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COURT RECOGNIZES REALITIES OF CHILD ABUSE

by Jay Howell

A tragic and all too common scenario of child exploitation unfolds. A young child is the target of repeated sexual abuse, committed by a parent, step-parent, or other relative in her own home. The child is always afraid. The perpetrator is an individual she has been taught to trust and to rely upon. The recurring scene of the crime is her own bedroom.

Finally, the child musters the courage to report what has happened to her. Her outcry launches an official investigation where child protective service workers and the police interview the child and other family members. The official focus on the family turns the child's existence upside down. Family members tell the young girl that if the investigation continues, the entire family will be broken up. Without the perpetrator in their lives, the family will not have financial resources to continue. The trusted father, step-father, or uncle, will go to jail.

Some of the child's family members believe her. Some do not. People tell her that she holds the keys to the family's future.

In response to this overwhelming burden, the child retreats to the only reasonable shelter that is available - she tells the investigators that it didn't happen.

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Any child care professional who has a deep experience with the family dynamics of child abuse will tell you that the above-described series of events is all too common. Fifteen years ago a California physician described this as the Sexual Abuse Accommodation Syndrome. Dr. Roland Summitt, M.D., of Los Angeles offered a series of articles explaining that the child's only reasonable alternative, in accommodating and dealing with the pressures placed upon her was to seek the only escape hatch which was within her grasp and report to investigators that the acts of abuse did not happen after all.

During the last two decades, our courts have struggled with understanding and resolving this family dynamic in our legal system. Recently, the Florida Supreme Court tackled this issue head on. In *Department of Health and Rehabilitative Services vs. M.B.*, 22 Fla. L. Weekly S564, the Court considered a case where an eight-year-old child victim disclosed to her teacher and to child protection investigators that her stepfather had sexually assaulted her. Her mother acknowledged that the child had been molested, but refused to believe that the perpetrator was her husband. After the initial dependency petition was filed, the child told investigators that she no longer could remember who abused her. At the trial on the dependency petition the child testified that she was unable to identify the person that had hurt her. Medical evidence was also admitted along with the testimony of several witnesses regarding the **child's initial statements about her abuse and the identity of the perpetrator**. Relying upon the testimony of various adults who had listened to the initial complaints of the child, the trial court entered an order of dependency.

The Supreme Court of Florida held that the hearsay exception in the Florida Evidence Code permitted the admission into evidence of the out of court statements of the child victim without the necessity that those statements be consistent with the child's trial testimony. The Court emphasized the strict standards of reliability that must be applied before admitting such hearsay statements. The Court

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determined that since the child did not testify that her step-father did not abuse her, she did not deny her previous statements and to characterize them as a recantation was inappropriate.

In an extended footnote the Court reviewed various out of state court decisions and legal articles on the reliability of children's out of court statements.

The Court concluded that when combined with the objective and unchallenged corroborating medical evidence in the case that indicated that some form of sexual penetration had occurred, the evidence was sufficient to meet the preponderance of the evidence standard applicable in Florida dependency cases.

In this decision, rendered by the highest legal authority in Florida, the Court did not conclude that all allegations of abuse are valid or that every instance of recantation means that the child was unfairly pressured by family or friends. However, the Supreme Court has provided an insightful analysis of the dynamics of this horrible situation and a legal response to child abuse which is based upon a deeper appreciation for the true forces at work in the child's life.