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Gehrke: Victims of sex abuse should be able to sue the perpetrator, even if the case is decades old



(Al Hartmann | The Salt Lake Tribune) Terry Mitchell, who allegedly was sexually assaulted by a federal prosecutor in 1981, spoke out against HB 298, Victim Confidentiality Amendments, at the House Judiciary Committee Friday, Feb. 23, 2018. She speaks with Rep. Ken Ivory, R-West Jordan, a member of the committee, outside the chambers.



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The Utah Supreme Court will hear arguments Monday on whether a woman can pursue a sex abuse case against a federal judge who stepped down when her allegations went public.

You may remember hearing Terry Mitchell's story when it made national headlines in 2016. Mitchell witnessed the murder of two of her friends, both black, by racist serial killer Joseph Paul Franklin while they were jogging in Liberty Park in 1980.

Mitchell has alleged that Richard Warren Roberts, a then-27-year-old federal prosecutor assigned to the case, sexually abused her over the span of several months during the 1981 trial. She was 16 at that time. He coerced her into keeping it secret, she said, by saying Franklin would go free if the activities became public.

Mitchell's attorney, former Salt Lake City Mayor Rocky Anderson, filed a civil suit against Roberts in March 2016. Roberts — who had gone on to be the chief judge for the Washington, D.C., district court — submitted his retirement paperwork the same day.

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The Salt Lake Tribune staff portraits. Robert Gehrke.

Now, Roberts' attorneys are trying to get Mitchell's case tossed out, arguing the law at the time provided a strict deadline for such a civil case and Mitchell missed it.

But in 2016, the Utah Legislature passed HB279, sponsored by Rep. Ken Ivory, R-South Jordan, which removed the statute of limitations for child sex abuse lawsuits. And it did so not only going forward, but in all past cases of abuse.

Roberts' attorneys are arguing that this sort of retroactive change is not just unfair to a defendant, but violates the Utah Constitution and Supreme Court precedent dating almost all the way back to statehood.

Anderson contends that's not the case. The courts have decided a law can be retroactively applied if there is clear intent the Legislature wanted to make it retroactive.

And the Utah Legislature, in an amicus brief filed in the case, said that's exactly what it intended to do when it passed HB279. In the brief, lawmakers urged the justices to respect the Legislature's authority to make laws.

In fact, the Legislature, a year earlier, had enacted a law removing the statute of limitations going forward. The sole reason to revisit the issue was to deal with retroactive claims.

"We thought if we protected children going forward, that would be a good step for the future," Ivory said on the House floor. "After we passed that bill, I got calls almost every week, agonizing calls from all over our state, all over our nation, people who had lived in Utah as children and they would tell me their horrifying stories of abuse as a child and they would ask, 'Does [last year's bill] help me?'"

In case after case, Ivory said, it did not. The clock had run out and they had no recourse, which prompted the proposal to make the statute of limitations change retroactive.

Now, in many instances having a statute of limitations makes sense so parties in a contract dispute or some other disagreement don't get slapped with a lawsuit decades later. In fact, in pretty much every case, I would argue, it's a terrible idea for the Legislature to change the rules after the fact by making laws retroactive.

This is the rare exception.

For too long, Utah had a bad law on the books. Until 2016, a case had to be filed by the time the victim of a sex crime turned 22 years old. It is an unrealistically narrow and rigid deadline in which to bring a case resulting from a crime that is uniquely complex and fraught with emotion.

As the Legislature pointed out in the body of the new law, child sex abuse targets the most vulnerable in our community. The perpetrators often are family members or people with positions of authority who can use coercion or fear or guilt to conceal their acts. It can take years for a survivor to come to terms with what happened.

So there were highly compelling reasons for the Legislature to change the law, as it did, and to make it retroactive.

Mitchell won't be the first Utahn to sue her accuser under the new law. Last year, Ginger Utley settled a lawsuit against a former neighbor and Sunday school teacher, Jess Hurtado, who Utley said had abused her for five years, beginning when she was 13.

Mitchell's case has already been more complicated. The attorney general's office shared its entire investigation — including interviews with Mitchell and other evidence even she didn't have access to — with congressional committees and court administrators. Somehow the information made it to Roberts, which infuriated Anderson, Mitchell's attorney.

Roberts retired and has been receiving his full pay and health insurance, Anderson said. Rep. Jason Chaffetz vowed to get to the bottom of the Roberts matter, not long before he quit the U.S. House.

If the state Supreme Court sides with Mitchell and the Legislature, her case will go back to federal court and attorneys will fight it out there.

If the court rules against her and strikes down the retroactive component of Utah's law, Mitchell's case will be dismissed. She and an untold number of survivors of child sexual abuse who carried the burden for years will lose their chance to hold their abusers accountable.



gehrke@sltrib.com



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