

STATE OF MICHIGAN
COURT OF APPEALS

TIMOTHY HASSETT, WILLIAM JOHNSON,
a/k/a GOLF SHOES JOHNSON, and JOHN
FRUCIANO,

UNPUBLISHED
November 10, 2005

Plaintiffs-Appellants,

v

No. 261483
Wayne Circuit Court
LC No. 04-414439-NZ

ARCHDIOCESE OF DETROIT,

Defendant-Appellee.

Before: Fort Hood, P.J., and White and O’Connell, JJ.

PER CURIAM.

Plaintiffs appeal as of right an order granting summary disposition in favor of defendant pursuant to MCR 2.116(C)(7) and dismissing their complaint alleging a civil conspiracy to conceal the sexual abuse of plaintiffs by Roman Catholic priests under defendant’s supervision. We affirm.

On appeal, plaintiffs contend that the statute of limitations was not violated because they filed suit within two years of realizing the extent and nature of the sexual abuse by defendant’s priests and defendant’s concerted, inadequate, and detrimental response to it. Plaintiffs base their claim on the fraudulent concealment statute of limitations, which allows a plaintiff to sue within two years after a plaintiff “discovers, or should have discovered, the existence of the claim” MCL 600.5855. To support its claim for fraudulent concealment, plaintiffs aver defendant’s concerted practice of cloaking incidents of abuse in secrecy, failing to take reasonable measures to ensure against future abuse, and haphazardly shifting abusive priests to new locations where they found new, unsuspecting victims. While these actions would certainly have exposed defendant to liability in a timely filed suit, we must disagree that they are sufficient to support plaintiffs’ claim that defendant fraudulently concealed the existence of plaintiffs’ claims. We review de novo a trial court’s ruling on a motion for summary disposition under MCR 2.116(C)(7). *Doe v Roman Catholic Archbishop of the Archdiocese of Detroit*, 264 Mich App 632, 638; 692 NW2d 398 (2004). “Absent a disputed question of fact, the determination whether a cause of action is barred by a statute of limitations is a question of law that this Court reviews de novo.” *Id.*

Plaintiffs have failed to persuade us that we can distinguish this case from *Doe*, in which we rejected this same tolling theory under nearly identical circumstances. *Id.* at 643-649.

Absent the application of an exception, plaintiffs' claims are clearly barred by the statute of limitations. Plaintiffs claim that Catholic priests sexually abused them when they were minor children, and that Catholic officials conspired in the abuse by failing to protect them from the known danger and later by covering up the incidents. Because plaintiffs were young minors, the ordinary limitations period for the assaults, along with any negligence or respondeat superior claims, was tolled until one year after the moment the disability of infancy was removed. MCL 600.5851(1). All of the alleged incidents of sexual abuse occurred at various times throughout the 1950's, 1960's, and 1970's. According to the parties' briefing and argument, Fruciano, Doe, Johnson, and Hassett turned nineteen years old in 1959, 1969, 1974, and 1981, respectively. Plaintiffs first filed this action on May 12, 2004, at least twenty years too late.

Regarding fraudulent concealment, we expressly rejected its application in *Doe, supra* at 643-649. We held that knowledge of the events at the time they occurred, coupled with the ability to associate the abuser with his role in the Archdiocese, meant that the plaintiff was aware of his possible cause of action against the Archdiocese, and the Archdiocese had not fraudulently concealed it from him. *Id.*; MCL 600.5855. We held that the plaintiff failed to allege any concealment beyond mere silence, and found silence insufficient to establish fraudulent concealment under the circumstances. *Doe, supra* at 645-646, n 3. Plaintiffs raise substantially identical facts, issues, and arguments here. We disagree with plaintiffs' argument that *Doe* is distinguishable because it did not involve a claim of civil conspiracy. Our opinion in *Doe, supra* at 649, expressly addressed the plaintiff's claim that a conspiracy provided him a basis for asserting fraudulent concealment. As in *Doe*, we fail to see how more discovery would reveal anything that could undermine the application of the statute of limitations to this case. *Id.*

Plaintiffs also assert that their claims were tolled because of their repressed memories and because the underlying criminal conduct was clear or admitted. Similarly, plaintiffs contend that their claims were filed within the insanity grace period provided by MCL 600.5851(1). However, we have already rejected these arguments in nearly identical situations. *Guerra v Garratt*, 222 Mich App 285, 287; 564 NW2d 121 (1997); *Demeyer v Archdiocese of Detroit*, 233 Mich App 409, 411-412; 593 NW2d 560 (1999) (begrudgingly following *Guerra* in a case similar to the one at bar). More importantly, our Supreme Court has also rejected their application in such cases. *Lemmerman v Fealk*, 449 Mich 56, 75-76; 534 NW2d 695 (1995).

Affirmed.

/s/ Karen Fort Hood
/s/ Peter D. O'Connell