

R.L.  
Plaintiff-Respondent

vs.

KENNETH VOYTAC  
Defendant-Appellant

SUPREME COURT OF NEW JERSEY  
DOCKET NO.: 63262

ON PETITION FROM:  
SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET N O.: A-1001-06T5  
SAT BELOW:  
ARIEL A. RODRIGUEZ, J.A.D.  
CLARKSON S. FISHER, J.A.D.  
CHRISTINE L. MINIMAN, J.A.D.

ORIGINAL TRIAL COURT:  
SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: MORRIS COUNTY  
DOCKET NO.: MRS-L-0472-04  
SAT BELOW:  
DAVID B. RAND, J.S.C.

CIVIL ACTION

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**BRIEF OF AMICUS CURIAE, THE SURVIVOR'S NETWORK  
OF THOSE ABUSED BY PRIESTS**

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## Preliminary Statement

The core issue presented in this appeal is under what circumstances does a cause of action accrue under the Child Sexual Abuse Act, N.J.S.A. §2A:61B-1. Stated simply, a cause of action for child sexual abuse does not accrue until the victim realizes that the harm he has suffered is a result of the sexual abuse he endured while a minor. To be clear, even if the victim is aware of the illicit sexual contact as well as the concomitant existence of psychological, emotional, or behavioral difficulties, but does not attribute those difficulties to the abuse, the cause of action has not accrued. This interpretation of the Child Sexual Abuse Act is consistent not only with the public policy of the State of New Jersey, but also with the prevailing national legal trend towards expanding the statute of limitations for child sexual abuse survivors.<sup>1</sup> This trend is due in large part to courts and legislatures embracing the scientific literature that recognizes that the circumstances surrounding child sexual abuse make pursuing claims in a short period of time

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<sup>1</sup> Indeed, Alaska (Alaska Stat. § 09.10.065) and Maine (Me. Rev. Stat. Ann. Tit. 14, § 752-C) no longer have any statute of limitations in actions for child sexual abuse. In Canada, all provinces with the exception of New Brunswick and Prince Edward Island have enacted limitation period exceptions for child sexual abuse. For example, British Columbia [B. C. Limitation Act, RSC 1996, Chapter 266, §3[4]] provides that victims of child sexual abuse may bring their claims at any time. Both California (Ca. Civ. Proc. Code § 340.1) and Delaware (Del Code Ann. tit. 10, §8145) have enacted "windows" in their statutes of limitation, providing that no claim shall be barred provided it is filed within a set time period.

unduly difficult for victims.

In addition, a review of the record in this case reveals that the trial judge erroneously applied statements made with the benefit of hindsight to contemporaneous events. This conclusion is not supported by the evidence.

**Statement of Interest of Amicus Curiae**

The Survivors' Network of those Abused by Priests (hereinafter "SNAP") is a not-for-profit agency headquartered in Chicago, Illinois providing advocacy and support to victims of sexual abuse and members of victims' families through support groups and peer counseling. SNAP was founded in 1989, and now has groups meeting in over 55 cities across the United States with over 5000 members. In New Jersey, SNAP maintains a regional office and three local chapters. SNAP members seek to ensure the protection of children today as well as future generations by working to change structures within organizations and society that have failed to prevent sexual abuse. SNAP has been a powerful voice for victims of sexual abuse in multiple cases all over the United States. SNAP has an interest in this case as many perpetrators of child abuse may still pose a risk to children in New Jersey and the ruling in this case may impact upon the ability to expose those perpetrators and institutions

that my have harbored them.

### Statement of Facts and Procedural History

In the interest of brevity, Amicus Curiae adopts the Statement of Facts with accompanying procedural history as stated in Plaintiff's supplemental brief.

### Argument

1. THE STANDARD REQUIRED UNDER THE CHILD SEXUAL ABUSE ACT, N.J.S.A. §2A:61B-1(B) IS A SUBJECTIVE STANDARD, SUBJECT ONLY TO OBJECTIVE CREDIBLE EVIDENCE. RESEARCH INTO CHILD SEXUAL ABUSE DEMONSTRATES THAT REASONABLE DISCOVERY OF THE INJURY AND ITS CAUSAL RELATIONSHIP TO THE ACT OF SEXUAL ABUSE CANNOT BE EQUITABLY DETERMINED WITHOUT VIEWING THE ISSUE THROUGH THE EXPERIENCE OF THE SURVIVOR THAT HAS PROCESSED THE EVENT TO THE POINT WHERE HE SEEKS A JUDICIAL REMEDY.

In determining whether or not a "reasonable discovery of the injury and its causal relationship to the act of sexual abuse" was understood by the survivor, it is crucial to acknowledge that the survivor's perception of the events constituting child sexual abuse may cause the survivor to misinterpret or recast the event as something other than what it was. Simply because a child sexual abuse survivor is aware of sexual contact does not mean he will associate that contact with harm. Likewise, simply because a child sexual abuse survivor is aware that he is depressed, confused about his gender identity, or otherwise "different" than

normal people does not mean that the harm in his mind is associated with the abuse. Stated another way, predatory sexual contact with a child is not only a physical insult but a toxic assault on the still developing mind of a child engendering confusion, self loathing, fear, secrecy and a variety of other well documented sequellae. To many judges, lawyers, therapists and other objectively situated observers it is a simple crime of power and sex with predictable injuries and impacts. For the survivor it is far from simple straight line understanding of cause and effect. The road to understanding these types of events is a path filled with mixed messages, confusion and denial all of which evolved from an out of context event and on immature psyche of a child left to process the event. In this way, child sexual abuse and how it impacts the operable accrual language of the statute in question makes the child sexual abuse survivor litigant different from any other tort victims. Victims of ordinary assault, false imprisonment, or battery will often know immediately on the commission of the act they have been wronged. Victims of fraud or conversion will likely become aware they have been wronged as soon as they discover the harm done to them, normally in the form of a financial loss.

