
New York Supreme Court

Appellate Division – Fourth Department

Docket No: CA 22-00294

FRANCIE F. GILCHRIST,

Plaintiff-Appellant,

-against-

MARK OLVER,

Defendant-Respondent.

**BRIEF OF *AMICUS CURIAE* CHILD USA
IN SUPPORT OF PLAINTIFF-APPELLANT**

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QUESTIONS PRESENTED

CHILD USA relies on the questions presented as submitted by the parties.

STATEMENT OF FACTS

CHILD USA relies on the statement of facts as presented by the parties.

AMICUS CURIAE STATEMENT OF INTEREST

CHILD USA is the leading non-profit national think tank fighting for the civil rights of children, and its mission is to employ in-depth legal analysis and cutting-edge social science research to protect children, prevent future abuse and neglect, and bring justice to survivors. CHILD USA's interests in this case are directly correlated with its mission to eliminate barriers to justice for child sex abuse ("CSA") victims who have been harmed by individuals and institutions.

CHILD USA is uniquely positioned to provide this Court with current research and analysis on the unique issues involved in CSA cases, including the science of trauma and its impact on the disclosure rates of victims. The Child Victims Act's ("CVA") revival window enabled victims of sexual abuse whose claims were previously time-barred to bring their claims. N.Y.C.P.L.R. § 214-g. In turn, claim revival for sexual abuse in New York has exposed hidden perpetrators to the public, shifted the cost of abuse from victims to those who perpetrated and enabled the abuse, and ultimately educated the public and helped prevent future abuse. CHILD USA's contribution will aid the Court's analysis beyond that which the parties' lawyers provide.

PRELIMINARY STATEMENT

CHILD USA respectfully submits this brief as *amicus curiae* pursuant to 22 NYCRR 1250.4(f). Plaintiff-Appellant challenges the ruling of the Supreme Court of New York that granted Defendant's Motion to Dismiss on the ground that Plaintiff signed a release agreement in 1993, barring her from bringing the instant action under the CVA. CHILD USA agrees with Plaintiff-Appellant that this Court should reverse the lower court's decision and permit Plaintiff to proceed with her claim that the 1993 agreement was procured under duress. This would invalidate the release and allow her to proceed with the instant action under the CVA.

CSA is a public policy crisis affecting one in five girls and one in thirteen boys in this nation.¹ Historically, most child victims never go to the authorities, and most claims expire before the victims may bring them to court.² Of those individuals who do choose to disclose, even fewer seek to hold their perpetrators accountable by filing civil claims. Disclosure of abuse is further complicated when the alleged

¹ G. Moody, et. al., *Establishing the international prevalence of self-reported child maltreatment: a systematic review by maltreatment type and gender*, 18(1164) BMC PUBLIC HEALTH (2018) (finding a 20.4% prevalence rate of child sexual abuse among North American girls); M. Stoltenborgh, et. al., *A Global Perspective on Child Sexual Abuse: Meta-Analysis of Prevalence Around the World*, 16(2) CHILD MALTREATMENT 79 (2011) (finding a 20.1% prevalence rate of child sexual abuse among North American girls); N. Pereda, et. al., *The prevalence of child sexual abuse in community and student samples: A meta-analysis*, 29 CLINICAL PSYCH. REV. 328, 334 (2009) (finding a 7.5% and 25.3% prevalence rate of child sexual abuse among North American boys and girls respectively).

² CHILD USA, *Delayed Disclosure: A Factsheet Based on Cutting-Edge Research on Child Sex Abuse*, CHILDUSA.ORG, 3 (Mar. 2020) available at <https://childusa.org/wpcontent/uploads/2020/04/Delayed-DisclosureFactsheet-2020.pdf>.

perpetrators are trusted figures in the child's life, especially in the role of a parent or other relative. Overwhelming social science research shows that the pervasive effects of CSA, including the delay of disclosure into adulthood (if ever), are particularly severe when the abuse occurs by a trusted figure in the victim's life, such as a family member. *See infra* Section II.

