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# 心理師使用恢復記憶療法 而對第三人負注意義務 Mental Health Professional Has a Duty to Third Parties When Using Recovered Memory Therapy

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案號: Court of Appeals of Michigan.

Lale ROBERTS and Joan Roberts, Plaintiffs–Appellants, v. Kathryn SALMI, LPC, d/b/a Salmi Christian Counseling, Defendant–Appellee.

Docket No. 316068. Decided: December 18, 2014



# 摘要

被告為K提供諮商服務,K指稱受其父即原告性虐待。被告通報性侵案件後,調查顯示尚無原告性侵其兩位女兒之證據,故不起訴原告夫婦。嗣後原告夫婦指控被告因使用恢復記憶療法致K產生錯誤記憶,使原告不僅受到虛偽指控,更因此與K斷絕往來。一審法院認為,被告僅僅對其個案K負有注意義務,而不包含第三人原告夫婦,進而判原告敗訴。惟上訴法院認為恢復記憶療法有致錯誤記憶之危險,被告可預見其危險將

關鍵詞:心理諮商師(licensed professional counselor)、注意義務(duty

of care ) 、恢復記憶療法(Recovered Memory Therapy)、醫療事故(malpractice)、醫療過失(negligence)

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使原告受有虛偽指控之可能,何況被告具有專業能力 來防範原告受到此等令人羞恥的虛偽指控,故而具有 限的注意義務。密西根上訴法院爰撤銷一審判決並發 回。

Shortly after the defendant, a licensed professional counselor, has provided counseling to K, K purportedly remembered that her father had physically and sexually abused her. Therefore, the defendant reported the allegations to the Department of Human services. However, the investigators found no physical evidence that K's father had been or was being physically or sexually abused, and thus no charges were brought against K's parent. Thereafter, the plaintiff, K's parent, alleged that the defendant treated K with "Recovered Memory Therapy", which improperly made false memories of sexual abuse. The plaintiff maintained that K severed all ties with her parents. The trial court agreed that the defendant had no duty of care to avoid harming third parties with her treatment of K. However, it is entirely foreseeable that the use of suggestive techniques to recover memories might result in the creation of false memories of abuse by the plaintiff. The defendant is in the best position to avoid the harm caused by the introduction of false memories. As a result, the defendant owes a limited duty of care to the plaintiff. Court of Appeals of Michigan reverse and remand for further proceedings.

## 壹、事實概要

## 一、事件概要

原告夫婦有兩位女兒,K與患有唐氏症之L。因K受不適當的性接觸,原告夫婦為其尋求心理健康專家之幫助。具諮商



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師(licensed professional counselor)資格之被告於2009年7月開始為17歲之K提供諮商服務。諮商過程中K稱其於5歲起受父親性虐待,被告於是邀請原告夫婦與K參與團體諮商,其中K並指控原告性虐待。同年9月,被告向政府部門通報性侵案件,並提供調查人員手寫便條,其記載K所稱之虐待行為以及K指稱L亦受虐待。

經調查後,尚未有任何證據顯示L受到家庭虐待。一方面 K指控的虐待行為,與被告手寫便條所載之細節驚人地一致; 另方面,據未同住之K的姐姐所稱,雖原告夫婦乃基督教基本 教義派而有堅定信仰與實踐,進而讓K的姐姐認為有身體上與 心理上之壓迫,但不相信其父會性侵K與L,亦未觀察到有虐 待之事跡。最終,原告夫婦並未被起訴。

2012年1月,原告夫婦起訴被告具有一般過失與疏失(ordinary negligence or malpractice),即被告對K實施「恢復記憶療法」(recovered memory therapy),但K有義務不藉由催眠、年齡回溯(age regression)或其他心理治療方法,不當植入或強化性虐待的錯誤記憶。原告聲稱K在接受被告治療後才出現錯誤記憶且堅信不疑,因此K與原告至今斷絕往來,而原告不僅受到警方調查,社會也注意到這些指控。

被告則答辯其未受催眠專業訓練,亦未實施恢復記憶療法,並無故意使用任何暗示性技巧。被告堅稱若個案未將性侵事件當作問題時,其不會探索該類事件或創傷。被告認為因K的治療紀錄不應公開,原告夫婦因此不能舉證被告治療K具有過失;其次,被告認為其只對K有注意義務,縱其諮商治療有所過失或不當,所受損害之第三人仍不得向其求償;最後,原告夫婦所請求賠償之損害乃感情疏離(alienation of affections),此非密西根(Michigan)州法所允。