

IN THE COURT OF APPEALS  
September Term, 1995

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NO. 102

JANE DOE, et al.

Appellants

v.

A. JOSEPH MASKELL, et al.

Appellees

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APPEAL FROM THE CIRCUIT COURT FOR BALTIMORE CITY  
ON WRIT OF CERTIORARI FROM THE COURT OF SPECIAL APPEALS

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CONSOLIDATED BRIEF OF APPELLEES

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I. STANDARD OF REVIEW

The standard of review governing a grant of summary judgment is whether the decision was legally correct. However, in deciding a summary judgment motion, the facts proffered in support of the motion must be admissible in evidence, and are judged by the same standard as facts received at trial. Shaffer v. Lohr, 264 Md. 397 (1972); Hill v. Lewis, 21 Md. App. 121 (1974). Judge Caplan's ruling that Appellants' proffered evidence failed to meet the standard set forth in Reed v. State, 283 Md. 374 (1978) was an evidentiary ruling. Trial judges are vested with

broad discretion as to rulings on proffered evidence. See Fleming v. Prince George's County, 277 Md. 655 (1976); Myers v. Celotex, 88 Md. App. 442 (1991). Further, admissibility of expert testimony is a matter within the sound discretion of the trial court. Radman v. Harold, 279 Md. 167, 173 (1977). Thus, Judge Caplan's evidentiary ruling at the conclusion of the hearing should not be disturbed on appeal absent an abuse of discretion.

## **II. ISSUES PRESENTED**

- A. WHETHER THE LOWER COURT PROPERLY HELD THAT APPELLANTS' CLAIMS ARE BARRED BY MARYLAND'S THREE YEAR STATUTE OF LIMITATIONS?**
- B. WHETHER THE LOWER COURT CORRECTLY HELD THAT THE THEORY OF REPRESSED MEMORY DOES NOT MEET THE FRYE-REED STANDARD?**
- C. WHETHER THE LOWER COURT CORRECTLY HELD THAT ROE WAS ON INQUIRY NOTICE OF HER CAUSES OF ACTION AND, THEREFORE, HER CLAIMS ARE TIME BARRED?**

## **III. STATEMENT OF FACTS**

### **A. Appellant Jane Doe**

As explained by Doe's expert psychologist, Lawrence Donner, Ph.D, ever since graduating high school Doe was able to function in daily life, except for three brief episodes of a few months total. Doe raised two children, held various positions of employment, and maintained a marriage. Doe was able to make her own decisions concerning her welfare and interests. (T. 5/3/95 at 89-9; 5/1/95 at 141-2). Doe claims that she was sexually abused during her high school years and that such abuse abated upon her matriculation in 1971. Doe claims she repressed memories of these events until recently. (T. 5/1/95 at 145-147). However, Doe

admits that some of these repressed and recovered memories have proved to be verifiably false, such as her belief, derived solely from a recovered memory, that she had killed a religious sister at her school. (T. 5/1/95 at 248-51). Additionally, Doe wrote in her diary at one point that her "recovered" memories of abuse by a priest were "bull crap." (T. 5/1/95 at 246-7).

Doe admits that she was subjected to another earlier sexually abusive relationship in which her uncle, and many other strangers at his direction, sexually abused Doe from ages 3-12. Doe believes that her siblings were sexually abused by the same uncle, despite their assertions to the contrary. (T. 5/1/95 at 199; 5/2/95 at 52). Doe's first "recovered" memories of abuse, which initially arose in the early 1980's during prayer and self-dialoguing experiences, were committed by her uncle. These memories continued while she was in therapy through the 1980s. (T. 5/1/95 at 196-202, 215-20). She claims that the "recovered" memories of abuse that allegedly occurred with the priests in high school did not arise until 1992. (T. 5/1/95 at 195-202, 281). During deposition, Doe stated that shortly after the "recovery" of new memories of priestly abuse by a Father Magnus, (T. 5/1/95 at 147, 227-233), she learned that he had died, and very soon thereafter, she ceased having new memories of priestly abuse alleged to have been committed by him. (T. 5/1/95 at 227-31). Shortly thereafter, while engaged in her "dialoguing with the inner-child" therapy<sup>1</sup>, Doe noted in her "prayer journal" that Father Magnus is dead and that she and/or one of her "inner children" would have to "tell" on Father

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<sup>1</sup>Doe has dialogued with various aspects of her inner self, some of which she named, including Jeannie, Beth (very passive), Gloria ("tomboyish"), Ethel (puritanic), and Martha (materialistic). (T. 5/2/95 at 27-32).

