STATE OF MICHIGAN

COURT OF APPEALS

PATRICK ANTOS,

Plaintiff-Appellant,

v

DIOCESE OF LANSING, BISHOP CARL F. MENGELING, BISHOP JAMES MURRAY, ARCHDIOCESE OF SANTA FE, ARCHBISHOP MICHAEL JAROBE SHEEHAN, ROBERT F. SANCHEZ, f/k/a ARCHBISHOP ROBERT F. SANCHEZ, THE SERVANTS OF THE PARACLETE, ARCHDIOCESE OF DETROIT, CARDINAL ADAM JOSEPH MAIDA, and BISHOP THOMAS GUMBLETON,

Defendants-Appellees,

and

JASON B. SIGLER, f/k/a FATHER JASON SIGLER,

Defendant.

UNPUBLISHED
November 15, 2005

No. 262137
Wayne Circuit Court
LC No. 04-413121-NZ

Before: Cavanagh, P.J., and Smolenski and Zahra, JJ.

PER CURIAM.

Plaintiff filed this action alleging that defendant Jason B. Sigler, a former Roman Catholic priest, sexually abused him in 1974 and 1975, when plaintiff served as an altar boy at St. Robert Bellarmine parish in Flushing, Michigan. Plaintiff named as defendants several church officials and organizations, alleging that they were aware of Sigler's inappropriate conduct involving young boys and conspired to conceal Sigler's conduct and criminal history. The trial court granted defendants' motions for summary disposition pursuant to MCR 2.116(C)(7) (claim barred by the statute of limitations). Plaintiff appeals as of right. We affirm.

This Court reviews de novo a trial court's decision on a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). In reviewing a motion for summary disposition under MCR 2.116(C)(7), this Court accepts the contents of the

complaint as true unless the moving party contradicts the plaintiff's allegations and offers supporting documentation. *Pusakulich v Ironwood*, 247 Mich App 80, 82; 635 NW2d 323 (2001). We consider affidavits, depositions, admissions, and other documentary evidence when reviewing a motion under MCR 2.116(C)(7) if the supporting materials are admissible into evidence. *Doe v Roman Catholic Archbishop of the Archdiocese of Detroit*, 264 Mich App 632, 638; 692 NW2d 398 (2004), *Pusakulich*, *supra*. "Absent a disputed question of fact, the determination whether a cause of action is barred by a statute of limitation is a question of law that this Court reviews de novo." *Doe*, *supra* at 638. In addition, with respect to plaintiff's equal protection challenge, constitutional questions are questions of law that this Court reviews de novo on appeal. *Morales v Parole Bd*, 260 Mich App 29, 49; 676 NW2d 221 (2003).

In *Doe*, *supra* at 639, which is nearly identical to the instant case, this Court recognized that under MCL 600.5851(1)[1] the statute of limitations for the causes of action alleged by the plaintiff were tolled until the time that the plaintiff reached the age of majority. After the plaintiff's eighteenth birthday, he had one year in which to file his claims stemming from the alleged sexual abuse. *Id*. Because the plaintiff failed to file his complaint within that timeframe, he argued that the statute of limitations were tolled by MCL 600.5855 because the defendant fraudulently concealed the causes of action against it. *Id*. The Court stated that the acts relied on to prove fraudulent concealment must be affirmative and fraudulent and that "'the fraud must be manifested by an affirmative act or misrepresentation.'" *Id*. at 641, quoting *Witherspoon v Guilford*, 203 Mich App 240, 248; 511 NW2d 720 (1994). "'There must be concealment by the defendant of the existence of a claim or the identity of a potential defendant . . . .'" *Doe*, *supra* at 643, quoting *McCluskey v Womack*, 188 Mich App 465, 472; 470 NW2d 443 (1991). The *Doe* Court stated, however, that there can be no fraudulent concealment when there exists a known cause of action. *Doe*, *supra*. "For a plaintiff to be sufficiently apprised of a cause of action, a plaintiff need only be aware of a 'possible cause of action.'" *Id*., quoting *Moll v Abbott Laboratories*, 444 Mich 1, 5; 506 NW2d 816 (1993).

The *Doe* Court rejected the plaintiff's argument that the defendant fraudulently concealed the causes of action against it. This Court reasoned that the facts the plaintiff alleged in support of his claims were known or should have been known at the time of the injury. *Id*. This Court further reasoned that the actions the plaintiff alleged the defendant took to conceal the causes of action do not constitute fraudulent concealment because they were nothing more than mere silence. *Id*. at 645. In addition, the Court stated that the defendant's failure to publicly disclose the actions of the abusive priest, Robert Burkholder, or the defendant's knowledge of Burkholder's actions did not prevent the plaintiff from knowing that he was sexually abused by

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[1] MCL 600.5851(1) provides:

> Except as otherwise provided in subsections (7) and (8), if the person first entitled to make an entry or bring an action under this act is under 18 years of age or insane at the time the claim accrues, the person or those claiming under the person shall have 1 year after the disability is removed through death or otherwise, to make the entry or bring the action although the period of limitations has run. This section does not lessen the time provided in section 5852.