There is a wealth of scientific literature that catalogues the difficulties faced by adult survivors of child sexual abuse



in realizing both that they have, in fact, been abused and that they have suffered harm as a result. In fact, studies indicate that disclosure of child sexual abuse by victims is less likely by survivors of more severe assaults, or when the abuse is perpetrated by persons related to the victim. Sarah E. Ullman and Henrietta H. Filipas, *Gender Differences in Social Reactions to Abuse Disclosures, Post-Abuse Coping, and PTSD of Child Sexual Abuse Survivors*, *Child Abuse & Neglect* 29, 767-782, 770 (2005). Likewise, younger victims are less likely to disclose than older victims. Gail S. Goodman et. al., *A Prospective Study of memory for Child Sexual Abuse*, *Psychological Science*, Vol. 14, No. 2, 113-118, 113 (March 2003).

The process of connecting the dots of cause and effect begins with disclosure. There is significant statistical data concluding that victims of childhood sexual abuse, particularly male victims of childhood sexual abuse, have great difficulty acknowledging and disclosing that they have been abused. Guy R. Holmes et. al., *See No Evil, Hear No Evil, Speak No Evil: Why Do Relatively Few Male Victims of Childhood Sexual Abuse Receive Help for Abuse-Related Issues in Adulthood?*, *Clinical Psychology Review*, Vol. 17, no. 1, 69-88, 75 (1997). One 1984 study found that only 25% of male subjects and 33% of female subjects ever told anyone about being sexually abused. Id. A 1990 study found

that 43% of men and 41% of women told others about being abused within one year of the abuse, however, only 14% of men and 24% of women said that they went on to tell someone later and a full 42% of men and 33% of women never disclosed their abuse. Id. The Holmes article went on to note:

Many reasons for non-disclosure (**i.e., the long-term effects of having been engaged in the perpetrator's secrecy strategies**) are common to both male and female victims.... Researchers have emphasized... three key areas as offering potential explanations for non-disclosure in the male population.... Men do not define their childhood experiences as abusive, and do not think that their abuse experiences have had a negative impact.... The consequences of disclosure are perceived as worse than the consequences of non-disclosure.... There is a paucity of services for adult male victims of childhood sexual abuse. [emphasis added]. Id. at 75.

Accordingly, many victims of child sexual abuse often do not even view the sexual contact as abuse, and may in fact view it as a loving relationship between the child and a parent or other adult figure. For males, sexual experiences with adults may be culturally defined, even by the victim himself, as an early introduction to sexual prowess and manhood, particularly where there is no homosexual content involved. Id. At 76. In addition, male victims also redefine sexual abuse as "experimentation" and minimize it's effect on their lives. Id. In one case, a man with a 39-year history of severe psychological problems described being repeatedly oral and anally penetrated by

older boys as "horseplay." Id. In another case, a 22 year old man admitted to a hospital after a suicide attempt described being anally raped by an older boy when he was 10 as "mucking about." Id.

In addition, victims of child sexual abuse, particularly male victims, can often feel complicit in the abuse, believing that they either desired the abuse, or somehow bought it on themselves.

The fact that males can have a clear physiological reaction during their abuse (i.e., an erection and possible ejaculation) may also lead some males to rationalize their abuse as something that they desired or invited (Watkins & Bentovim, 1992). Unlike in females, male arousal is markedly visible and this can enhance what Gerber (1990) has called the "myth of complicity." Id.

Other studies have shown that the vast majority of victims feel that they are in some way responsible for their own abuse.

Regardless of the type of abuse experienced by a child, most children feel responsible for their own abuse (Ney, Moore, McPhee, & Trought, 1986). The dynamics of the abusive relationship and the insidious nature of the grooming process may lead victims to perceive themselves as willing participants in a ``relationship'' with the offender (Berliner & Conte, 1990; Kaufman et al., 1996). Similarly, victims may perceive themselves as coconspirators, acting to maintain the secret of the abuse (Furniss, 1991; Summit, 1983). A retrospective study using a sample of female undergraduates suggests children who do not disclose their sexual victimization immediately may be more reluctant to disclose subsequent incidents of abuse (Arata, 1998). Victim's feelings of responsibility may be compounded by the intense

feelings of shame and stigma associated with sexual abuse (Finkelhor, 1986; Furniss, 1991). Many children are reluctant to disclose their victimization for fear they will be blamed or judged negatively by others (Berliner & Conte, 1995; Gomes-Schwartz et al., 1990; Sauzier, 1989). Children have related they were hesitant to break their promise to keep the abuse a secret (Bussey, Lee, & Richard, 1990, reported in Bussey & Grimbeek, 1995). In addition, as noted earlier, sexual stereotypes and concerns regarding homosexuality pose additional barriers to disclosure for male victims (Lynch et al., 1993; Reinhart, 1987; Summit, 1983; Watkins & Bentovim, 1992). Mary L. Paine and David J. Hansen, *Factors Influencing Children to Self-Disclose Sexual Abuse*, *Clinical Psychology Review* 22, 271-295, 281-82 (2002).

