

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF MONROE

MAGDALENA CRUZ, as Guardian of Person of I.C., Plaintiff, -against- NEW YORK STATE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES, Defendant.

VERIFIED COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Magdalena Cruz, as Guardian of Person of I.C., by her attorneys, Crumiller P.C. and C.A. Goldberg PLLC, as and for her complaint against defendant the New York State Office For People With Developmental Disabilities (“OPWDD”), respectfully alleges as follows, upon information and belief:

PRELIMINARY STATEMENT

1. Systemic sexual abuse can persist for years, even decades, when institutions such as churches, schools, and prisons collude to protect and enable sexual abusers at the expense of the vulnerable people they target.
2. Facilities for our developmentally disabled population are no exception. Indeed, New York State has a shameful history of abusing developmentally disabled patients in its institutionalized care state-wide overseen by OPWDD, including beatings by staff, squalid conditions, and sexual violence.
3. Monroe Development Center (“MDC”), in Rochester, was one such facility with an extensive history of violence and abuse dating back to 1974, when it opened its doors.
4. In 1985, an MDC caretaker raped and impregnated I.C., a 30-year-old woman with the mental acuity of a two-year-old, in diapers and unable to talk, feed, or bathe herself.

5. MDC told I.C.'s parents that it suspected another patient had committed the rape, that it was investigating, and that it would be filing a police report. These were lies. In fact, MDC had covered up the rape, just as it had covered up the escalating pattern of cuts and bruises on I.C.'s body during her pregnancy, including a bruise in the shape of a cross, and a bite mark on her breast.

6. Upon discovering the pregnancy, rather than taking steps to root out the violent perpetrator within its walls, MDC enabled I.C.'s rapist(s) by recommending I.C. go on birth control or undergo a tubal ligation.

7. In August 1986, I.C. gave birth to a healthy baby girl, Magdalena Cruz. Over 30 years later, Cruz would begin a yearslong investigation of the circumstances of her birth.

8. Using an Ancestry.com DNA test and online search engines, and with the help of police, Cruz was able to positively identify her father: a former MDC employee who was one of I.C.'s caretakers.

9. We will likely never know the full extent of the abuse MDC facilitated against its vulnerable and defenseless patients. But now, with the passage of the Adult Survivors Act, which reopens the civil statute of limitations for these claims, we can at least seek redress for the profound injustice that one woman suffered.

PARTIES

10. I.C. is a 66-year-old incapacitated woman living with severe developmental disabilities in Penfield, New York.

11. Plaintiff Cruz is the daughter of I.C. and the Guardian of Person of I.C., pursuant to SCPA Article 17-A.

12. Defendant OPWDD is an independent, cabinet-level New York State agency, responsible for coordinating services for nearly 140,000 New Yorkers with developmental disabilities. The agency was created in 1978 after public outcry over the conditions at New York state-run facilities. Upon information and belief, OPWDD managed MDC, the facility where the incidents described herein occurred.

JURISDICTION AND VENUE

13. Jurisdiction is proper pursuant to CPLR § 301 et. seq.

14. Venue is appropriate pursuant to CPLR § 503(a) on the basis that the events giving rise to these claims occurred in Monroe County.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

15. On February 3, 2023, plaintiff filed a notice of claim.

FACTUAL ALLEGATIONS

I. New York State Has a History of Torturing Developmentally Disabled Patients In Its Care

16. New York State has a shameful history of torturing patients in its care.

17. In 1972, Geraldo Rivera’s “Willowbrook” exposé revealed that children at one facility were being fed hepatitis-infected feces, living in deplorable conditions, and subject to rampant physical and sexual abuse.¹

¹ Rivera, Geraldo (1972). *Willowbrook: The Last Great Disgrace*. WABC-TV.

