

State of New York Court of Appeals

Summaries of cases before the Court of Appeals are prepared by the Public Information Office for background purposes only. The summaries are based on briefs filed with the Court. For further information contact Gary Spencer at 518-455-7711 or gspencer@nycourts.gov.

To be argued Thursday, March 13, 2025, in Binghamton

No. 37 Nellenback v Madison County

Michael Nellenback filed this action against Madison County under the Child Victims Act in 2019, alleging the County was liable for negligent hiring and supervision of a caseworker who sexually abused him beginning in 1993, when Nellenback was 11 years old. At that time he had been designated a person in need of supervision and placed in custody of the County's Department of Social Services (DSS). He was assigned to DSS caseworker Karl Hoch, who had been named "Madison County Employee of the Year" in 1990, and he said Hoch began abusing him almost immediately. Hoch's sexual misconduct with other children was reported to the County in 1996 and he was immediately suspended. Hoch was convicted of various sex crimes and sentenced to prison, where he died in 2001.

Supreme Court granted the County's motion for summary judgment dismissing the case, saying it "has made a prima facie showing that Madison County lacked knowledge, actual or constructive, of Karl Hoch's propensity to engage in sexually exploitive and abusive conduct with the children under his care. The record evidence is that Hoch had a lengthy and positive reputation as a County employee."

The Appellate Division, Third Department affirmed on a 3-2 vote, finding the County had met its prima facie burden and Nellenback failed to raise a triable issue of fact regarding his negligent hiring and supervision claims. As for supervision, the majority said, "Plaintiff's reliance on the offhand comment by Hoch's supervisor ... that she could have reviewed Hoch's case notes more carefully does not negate the fact that she regularly met with caseworkers and, more importantly, that there was no indication in any notes, or anywhere else in the record, that would have provided any notice to the supervisor that Hoch was engaged in sexual misconduct." Further, it said "the record is devoid of any proof that would establish the required nexus between the failure by Hoch's supervisor to address any potential inadequacies in Hoch's preparation of case notes and the sexual abuse that Hoch was perpetrating. In light of the lack of evidence signaling a propensity for committing such acts, the suggestion that a more formal review may have revealed some indication of improper interactions with plaintiff amounts to nothing more than hopeful speculation."

The dissenters argued that Nellenback raised a triable question as to whether the County's supervision of Hoch was negligent, saying "Hoch had regular contact with plaintiff over a three-year period and was required, but failed, to document his interactions with the child. The supervisor, in turn, failed to regularly review Hoch's notes..., essentially relying upon Hoch's self-reporting. Had the supervisor actually reviewed Hoch's notes, she would have learned that Hoch failed to document any interaction with plaintiff – an omission that presented a genuine concern as to Hoch's conduct and the safety of the child. As a consequence, Hoch was left in a position to cause foreseeable harm that could have been avoided had more diligent supervision efforts been made. The harm was foreseeable because Hoch was effectively concealing his actual contacts with plaintiff over an extended period of time. Under these circumstances, the record presents a question of fact as to both negligent supervision and causation."

For appellant Nellenback: Hillary M. Nappi, Manhattan (212) 779-0057

For respondent Madison County: Kevin G. Martin, Utica (315) 507-3765

State of New York Court of Appeals

Summaries of cases before the Court of Appeals are prepared by the Public Information Office for background purposes only. The summaries are based on briefs filed with the Court. For further information contact Gary Spencer at 518-455-7711 or gspencer@nycourts.gov.

