



Julie Herald's lawyer, Robert Royer, says he has received several phone calls from lawyers and sex abuse victims who want to know how to handle sexual abuse cases such as Herald's in which memory of the abuse is repressed for years. PD/BILL KENNEDY

Sex abuse case breaks ground

Jury accepts repressed memories

By ALAN ACHKAR
PLAIN DEALER REPORTER

AKRON
When Julie Herald stepped into a Summit County courtroom to convince a jury that she had been sexually abused as a child, she was entering largely uncharted territory.

And when she stepped out of the courtroom with a \$5.15 million verdict and a sense of vindication, she broke new ground.

Herald, 33, faced a host of obstacles earlier this month when her sex abuse lawsuit against her uncle, former Tallmadge Mayor Dennis Hood, was tried before a Common Pleas Court jury.

Lawsuits filed by adults claiming to be victims of child sexual abuse are on the rise, although statistics are not available.

The adults usually claim that they repressed memories of the abuse for years, pushing the traumatic events out of their conscious minds.

But the cases rarely make their way into Ohio courtrooms, according to experts, meaning a victim today is breaking new legal ground if the case comes before a jury.

And when that case is presented to jurors, a

victim must overcome a jury's natural skepticism toward a person who claims to have repressed traumatic memories for years.

Another obstacle: There are psychologists and national organizations that are casting doubt on the validity of sex abuse claims and investigating lawsuits brought by adults.

But Herald won. And she won big. Her \$5.15 million verdict is believed to be one of the largest ever in the nation for a case of delayed memory of child sex abuse.

"That is extremely high," said David Beatty, director of public affairs for the National Victim Center, which tracks sexual abuse cases around the country. "Nationwide, that is clearly in the upper two or three percent for that type of case."

Herald's lawyer, Robert Royer, saw another victory in the verdict. He has received several phone calls from lawyers and sex abuse victims around Ohio who had similar stories or who wanted to know how he handled Herald's case.

"Lawyers maybe want to know if it's possible for jurors to understand these kinds of things," said Royer, an Akron lawyer.

"But more important... this tells victims somebody out there is willing to stand up.

"I've had several, several calls from victims

who've basically said, 'We're proud of you, we're glad you did this,'" said Royer. "Hopefully, this verdict sets a precedent."

Jurors interviewed recently said they knew Hood could afford to pay only a fraction of the \$5.15 million verdict. But they wanted to send a message.

"We wanted everybody to know we don't like the idea (of molestation), especially with kids," said juror Betty McCartney, 43. "This is a way of saying, 'You claim molest, or you molest anybody, and they'll get even. Your justice will come.'"

But the verdict was not unanimous. James Provence, the only male on the eight-member jury, voted against Herald's claims and said last week "this case has bothered me because of its conclusion."

Unlike criminal cases, juries in civil cases can have split decisions.

Hood and his lawyer have denounced the verdict, maintaining Hood's innocence and vowing to appeal.

Herald sued her uncle in 1989, when he was still mayor of Tallmadge. She testified during the trial that she had been abused about 50 times between the ages of 3 and 14. But she said she repressed the memories until they came crashing back into her conscious mind in 1988.

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The trigger, she said, was a day in January 1989 when she saw her 4-year-old daughter playfully climb under the bedcovers of a male family friend who was visiting the Herald home.

"My daughter looks very much like myself when I was a little girl,"

Herald said during the trial. "When she did that, I could see myself."

Before recalling the memories, Herald seemed to lead a normal life and even maintained a close relationship with Hood.

But the repressed memories, according to Herald, began to ruin her life, leading to medical ailments, psychological problems and a failed marriage. Compounding the problem, she said, was an overwhelming sense of frustration because she could not find the root of her problems.

Lawyers handling Herald's case had almost no legal precedents to study. Lawsuits dealing with delayed discovery of sex abuse have emerged only in the last two or three years and they are rarely heard by a jury because a large majority are dismissed or settled out of court.

Elinore Marsh Stormer, an Akron Municipal Court judge, ran into the problem when she was still a lawyer.

