STATE OF MICHIGAN

COURT OF APPEALS

ROBERT MICHAEL MASON and
ROSE MASON,

Plaintiffs-Appellants,

v

ARCHDIOCESE OF DETROIT, ST. HUGH'S PARISH and ROBERT BURKHOLDER,

Defendants-Appellees.

UNPUBLISHED
July 11, 1997

No. 191377
Wayne Circuit Court
LC No. 94-416841

Before: Taylor, P.J., and Griffin and Saad, JJ.

PER CURIAM.

Plaintiffs appeal as of right from an order granting summary disposition in favor of defendants pursuant to MCR 2.116(C)(10). We affirm.

Plaintiffs sued defendants in 1994 alleging that Burkholder sexually abused Robert Michael Mason in 1968 when Mason was twelve years old. Mason claims he repressed the memory of the sexual abuse and did not remember the incident until 1993. Defendants filed a motion for summary disposition, arguing that Mason had not repressed the memory of the abuse and that the lawsuit was barred by *Lemmerman v Fealk*, 449 Mich 56; 534 NW2d 695 (1995). In *Lemmerman*, the Supreme Court held that neither the discovery rule nor the statutory grace period that applies to persons suffering from insanity extends the limitation period for filing a repressed memory cause of action for the alleged sexual abuse of a minor. The trial court rejected defendants' argument premised on *Lemmerman*, but granted summary disposition because there had been no repressed memory.

After a review of the depositions, admissions, and other documentary evidence presented by the parties, *Sanchez v Lagoudakis*, 217 Mich App 535, 539; 552 NW2d 472 (1996), we agree with the trial court that reasonable minds could not differ that Mason did not repress the memory of the abuse. *Id.* Mason stated that he told his parents about the abuse immediately after the incident, that he related teasing he experienced at school to the abuse by Burkholder, that he told both his first and second wives that he was abused by a Catholic priest, whose name he recalled but did not disclose, and

that he also told a psychiatrist about the incident. Although Mason may not have been able to recall in vivid detail what occurred until 1993, sufficient evidence was presented from numerous witnesses, including Mason himself, that Mason recalled the incident of abuse and did not repress the memory. Thus, the trial court properly granted defendants' motion for summary disposition on the basis that there had not been a repressed memory.

Plaintiffs argue for the first time on appeal that they were entitled to a factual determination by a jury of the date of discovery of their cause of action. We disagree.

Here, the applicable statute of limitations is one year from the time that the disability of infancy is removed. MCL 600.5851(1); MSA 27A.5851(1). This Court has previously held that summary disposition is inappropriate when there is a question of fact for the jury. *Kermizian v Sumcad*, 188 Mich App 690, 694; 470 NW2d 500 (1991). However, summary disposition is appropriate when a trial court could decide an issue as a matter of law. *Id.*

The testimony presented in the depositions reflected that Mason was aware of the abuse before age eighteen as he told his parents and siblings about the abuse shortly after the incident, and where he associated the teasing at school a few months after the incident with the abuse. This evidence demonstrates that Mason did not truly repress the memory of the abuse and, therefore, the one-year statute of limitations began running when plaintiff turned eighteen, and ended when plaintiff turned nineteen.[1] We conclude that the question of the date of discovery could have been decided by the trial court as a matter of law. *Kermizian, supra.*

Furthermore, had Mason repressed the memory before turning eighteen, the evidence presented reflected that Mason told his first wife that he was abused after he turned eighteen, and also told his second wife about the abuse on various occasions, all before 1993. Although Mason claims that he did not completely remember all of the vivid details of the abuse until 1993, the evidence submitted to the trial court established that there was no genuine issue of material fact that he sufficiently remembered the abuse and informed others about the incident such that the trial court could conclude as a matter of law that Mason knew of the abuse before 1993.

As an alternative ground for upholding the order of summary disposition, defendants argue that the complaint should have been summarily dismissed pursuant to *Lemmerman*. Plaintiffs argue that their cause of action is not barred by the applicable statute of limitations because Burkholder admitted that he abused Mason, which provides an exception to the holding in *Lemmerman*.[2]

This Court has recently addressed this exact issue in *Guerra v Garratt*, 222 Mich App 285; __ NW2d __ (1997).

In *Lemmerman*, the Michigan Supreme Court noted:

> We do not address the result of those repressed memory cases wherein long-delayed tort actions based on sexual assaults were allowed to survive summary disposition because of the defendants' admissions of sexual contact with the plaintiffs

> when they were minors. *Meiers-Post* [*v Schafer*, 170 Mich App 174; 427 NW2d 606 (1988)], *Nicolette v Carey*, 751 F Supp 695 (WD Mich, 1990). Such express and unequivocal admissions take these cases outside the arena of stale, unverifiable claims with which we are concerned in the present cases. [*Lemmerman, supra* at 77, n 15.]

Guerra claimed that this footnote created an exception to *Lemmerman*'s general holding. This Court disagreed, finding that the footnote addressed the retroactivity of *Lemmerman* and did not articulate an exception to the general holding. This Court stated that the sentence at issue was part of a footnote, and opined that, had the *Lemmerman* Court intended to carve out such an exception, it would have done so in the body of the opinion rather than in a footnote. *Guerra, supra*. On this basis, this Court, in *Guerra*, held that the trial court properly granted defendant Garratt's motion for summary disposition pursuant to MCR 2.116(C)(7) because Guerra's claim was barred by the statute of limitations. *Id*. Applying the rationale and holding from *Guerra* to the instant case, we conclude that plaintiffs' claims are also barred by the statute of limitations. As noted in *Guerra*, there is no Michigan law that tolls the statute of limitations where abuse is admitted. There is no current exception to *Lemmerman*'s general holding that neither the discovery rule nor the statutory grace period for persons suffering from insanity extends the limitations period for tort actions delayed by alleged repressed memory.

Affirmed.

/s/ Clifford W. Taylor
/s/ Richard Allen Griffin
/s/ Henry William Saad

[1] Mason was at least thirty-six years old when he filed the complaint.

[2] In his answer to plaintiffs' complaint Burkholder admitted that he had touched Mason's genitals.