18. And yet, after class-action litigation, a consent decree, and even federal legislation to rectify the issue, a 2019 *New York Times* report found patients removed from Willowbrook for their safety were *still* being abused at their new facilities.²

19. Virtually nothing had changed to require state run institutions to protect – and not injure – the defenseless individuals entrusted to its care.

II. Caregivers Had No Choice but To Put Their Faith in State Institutions

20. Meanwhile, in 1976, I.C.’s parents were grateful that a new facility was opening close to their home in Rochester. It meant they could move their 21-year-old daughter, I.C., from Newark Developmental Center in Newark, New York, the facility in which she had been housed since age 10.

21. I.C. was extremely developmentally disabled. She was not toilet-trained and needed diapers. She was non-verbal, and had vocalizations of “kee kee kee.” Her IQ was less than 20, classified as “profound mental retardation.”

22. I.C.’s parents looked forward to being able to see I.C. more regularly and keep a closer eye on her, having made the difficult decision that they did not have the medical training or resources to care for her full-time along with their four other children.

23. I.C. remained at MDC for approximately ten years without incident until, in May of 1986, MDC summoned her parents for a meeting. It was there that they received the shock of their lives: I.C. was five months pregnant.

² Weiser, Benjamin (21 February 2020). "Beatings, Burns and Betrayal: The Willowbrook Scandal's Legacy". *The New York Times*. <https://www.nytimes.com/2020/02/21/nyregion/willowbrook-state-school-staten-island.html>

24. MDC proposed that I.C. be moved to an alternate facility on a temporary basis as a protective measure for the remainder of her pregnancy and for postnatal care. It suggested that another resident was likely culpable, and that the transfer would keep her safe.

25. MDC assured I.C.'s family that there would be an "internal investigation" and that a police report would be made. MDC also said that it was working to narrow down a list of suspects based on "genetic analysis." I.C.'s parents had no reason to mistrust MDC. They took its statements at face value and believed the situation was being properly handled. They agreed to move I.C. temporarily, and then to return her to MDC after she gave birth.

III. MDC Was Rampant with Violence and Abuse of Patients

26. Unbeknownst to I.C.'s parents, MDC had been plagued with claims of gross neglect, physical and sexual abuse of patients, and other types of mismanagement rampant throughout New York State institutions, from its very inception.

27. That first year, seven MDC employees were arrested for the sexual abuse of a teenage boy with developmental disabilities under their care.³ A male MDC employee had woken the boy up from his bed and forced him to engage in sexual acts in the home's living room on Culver Road. Two youths in the home tried unsuccessfully to fight off the employee, while two women, one a center worker, looked on and did nothing to stop it.

28. One of the perpetrators had 30 to 40 young men under his care. He had also facilitated the hiring of several of the others. It was a coordinated effort of widespread abuse.⁴

³ Stewart, John, "2 more arrests in center sex probe", *Democrat and Chronicle*. (June 25, 1976).

⁴ Pritchard, Keith "Ex-aide accused of abusing patients", *Democrat and Chronicle*. (June 16, 1976).

29. In June of 1976, the director of volunteer services at MDC was arrested for raping a disabled nineteen-year-old boy. An MDC security guard faced the same charges after using his pass key to unlock the boy's door.⁵
28. In May of 1979, the parents of a 14-year-old boy with disabilities found bruises and welts on their son's thighs and buttocks after just three days at MDC.⁶
29. In 1980, a 49-year-old therapist was discovered in a fifteen-year-old female patient's bed, resulting in a lawsuit and a finding of liability against the facility.⁷
30. There were also many documented "unusual" patient deaths.
31. In March 1982, a 26-year-old man died after swallowing five surgical gloves.⁸
32. On July 5, 1982, a 21-year-old quadriplegic patient was left outside in the sun for four hours without fluids. He died from hyperthermia, or excessively high body temperature.⁹
33. At least 10 staff members from 1976-1985 were identified as pedophiles and rapists, including staff supervisors, security guards, and volunteers. There are reported incidents which detail psychological torture, such as blocking a 32-year-old male patient in a two-foot square space with furniture for hours.¹⁰
34. This pattern of abuse prompted investigations into the hiring procedures and lack of accountability within MDC. Many employees that committed offenses had been fired and rehired, suspended previously, or had never been subjected to background checks. Despite public

⁵ Akeman, Thom "6th man arrested by abuse probers", *Democrat and Chronicle*. (June 19, 1976).