Indeed, New Jersey law clearly recognizes that victims of child sexual abuse may find it difficult to come forward until large periods of time have passed since the commission of the abuse. New Jersey law permits the admission of expert testimony regarding Child Sexual Abuse Accommodation syndrome ("CSAAS") in criminal cases, solely for the purpose of explaining why victims of child sexual abuse will often delay in reporting sexual abuse. (New Jersey Criminal Model Jury Charges, Non 2C charges, Child Sexual Abuse Accommodation Syndrome). CSAAS consists of five traits, "secrecy, helplessness, entrapment and accommodation, delayed disclosure, and retraction." State v. J.Q., 130 N.J. 554, 566-74 (1993). These traits form a psychological underpinning for why victims of child sexual abuse often fail to come forward in a timely manner. Thus, CSAAS testimony is

allowed to dispell concerns by the jury that the delay in reporting may be indicative of false accusations. As Justice Rivera-Soto stated in writing the majority opinion in State v. R.B., 183 N. J. 308 (2005):

It is instructive to first consider the purpose of CSAAS testimony and, hence, the limitations thereon; that analysis then informs whether the CSAAS charge given here was proper. State v. J.Q., 130 N.J. 554, 566-74 (1993), sets forth the limitations of CSAAS expert testimony. Detailing the five traits that characterize the Child Sexual Abuse Accommodation Syndrome -- "secrecy, helplessness, entrapment and accommodation, delayed disclosure, and retraction," id. at 574-75 -- State v. J.Q. makes clear that, while an expert may explain CSAAS and its characteristics, the testimony must be carefully circumscribed to explaining to the jury that **secrecy or delay in reporting sexual abuse may be typical post-sexual abuse behavior** and bears no meaningful correlation to the fact of sexual abuse itself. Id. at 579. Thus, expert testimony concerning the syndrome is permitted on a circumscribed basis to explain what may well be counter-intuitive to a jury: **that a child victim of sexual assault is often loathe to press an accusation.** Id. at 568-71. [emphasis added]. Id.

Other states have recognized that the nature of child sexual abuse requires that questions regarding the tolling of the statute of limitation be viewed through a subjective standard. "[B]ecause of the nature of the injury and the relationship of the parties, a child may repress all memory of the abuse, lack understanding of the wrongfulness of the conduct, or be unaware of any harm or it's causes until years after the abuse." Phinney

v. Morgan, 39 Mass. App. Ct. 202, 205 (1995). Massachusetts recognizes four factors, viewed subjectively, which aid the Court in determining when the statute of limitations should be tolled for child sexual abuse victims. Those factors are: (1) a plaintiff's lack of awareness that the defendant's act was wrong when committed; (2) the plaintiff's trust in the defendant; (3) the defendant's control over the facts giving rise to the plaintiff's cause of action; (4) the necessity of a triggering event which makes the plaintiff aware of potential liability by the defendant. Ross v. Garabedian, 433 Mass 360, 364 (2001).

Further, actions by the perpetrators in child sexual abuse cases often result in victims being unable to understand the harm caused by the abuse. Holmes, *See No Evil*, at 76. Perpetrators tend to abuse children over whom they have some authority or power.

The victim-perpetrator relationship is not only most often a familiar one, but is also often an emotionally close and significant one. The individual perpetrating the abuse is often a parent or parent-figure (Berliner & Conte, 1995; Faller, 1989; Gomes-Schwartz et al., 1990; Sorenson & Snow, 1991). The perpetrator is frequently in a position of power and authority over the child and/or charged with providing for the child's care (Berliner & Conte, 1995; Elliott et al., 1995; Sorenson & Snow, 1991)....

Clinicians have observed children who are sexually abused by a close family member are particularly hesitant to disclose their abuse (Furniss, 1991;

Rieser, 1991; Summit, 1983). Research findings consistently indicate that children abused by a close family member are less likely to report their abuse than those abused by a stranger (Arata, 1998; Berliner & Conte, 1990; DiPietro et al., 1997; Mendelsohn, 1994; Sauzier, 1989; Sorenson & Snow, 1991). **This finding is particularly important as research also suggests that the longer children are abused, the more hesitant they may be to disclose their abuse** (Arata, 1998; Mendelsohn, 1994). [emphasis added]. Mary L. Paine and David J. Hansen, *Factors Influencing Children to Self-Disclose Sexual Abuse*, *Clinical Psychology Review* 22, 271-295, 276 (2002).

A 1989 study of 72 adult male inmates incarcerated for child sexual abuse indicated that a preferences for abusing either their own children or choosing "passive, quiet, troubled, lonely children from broken homes." Id. In a 1987 survey of perpetrators in a specialized treatment program, the perpetrators indicated they would generally target children who appeared vulnerable and/or particularly trusting, and that they would work pro-actively to establish a trusting relationship with them before assaulting them. Id.

Many perpetrators "groom" their victims, preceding their sexual contact with affectionate real or substitute parenting, attention and rewards. The "grooming" process has been defined as "a lot of gift giving, a lot of affection, praising, rewards, anything to make the individual more comfortable, even to the extent of dealing with lots of people surrounding this particular

person, just getting into a comfortable role; in other words, feeling comfortable and being close to an individual. Yes, they often establish some emotional dependency". In re the Application of Donald D. Nash for Reinstatement as an Active Member of the Oregon State Bar, 855 P.2d 1112 (Or.) en banc 1993, State v. Quigg, 866 P.2d 655, 72 Wash. App. 828 (1994) (expert testimony stating that grooming is a concept directly related to child sexual abuse), Rubin A. Lang et. al., *How Sex Offenders Lure Children*, Canada Annals of Sex Research, Vol. 1(2), 303-317 (1988). Pedophiles reported using a slow courtship or "grooming process" to seduce children with gifts, attention, and affection.

Male victims with these experiences often find it hard to acknowledge the abusive nature of the relationship, directly due to the actions of the perpetrators. Holmes, *See No Evil*, at 76. In a 1990 study exploring the process of sexual victimization from the perspective of the child victim, most of the victims described their relationship with the perpetrator as positive, half reporting that they "loved him, liked him, needed or depended on him." Paine, *Factors influencing Children* at p. 276.

