

Negligence suit results in \$688K settlement *Mentally impaired woman raped, impregnated*

The plaintiff, a developmentally disabled person with an IQ of less than 24 months and with no ability to speak, was residing in an adult foster care group home when she was raped and impregnated. As a result, she gave birth to a son. Plaintiff's counsel said the plaintiff does not have the mental capacity to know that she has a child and her son is being raised by the plaintiff's father.

The plaintiff did not have the mental capacity to consent to sexual intercourse. Although she missed her menstrual cycle for three consecutive months, the group home failed to report the pregnancy during that time period.

The group home attempted to keep the pregnancy a secret from the plaintiff's family members. When the family attempted to visit the plaintiff, they were told either that the plaintiff was sick or that she was not home. This went on for several months during which time the group home also petitioned the probate court for an order allowing the child to be aborted. However, because they delayed petitioning for the procedure, the time lapsed in which the operation could be performed. Thereafter, the group home came up with a plan to allow one of their employees to adopt the unborn child, still without notifying the plaintiff's family members that the plaintiff was scheduled to give birth to a child.

After the family finally discovered the pregnancy, the plaintiff's father sought legal counsel in an attempt to have access to his daughter and to take guardianship of the child once the birth took place. After emergency petitions were filed, the plaintiff's father was finally able to see his daughter and grandson at the hospital on the day his daughter gave birth.

A civil and criminal investigation commenced regarding the rape. Plaintiff's counsel said the group home made false allegations to the detective who was assigned to the case, including 1) saying that possibly the plaintiff's father raped her and fled to Puerto Rico; 2) suggesting that no male ever had access to the plaintiff; and 3) suggesting that this was an immaculate conception as described by the Adult Protective Service worker who was assigned to the case. The group home then indicated that the plaintiff was raped at Pontiac Central High School where she attended a class five days a week with other developmentally disabled persons.

Counsel asserted that the police investigation was diverted by the group home.

The police not only received false information, they also had records withheld. Instead of doing a vigorous investigation or DNA testing on the limited number of males that the plaintiff had contact with, the police agency instead gave up and closed their case.

When the child was born, it was obvious that the rapist was of African American origin, thus narrowing the number of suspects to several that the plaintiff had contact with. Still the police agency elected not to pursue the investigation.

Plaintiff's counsel then filed a lawsuit against the group home and also named the guardian service that the State of Michigan paid to act as the plaintiff's guardian.

Eventually, the circuit court judge to whom the case was assigned granted the defendants' petition for summary disposition partially on the grounds that the plaintiff could not prove who the rapist was.

It was the plaintiff's position that the group home was liable on the grounds that they signed a service contract with the State of Michigan providing that they would keep the plaintiff within a staff member's sight at all times and, therefore, it was not necessary to know who the rapist was. The plaintiff pursued the guardian service on the basis that they failed to adequately supervise the plaintiff.

The Court of Appeals reversed the circuit court's decision and sent the case back for trial. The defendant applied for certification from the Supreme Court in the interim and it was denied. Therefore, the case was once again scheduled for trial. On the eve of the trial, the circuit court for the second time granted the defendants' second motion for summary disposition on very similar grounds as the first time.

The Court of Appeals sent the case back for a second time explaining the doctrine of "law of the case" should have prevented the case from being dismissed a second time, therefore, making it clear to the trial court that no further appeals should be considered.

During the discovery process, the various attorneys assigned to the case provided tens of thousands of pages of documents in response to discovery requests. They also amended each discovery response six times for a total of 36 sets of discovery responses.

Trial commenced Sept. 26, 2005, with a final offer of \$50,000 and a letter from de-

fense counsel stating that no more offers would be following. Their defense was that the service contract did not oblige them to be responsible for the plaintiff when she was at school where they alleged she was raped.

The trial was expected to last one month; however, the first two days of testimony were very favorable to the plaintiff. Counsel noted that the group home manager's testimony was very detrimental for the defense and, as a result, they increased their offer of settlement.

On the fourth day of trial, the plaintiff, through her guardians, accepted an offer from the group home of \$537,000, adding to the amount from the guardian service of \$150,000 that had previously been settled, bringing the total amount to \$687,500.

Type of action: Negligence in adult foster care group home

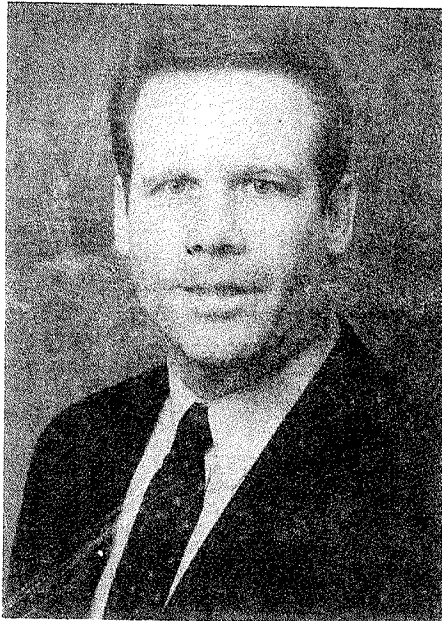
Type of injuries: Rape and impregnation of a profoundly retarded 22-year-old

Name of case: Reyes v. Christian Hills Group Home, et al.

Court/case no./date: Oakland County Circuit Court; #1998-009100-NO; Oct. 5, 2005

Name of judge: Colleen O'Brien

Settlement amount: \$687,500



Attorney for the plaintiff:

James O. Elliott

Attorney for the defendant: Withheld
Insurance carrier(s): Western World Insurance Group