Further, the CVA's revival window is supported by clear legislative intent and the significant public interest to remedy the injustice of New York's prior unreasonably short statutes of limitation ("SOLs"), which obstructed CSA victims' access to the courts and kept the public in the dark about child predators. The dismissal of a case that was filed under the CVA's revival window, without fully considering the alleged facts and unique circumstances, would negatively impact thousands of CSA victims throughout New York with similar claims who embraced the window in pursuit of long overdue justice. Such a ruling would additionally jeopardize the important public policies of justice, public safety, and preventing future sexual abuse that the New York Legislature sought to uphold and improve when it passed the CVA.

Accordingly, CHILD USA respectfully submits that this Court reverse the lower court's decision granting Defendant's Motion to Dismiss and allow Plaintiff to proceed on her claims under the CVA.

ARGUMENT

Child sexual abuse (“CSA”) victims are traumatized in a way that is distinguishable from victims of other crimes. Many victims of CSA suffer in silence for decades before they talk to anyone about their traumatic experiences. The relationship between the victim and perpetrator, notably when the perpetrator is a trusted figure in the victim’s life, such as a parent, is of particular relevance when considering the pervasive effects of CSA and the timing of disclosure.

Accordingly, the revival window under the Child Victim’s Act (“CVA”) was enacted with a significant public policy purpose in mind: to reasonably remedy the injustice of New York’s untenably short CSA SOLs, which failed to reflect the scientific realities regarding the recognition and disclosure of abuse. These short SOLs inequitably blocked victims’ access to the courts and concealed from the public the predators who continued to sexually abuse children. Plaintiff’s previously time-barred claim against Defendant is precisely the type of claim the CVA was intended to revive.

As such, the Court should consider the pervasive, traumatic effects of CSA, particularly when the perpetrator is a trusted figure in the victim’s life, and reverse the lower court’s decision to consider Plaintiff’s claim that the 1993 release was procured under duress and proceed under the CVA’s revival window.

I. CHILD SEXUAL ABUSE AND ITS LIFELONG EFFECTS UNIQUELY PREVENT VICTIMS FROM BRINGING TIMELY CLAIMS

As mentioned above, CSA is a national public health crisis, with 3.7 million children sexually abused every year.³ An extensive body of evidence establishes that CSA survivors are traumatized in a way that is distinguishable from victims of other crimes. As children, sex abuse victims often fear the negative repercussions of disclosure, such as disruptions in family stability, loss of close relationships, or involvement with the authorities.⁴ This is a crime that typically occurs in secret, and many child victims of sexual violence assume no one will believe them.⁵

CSA victims may struggle to disclose their abuse because of psychological barriers such as shame and self-blame, as well as social factors like gender-based stereotypes or the stigma of sexual victimization.⁶ Victims may also develop a

³ See *Preventing Child Sexual Abuse*, CDC.gov, <https://www.cdc.gov/violenceprevention/pdf/can/factsheetCSA508.pdf>; D. Finkelhor, et. al., *Prevalence of child exposure to violence, crime, and abuse: Results from the Nat'l Survey of Children's Exposure to Violence*, 169(8) JAMA PEDIATRICS 746 (2015).

⁴ Delphine Collin-Vézina et al., *A Preliminary Mapping of Individual, Relational, and Social Factors that Impede Disclosure of Childhood Sexual Abuse*, 43 CHILD ABUSE NEGL. 123 (2015), <https://pubmed.ncbi.nlm.nih.gov/25846196/>.

⁵ See *Myths and Facts About Sexual Assault*, CAL. DEP'T OF JUST., https://www.meganslaw.ca.gov/mobile/Education_MythsAndFacts.aspx (last visited Aug. 17, 2022); National Child Traumatic Stress Network Child Sexual Abuse Committee, *Caring for Kids: What Parents Need to Know about Sexual Abuse*, NAT'L CTR. FOR CHILD TRAUMATIC STRESS 7 (2009), https://www.nctsn.org/sites/default/files/resources/factsheet/caring_for_kids_what_parents_need_know_about_sexual_abuse.pdf.

⁶ Ramona Alaggia et al., *Facilitators and Barriers to Child Sexual Abuse (CSA) Disclosures: A Research Update (2000-2016)*, 20 TRAUMA VIOLENCE ABUSE 260, 279 (2019), <https://pubmed.ncbi.nlm.nih.gov/29333973/>.

variety of coping strategies—such as denial, repression, and dissociation—to avoid recognizing or addressing the harm they suffered.⁷ Moreover, they disproportionately develop depression, substance abuse, Post-traumatic Stress Disorder (“PTSD”), and challenges in personal relationships. These mechanisms may persist well into adulthood, long past the date of abuse.

