

ORIGINAL

IN THE SUPREME COURT OF OHIO
CASE NO. 2014-1462 14-1953

JESSICA SIMPKINS, et al.
Plaintiff-Appellees/Cross Appellants

-v-

GRACE BRETHERN CHURCH OF DELAWARE, OHIO
Defendant-Appellant/Cross Appellee

On Appeal from the Fifth District Court of Appeals, Delaware County,
Case No. 13 CAE 10 0073

AMICUS CURIAE BRIEF OF THE OHIO ASSOCIATION FOR JUSTICE
IN SUPPORT OF PLAINTIFF-APPELLEES/CROSS APPELLANTS

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R.C. 2315.18 *passim*

INTRODUCTION AND INTERESTS OF AMICUS CURIAE

This Amicus Curiae represents the interests of the Ohio Association for Justice (“OAJ”), a consortium of attorneys who focus on representing individual plaintiffs in personal injury cases and other civil litigation within the State of Ohio. The members of OAJ are dedicated to protecting the rights of individuals in litigation and to the improvement and promotion of public confidence in the legal system.

In this regard, the OAJ and its members have a strong interest in defending the ability of juries to establish standards within the community, and to deter others from engaging in reprehensible conduct via the award of non-economic damages on behalf of minors who are the victims of sexual abuse. Such awards play a vital role in the civil justice system. As such, the OAJ respectfully requests that this Court overrule the decision of the Fifth District Court of Appeals for the reasons stated herein.

STATEMENT OF CASE AND FACTS

While adopting the statement of the case and the statement of facts set forth in the Merit Brief of Plaintiffs-Appellants, the OAJ offers this short introduction to focus this Court on the central issue of this Amicus Brief.

Unrelated to the financial and political concerns of the Chamber of Commerce, big business, or conservative economists, is the life of one special young girl, Jessica Simpkins. Having been raped by her minister, she comes to this Honorable Court for justice.

When Jessica sued her minister and the church she once trusted, a compassionate jury awarded her a total of \$3,500,000 for her noneconomic damages. But the judge reduced those damages to \$350,000.00. He came to that result simply by applying the damages cap set by R.C. 2315.18 (B)(2).

Now the question remains: is this what the Ohio Legislature could have wanted or intended when it voted to put a cap on damages? Did it ever imagine how the life of a young rape victim would be impacted? Kids who are sexually abused typically don't sustain serious economic damages related to their abuse. Non-economic damages are the only way they can really get justice.

The ugly, nightmarish suffering of sexually abused children is real and largely undisputed. As this case shows, when judges apply R.C. 2315.18 to a case involving a child like Jessica, Ohio's cap on damages shields child abusers from having to fully pay for their heinous acts.

This can't be the way Jessica's tragic story ends. Thus, Jessica Simpkins implores this Court to declare R.C. 2315.18 is unconstitutional as applied to her unique case.

APPELLANT'S FIRST PROPOSITION OF LAW

As applied to minors who are victims of sexual abuse, R.C. 2315.18 is unconstitutional.

ARGUMENT IN SUPPORT OF THE FIRST PROPOSITION OF LAW

I. As applied to minors who are victims of sexual abuse, R.C. 2315.18 denies due process of law, equal protection of the laws, trial by jury, open courts, and a remedy guaranteed by the Ohio

Although the United Supreme Court's jurisprudence in the area of 'as applied challenges' is "hardly a model of clarity," the Court has declared a statute invalid as to a particular application without striking the entire provision that appears to encompass it. See, e.g., *United States v. Grace*, 461 U.S. 171, 103 S.Ct. 1702, 75 L.Ed.2d 736 (1983) (finding a statute's limitations on gathering in a public fora to be inadequately justified as applied to the sidewalks surrounding the Supreme Court); *Tennessee v. Garner*, 471 U.S. 1, 105 S.Ct. 1694, 85 L.Ed.2d 1 (1985) (invalidating a state provision permitting police officers to use "all the necessary means to effect the arrest" of a fleeing or forcibly resisting defendant as applied to uses of deadly force against an unarmed, non-dangerous suspect); and *United States v. Nat'l Treasury Employees Union*, 513 U.S. 454, 487, 115 S. Ct. 1003, 1023, 130 L. Ed. 2d 964 (1995) (noting that the 'as applied' challenge permits a court to declare a statute to be declared invalid to the extent that it reaches too far, but it may otherwise leave the statute intact). See also *Arbino v. Johnson & Johnson*, 2007-Ohio-6948, 116 Ohio St. 3d 468, 880 N.E.2d 420.

The point of all of this is clear: Appellant's argument that R.C. 2315.18 ought to be declared unconstitutional as to minors who are victims of sexual abuse does not undermine the full force and thrust of Ohio law regarding caps on damages. Nor does it

put in jeopardy the interests of those who fought for the protections that this statute affords, regardless of the perceived intended or unintended evils of that protection. A successful 'as applied' challenge is a compromise, as it protects children and shifts the costs of caring for their damaged minds to those who most deserve to carry those costs.