Maskell. This is the last reference to Father Magnus in Doe's prayer journal. (T. 5/1/95 at 231-4).

Doe's list of alleged sexual abusers is not merely limited to the late Father Magnus and Father Maskell, but include a police officer in uniform, at least three lay teachers at her high school, Mr. Carpenter, a "Mr. Silk Handkerchief," and Mr. Mimi DiPietro, a local politician who allegedly practicing a political speech while she was performing oral sex on him. (T. 5/1/95 at 177-78, 264, 266, 289; T. 5/2/95 at 13-17). Doe also recalls abuse by three additional priests, Father Schmidt, Father John, Father Daniel, religious brothers Tim<sup>2</sup>, Bob, Frank and Ed, religious sisters Nancy and Russell, who were allegedly cloaked in the traditional nun's habit while engaging in the abuse, and a religious brother referred to by her only as "Mr. Teeth," who read from the Book of Psalms while he forced her to perform sexual acts. (T. 5/1/95 at 193-94, 259-60, 286-87; T. 5/2/95 at 10-18). Additionally, Doe admitted that she felt that her "memory" that Sister Russell and Sister Nancy wearing their full habits as they participated in the abuse was absurd and almost impossible to accept. (T. 5/1/95 at 289; see generally T. 5/1/95 at 259-269; 5/2/95 at 10-20).

Doe's memories of varied abuse arose in connection with some form of therapy. Her "recovery of memories" of abuse by priests and others in high school arose during the self therapy known as "dialoguing with the inner-child." (T. 5/1/95 at 202-205, 226-228). Brother Breese, her spiritual director beginning in 1981, introduced her to this practice which she uses to access and recover memories. (T.

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<sup>2</sup>Later at the hearing, Doe announced that there was never a person known as "Brother Tim" and that her reference to him at deposition was erroneous. (T. 5/1/95 at 285).

5/1/95 at 196-202, 210, 226-8). In that context, she claims to have also recovered memories of abuse by her uncle. (T. 5/1/95 at 196-204). She saw numerous other therapists and counselors in the 1980s. (T. 5/1/95 at 212-9). She felt that she was possessed by an evil force for about six months in 1979. (T. 5/1/95 at 210-2). Some "memories" of childhood sexual abuse as well as teenage psychological disorders surfaced during "massage therapy" and/or "movement therapy" in the 1990's. (T. 5/1/95 at 235-9; T. 5/2/95 at 23-24). Doe read several books that dealt with repression of memory of childhood sexual abuse before "recovering" her memories of sexual abuse by priests. (T. 5/2/95 at 237).

Doe was treated since May, 1992 by a psychologist, Dr. Norman Bradford, who advised Doe to maintain a dream journal for later analysis known as "dream therapy." (T. 5/1/95 at 223). According to Dr. Bradford's notes and Doe's testimony, her "recovery of memories" of sexual abuse by priests started shortly after beginning therapy with Dr. Bradford, and while she was also engaged in dream therapy, movement therapy, dialoguing with the inner child, and keeping a log. (T. 5/1/95 at 226-234, 239-40; T. 5/2/95 at 54; see also Defendants' Hearing Exhibit 8 (Dr. Bradford's notes)). Doe memorialized her "recovered" memories as part of her "dialoguing" process. (T. 5/1/95 at 237-8, 241-5). Doe's expert witness, Dr. Donner, stated that one cannot consciously turn on and off such memories. (T. 5/3/95 at 74).

Doe admitted that she could not say at what point in time that she "repressed" or lost her memory or awareness of the alleged abuse by the priests and others that she now claims to have recovered. Doe does not know if the

alleged "repression" occurred during high school, shortly thereafter, or years later. (T. 5/1/95 at 145-147; 5/2/95 at 3-6).

**B. Appellant Jane Roe**

Roe's claims are based on alleged recovered memories of sexual abuse inflicted by the Appellees from 1970 to 1972. Prior to recovering the allegedly repressed memories in 1993-1994, Roe maintained a continuous, ongoing and constant memory of specific instances of abuse allegedly committed by the Appellants since their alleged occurrence. Roe's testimony regarding the recovery of her "new memories" was demonstrated to be hopelessly confused and inconsistent.

Roe testified that, following the discovery of a hypodermic needle and rolling papers in her purse by her parents, on October 5, 1970, set met with Father Maskell, a guidance counselor at Archbishop Keough High School. (T. 5/1/95 at 47). It was during her first meeting with Father Maskell that Roe alleges a pattern of continuous sexual abuse began. Over the next two years, until June, 1972, when she graduated from high school, Roe testified, based on her ongoing memories, that she was repeatedly undressed by Father Maskell, forced to sit on his lap in his office, and that, while she was naked, she was caressed and fondled, by Father Maskell, subjected to invasive vaginal examinations and the administration, by Father Maskell, of suppositories. (T. 5/1/95 at 50 - 53). Roe admitted that, at least during some sessions where she was naked and subjected to abuse, another student was present. (T. 5/1/95 at 16).