As noted in the Paine article:

The methods employed by perpetrators to gain and maintain their victim's compliance and silence have been well documented in the research and clinical



literature (Berliner & Conte, 1990; Budin & Johnson, 1989; Christiansen and Blake, 1990; Conte et al., 1987; Elliott et al., 1995; Furniss, 1991; Kaufman, Hilliker, & Daleiden, 1996; Lyon, 1996; Singer, Hussey, & Strom, 1992; Steward et al., 1993). Both victims (Berliner & Conte, 1990) and perpetrators (Conte et al., 1989) have identified a gradual process whereby perpetrators employ successively inappropriate comments and increasingly inappropriate touches and behaviors so insidious that the abuse is often well under way before the child recognizes the situation as sexual or inappropriate. Strategies employed to gain the compliance of victims include the addition and withdrawal of inducements (attention, material goods, and privileges), misrepresentation of society's morals and standards and/or the abusive acts themselves, and externalization of responsibility for the abuse onto the victim. Children are admonished that they (the child) will be judged negatively, blamed, and/or punished (Kaufman et al., 1996). In a review of the experimental and observational research examining the impact of threats upon disclosure, Lyon (1996) found that threats decrease the likelihood that children will self-disclose sexual abuse. Threats can take many forms including physical harm to the victim and/or their loved ones (Kaufman et al., 1996; Kelley et al., 1993), or forecasting negative or dire outcomes for the victim, their loved ones, and/or the perpetrator. Mary L. Paine and David J. Hansen, *Factors Influencing Children to Self-Disclose Sexual Abuse*, *Clinical Psychology Review* 22, 271-295, 277 (2002).

The evidence in this case clearly demonstrates that Voytac took great efforts to groom R.L. as a victim prior to molesting him and that Voytac utilized his status as a male parental figure to facilitate the abuse. R.L. had no relationship with his natural father, since he left the family home when R.L. was an infant. (May 1, 2006 Tr. at 9:21-10:10). At the time R.L. met

Defendant Voytac, the family household consisted of R.L.'s mother, Diana (who was then holding down two jobs to support her family), R.L., and R.L.'s older brother, Travis. (Id. at 9:6-15; 10:11-11:22). Travis was heavily into NASCAR and would spend most weekends with his grandparents, away from R.L.'s household. (Id. at 11:23-12:18).

Defendant Voytac began to spend more time at R.L.'s home when R.L. was in fifth grade, approximately 9 years old. (May 1, 2006 Tr. at 15:2-24). Prior to that abuse, R.L. was a normal, happy 5<sup>th</sup> grader. (Id. at 13:21-14:13). Prior to Defendant Voytac's increasing presence in the household, R.L. had no adult male father figure in his life. (Id. at 19:21-25). Defendant Voytac would often watch Ryan when Diana worked on evenings and weekends. (Id. at 11:23-12:8).

Defendant Voytac began abusing R.L. when R.L. was ten years old. (May 1, 2006 Tr. at 15:25-18:20). The abuse followed a progression, beginning with Defendant Voytac touching R.L.'s penis, to masturbating R.L., to mutual touching and masturbation, to Defendant Voytac performing oral sex on R.L., and finally to R.L. performing oral sex on Defendant Voytac. (Id. at 15:25-28:23).

The abuse lasted for a three-year period and stopped when R.L. was 12 years old and finishing sixth grade. (May 1, 2006 Tr. at 15:25-29:17; 33:19-34:1). Defendant Voytac instructed R.L. never to tell anyone about the abuse - particularly R.L.'s mother.

Q.: Can you tell us what, if any, conversations you had with Mr. Voytac about his sexual conduct?

R.L.: Pretty much right in the beginning, he had mentioned that it might not be a good idea not to tell anyone, particularly my mother because she wouldn't really understand it. I think my impression was that it was a boy thing or our kind of- -

Q.: Okay. Did you - - did you follow through with - - with his advice to you?

R.L.: Yes.

Q.: Okay. Did you feel threatened by him or no?

R.L.: No. I kind of felt more so special.

Q.: You felt what?

R.L.: Special. (Id. at 31:4-17).

R.L. followed Voytac's instructions. (Id. at 31:11-13). Even when R.L. received treatment for depression in 1996, he never mentioned the sexual abuse he received at the hands of Defendant Voytac. (May 1, 2006 Tr. at 42:8-44:8; see also May 2, 2006 Tr. At 26:22-32:9).

Initially, R.L. didn't see anything particularly wrong about the abuse. The first few times R.L. was molested by Defendant Voytac, R.L. described the experience as "somewhat pleasurable." (May 1, 2006 Tr. at 18:15-20). R.L. described his relationship with Defendant Voytac during the abuse as "pretty good" and that they were "pretty close," noting that they did a lot of "general father and son type scenarios" together. (Id. at 19:9-20). Over time, the nature of their sexual encounters changed:

R.L.: The [child sexual abuse] incidents later on started in a slightly different manner because I wasn't really sleeping at the time. I would - - I mean, it all occurred on the couch. They all started that way. But as it progressed, I more so would act as though I was asleep and later on began motioning him to initiate the contact versus him doing it on his own.... (Id. at 25:11-17).

R.L. stated that his sexual relationship with Defendant Voytac made him feel "special" and that it felt "meaningful, like I was close to someone." (Id. at 31:14-21).

R.L. began to secretly cross dress at age 12, shortly after Voytac abruptly terminated the abuse. (May 1, 2006 Tr. At 32:4-37:15). R.L. also began to experience gender confusion and wondered if he should have been born a woman. (Id.) Eventually R.L. began to compulsively masturbate and cross-dress. (Id.) R.L. would hide his abnormal sexual thoughts and behaviors from others because he was embarrassed and ashamed. (March 7, 2006

R.L. certification at ¶ 3-7, admitted as hearing exhibit "D-1," at Pa 197 - Pa 198). R.L. has consistently testified that up until his 2002 conversation with a co-worker "I guess I didn't consider [the sexual abuse] to be a - - a traumatizing event that would cause [my gender confusion and cross-dressing]." (May 1, 2006 Tr. At 85:11-22).

