to established statutes of limitation in cases where the victim has no memories

15. Kanaan, R., Craig, T., Wessely, S., & David, A. (2007). Imaging Repressed Memories in Motor Conversion Disorder. *Psychosomatic Medicine*, 69, 202-205.

of the sexual assault. How could a victim possibly bring a claim for acts he or she cannot remember happening?

Like most states, Ohio has established an exception for victims who do not have memories of the injurious conduct within the established limitations period. In *Ault v. Jasko*, (1994) 70 Ohio St. 3d 114, 637 N.E.2d 870, this Court provided an exception to the statute of limitations for abuse victims who completely repress memories of childhood abuses. This Court held in *Ault v. Jasko* that the limitations period on the abuse claims did not begin to run until “the victim recalls or otherwise discovers that he or she was sexually abused, or when, through the exercise of reasonable diligence, the victim should have discovered the sexual abuse.” *Id.* at 117 – 118.

Similarly, a substantial majority of states have determined that the psychiatric condition of repressed memory for the acts of sexual abuse should toll the statutes of limitation. For example, *Olsen v. Hooley*, 865 P.2d 1345, 1348-49 (Utah 1993), the Utah Supreme Court stated that “a substantial majority of courts that have addressed this issue have held that the repression of memories of childhood sexual abuse tolls the applicable statute of limitations.” See also, *Doe v. Roe*, 955 P.2d 951, 960 (Ariz. 1998); *Hearndon v. Graham*, 767 So.2d 1179, 1186 (Fla. 2000); *Pedigo v. Pedigo*, 292 Ill.App.3d 831, 841 (Ill. Ct. App.1997); *Doe v. Shults-Lewis Child and Family Services, Inc.*, 718 N.E.2d 738, 750 (Ind. 1999); *Doe v. Archdiocese of New Orleans*, 823 So.2d 360, 366-67 (La Ct. App. 2002); *Hoult v. Hoult*, 792 F.Supp. 143, 145 (D. Mass. 1992); *Bertram v. Poole*, 597 N.W.2d 309, 312-13 (Minn. Ct. App. 1999); *Sheehan v. Sheehan*, 901 S.W.2d 57, 59 (Mo. 1995); *Peterson v. Huso*, 552 N.W.2d 83, 86 (N.D. 1996); *Moriarty v. Garden Sanctuary Church of God*, 511 S.E.2d 699, 709 (S.C. Ct. App. 1999).

PROPOSITION OF LAW NO. 2: Interpreting R.C. 2305.111(C) to overrule Ault v. Jasko would violate the Ohio Constitution by depriving those who recover memories of their sexual abuse after age 30 from access to Ohio courts

If this Court were to interpret R.C. 2305.111(C) as overruling *Ault v. Jasco*, such an interpretation would violate the Ohio Constitutional guarantee to a remedy and open courts. Specifically, Section 16 of Article I of the Ohio Constitution states: “All courts shall be open, and every person, for an injury done him in his land, goods, person or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay.” According to *Hardy v. VerMeulen* (1987), 32 Ohio St. 3d 45, 47, 512 N.E.2d 626, when the Ohio Constitution speaks of remedy and injury, it requires an “opportunity granted at a meaningful time and in a meaningful manner.” This Court held in *Hardy* that the four-year statute of repose of R.C. 2305.11(B) was unconstitutional as applied to bar the claims of medical malpractice plaintiffs who did not know or could not reasonably have known of their injuries, because it violates Section 16, Article I of the Ohio Constitution. 32 Ohio St. 3d 45 at syllabus.

In *Arbino v. Johnson & Johnson* (2007), 116 Ohio St. 3d 468, 2007 Ohio 6948 at ¶44, this Court interpreted this provision to prohibit statutes which effectively prevent individuals from pursuing relief for their injuries. Specifically, this Court cited two prior cases in which statutes of repose were found unconstitutional where the victims did not have an opportunity to discover their claims. *Id.*, citing *Brennaman v. R.M.I. Co.* (1994), 70 Ohio St. 3d 460, 466, 1994 Ohio 322, 639 N.E.2d 425; *Gaines v. Preterm-Cleveland, Inc.* (1987), 33 Ohio St. 3d 54, 60-61, 514 N.E.2d 709.

In *Gaines*, this Court ruled that the statute of limitations could not be constitutionally applied to bar the claims of medical malpractice litigants who discovered their malpractice injuries before the four-year statute of repose expires, but at such a time as affords them less than one full year to

pursue their claims because these litigants had not been granted a reasonable, meaningful opportunity to pursue a claim which is guaranteed by the Ohio Constitution. *Id.* at 57 - 60.

It is reasonable to presume that the legislature did not intend to violate the open courts provision of the Ohio Constitution when adopting R.C. 2305.111. Consequently, any interpretation that R.C. 2305.111 overrules the exception for repressed memory established in *Ault v. Jasco* and that it was intended to deprive those victims of a remedy, when they do not recover the memories of their sexual abuse prior to their thirtieth birthday of a remedy, must then be avoided as violative of the Ohio Constitution. On the contrary, an interpretation that the repressed memory tolling mechanism of *Ault v. Jasco* is still available to litigants is the more Constitutionally-sound approach.

CONCLUSION

NAPSAC, SNAP and NCVS respectfully request that this Court reverse the judgment of the Court of Appeals and hold that the repressed memory exception established in *Ault v. Jasco* is not overruled by the recently enacted R.C. 2305.111(C) and that repressed memory of acts of sexual abuse tolls the applicable statute of limitations for one year from the date the victim recovers the repressed memories of abuse.

Dated: 10/30/09

Respectfully submitted,



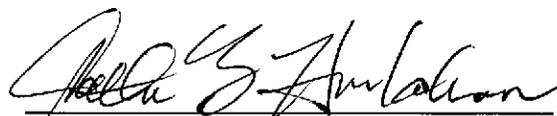
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CERTIFICATE OF SERVICE

This will certify that true copies of the foregoing have been served upon Scott E. Wright, MATAN WRIGHT & NOBLE, 261 S. Front St., Columbus, OH 43215, Attorney for the Defendant-Appellee and Konrad Kircher (0059249), KIRCHER LAW OFFICE, LLC, 4824 Socialville-Foster Road, Mason, OH 45040 by ordinary U.S. Mail, postage prepaid, this 30th day of October, 2009.



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