To be argued Thursday, March 13, 2025, in Binghamton

No. 38 Carlson v Colangelo

Kristine Carlson was the long-term romantic partner of Donald Dempsey and, as a registered nurse, served as his caregiver from the time of his cancer diagnosis in 2005 until he died in December 2015. In or about 2005, Carlson transferred \$100,000 to Dempsey for the purchase of commercial real estate in Peekskill, which Dempsey created Dempsaco LLC to own. The parties dispute whether the transfer was a loan, which Dempsey partially repaid, or an investment that was to give Carlson a 50% share of Dempsaco. Crissy Colangelo, Dempsey's daughter, is trustee of the Donald P. Dempsey Revocable Trust and executor of his will, and is the principle beneficiary under both instruments. The trust and the will, created shortly before Dempsey's death, contain an in terrorem clause providing that any beneficiary who contests any of their provisions would forfeit any legacies provided for them. The trust provided that the trustee would transfer title to his house in Cortlandt Manor, where he and Carlson lived together, and further stated that it was his "sincere wish and desire that [Colangelo] provide a stream of income, not to exceed [\$350,000] in total," to Carlson. Carlson was not informed she was a beneficiary of the trust until two and a half years after Dempsey's death, when she received a letter from Colangelo's attorney telling her that Dempsey "grossly over-estimated the value of Dempsaco LLC.... As such, neither Crissy nor the company has a stream of income or assets with which to pay anything to Kristine." The letter informed Carlson that, in order to receive the house left to her in the trust, she would have to waive all rights to the \$350,000 income stream and sign a release indemnifying Colangelo. Carlson filed this suit in January 2019 against Colangelo, as trustee, and Dempsaco, seeking declarations that she was entitled to the house in Cortlandt Manor and the \$350,000 income stream and that she was a 50% owner of Dempsaco.

Supreme Court partially granted the defendants summary judgment dismissing Carlson's suit and declaring she violated the in terrorem clause. It said Dempsey had been sole owner of Dempsaco and, pursuant to the trust, "all of [his] interest in Dempsaco went to Colangelo." It said, Carlson "did indeed contest 'any aspect' of the Trust, by ... claiming that she was a 50% member of Dempsaco LLC. This court ultimately determined that Plaintiff is not even a member of Dempsaco LLC. Viewing the totality of the conduct by the parties, it is determined as a matter of law that Plaintiff clearly violated the in terrorem clause of the Trust and, consequently, forfeited her legacies thereunder...." The Appellate Division, Second Department affirmed.

Carlson argues that the decision below "contravenes both this Court's decision in Matter of Singer [13 NY3d 447] and this State's long-standing public policy of strictly construing *in terrorem* clauses" and, if not reversed, "will result in nullifying the Decedent's intentions: under [Dempsey's] Trust, he wanted [Carlson] to have two pre-residuary bequests: a house and \$350,000 in total. She has not received either one." She says Colangelo "abused her fiduciary duties when she sought to force [Carlson] to accept only the house (and to give up the \$350,000 bequest)." And her own lawsuit did not violate the in terrorem clause because it sought "to carry out the Decedent's express intentions" under the trust and "never contested any aspect of [Dempsey's] Trust."

For appellant Carlson: Frank W. Streng, White Plains (914) 946-3700

For respondents Colangelo and Dempsaco: Michael Konicoff, Rye (914) 835-6900

State of New York Court of Appeals

Summaries of cases before the Court of Appeals are prepared by the Public Information Office for background purposes only. The summaries are based on briefs filed with the Court. For further information contact Gary Spencer at 518-455-7711 or gspencer@nycourts.gov.

To be argued Thursday, March 13, 2025, in Binghamton

No. 39 Tuckett v State of New York

Ali Tucker filed this unjust conviction claim against the State under Court of Claims Act § 8-b, asserting that he had been wrongfully convicted of sexually abusing a male relative in Rochester in 2009, when Tuckett was 35 years old and the complainant had just turned 11. After his conviction in 2011, Tuckett was sentenced to 18 years in prison. In 2014, the complainant met with the prosecutor and recanted his accusations, and County Court vacated Tuckett's conviction in 2015.

The Court of Claims dismissed Tuckett's claim after a bench trial, concluding that he failed to establish by clear and convincing evidence that he did not commit the sexual abuse of which he had been convicted. The court found that neither Tuckett's testimony in the civil case nor the complainant's recantation were credible. On appeal, Tuckett contended that the Court of Claims improperly relied on hearsay statements and on documents that were not entered into evidence in the civil case.

The Appellate Division, Fourth Department affirmed in a 3-2 decision. The majority rejected Tuckett's claim that the court improperly considered statements by the complainant's aunt, who did not testify in the civil case, that she was disturbed by an incident in which the complainant had been alone in his bedroom with Tuckett and ran out of the room crying. "But both the complainant and [Tuckett] testified that the aunt saw the complainant coming out of the room crying, and [Tuckett] testified that, at the criminal trial, the aunt may have given such testimony," it said. "There was therefore admissible evidence to support the court's finding..." It said the court, in finding Tuckett's testimony and the complainant's recantation unreliable, did not rely on the complainant's hearsay statements to a police officer and a prosecutor that he 'felt better' after reporting the abuse and was concerned about possible health effects. Instead, it said, the court "gave numerous and detailed reasons based on admissible evidence for making those credibility determinations."