However, Defendant Voytac's hold over R.L. remained strong, and in the summer before R.L.'s 10<sup>th</sup> grade year, R.L. stayed with Defendant Voytac at the same home in Danville where some of the abuse occurred. (May 1, 2006 Tr. At 40:4 - 41:5). Even though it was several years after the last instance of abuse by Defendant Voytac, R.L. still desired sexual contact with Defendant Voytac. (Id.)

In 1996, R.L. received psychological counseling for depression which R.L. attributed at the time to having broken up with his then-girlfriend. (May 1, 2006 Tr. at 42:8-43:15). However, at that time, R.L. still had not made the connection between the child sexual abuse and the problems in his life.

Q.: Did you discuss with Dr. Durka - - this is - - we're talking about the time frame in '95 and '96 that you saw him - - anything about what Kenneth Voytac did to you sexually?

R.L.: No I did not.

Q.: Why?

R.L.: It didn't seem like it was part of my issues at the time. (Id. at 44:1-8).

Even in 1999, when R.L. had a "flashback" to the abuse while receiving fellatio from his girlfriend, he still was not able to acknowledge the harm he had received from defendant Voytac. (Id. at 65:16-67:24). The next day, R.L. informed his girlfriend that his stepfather had "did things" to him. (May 1, 2006 Tr. At 67:25-68:21). However, he minimized the abuse by telling his girlfriend that the abuse was "not that big of a deal..." (Id.) When R.L. told his mother about the abuse that same day he again minimized it's significance (May 1, 2006 Tr. At 77:3-78:4).

It should be noted that even after the 1999 incident, R.L. And his girlfriend continued to have sexual relations on an regular basis. (Id. at 73:15-74:18). R.L. further testified he did not have any other intrusive thoughts regarding Defendant Voytac while he was involved in sexual contact with his girlfriend, at least until the 2002 conversation with his co-worker that is the heart of this case. (Id.) It is difficult to believe that, if the 1999 flashback was the epiphany that defense counsel argues it was, R.L. could return to normal sexual relations so quickly. The only reasonable conclusion is that R.L. had not yet made the association between the abuse he suffered at the hands of Defendant Voytac and the harm caused by

that same abuse, and would not do so until the conversation with his co-worker and resultant psychological counseling in 2002.

The situations described by R.L. clearly mirror the scientific literature regarding child sexual abuse victims. Defendant Voytac targeted R.L., a child without a father figure in the home, and who was completely estranged from his birth father. Defendant Voytac then slowly increased the severity of abuse, beginning with the touching of R.L.'s genitals and moving on to mutual masturbation and oral penetration of R.L. Throughout the relationship, Defendant Voytac instructed R.L. not to tell anyone about the abuse, and R.L. did as he was told. Indeed, so confused was R.L. about his relationship with Defendant Voytac that several years after the abuse ended R.L. shared a house with Defendant Voytac and hoped to renew a sexual relationship with him. Likewise, even when he did disclose his sexual abuse to others, he would instinctively minimize it, saying it was no big deal. Confused about his attraction to Defendant Voytac as a result of the abuse, R.L. became confused about his gender and engaged in cross-dressing behavior. It was not until the 2002 conversation with a co-worker that R.L. finally saw even the possibility of a connection between his gender confusion and the child sexual abuse R.L. suffered at the

hands of Defendant Voytac, a thought so novel that it was stunning to him. (May 2, 2006 Tr. At 136:16-138:21; see also March 7, 2006 R.L. Certification at ¶ 26-27, at Pa 204). Simply stated, the child sexual abuse suffered by R.L. (Coupled with the actions of Defendant Voytac in grooming R.L.) Made it impossible for R.L. to accept that his relationship with Defendant Voytac was harmful to him in any way. As R.L. stated in his March 7, 2006 certification:

I realize that the defendant may assert that all this [that R.L. was unable to understand the connection between the abuse and his gender confusion and cross-dressing] sounds contrived. When I look back from my present perspective, it seems only a child wouldn't be able to draw the connection between the abuse and the problems with which I struggled. But I was not yet a teenager when my life was irrevocably corrupted, and later the sense I tried to make from the wreckage of my life was nonsense. Then again, I did not create the situation, I just tried to deal with it. (March 7, 2006 Certification of R.L., ¶ 12, at Pa 199 - 200.)

R.L. did not pursue his claim earlier because the abuse he suffered made him unable to understand that it existed. His inability to understand the harm that was done to him is a direct result of the intentional acts of the Defendant Voytac. To allow Defendant Voytac to use the destruction of a small child's psyche as a shield against justice does an enormous disservice to the public policy of New Jersey that was the spring-board for the statute before this court.



**2. DURESS AS A MATTER OF LAW CAN BE PRESENT LONG AFTER CONTACT WITH THE PERPETRATOR HAS ENDED DUE TO THE UNIQUE IMPACT ON CHILDREN WHO ARE SURVIVORS OF SEXUAL ABUSE.**

Much has been made of the fact that, by the time R.L. Filed his claim in 2002, Defendant Voytac had not had any contact with R.L. for several years. It has been argued that the fact that there was no longer any relationship between the Plaintiff and Defendant Voytac makes it impossible for there to be any duress exerted on R.L. by Defendant Voytac. This position is incorrect as a matter of law.

