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Sonia F. ex rel. J.M. v. Dist. Ct.
125 Nev. Adv. Op. No. 38 (Sept. 10, 2009)¹

EVIDENCE – RAPE SHIELD LAW IN CIVIL CASES

Summary

Nevada’s rape shield law² applies only to criminal proceedings and not civil cases. However, the district court may limit the discovery of an alleged victim’s sexual history to protect the victim’s privacy.

Disposition/ Outcome

The Court held that NRS 50.090 is plain and unambiguous and applies to criminal prosecutions but not to civil trials. Nevertheless, the Court held that discovery should not be unlimited in civil sexual assault cases. Rather, the district court should use its sound discretion to determine whether the discovery sought is relevant and “reasonably calculated to lead to the discovery of admissible evidence.”³

Factual and Procedural History

Sonia F. filed a civil complaint *ad litem* (on behalf of her minor daughter J.M.) against Amir Ahmad. The complaint requests compensation for the physical, emotional, and mental harm suffered as a result of Ahmad’s alleged rape of J.M.⁴ During discovery, Ahmad filed a motion to compel J.M. to submit to an independent medical examination to address J.M.’s claims for emotional damages. The district court granted Ahmad’s request.

Relying on Nevada’s rape shield law, Sonia F. filed a protective order to specifically prevent questioning J.M. about her sexual history. Ahmad opposed the motion, arguing that Nevada’s rape shield law does not apply in civil cases. The district court denied Sonia F.’s protective order, thereby inducing this appeal. In the interim, the Court granted a temporary stay of further discovery until resolution of the issue.

Discussion⁵

The Court held that NRS 50.090 is unambiguous and does not apply to civil trials.⁶ The Court held that the terms “prosecution” and “accused,” evinced the legislature’s intent that the statute exclude civil proceedings and apply solely to criminal prosecutions.

The Court stopped short of adopting a bright-line rule permitting *all* discovery in civil sexual assault cases. Instead, the Court stressed that under NRCP 26, district courts have the

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² NEV. REV. STAT. §50.090 (2007).

³ NEV. R. CIV. P. § 26(b)(1).

⁴ Ahmad admitted to having sexual intercourse with J.M. but contends that it was consensual.

⁵ Issues of statutory construction are reviewed *de novo*. *Stalk v. Mushkin*, 125 Nev., __, __, 199 P.3d 838, 840 (2009).

⁶ NEV. REV. STAT. § 50.090 states in relevant part: “In any prosecution for sexual assault or statutory sexual seduction . . . the accused may not present evidence of any previous sexual conduct of the victim of the crime to challenge the victim’s credibility as a witness unless the prosecutor has presented evidence or the victim has testified concerning such conduct, or the absence of such conduct, in which case the scope of the accused’s cross-examination of the victim or rebuttal must be limited to the evidence presented by the prosecutor or victim.” (emphasis added).

broad discretion to determine, on a case-by-case basis, whether the alleged victim's sexual history is discoverable. The Court further noted that district courts have broad discretion to limit discovery and protect alleged victims from annoyance, embarrassment, or oppression.⁷⁸

As a guideline, the Court identified *D.S. v. Depaul Institute*, as instructive on the issue. In *DePaul*, a Pennsylvania district court differentiated between the plaintiff's history of consensual sexual relationships from history of traumatic experiences.⁹

Conclusion

NRS 50.090 applies only to criminal trials. The statute does not limit discovery of an alleged victim's sexual history in civil cases. However, district courts may choose to allow discovery on a case-by-case basis pursuant to NRCP 26.

Accordingly, the Court granted the petition in part. In addition, the Court vacated the stay on discovery that it previously entered. The Court further ordered the clerk of the court to issue a writ of mandamus instructing the district court to conduct discovery in a manner consistent with this opinion.

⁷ NEV. R. CIV. P. § 26(c).

⁸ The Court cited NEV. R. CIV. P. § 26(5)(c), which does not exist. The correct section is NEV. R. CIV. P. § 26(c).

⁹ *D.S. v. DePaul Institute*, No. GD93-19010, 1996 WL 932778, at *7 (Pa. Ct. Com. Pl. May 2, 1996).