

8/28/08

STATE OF MISSOURI)
) SS
CITY OF ST. LOUIS)

MISSOURI CIRCUIT COURT
TWENTY-SECOND JUDICIAL CIRCUIT
(City of St. Louis)

JOHN DOE KK,)
)
Plaintiff,)
)
vs.)
)
ROMAN CATHOLIC ARCHDIOCESE)
OF ST. LOUIS, et al.,)
)
Defendants.)

Case No. 052-01647

Division No. 17

FILED
AUG 25 2008

MARIANO V. FAVAZZA
CLERK, CIRCUIT COURT
BY _____ DEPUTY

ORDER AND JUDGMENT

The Court has before it Defendant Roman Catholic Archdiocese of St. Louis, by and through Archbishop Raymond L. Burke's (hereinafter, Archdiocese's) Motion for Summary Judgment. After review of the submissions of the parties, the relevant authorities, and the arguments of counsel, the Court now rules as follows.

Plaintiff brought this action for intentional failure to supervise clergy alleging that Plaintiff was sexually abused by a priest when Plaintiff was a minor attending St. George Parish School.

The following facts are uncontroverted:

Plaintiff was twenty-one years old on March 9, 1982.

Norman Christian (Christian) was ordained a priest in 1961.

Plaintiff was sexually abused by Father Christian from approximately 1974 till 1976, when Plaintiff was between thirteen and fifteen years of age.

Plaintiff kept this sexual abuse secret at the time of his abuse and throughout his adult life. Plaintiff did not reveal that he had been abused to anyone until 2003 when he told his wife.

Plaintiff knew that the abuse was wrong at the time it occurred and tried to fight back on at least one occasion. Plaintiff felt scared, ashamed and guilty about the abuse.

Plaintiff did not repress the memory of his abuse or suffer from amnesia. Plaintiff testified that he ``locked [his memories of the abuse] away.'' Plaintiff further testified that he ``put it under lock and key in a box.''

Plaintiff did not forget the sexual abuse.

This lawsuit was filed May 13, 2005.

Defendant Archdiocese argues that it is entitled to judgment as a matter of law on the single remaining count of the petition because Plaintiff cannot prove the elements of the claim and because Plaintiff's claim is time-barred.

Summary judgment is designed to permit the trial court to enter judgment, without delay, when the moving party has demonstrated a right to judgment as a matter of law on the basis of facts as to which there is no genuine dispute. Rule 74.04.

A defending party may establish a right to summary judgment by showing "(1) facts that negate any one of the claimant's elements facts, (2) that the non-movant, after an adequate period of discovery, has not been able to produce, and will not be able to produce, evidence sufficient to allow the trier of fact to

find the existence of any one of the claimant's elements, or (3) that there is no genuine dispute as to the existence of each of the facts necessary to support the movant's properly pleaded affirmative defense." ITT Commercial Finance v. Mid-America Marine Supply Corp., 854 S.W.2d 371, 381 (Mo. banc 1993).

"A cause of action of intentional failure to supervise clergy has the following constituent elements: (1) a supervisor (or supervisors) exists; (2) the supervisor (or supervisors) knew that harm was certain or substantially certain to result; (3) the supervisor (or supervisors) disregarded this known risk; (4) the supervisor's inaction caused damage, and (5) the other requirements of the Restatement (Second) of Torts, Section 317 are met." Weaver v. African Methodist Episcopal Church, Inc., 54 S.W.3d 575, 581 (Mo. App. E.D. 2001), citing Gibson v. Brewer, 952 S.W.2d 239, 248 (Mo. banc 1997). The other elements stated in Section 317 are that "the servant is upon the premises of the master or upon which the servant is privileged to enter only as his servant, or is using the chattel of his master." Id.