Victims of CSA, therefore, often need decades to process and cope with the abuse they suffered, much less to report it.⁸ In fact, a study found that 44.9% of male CSA victims and 25.4% of female CSA victims delayed disclosure by *more than twenty years*.⁹ Remarkably, it is estimated that 70–95% of CSA victims never report their abuse to the police.¹⁰ Additionally, research has found a higher rate of PTSD symptoms in CSA victims who delay disclosure when compared with those who did not delay disclosure.¹¹

⁷ G.S. Goodman et. al., *A prospective study of memory for child sexual abuse: New findings relevant to the repressed-memory controversy*, 14 PSYCHOL. SCI. 113–8 (2003), <https://pubmed.ncbi.nlm.nih.gov/12661671/>.

⁸ Rebecca Campbell, Ph.D., *The Neurobiology of Sexual Assault: Explaining Effects on the Brain*, NAT’L INST. OF JUSTICE (2012), [https://upc.utah.gov/materials/2014Materials/2014sexualAssault/TonicImmobility Webinar.pdf](https://upc.utah.gov/materials/2014Materials/2014sexualAssault/TonicImmobility%20Webinar.pdf) (hereinafter “Campbell”); *R.L. v. Voytac*, 971 A.2d 1074 (N.J. 2009); Bessel A. van der Kolk M.D., et al., *Traumatic Stress: The Effects of Overwhelming Experience on Mind, Body, and Society* (2006).

⁹ Patrick J. O’Leary & James Barber, *Gender Differences in Silencing following Childhood Sexual Abuse*, 17 J. CHILD SEX. ABUSE 133 (2008).

¹⁰ D. Finkelhor et al., *Sexually Assaulted Children: National Estimates and Characteristics*, US Dept. of Justice, Office of Justice Programs (2008), <https://www.ojp.gov/pdffiles1/ojdp/214383.pdf>.

¹¹ S.E. Ullman, *Relationship to Perpetrator, Disclosure, Social Reactions, and PTSD Symptoms in Child Sexual Abuse Survivors*, 16 J. CHILD SEX. ABUSE 19, 30 (2007), <https://pubmed.ncbi.nlm.nih.gov/17255075/>.

In sum, overwhelming social science research and evidence details the severe harm that CSA-related trauma is known to cause throughout a victim's life. Accordingly, the Court should consider these pervasive and harmful effects when determining Plaintiff's duress claim.

II. VICTIM-PERPETRATOR DYNAMICS UNIQUELY COMPLICATE CHILD SEXUAL ABUSE TRAUMA, PARTICULARLY WHEN THE PERPETRATOR IS A TRUSTED FAMILY MEMBER

CSA is most frequently committed by adults who occupy positions of trust and authority in the child's life.¹² Typically, the perpetrator will exploit this inherent power imbalance to exert control over the child.¹³ Perpetrators often use their position of power and trust to "groom" their victims, a process through which the perpetrator distorts the victims' emotions in way that makes them feel more "special" than other children.¹⁴ Offenders generally target victims who are somehow vulnerable, isolated, or from dysfunctional families and may lack emotional

¹² Paine, M. & Hansen, D.J., *Factors influencing children to self-disclose sexual abuse*, 22 *Clinical Psych. Rev.* 271-295, 276 (2002) (hereinafter "Paine").

¹³ *Id.*

¹⁴ See McAlinden, A., *'Setting 'Em Up': Personal, Familial and Institutional Grooming in the Sexual Abuse of Children*, 15 *SOC. & LEG. STUD.* 339, 340 (2006) (Grooming "refers to the situation whereby a potential offender will set up opportunities to abuse by gaining the trust of the child in order to prepare them for abuse."); see also, U.S. Dep't of Justice, *The National Strategy for Child Exploitation Prevention and Interdiction: A Report to Congress*, JUSTICE.GOV (Aug. 2010) ("Grooming usually involves normalizing sexualized behavior in the offender-child relationship by introducing increasingly intimate physical contact by the offender toward the victim, very gradually sexualizing the contact, and sometimes using child pornography to break down the child's barriers. This gradual process and the relationship of trust and authority that the offender usually holds over the child, along with the child's immaturity and subservience, serves to break down the child's resistance.").