As the Court is well aware "duress" does not require a physical threat, "moral compulsion or psychological pressure may constitute duress." Smith v. Est of Kelly, 343 N.J. Super. 392, 480, 499 (App. Div. 2001) *citing* Rubenstein v. Rubenstein, 20 N.J. 359, 366 (1956). Simply because a child sexual abuse victim no longer has any contact with the perpetrator, does not mean that the victim is free of the duress caused by the perpetrator's actions and threats regarding disclosure.

There is evidence that... processes of social construction and masculine socialization have an impact on men's willingness to disclose child sexual abuse. In a study by Dimrock (1988), fear of the consequences of disclosure were instrumental in preventing all but one of a sample of 25 men from telling anyone about the

abuse at the time it was occurring. Males cite threats from the abuser and fears of reprisal as common reasons for not disclosing. (Dimrock, 1988; Nasjleti, 1980; Sebold, 1987). **Even when the threat is no longer apparent, (e.g., when the boy is grown up and no longer in contact with the abuser), the psychological residue of the threat may still provide an effective barrier to disclosure.** [Emphasis added]. Holmes, *See No Evil* at 78.

Particularly with male sexual abuse victims, societal and psychological forces can contribute to an unwillingness to acknowledge the abuse and pursue claims against perpetrators.

Society casts the normal male as sexually active... [sexually] knowledgeable, potent and a successful seducer.... Boys are socialized to be dominate and in control. These factors are not easily reconciled with the experience of being abused, defining oneself as a victim, and disclosing abuse. Holmes, *See No Evil* at 77-78.

There are also issues of shame, stigma and self-blame (McMullen, 1990). There may be shame regarding the inability to prevent what happened. One victim said "Deep down, if I were a real man I should have been able to stop the abuse." (Dimlock, 1988, p. 209).... The "ideal man" is silent, strong and in charge of their masculinity. To talk about [being a sexual abuse victim] would further involve threats to their male self-concept. Holmes, *See No Evil* at 78.

As Holmes concluded when dealing with the issue of the consequences of disclosure being perceived as worse than the consequences of non-disclosure:

To summarize, there is an intense cocktail of pressures on males to use the defenses of denial and disassociation regarding their childhood abuse. In extreme forms, these pressures will lead to repression

and inaccessibility of memories.... Males find themselves enclosed in a tightly pulled knot: "If I was abused, then I am not a man; if I am a man, then I was not abused." (Mendel, 1995, p. 206). Holmes, *See No Evil* at 79.

Indeed, the legislature has made explicit that the difficulties faced by victims of child sexual abuse in pursuing their claims must be taken into consideration when considering the statute of limitations under N.J.S.A. §2A:61B-1(b):

**Because of the unique nature of sexual abuse,** which may only be discovered by an adult victim after years of repression, the bill provides that a civil suit for child sexual abuse shall accrue at the time of reasonable discovery of the injury and its causal relationship to the act of sexual abuse. Any such action must be brought within two years of reasonable discovery. [emphasis added]. *Senate Judiciary Committee Statement attached to N.J.S.A. §2A:61B-1.*

The intent of the legislature is clear, they have identified child abuse victims as a special class of plaintiff who are entitled to special consideration. This point is further emphasized by N.J.S.A. §2A:61B-1(c) which provides that the subjective standard applied to child sexual abuse survivors is in addition to well-established pre-existing common law considerations. "Nothing in this act is intended to preclude the court from finding that the statute of limitations was tolled in this case because of **the plaintiff's mental state, duress by the defendant,** or any other equitable grounds." [emphasis added]

N.J.S.A. §2A:61B-1(c).<sup>2</sup> These are not objective standards, but subjective determinations, looking through the eyes of the plaintiff, to determine whether the plaintiff was unable to proceed with his claim based upon either the plaintiff's inability to understand the nature of the harm he suffered, or the actions of the defendant which caused the plaintiff to be unable to understand the harm that was done to him.

Further, the Appellate Division has already acknowledged that the long-term psychological effects of child sexual abuse can have severe psychological effects on the victim. In Jones v. Jones, 242 N.J. Super 195, the court dealt with the issue of whether the statute of limitations should be tolled for a incest child sexual abuse survivor. The appellate court concluded that the vast amount of scientific evidence regarding incestuous child sexual abuse indicated that the victim may have been psychologically unable to pursue her claim in a timely manner, and thus the statute of limitations may have been tolled. As Justice Baime noted in the Appellate Court's opinion:

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<sup>2</sup> S. 3624 (The Child Sexual Abuse Act) "contains a proviso that insanity, duress, or other equitable grounds that might indefinitely toll the statute of limitations are not subject to the time constraints set forth in the proposed statute and requires the court to make that determination in a plenary hearing" Ronald J. Fleury, *In Trenton, the Subject Was Torts: Pending Senate Bill Fosters Incest Victims' Right to Sue*, 129 N.J.L.J. 1, 28-29, 28 (Sep. 5, 1991).

[W]e are satisfied 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.... We note a plethora of recent studies has revealed the disabling psychological impact of incestuous sexual abuse. See, e.g., Butler, *Conspiracy of Silence: The Trauma of Incest*, at 37-48, 149-173 (1978); Herman and Hirschman, *Father-Daughter Incest*, at 22-108 (1981); Meiselman, *Incest: A Psychological Study of Causes & Effects With Treatment*, at 22-50, 140-261 (1978); Russell, *The Secret Trauma: Incest in the Lives of Girls & Women*, at 31-35 (1986); Weinberg, *Incest Behavior*, at 121-156 (1976); Beck & van der'Klok, "Reports of Childhood Incest and Current Behavior of Chronically Hospitalized Psychotic Women," 144 *American Journal of Psychiatry*, 1474 (1987); Swanson and Biaggio, "therapeutic Perspectives on Father-Daughter Incest," 142 *American Journal of Psychiatry*, 667 (1985); Gelinias, "The Persisting Negative Effect of Incest," 46 *Psychiatry* 312 (1983); Herman, Russell & Trioki, "'Long-Term Effects of Incestuous Abuse in Childhood,'" 143 *American Journal of Psychiatry*, 1293 (1986). The gist of these studies, as recounted by Dr. Silverman's Affidavit, is that "often even long after the cycle of abuse itself has been broken, the victim will repress and deny, even to himself or herself, what has happened." According to Dr. Silverman, "[i]n many instances, this repression is so complete that the secret inside the victim becomes hidden even from [himself or herself] and can only be discovered through therapy or as a result of subsequent events which trigger off the first conscious recollection of the trauma." Jones v. Jones, 242 N.J., Super at 205-06.