Stormer handled the 1988 case of a Bath Township woman in her early 40s who claimed to recall repressed memories of sexual abuse by her parents. The woman later settled out of court for less than \$100,000.

"When I got involved in it, this situation was just starting to emerge in Ohio," Stormer said. "I did everything I could to find the cases and I couldn't find them."

Nationwide, cases such as Herald's began emerging in the mid-1980s. But victims ran into legal snags because statutes of limitation did not allow them to file lawsuits years after the abuse.

Adult survivors of sexual abuse began working for legislative reform, and many states now have a "delayed discovery rule" for child sexual abuse cases, allowing an adult victim to file a suit within a few years after recalling the abuse.

"The issue has continued to grow as a legal issue because survivors of sexual abuse are more and more insisting upon their rights. The legal system has been forced to respond," said Sally Goldfarb, a senior staff lawyer for the National Organization for Women Legal Defense and Education Fund.

In Ohio, the delayed discovery rule was traditionally applied to medical malpractice and product liability cases. But common law has allowed the rule to be used in suits brought by adult survivors of sexual abuse, such as Herald.

Nevertheless, one state legislator is working to have Ohio law allow relief specifically for adults who repressed memories of sexual abuse. State Rep. Madeline A. Cain, D-8, of Lakewood, is sponsoring a bill to allow adults to file a lawsuit within two years after the abuse is discovered.

Relying on common law is not enough, according to Cain.

"I think at this point that it really depends on the judge, and if you're lucky enough to find an attorney who'll pursue it," she said.

And in a case decided in court, a victim has the dual responsibility of not only proving that he or she has been sexually abused, but that he or she also repressed the memories.

"The jury is going to hold the plaintiff to a fairly strict standard. I think the person on the street is suspicious of someone coming out and saying, 'Let me tell you what happened 20 years ago,'" said James McElhaney, a law professor at Case Western Reserve University who teaches and lectures nationwide about trial tactics.

"People can't think they can just walk into court and win a case like this."

There is also a growing debate about the validity of sexual abuse allegations brought by adults, and critics question the motives of lawsuits that arise from the allegations.

Many psychologists are also questioning whether therapists, hypnotists and media reports are inducing adults to unknowingly fabricate memories of sexual abuse.

One of those psychologists, Dr. Elizabeth Loftus, testified for the defense in Herald's case. Loftus, a nationally renowned psychologist and a professor at the University of Washington in Seattle, testified about "contamination of the memory" and about ways that people can be led to create false memories.

"And the people are confident about it, they can describe it in great detail, even though they never experienced that event," Loftus told the jury.

Nationwide, organizations that represent people accused of sexual abuse are continuing to investigate the potential for false memories.

"We're not concerned about repressed memories, but implanted memories," said George Wimberly, co-founder of Victims of Child Abuse Laws in California. "We're finding that various therapists are the people who are basically triggering this latest hysteria."

So how was Herald able to prove her case?

Jurors interviewed last week pointed to two key pieces of evidence that left no doubt in their minds that Herald had been abused by her uncle.

The first was a tape-recorded telephone conversation between Herald and Hood. Herald recorded the call after writing Hood a letter in April 1989 detailing the alleged abuse and expressing fear that he would also abuse other relatives.

On the tape, Hood is heard telling his niece, "There never was anyone but you" and, "You are the only one."

The other key piece of evidence was testimony about a meeting Hood attended with Herald, her therapist and her psychologist after she recalled the abuse. Everyone at the meeting, except for Hood, testified that they walked away with the impression that Hood had admitted to the allegations.

"Those were the two biggest things in our minds," said juror Frances Reese, 59.

The result was a jury vote of 7-1 to award \$150,000 in compensatory damages and a vote of 6-2 to award \$5 million in punitive damages.

The only juror to vote against both awards was Provence.

"I'm surprised you can have a verdict like that," said Provence, 68. "I thought the defense did an admirable job of presenting evidence and witnesses that refuted everything (Herald) had to say."

But Provence was alone in his opinion. And Royer, Herald's lawyer, is hoping the verdict has set an example.



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