stability.¹⁵ The dynamics of the abusive relationship and the insidious nature of the grooming process leaves children feeling deeply confused and overwhelmed.¹⁶ In fact, the grooming process causes many victims to perceive themselves as willing participants in a “relationship” with their perpetrator.¹⁷ The child’s feelings of complicity may be compounded by intense feelings of shame.¹⁸

These dynamics allow the victim-perpetrator relationship to play a critical role in further complicating the already traumatic CSA experience and affecting the timing of disclosure.¹⁹ For instance, the inherent power imbalance complicates victims’ experiences and perceptions surrounding the abusive event and can affect when and in what manner trauma-related symptoms manifest. Studies have shown that higher levels of certain abuse characteristics such as severity and duration, and whether it was committed by a trusted adult, are associated with poorer mental health outcomes.²⁰

¹⁵ *Id.* at 349.

¹⁶ *Id.*

¹⁷ *Paine* at 278.

¹⁸ Hunter, S., *Disclosure of child sexual abuse as a life-long process: Implications for health professionals*, 32(2) AUSTRALIAN AND NEW ZEALAND J. OF FAM. THERAPY 159, 164 (2011) (feelings of fear, shame, and embarrassment may dwarf a child victims desire to disclose abuse).

¹⁹ See Smith, D.W., et. al., *Delay in disclosure of childhood rape: results from a national survey*, 24(2) CHILD ABUSE & NEGLECT, 273-287 (2000); see also Sjoberg, R.L. & Lindblad, F., *Limited disclosure of sexual abuse in children whose experiences were documented by videotape*, 159 AM. J. PSYCH. 312-314 (2002).

²⁰ Banyard, V. & Williams, L., *Characteristics of Child Sexual Abuse as Correlates of Women’s Adjustment: A Prospective Study*, 58(4) JOURNAL OF MARRIAGE AND FAMILY, 853-856 (1996); Bennett, S., Hughes, H., & Luke, D., *Heterogeneity in Patterns of Child Sexual Abuse, Family Functioning, and Long-Term Adjustment*, JOURNAL OF INTERPERSONAL VIOLENCE (2000); Kendall-Tackett, K.A., Williams, L.M., & Finkelhor, D., *Impact of sexual abuse on children: A*

The effects of CSA and the timing of disclosure are of particular concern when the perpetrator is a family member, such as a parent or parental figure. When abuse takes place within a family unit, victims often battle obstacles to coming forward and disclosing the abuse that arise from “the presence of violence in the home; poor communication patterns; desire to protect the family; rigid gender roles; social isolation; and expected or experienced negative reactions to disclosure.”²¹ Studies have indicated that PTSD symptoms are greatest for those abused by relatives as compared to those abused by strangers, and in return, increased PTSD symptoms is associated with the delayed disclosure of abuse.²² Indeed, research shows that victims of CSA committed by relatives experience a higher severity of abuse and greater negative social reactions to abuse disclosures, especially in childhood.²³

The harsh reality is that CSA is most often committed by someone the victim knows and trusts. The relationship between the perpetrator and victim, specifically

review and synthesis of recent empirical studies, PSYCHOLOGICAL BULLETIN, 113(1), 164-180 (1993); Ketring, S.A., & Feinhauer, L.L., *Perpetrator-victim relationship: Long-term effects of sexual abuse for men and women*, THE AMERICAN JOURNAL OF FAMILY THERAPY, 27(2), (1999); Mullen, P.E. et al., *Childhood sexual abuse and mental health in adult life*, THE BRITISH JOURNAL OF PSYCHIATRY, 163, 721-732 (1993).

²¹ Collin-Vezina, D. et al (2015) *A preliminary mapping of individual, relational, and social factors that impede disclosure of childhood sexual abuse*, CHILD ABUSE & NEGLECT, 43:123-134.

²² Ullman, S.E., *Relationship to Perpetrator, Disclosure, Social Reactions, and PTSD Symptoms in Child Sexual Abuse Survivors*, JOURNAL OF CHILD SEXUAL ABUSE 16(1) (2007).