The statute of limitations is an affirmative defense. Rule 55.08. Thus, summary judgment can be an appropriate method by which to test the validity of that affirmative defense. See Hasemeier v. Metro Sales, Inc., 699 S.W.2d 439, 441 (Mo. App. E.D. 1985). "Where the issue of the statute of limitations involves determination of when a claim accrues, summary judgment cannot be granted unless the evidence is so clear that there is no genuine factual issue and the determination can be made as a

matter of law." Tilley v. Franklin Life Ins. Co., 957 S.W.2d 349, 351 (Mo. App. E.D. 1997).

Section 516.120(4) RSMo provides that an action "for any other injury to the persons or rights of another, not arising on contract and not herein otherwise enumerated" must be brought within five years. When a person's cause of action accrues when they are under the age of twenty-one years, the statute of limitations does not begin to run until that person reaches the age of twenty-one years. Section 516.170. Section 516.100 establishes that a cause of action accrues "when the damage resulting [from the wrong] is capable of ascertainment, and if more than one item of damage, then the last item, so that all resulting damage may be recovered, and full and complete relief obtained."

The Missouri Supreme Court clarified when damages are "capable of ascertainment" under Section 516.100. Powel v. Chaminade College Preparatory, Inc., 197 S.W.3d 576, 584-85 (Mo. banc 2006). In Powel, the Missouri Supreme Court explained that, in determining when damages are capable of ascertainment, "the issue is not when the injury occurred, or when plaintiff subjectively learned of the wrongful conduct and that it caused his or her injury, but when a reasonable person would have been put on notice that an injury and substantial damages may have occurred and would have undertaken to ascertain the extent of the damages." Id. at 584.

"The statute of limitations begins to run when the evidence [is] such to place a reasonably prudent person on notice of a potentially actionable injury." Powel, 197 S.W.3d at 583, citing

Business Men's Assur. Co. of America v. Graham, 984 S.W.2d 501, 507 (Mo. banc. 1999). ``However, all possible damages need not be known, or even knowable, before the statute accrues.''

Gaydos v. Imhoff, 245 S.W.3d 303, 307 (Mo. App. W.D. 2008), citing Klemme v. Best, 941 S.W.2d 493, 497 (Mo. banc 1997). ``In order for the statute to accrue, plaintiff must have knowledge of the wrong and at least nominal damage, or of something that puts plaintiff on notice to inquire further.''

There is disputed evidence in the record that would be sufficient to allow the trier of fact to find each of the elements of intentional failure to supervise clergy. These facts include evidence that Father Christian informed his supervising pastor of a past sexual relationship as early as the 1960s and that his assignment at Ascension Parish ended in 1969 when he was ``acting out by cruising park [sic] to pickup boys.''

Defendant Archdiocese has not shown facts to negate these, nor has Defendant shown that there is no genuine dispute as to these facts.

In this case, Plaintiff did not forget the abuse that happened to him between the ages of thirteen and fifteen years old. Plaintiff knew that the conduct was wrongful and inappropriate even at the time it occurred and felt guilt, shame and fear regarding the abuse. As such, Plaintiff knew of the wrong, knew that he was at least nominally damaged and had information sufficient to place a reasonable person on notice of a potentially actionable injury.

As the Missouri Court of Appeals stated in Graham v. McGrath, "the issue is not when a plaintiff is subjectively aware of his injury; subjective awareness of damages does not resolve the question of when those damages were objectively capable of ascertainment." 243 S.W.3d 459, 462 (Mo. App. E.D. 2007), citing Powel, 197 S.W.3d at 584. "While a child victim may be unable to immediately recognize such harm, we fail to see how this inability prevents an adult with memory of the events of abuse from being on notice that harm may have occurred." Id.


Plaintiff's damages were capable of ascertainment as soon as he reached the age of majority. Because Plaintiff filed his claim more than five years later, his cause of action against Defendants is barred by the statute of limitations. Section 516.120(4).

THEREFORE, it is Ordered, Adjudged and Decreed that Defendant Archdiocese's Motion for Summary Judgment is GRANTED. Judgment is entered in favor of Defendant and against Plaintiff. Costs are assessed against Plaintiff.

Dated: 8/25/08

cc: Kenneth Chackes
Edward Goldenhersh

SO ORDERED:



David C. Mason, Judge