As discussed *supra*, Defendant Voytac carefully groomed R.L. in an attempt to prevent R.L. from ever revealing that Defendant Voytac had sexually abused him. R.L. stated in his testimony that

he was afraid to disclose the abuse to others out of fear embarrassment and a sense of shame. Further, Defendant Voytac made every effort to cause R.L. to view the abuse as something to be kept to himself, a "special guy thing" that other people, especially his mother, would not understand.

In the present case, psychological pressures exerted by Defendant Voytac compelled R.L. from ever disclosing the abuse he had suffered. R.L. was told that the abuse was a "special guy thing" that others would not understand, and was strictly instructed not to reveal the abuse to anyone by his trusted father-figure, Defendant Voytac. At the time of the abuse, it did not feel "wrong" to R.L. it seemed pleasurable and part of his special relationship with his step-father. The abuse became so deeply imprinted in R.L. personality that he was unable to believe that it might have effected him. To admit that the abuse had harmed him was to destroy his relationship with Defendant Voytac, something R.L. was unable to do. To admit to himself that he had been abused was to admit that he was less of a man, better to think he had been born a woman than to admit that.

It must always be remembered that these beliefs by R.L., those same beliefs that made him unable to link the child sexual

abuse he suffered with the damage he was suffering, were a direct result of the intentional acts of Defendant Voytac. In a legal sense, R.L. suffered duress as a result of the psychological pressure caused by the intentional acts of child sexual abuse by Defendant Voytac, which made it impossible for R.L. to pursue a claim against Defendant Voytac for years.

**3. THE TRIAL JUDGE ERRED AS A MATTER OF LAW AND FACT IN RELYING ON P-2 TO CONCLUDE THAT R.L. WAS BOTH AWARE OF THE ABUSE AND HAD ASSOCIATED IT WITH HARM PRIOR TO 2002.**

Appellate review of factual findings is limited. "Trial court findings are ordinarily not disturbed unless 'they are so wholly unsupportable as to result in a denial of justice.'" Meshinsky v. Nichols Yacht Sales, 110 N.J. 464, 475 541 A.2d 1063 (1988). However, appellate courts decide legal questions without deference to a lower court's "interpretation of the law and the legal consequences that flow from established facts." Manalapan Realty v. Manalapan Twp. Comm., 140 N.J. 366, 378, 658 A.2d 1230 (1995).

Regardless of the standard used, Judge Rand was simply wrong when he relied upon the document identified at "P-2" to establish that plaintiff was aware of a correlation between the harm he was

suffering and the abuse by Defendant Voytac in 1999. The evidence presented in this case clearly indicates that there was no contemporaneous realization of the harmful nature of the abuse in 1999. It was not until 2002 that R.L. finally realized the harmful nature of the link between the child sexual abuse he suffered and what had happened in 1999.

Judge Rand notes in his oral decision dismissing the complaint of R.L. with prejudice that the language contained in exhibit P-2 is a significant factor in his determination that the defendant was aware prior to 2002 that he had suffered harm as a result of Defendant Voytac's child sexual abuse. Judge Rand stated:

I find that it is likely so - - far more likely so than not that R.L. was aware, **as reflected in his statement P-2**, prior to the two year period. [Emphasis added]. [Emphasis added]. (Transcript of Trial Court's August 18, 2006 oral decision/opinion outlining basis for it's dismissal of R.L.'s complaint, p. 33:5-7, at Pa 38.)

Earlier in his reasoning, Judge Rand had also stated:

There is no doubt in the - - in the minds of the Court, **based upon the evidence that the Plaintiff's use of the term "select" - - "sexual molested," or his recitation of the negative connotation and the impact of this abuse on his psyche**, reflected at least some level of understanding by R.L. that what Voytac had done to him was wrong and, at the very least, injurious



to him. There is no other explanation for the conduct. [Emphasis added]. (Id. at p. 23:6-14, Pa 33.)

The problem with this statement by the court is that the record clearly establishes that at no time in 1999 did the Plaintiff use the words "sexually molested" when describing the child sexual abuse by Defendant Voytac, or associate it with any harm he had received.

With regard to what he told his girlfriend in 1999:

Q.: Okay. Did you have any other discussions with her about what had happened after that evening when you told her you simply were tired and weren't feeling that well or word to that effect?

R.L.: The next moment I elaborated on it.

Q.: Okay

R.L.: I told her what really happened.

Q.: What did you tell her?

R.L.: I told her that my stepfather **did things to me when I was a little kid** and I had a memory of it while we were making love the evening before.

Q.: Did you say anything more to her other than words to that effect?

R.L.: Are you referring to like details or anything of that nature?

Q.: Yes.

R.L.: No, I did not.

Q.: What did Stephanie say to you?

R.L.: As far as I can remember, she basically expressed concern and sorry for it. **And I kind of told her it was all right. It's not that big a deal and we moved on.** [Emphasis added]. (May 1, 2006 Tr. At 67:25-68:21.)