As to Dr. Richter, Roe's testimony establishes that she maintained a continuous, ongoing and constant memory of Father Maskell's participation in her first gynecological visit during which Father Maskell allegedly touched her breasts and vaginal area. Roe characterized her ongoing memories as being "there always and very real." (T. 5/1/95 at 76).

Despite the alleged occurrence of the events described above, following her graduation from high school in June, 1972, Roe has successfully cared for herself and her family and has been a functioning member of society. Roe has married twice, raised several children, participated in a medical malpractice action as a plaintiff, as well as returned to college with an intent to obtain a law degree. Since graduation, Roe never received any medical or psychological treatment for any alleged mental condition until 1994 when she was referred to a psychologist by her present attorneys. (T. 5/1/95 at 43-45).

Since graduation from high school, Roe repeatedly informed numerous persons of Father Maskell's character and activities, and she memorialized her memory of the abuse by recording her experiences in writing. Between the inception of the alleged abuse in 1970 and her first alleged "new memory" in 1993, Roe told "anybody who would listen" that Father Maskell was a "pervert." Moreover, Roe told her fellow high school students that Father Maskell abused her, she informed her first husband, "Jim," that Father Maskell abused her, she approached another counselor at school to inform him of the abuse and informed her current husband of the abuse. (T. 5/1/95 at 63-65). Not only did Roe continuously inform a multitude of persons throughout her lifetime of Father

Maskell's character and abuse, Roe specifically recorded her ongoing memories in a "diary" and "journal." Both the diary and journal, which were prepared in the 1970s and 1980s, accordingly to Roe, were "lost." (T. 5/1/95 at 61).

Not only did Roe maintain an ongoing, continuous and constant memory of the specific nature of the alleged abuse and inappropriate behavior of the Appellees, Roe fully, completely and unequivocally understood that the alleged actions of the Appellees were wrong. (T. 5/1/95 at 62-64). Despite her explicit cognitive understanding that both Father Maskell and Dr. Richter acted inappropriately towards her, as well as other students, Roe did not come forward to report the abuse. It was not until October of 1993, when Roe responded to an advertisement regarding alleged abuse at Keough High School, and after learning that Appellees' counsel represented other persons who alleged similar types of abuse, that "new memories," which form the basis of this matter, surfaced. (T. 5/1/95 at 93-94).

The evidence adduced at the hearing demonstrated that Roe's version of events regarding the recovery of her repressed memories was hopelessly confused and inconsistent. For example, Roe testimony regarding the first instance a "new" memory was recovered changed at least three times. (T. 5/1/95 at 81-90). Moreover, Roe could not accurately identify other dates that some of the "new" memories materialized. Id.

The recovery of Roe's alleged repressed memories of the rapes by the Appellees occurred after her consultation with attorneys. (T. 5/1/95 at 90 - 95) After responding to an advertisement, Roe was contacted by her present counsel



and immediately thereafter met with them. It was during a series of initial meetings that Roe disclosed the details of her ongoing memories of abuse. Months later, according to Roe, she awoke to a memory of an alleged rape by the Appellees, and she was then referred to a psychologist by her attorneys. It was after her therapy began that Roe recovered additional repressed memories of rapes. *Id.*

#### IV. ARGUMENT

##### A. THE LOWER COURT PROPERLY HELD THAT APPELLANTS' CLAIMS ARE BARRED BY MARYLAND'S THREE YEAR STATUTE OF LIMITATIONS

For purposes of the hearing below, the allegations of the Appellants were assumed to be true. (T. 5/1/95 at 5-6). The Appellants testified that the events forming the gravamen of their causes of action occurred between 1967 and June, 1972. Under Maryland law, a claim for battery must be filed three years after its occurrence, and these suits were filed in August of 1994. However, as both Appellants were minors at the time of the alleged acts, under § 5-201 of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland, the statute of limitations began to run on their eighteenth birthdays (Roe -- April 29, 1972 and Doe -- August 11, 1971).

Appellants' only potential means to prevent dismissal of their claims under the statute of limitations is to offer proof they were "disabled" under § 5-201 or, that they did not "discover" the batteries until sometime within three years before suit was filed. See Desser v. Woods, 266 Md. 696 (1973) (burden of proof on plaintiff). The lower court correctly held that the Appellants did not sustain their burden of