⁶ Cordts, Michael "Center investigating bruises on youth, 14", *Democrat and Chronicle*. (May 10, 1979).

⁷ McPhillips, Jody "Retarded patient awarded \$25,000 in sexual abuse", *Democrat and Chronicle*. (December 23, 1982).

⁸ Galante, David "State agency investigating two unusual deaths at MDC", *Democrat and Chronicle*. (August 13, 1982).

⁹ *Id.*

¹⁰ Mills, Steve, Driscoll, Kathleen "4 charged with mistreating disabled man", *Democrat and Chronicle*. (March 22, 1989).

calls for reform as early as 1976 – the very year the facility opened – no significant changes were made.¹¹

IV. Thirty Years Later, Cruz’s Investigation Reveals Cover-up by MDC

35. Cruz grew up knowing she was a child of rape. Growing up, she had a hard time fitting in at school and generally struggled with her identity and mental health. As she got older, she worried that she would never be able to have children of her own as she would be doomed to perpetuate the cycle of violence and trauma.

36. However, Cruz persevered, relying on her religious faith and her strong sense of self. She spent time caring for disabled individuals in group homes. She met the love of her life and they started a family together.

37. In 2019, at age 33, Cruz began investigating the circumstances of her birth.

38. She sent FOIL requests to the City of Rochester and the Town of Brighton and a records request to Defendant OPWDD. That is how she learned that the facts surrounding her birth were far more shocking and grotesque than her family had realized.

39. She learned that MDC had flatly ignored an escalating, disturbing pattern of injuries on I.C.’s body in the months leading to her pregnancy.

40. She learned that when the pregnancy was discovered, MDC had discussed putting I.C. on birth control, effectively planning for and condoning future rapes. Lastly, she learned that MDC had lied: there never was an investigation, and there never was a police report.¹²

¹¹ “Hiring reviewed”, *Democrat and Chronicle*. (June 24, 1976).

¹² There was never a police report made in either the City of Rochester or the Town of Brighton. Files retrieved from Finger Lakes Developmental Disability Office indicated that no internal investigation into her mother’s institutional rape took place. There were no remedial steps taken, no interviews taken of employees at the time, no sign of any records indicating that MDC took action as a result of I.C. being raped while in MDC’s care.

41. It remains unknown how many times I.C. was raped, by how many men, and how many other survivors there were. MDC presumably hid and covered up any other rapes or abuse, as it would have done successfully in this instance but for the pregnancy.

42. MDC's contemporaneous progress notes indicate no meaningful efforts to identify, let alone punish, the perpetrator(s) of numerous violent physical attacks on I.C. around the time her rapist impregnated her.

43. In January 1985, a nine-inch abrasion appeared on I.C.'s back. A bruise "in a cross shape" appeared on her left shoulder blade. Her right hand was found swollen, with "deep discoloration."

44. In July, a one-inch bloody cut appeared on the top of her head, a two-inch bruise on her hip, and further bruising on her back and shoulder.

45. In October, an MDC caretaker named "J.B." wrote, "[I.C.] likes men of color, strips, sometime yells, jumps, eats very fast." A week later, nail polish was found in I.C.'s mouth, hair, and face. That month, J.B. wrote, "[I.C.] the same still yelling strips jumps eats fast will try to write if help," along with several other notes about how she yelled, jumped, and wet herself regularly. In November, J.B. described I.C. as "grabbing staff" and continuing to wet herself.