Likewise, with respect to R.L.'s 1999 conversation with his mother where he revealed the abuse to her:

Q.: And what did you say to your mom [in 1999] and what did she say to you about that?

R.L.: I told her that **he had done things - - Ken had done things to me when we were - - when I was little.**

Q.: Anything else?

R.L.: In that sentence? No.

Q.: Did you give her any details about it?

R.L.: No.

Q.: Did you say anything else to her about it?

R.L.: After she started expressing great concern for it and looked very upset about it, **I tried to reassure her that it wasn't a big deal and it was in the past and it was over.** [Emphasis added.] (May 1, 2006 Tr. at 77:16-78:3.)

Further, on cross-examination, R.L. again clarified that he did not identify what had happened as sexual molestation in 1999.

Q.: I understand. You - - you told [your girlfriend in 1999] that you had been sexually abused, correct?

R.L.: **I told her he had done things to me.**

Q.: Did you tell her of a - - that he had done things of a sexual nature?

R.L.: Well, I told her that it was directly related to what she was doing the night before. And that's why I had - - that's why what had happened the evening before happened.... [emphasis added]. (May 2, 2006 transcript at 47:12-20.)

When pressed about by the Court about exactly what was said, R.L.

Responded:

THE COURT: Well, I - I don't need to know the [exact] words. It's the - - it's the communication as you currently recall it.

R.L.: I remember using the **exact terms of he did - he had done things to me.** And usually when I tell - I have told people that, they - - they - - they automatically on their own imply sexual. [Emphasis added]. (Id. at 48:15-21.)

Likewise, when cross-examined about the conversation with his mother, R.L. Replied:

Q.: And what did you tell [your mother]?

R.L.: I initially told her that I had walked out of work. I had a fight with my supervisor. And she kind of asked what was going on. "What's the deal? Like you just left", kind of thing? And I kind of just blurted out that I had a horrible evening with Stephanie and this happened. Well, I didn't tell her what happened the night before but **I told her Ken did things to me.** [Emphasis added]. (May 2, 2006 Tr. at 62:25-63:7.)

The record is clear, there was no contemporaneous statement in 1999 in which the Plaintiff identified what had happened to him as "sexual molestation." The record clearly demonstrates that the only place where the plaintiff associates the 1999 incident with the term "molested" or "sexual molestation" is in R.L.'s 2002 statement identified as "P-2."<sup>3</sup> (Pa. 48.)

Recently I have been feeling quite confused. Childhood events have caused complications with my current feelings. When I was between the ages of 9 and 12, I was molested by my stepfather. At the time, I didn't think anything of it nor did I understand that it was wrong. Now I greatly understand that this is wrong and also not my fault. But knowing this doesn't change the things that I feel now. The most notable event was with Stephanie, my girlfriend. In fact, events that have occurred with her are probably the only events that have opened these repressed emotions.... [the memo goes on to discuss R.L.'s cross-dressing and gender confusion at length]. (Undated memo written by R.L., "P-2," at Pa 48.)

The statements contained in P-2 are clear, they make the point that it was only recently that he made the association between the child sexual abuse and the cross dressing/gender confusion. From the statements made by Judge Rand in his oral

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<sup>3</sup> The term "sexually molested" likewise does not appear in the Plaintiff's March 7, 2006 certification, although he does refer to the sexual contact with Defendant Voytac as "abuse" in reference to the 1999 incident. Further, Plaintiff states in his certification at ¶ 34 "Much of what I understand about the events set forth in this certification is based upon insight that I have gained after the fact.... However, this was not apparent to me until after I sought counseling with Dr. Durka and others." (Plaintiff's March 7, 2006 Certification at Pa 196 - 207).

decision, it is clear that Judge Rand interpreted the statements in P-2 to read "In 1999, I realized what had happened to me was wrong" when in fact the what P-2 actually means is "Looking back from my current perspective (in February 2002, when P-2 was written), I now realize that what happened between me and my girlfriend in 1999 was due to the harm I suffered from the sexual abuse by Defendant Voytac."

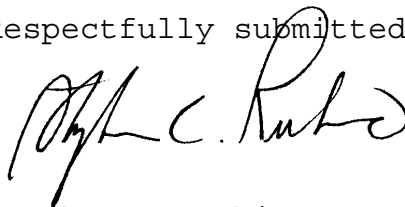
In reviewing the record concerning his contemporaneous statements, there simply cannot be any doubt that R.L. never used the words "molestation" or "sexual molestation" in 1999 when he described to his mother and girlfriend what Defendant Voytac had done to him. Instead, R.L. depersonalized the abuse, speaking in the passive voice and saying that Defendant Voytac had "done things to him." It was not until 2002, when a conversation with a co-worker led R.L. to consider, for the very first time, the possibility that the child sexual abuse R.L. had suffered had long-last and profoundly harmful effects on him. Up until that revelation, R.L. had viewed the abuse as "no big deal." It is error on the part of the trial court to take plaintiff's 2002 perception of past events and apply them retroactively so as to deprive the plaintiff of an opportunity to pursue his claim.

Conclusion

For the foregoing reasons, Plaintiff respectfully requests this Court affirm the decision of the Appellate Division and provide the guidance needed by the lower courts regarding the Child Sexual Abuse Act's discovery rule and remand this case for trial.

In the event this Court were to reverse the Appellate Division's conclusion regarding accrual, Plaintiff requests the Court reverse the trial court's ruling on tolling and provide the guidance needed by lower courts regarding the CSAA's tolling provisions. In the event this Court does not reverse on accrual or tolling, Plaintiff requests remand to the trial court with guidance on tolling under the CSAA and instructions to hold a plenary hearing on the issue of tolling as it relates to victims of child sexual abuse.

Respectfully submitted,



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