

Appellate Court Ruling may Lead to Increased Liability Against Mental Health Professionals in 'False Memory' Cases

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The Michigan Court of Appeals recently held that a mental health professional owes a duty to third parties, specifically a patient's parents, who might foreseeably be implicated in abuse when the professional treats a patient using techniques that cause his or her patient to have false memories of sexual abuse.

In the published opinion *Roberts v Salmi*, 2014 WL 7202808 (Mich Ct App December 18, 2014), the plaintiff parents had two daughters, K, 19, and her younger sister, L, both of whom lived at home. The plaintiffs had sought treatment for K from a mental health professional upon learning that a family friend had engaged in inappropriate sexual conduct with K. Eventually, the plaintiffs hired the defendant to provide mental health counseling to K.

Shortly after beginning treatment by the defendant, K remembered that her father had sexually and physically abused her beginning when she was five years of age. The defendant subsequently invited the plaintiffs to a group counseling session during which K confronted her father with her allegations of abuse. K also maintained that her father had abused L.

Several months later, the defendant notified the Michigan Department of Human Services of the abuse via a handwritten note which explained that K had "just remembered" the abuse. Department personnel and the Michigan State Police subsequently investigated, but no charges were ultimately brought against the parents.

The parents then brought suit in Houghton County Circuit Court alleging ordinary negligence or professional malpractice on the part of the defendant for engaging in "Recovered Memory Therapy" and implanting the false memories of abuse in K's mind. The defendant denied using such therapy in her affidavit of meritorious defense.

The trial court dismissed the claim, holding that the defendant owed no duty of care to avoid harming third parties resulting from her treatment of K.

APPELLATE COURT RULING MAY LEAD TO INCREASED LIABILITY AGAINST MENTAL HEALTH PROFESSIONALS IN 'FALSE MEMORY' CASES Cont.

The parents appealed and, in a 2 to 1 decision, the appellate court reversed. The majority engaged in a critical review of recovered memory theory and court opinions from other jurisdictions. The court held that the defendant did owe a duty of care to third parties, but limited the duty to one owed to parents in situations where a mental health professional uses techniques that cause his or her patient to have false memories of parental sexual abuse.

The court noted, “this case does not involve a situation where this Court is asked to analyze whether the mental health professional has a duty to protect his or her patient's parents from false accusations of sexual abuse. The allegations here are not that a mental health professional has a duty to ensure that a patient's allegations are true before reporting them or to otherwise protect a patient's parents from potentially false allegations of sexual abuse. Rather, this case involves allegations of professional misfeasance—namely, the negligent use of therapeutic techniques on a patient that actually cause the patient to have a false memory of childhood sexual abuse.”

The dissent would not have modified the common law to create such a duty and stated, “[p]laintiffs' claim is, in essence, that defendant relied upon “junk science” as a therapy method, which resulted in the creation of a false memory. It is far outside the expertise of this Court, or any future jury for that matter, to determine what is, or is not, an appropriate therapy method. It would seem to me that this is a question better left to the Legislature to address, or for the Legislature to delegate to an appropriate regulatory body with the expertise to determine under what circumstances a therapy method may be utilized, if at all. Under these circumstance, a court could entertain a claim that a therapist used a prohibited method, or utilized a method outside the circumstances approved for its use.”

While this case presents a unique factual scenario, the holding is significant because it expands the potential liability for mental health care providers in the state of Michigan.