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## State's cap on damages in rape case questioned

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COLUMBUS — A state law limiting jury awards in most civil lawsuits should not be used to invalidate a \$3.5 million verdict for a 15-year-old girl raped by a church pastor, her attorney argued Tuesday before the Ohio Supreme Court.

The case puts the high court in the potential position of rethinking a law it has already upheld.

"If (the victim), in the course of fleeing from the first rape, falls, trips, and scars her leg, this case goes from \$250,000 to \$3.5 million, because she has a disfigurement," the victim's attorney, John K. Fitch, said. "That, we say, is incredibly arbitrary and irrational."

At issue is a 2004 law that limits civil damages in non-catastrophic cases, those that don't involve something like the loss of a limb. The law does not cap economic damages for lost wages, medical costs, and quantifiable out-of-pocket expenses.

But it does limit awards for harder-to-measure pain, suffering, and other noneconomic damages to \$250,000, or three times the economic damages up to \$500,000 per incident, whichever is greater.

Brian L. Williams, a senior pastor at Sunbury Grace Brethren Church, pleaded guilty to two counts of sexual battery for the rape of the girl during a 2008 counseling session. Williams, now 53, is nearing the end of his eight-year sentence at Chillicothe Correctional Institution.

The girl reported the incident to school officials the next day, and she and her father later sued the church when they learned it was apparently aware of prior allegations of inappropriate conduct by Williams while he was a youth pastor at the affiliated Grace Brethren Church in nearby Delaware.

In 2013, a jury awarded the now adult woman and her father more than \$3.5 million in damages. The judge then reduced the non-economic damages to \$350,000. He then issued another order, currently on hold, to further reduce the award to the \$250,000 maximum.

William C. Curley, attorney for Grace Brethren Church, noted that the trial court in Delaware County did not find evidence of serious permanent emotional injury that might qualify as an exception to the caps under the law.

"There was no evidence that she could not care for herself," he said. "She played basketball, and went to college, and got good grades."

Some of the justices suggested these issues were already covered under their decision in 2007 to uphold the law in an unrelated product liability case, despite the arguments of the attorney that child rape victims should be treated differently.

Lawmakers who passed the tort reform law had argued at the time that it was necessary to provide a stable, predictable litigation climate for business in the state.

"Aren't you really better off making your argument to the members of the General Assembly, and saying we know you have damage caps, but you should carve out an exception for this category of individual, rather than have us do it under the umbrella of the Ohio Constitution?" Justice Terrence O'Donnell asked Mr. Fitch.

Mr. Fitch argued the law violates juvenile sexual assault victims' constitutional right to due process, considering the emotional damage can follow victims into adulthood. The appeal also argues the law violates their rights to trial by jury and equal protection under the law because juveniles don't typically have wage loss or other measurable economic damages that feed the formula for noneconomic damages.

The appeal questions whether the two sexual offenses to which Williams pleaded guilty, offenses that occurred within a short period of time on the same day, should be considered separate occurrences. That could double the amount of total damages.

The Blade does not publish the names of victims in its coverage of sexual assault cases.

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**Neal Levine** · University of Toledo  
 This will be interesting for the Court and what they do but totally the Courts and the legislature should have realized something like this would come along. If the Court decides to make an exception not written in the law and against the intent of the legislation they will have killed this law subject to any award damages which they already have enforced in Products liability cases. On the other hand not to allow these damages would allow the full punishment for the Church itself to walk away with a slap on the wrists. The legislature and the Courts did this to themselves and only have themselves to blame. Do the right thing. Do not ignore this child. Its bad law and needs to be changed.  
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