46. Based on Magdalena's date of birth, I.C.'s rapist impregnated her sometime in late November or early December 1985. Strangely, on December 9, 1985, a progress report signed by an employee Patty Shanks wrote, "[I.C.] has still been attacking James."

47. In early 1986, a bruise appeared on I.C.'s right eye, and a bite mark on her left breast.

48. In May 1986, I.C.'s pregnancy was mentioned for the first time. She was already five months pregnant.

49. On August 8, 1986, when I.C. was eight months pregnant, MDC suggested that the best prevention against future pregnancies was for I.C. to begin taking birth control or to undergo a tubal ligation.

50. I.C.'s parents had no knowledge of this pattern of abuse, nor of MDC's lies and coverup. Indeed, after she gave birth, I.C. was returned to MDC for another *nine years* until, in 1995, she was moved to a Heritage Christian Residence in Penfield, NY, where she continues to reside today.¹³

V. Cruz Seeks Justice for Her Mother

51. Cruz was shocked. Her lifelong sadness turned to fury on her mother's behalf. She became determined to seek justice.

52. She made the decision to take matters into her own hands. She bought mail-order genetic testing through Ancestry.com to try to identify her father.

53. Test results revealed that she had biological relatives on her father's side, living in Virginia. Through online searches, she located some photos of that family. She came across a photograph of a girl who had the same exact eyes as she did.

54. She identified the girl's father as a man named James Burrus. Thereafter, an online search revealed that, though the majority of the family she had found lived in Virginia, Burrus lived in Rochester, New York – just miles from MDC.

55. Cruz turned back to the records. It was clear beyond a doubt that Burrus was "J.B." – the "James" who I.C. had been "attacking."

¹³ I.C. is now wheelchair-dependent due to severe arthritis and a kidney condition. She is unable to ingest solid foods (only pureed), and she has lost most of her sight due to glaucoma.

56. In September 2019, Cruz reported her findings to the Brighton Police Department, which confirmed that Burrus had worked at MDC in 1985 and was familiar with I.C. However, MDC’s coverup had succeeded in keeping the rape(s) hidden long enough for the criminal statute of limitations to elapse, preventing the police from taking formal action.

57. Now, with New York State’s passage of the Adult Survivors Act, I.C.’s civil claims are revived, and justice is finally within reach.

**POINT OF LAW:
The Adult Survivors Act**

58. The Adult Survivors Act, CPLR § 214-j (“ASA”) revives every civil claim alleging intentional or negligent acts or omissions by a person for psychological injury suffered due to a sexual offense as defined in article 130 of the penal law, committed against someone age 18 or older, even if the applicable period of limitation has expired.

59. The assaults detailed herein are qualifying offenses under the ASA, and defendant’s actions constitute qualifying intentional and/or negligent acts and/or omissions for psychological injury suffered due to those offenses under the ASA.

60. Cruz’s claims are not subject to dismissal on the grounds that they are time-barred.

**FIRST CAUSE OF ACTION:
Gender Discrimination in Violation of the NYSHRL**

61. Cruz repeats and realleges all facts set forth above.

62. Defendant discriminated against I.C. on the basis of her gender, in violation of the New York State Human Rights Law (NY Exec Law § 296[1]) by subjecting her to sexual assault and harassment while she was under its care as a patient.

63. The discrimination was severe.

64. Defendant’s unlawful discrimination against I.C. caused her to suffer emotional and psychological distress, physical injury, mental anguish, loss of enjoyment of life, humiliation, embarrassment, pain and suffering, and economic damages.

65. Defendant is liable for compensatory and punitive damages, attorney’s fees, and costs.

**SECOND CAUSE OF ACTION:
Sexual Assault and Battery**

66. Cruz repeats and reallege all facts set forth above.

67. Burrus, within his capacity as defendant’s employee, intentionally touched or applied force to I.C., in a harmful and offensive manner, and without her consent.