The dissenters said "the Court of Claims erred in considering the grand jury and trial testimony of [the complainant], as well as the trial testimony of complainant's mother and aunt, each of which had been marked for identification, but had not been introduced in evidence.... [I]t is clear from the court's decision that the improperly considered and prejudicial evidence 'substantially affected the verdict.'" They also argued that "the court erred in considering hearsay statements made by complainant to the Assistant District Attorney who had prosecuted the criminal matter.... Inasmuch as the court expressly relied upon the statements as evidence of the credibility of complainant's original accusations, the error cannot be deemed harmless."

For appellant Tuckett: Katie McCarthy, Manhattan (212) 965-9081

For respondent State: Assistant Solicitor General Frank Brady (518) 776-2054

State of New York Court of Appeals

Summaries of cases before the Court of Appeals are prepared by the Public Information Office for background purposes only. The summaries are based on briefs filed with the Court. For further information contact Gary Spencer at 518-455-7711 or gspencer@nycourts.gov.

To be argued Thursday, March 13, 2025, in Binghamton

No. 40 People v Hu Sin

Hu Sin was charged with forcibly raping a female relative of his wife in her Buffalo apartment in May 2017. The assault was witnessed by the victim's young son and ended when the boy ran out the door. Both Sin and the victim are immigrants from Myanmar and speak only Burmese.

Before trial, the prosecution sought to introduce Molineux evidence of two prior uncharged crimes involving the attempted rape of two other female relatives of his wife. The first incident occurred in Salt Lake City in 2011 or 2012, when Sin entered the woman's home, sent her children outside, and allegedly attempted to rape her. She fought him off until her children returned and knocked on the door, at which point he stopped and urged her to tell no one. She said she did not report the incident at the time because she did not want to violate Burmese cultural norms. The second incident occurred in March 2017, when Sin allegedly attempted to rape the other relative in a house in Buffalo. She, too, fought him off and said he urged and threatened her to tell no one, offering her \$500 to keep quiet. She said she told her mother, father and son, about the assault and they convinced her not to report it to the police in order to protect the family's reputation.

County Court granted the Molineux application to admit the testimony about prior uncharged crimes. "Where admitting such testimony establishes an element of the crime charged, such as the forcible compulsion of rape, the probative value exceeds the potential prejudice to the defendant..." it said. "[T]he facts and circumstances surrounding all three incidents have similar fact patterns and do demonstrate a common scheme amongst them." Sin was convicted of first-degree rape and sexual abuse and sentenced to 15 years in prison.

The Appellate Division, Fourth Department affirmed on a 4-1 vote, saying the testimony of the victim's relatives was admissible "for the purposes of completing the narrative and providing relevant background information of the family dynamic.... [T]he victim and her two [relatives] 'share a specific ethnic background whose culture ... afford[s] men significant power and respect,'" and the testimony "was probative insofar as it helped explain the victim's conduct in the aftermath of the rape as well as why defendant would make such an overt and brazen sexual advance on the victim while her son was present." The majority further found the testimony "was relevant to the element of forcible compulsion" needed to prove the rape and sexual abuse charges. "It was defendant's theory at trial to suggest that defendant and the victim were engaged in rough but consensual sexual acts. Thus, the testimony of the victim's [relatives] was relevant to establish defendant's use of force...."

The dissenter argued that "the prejudicial value of the proffered Molineux evidence outweighed its probative value and adversely affected defendant's ability to have a fair trial." She said, "The testimony provided no additional insights into the parties' relationship, gave no context to explain defendant's conduct, and did not corroborate any particular details of the victim's testimony.... [T]he probative value of defendant's attempted sexual assaults of [her relatives] is nothing more than evidence of defendant's propensity to commit sex crimes."

For appellant Sin: Thomas J. Eoannou, Buffalo (716) 885-2889

For respondent: Erie County Assistant District Attorney Daniel J. Punch (716) 858-2424