R.C. 2315.18 violates a child sex abuse victim's right to Due Process because "it does not bear a real and substantial relation to public health or welfare and further because it is unreasonable and arbitrary." *Morris v. Savoy*, 61 Ohio St. 3d 684, 705, 576 N.E.2d 765, 780 (1991). The lack of due process inherent in the architecture of R.C. 2315.18 is obvious as one considers the nature of a child's injuries in a rape/sexual assault scenario. With the economic harm being relatively light in these cases, the social need to stop and – better yet – prevent such heinous activity is clear.

The numbers are staggering. Child sexual abuse is likely the most prevalent health problem children face with the most serious array of consequences. Townsend, C., *Prevalence and consequences of child sexual abuse compared with other childhood experiences*, Charleston, SC, Darkness to Light. (2013). About one in 10 children will be sexually abused before their 18th birthday. Townsend, C., & Rheingold, A.A., (2013). *Estimating a child sexual abuse prevalence rate for practitioners: studies*. About one in seven girls and one in 25 boys will be sexually abused before they turn 18. *Id.* This year, there will be about 400,000 babies born in the U.S. that will become victims of child sexual abuse unless we do something to stop it. *Id.*

Consider too, nearly 70% of all reported sexual assaults (including assaults on adults) occur to children ages 17 and under. Snyder, H. N. (2000). *Sexual assault of young children as reported to law enforcement: Victim, incident, and offender*

characteristics. See Washington, DC: U.S. Dept. of Justice, Office of Justice Programs, Bur. of Justice Statistics. 1/12/2009, <http://www.ojp.usdoj.gov/bjs/pub/pdf/saycrle.pdf>; and *National Crime Victimization Survey, Statistic calculated by staff at Crimes against Children Research Center*. 2002. Youths have higher rates of sexual assault victimization than do adults. In 2000, the rate for youths aged 12 to 17 was 2.3 times higher than for adults. Tebbutt, J., Swanston, H., Oates, R. K., O'Toole, B.I. (1997). *Five years after child sexual abuse: Persisting dysfunction and problems of prediction*. Journal of the American Academy of Child & Adolescent Psychiatry, 36, 330-339.

R.C. 2315.18 also violates a child sexual assault victim's right to equal protection of the laws. The Court in *Arbino* noted how R.C. 2315.18 creates different classes of injured persons. But those classes do not account for persons, like Jessica, who suffered serious and permanent psychological injury. Why are non-physical/psychological injuries less significant, when clearly a broken mind ruins a person just as completely, if not more so, than a broken body.

The irrationality of the statute as applied to minors who are victims of sexual abuse is further demonstrated by the simple fact that it uses economic damages to establish the limits on noneconomic damages. Children like Jessica Simpkins, have no wage loss, because they have no real ability to earn a wage. Children subjected to sexual abuse were simply not factored into the architecture of R.C. 2315.18. And this is the crucial error made by the legislature in formulating R.C. 2315.18.

Despite the *Arbino* holding, which was based upon the legislature's apparent policy choice to limit damages for all but the most serious injuries, the legislature failed to consider minors victimized by sexual abuse. It failed to consider their life-altering

injuries. It failed to consider the injustice of barring those children from getting an uncapped award of noneconomic damages for the cruelty and evil that was visited upon them. As applied to Jessica Simpkins, the effect of R.C. 2315.18 violates Jessica Simpkins' right to a trial by jury.

APPELLANT'S SECOND PROPOSITION OF LAW

The separate acts of sexual battery constitute separate occurrences under R.C. 2315.18.

ARGUMENT IN SUPPORT OF THE SECOND PROPOSITION OF LAW

II. Separate and distinct acts of sexual battery constitute separate "occurrences" for purposes of applying the damage cap for non-economic losses in R.C. 2315.18.

Assuming the caps in R.C. 2315.18 remain, then Appellant's argument must be considered Jessica should be able to enjoy recovery for two separate and distinct counts of sexual battery. An "occurrence" means "all claims resulting from or arising out of any one person's bodily injury." R.C. 2315.18(A)(5). Jessica Simpkins suffered two distinct bodily injuries: oral and vaginal rape. If these acts were charged as crimes, they would be charged as two separate counts, because they involve two distinct acts. R.C. 2315.18 allows the \$350,000 cap to be applied to each occurrence. Although by no means whole compensation for her losses, this is better than the situation that would emerge for Jessica if the Fifth District's decision stands.

CONCLUSION

In light of the foregoing, the OAJ and its members respectfully request that that the decision of the Fifth District be overruled.

Respectfully submitted,


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CERTIFICATE OF SERVICE

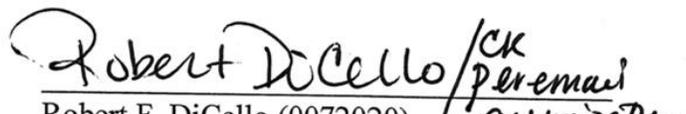
I hereby certify that the foregoing Brief was served by regular U.S. Mail on this 20th day of July, 2015 upon the following:

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