68. Burrus battered I.C. when he sexually assaulted her by forcibly touching her body and raping her.

69. Burrus acted carelessly, recklessly and/or intentionally, and knew that his actions against I.C. constituted assault, causing her apprehension of harmful or offensive contact.

70. Burrus’s assault and battery of I.C. caused her to suffer emotional and psychological distress, physical injury, mental anguish, loss of enjoyment of life, humiliation, embarrassment, pain and suffering, and economic damages.

71. Burrus’s sexual assault and battery of I.C. has the character of outrage associated with crime, entitling her to an award of punitive damages.

72. Defendant is vicariously liable for Burrus’s sexual assault and battery of I.C. because Burrus was an employee acting within the scope of his employment at the time of the rape; i.e., his intentionally tortious conduct was generally foreseeable due to the many documented consistent injuries I.C. suffered in the fall of 1985. Burrus’s actions fall within the scope of his

employment because he was one of I.C.’s caretakers and he raped her while he was generally engaged in caretaking, which was the purported business of his employer, defendant.

73. Defendant is therefore vicariously liable for compensatory and punitive damages for Burrus’s actions.

**THIRD CAUSE OF ACTION:
Negligence**

74. Cruz repeats and realleges all facts set forth above.

75. Defendant owed I.C. a duty of reasonable care because it had a special relationship with her.

76. Defendant owed I.C. a duty to protect her from Burrus because it had a special relationship with Burrus.

77. Defendant breached its duty to I.C., creating a foreseeable risk of harm to her.

78. As a direct and proximate result of that breach, I.C. has suffered emotional and psychological distress, physical injury, mental anguish, loss of enjoyment of life, humiliation, embarrassment, pain and suffering, and economic damages.

79. No negligence on the part of I.C. contributed to her injuries.

80. Defendant’s negligence was extreme, egregious, immoral, reckless, willfully indifferent, and shocking to the conscience.

81. Defendant is liable for compensatory and punitive damages.

**FOURTH CAUSE OF ACTION:
Negligent Hiring, Supervision, and Retention**

82. Cruz repeats and realleges all facts set forth above.

83. Defendant negligently hired and/or retained Burrus when it knew, or should have known, of his propensity for the misconduct which resulted in I.C.'s injuries.

84. Defendant negligently retained Burrus and negligently placed him in a position to cause foreseeable harm, which I.C. would not have been subjected to had defendant taken reasonable care in its hiring, supervision, or retention of Burrus.

85. As a direct and proximate result, I.C. was injured, causing her to suffer emotional and psychological distress, physical injury, mental anguish, loss of enjoyment of life, humiliation, embarrassment, pain and suffering, and economic damages.

86. No negligence on I.C.'s part contributed to her injuries.

87. Defendant's negligence was extreme, egregious, immoral, reckless, willfully indifferent, and shocking to the conscience.

88. Defendant is liable for compensatory and punitive damages.

DEMAND FOR RELIEF

WHEREFORE, it is respectfully requested that the Court enter judgment in plaintiff's favor as against defendant:

- a. on the First Cause of Action, awarding compensatory and punitive damages, attorney's fees, and costs;
- b. on the Second, Third, and Fourth Causes of Action, awarding compensatory and punitive damages; and
- c. granting such other relief as may be just.

DEMAND FOR TRIAL BY JURY

Pursuant to FRCP § 38(b), plaintiff demands a trial by jury.

Dated: Brooklyn, New York
March 6, 2023

Respectfully submitted,



Susan K. Crumiller
Julia Elmaleh-Sachs
Crumiller P.C.
susan@crumiller.com
julia@crumiller.com

Carrie A. Goldberg
Annie Seifullah
C.A. Goldberg, PLLC
carrie@cagoldberglaw.com
annie@cagoldberglaw.com

d/b/a Survivors Law Project
16 Court St, Ste 2500
Brooklyn, NY 11241
(877) 757-9467
Attorneys for Plaintiff