²³ *Id.*; see also Kendall-Tackett, K.A., Williams, L.M., & Finkelhor, D., *Impact of sexual abuse on children: A review and synthesis of recent empirical studies*, PSYCHOLOGICAL BULLETIN 113(1), 164-180 (1993).

when the perpetrator is a trusted parent or relative, is of particular importance when considering the pervasive effects of CSA over the course of the victim's lifetime.

III. THE SCIENCE OF TRAUMA AND DELAYED DISCLOSURE SUPPORT THE LEGISLATURE'S COMPELLING PURPOSES FOR ENACTING THE CVA REVIVAL WINDOW

Plaintiff's previously time-barred claim against Defendant is precisely the type of lawsuit the CVA was intended to include under its revival window, and therefore, all the facts alleged within her claim should be considered prior to dismissal. When creating the CVA revival window, the New York Legislature carefully considered the reality faced by CSA victims. It analyzed the science of trauma and how delayed disclosure prevents victims from bringing timely claims under short SOLs, and enacted the revival window to rectify its prior misunderstandings of the obstacles CSA victims face in bringing their claims to court. For example, the Assembly Committee Report Sponsor Memorandum provided:

The bill is a legislative acknowledgment of the *unique character of sex crimes against children, which can have a multitude of effects upon victims*, including being justifiably delayed in otherwise timely taking action against their abusers and/or those who facilitated their abuse.

Sponsor's Memorandum (AO5885 Memo), Assembly Bill No. 2683, 2019-20 Leg. Sess. (N.Y. 2019) (emphasis added).

The injustice that the Legislature sought to remedy through the CVA's revival provision is clear and well documented. New York's prior civil CSA SOL of age

twenty-three was an oppressive barrier to justice, as it rendered bringing claims to court virtually impossible for most survivors. *Id.* Compounding this was the fact that, unlike most other states, New York did not have a discovery rule to expand the SOL once survivors recognized their abuse or their injuries.²⁴ The Legislature understood that because of New York’s short SOL and lack of discovery rule, “thousands of survivors are unable to sue or press charges against their abusers, who remain hidden from law enforcement and pose a persistent threat to public safety.” *Id.* Notably, this aligns with New York’s “compelling interest” in protecting its youth from sex abuse, which is well established in legislative enactments and judicial rulings. *See, e.g., New York v. Ferber*, 458 U.S. 747, 756-57 (1982).

The Legislature’s enactment of the CVA revival window not only remedies the long-standing injustice to CSA victims, but also remedies the unfair negative ripple effects the public suffered because survivors’ stories remained concealed. Reviving expired claims serves New York’s compelling interests in: (1) identifying hidden child predators and the institutions that endanger children to the public, therefore shielding other children from future abuse; (2) shifting the cost of abuse from victims and taxpayers to those who caused the abuse; and (3) educating the public about the prevalence of CSA and the patterns institutions follow that put

²⁴ CHILD USA, *Discovery Rule Report: Discovery Tolling of Statutes of Limitation for Child Sexual Abuse Claim*, at 9 (Feb. 26, 2021), <https://childusa.org/2020-discovery-rule-report/>.

children at risk. With the opening of the revival window, the public was empowered to uncover instances of child sex abuse that would have otherwise remained hidden. Children are at heightened risk when the public and parents are left uninformed that adults and certain institutions to which they entrust their children have sexually assaulted children before and covered up that abuse. The decades before public disclosure give perpetrators and institutions wide latitude to suppress the truth to the detriment of children, parents, and the public.

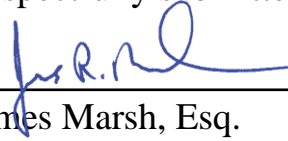
The alleged facts and circumstances of each case filed under the CVA's revival window should be wholly considered before dismissal in light of the Legislature's intent to open the courthouse doors for victims who were denied access to justice by historically short SOLs. Plaintiff's instant action deserves no less; to uphold the CVA's purpose, this Court should fully analyze the unique trauma Plaintiff experienced when subjected to sexual abuse by her stepfather, including Plaintiff's alleged duress when signing the 1993 release agreement.

CONCLUSION

For the foregoing reasons, *amicus curiae* requests this Court reverse the lower court's ruling in granting Defendant's Motion to Dismiss and allow Plaintiff to proceed with her claims under the CVA.

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