Burkholder, who was under the defendant's control, that the abuse occurred on church property, that the defendant failed to prevent Burkholder's actions, or that the plaintiff was harmed. *Id*. at 646. Thus, this Court concluded that, on the basis of the complaint alone and taking into account all the information available to the plaintiff, he knew or with diligent inquiry should have known of the possible causes of action against the defendant. *Id*. This Court further stated that although the plaintiff was unaware of the "widespread sexual abuse plaguing the church," it was not necessary for him to be aware that others had also been abused in order to have knowledge of the existence of his own causes of action against the defendant. *Id*. at 647-648. This Court also rejected the plaintiff's argument that further discovery would uncover evidence showing that a church-wide conspiracy existed to address the problem of abusive priests internally rather than involving the appropriate outside authorities. *Id*. at 649. The Court stated that even if further discovery would provide evidence of such a conspiracy, a practice addressing problems involving abusive priests internally would not have operated to conceal from the plaintiff any cause of action against the defendant. *Id*. Accordingly, this Court reversed the trial court's denial of the defendant's motion for summary disposition and remanded the case for entry of summary disposition in the defendant's favor. *Id*. at 650.

Following this Court's decision in *Doe* and denial of the plaintiff's motion for reconsideration, the plaintiff filed an application for leave to appeal to the Michigan Supreme Court, which remains pending. Additionally, in light of *Doe*, this Court reversed the trial court's order denying summary disposition in favor of the defendants in another case, *Reinhardt v Diocese of Lansing*, unpublished orders of the Court of Appeals, entered January 20, 2005 (Docket Nos. 257855, 257873, 257912, 257977, and 258027), which is nearly identical to this case.

On appeal, plaintiff asserts numerous arguments in an attempt to distinguish this case from *Doe* and *Reinhardt*. As an initial matter, plaintiff argues that this Court's decision in *Doe* has not yet taken effect under MCR 7.215(F)(1)(a), which provides:

> [T]he Court of Appeals judgment is effective after the expiration of the time for filing an application for leave to appeal to the Supreme Court, or, if such an application is filed, after the disposition of the case by the Supreme Court.

In *Johnson v White*, 261 Mich App 332, 347; 682 NW2d 505 (2004), this Court rejected a similar argument, stating that MCR 7.215(F)(1)(a) "pertains to the timing of when [this Court's] judgment becomes final in regards to the parties to the appeal and its enforceability with respect to the trial court that presided over the case." This Court recognized that "[u]nder this court rule, a timely application for leave to appeal to the Supreme Court operates as a stay of the Court of Appeals judgment regarding its enforcement by the prevailing party to that action." *Id*. That MCR 7.215(F)(1)(a) pertains to the enforceability and execution of a judgment is evident from the subheading of MCR 7.215(F), entitled "Execution and Enforcement." Regarding the precedential effect of this Court's decisions, the *Johnson* Court relied on the plain language of MCR 7.215(C)(2), which "provides that neither the filing of an application for leave to appeal to the Supreme Court nor an order granting such leave diminishes the precedential effect of a published opinion of the Court of Appeals." *Id*. Thus, plaintiff's argument that *Doe* has not taken effect and is not of precedential value is erroneous.

Plaintiff also contends that there was a fiduciary relationship in this case and that the statute of limitations did not begin to run until the termination of that relationship. This Court has recognized that an exception to the requirement of an affirmative act or misrepresentation for purposes of the fraudulent concealment statute exists where the parties have a fiduciary relationship. See *Brownell v Garber*, 199 Mich App 519, 527; 503 NW2d 81 (1993); *Bradley v Gleason Works*, 175 Mich App 459, 462-463; 438 NW2d 330 (1989); *Lumber Village, Inc v Siegler*, 135 Mich App 685, 694-695; 355 NW2d 654 (1984). Plaintiff's argument is unavailing, however, because, as this Court stated in *Doe*, *supra* at 639 n 1, Michigan law does not recognize a fiduciary duty on the part of a religious organization. The *Doe* Court relied on *Teadt v Lutheran Church Missouri Synod*, 237 Mich App 567, 569; 603 NW2d 816 (1999), for this proposition. As recognized in *Teadt*, determining whether a fiduciary relationship exists between a parishioner and a religious entity would involve inquiry into religious doctrine and ecclesiastical polity. This Court has previously declined to exercise jurisdiction over such matters. See *Dlaikan v Roodbeen*, 206 Mich App 591, 594; 522 NW2d 719 (1994); *Maciejewski v Breitenbeck*, 162 Mich App 410, 414; 413 NW2d 65 (1987). Thus, plaintiff cannot avail himself of the exception to the requirement of an affirmative act or misrepresentation for purposes of the fraudulent concealment statute in cases involving a fiduciary relationship.

Plaintiff also contends that a statute of limitations is tolled in cases involving repressed memory. Plaintiff relies on a footnote in *Lemmerman v Fealk*, 449 Mich 56, 77 n 15; 534 NW2d 695 (1995), in support of his position. *Lemmerman* involved the "discovery rule" which allows a plaintiff in limited circumstances to bring a cause of action that would otherwise be barred by the statute of limitations. *Id*. at 65-66. In that case, the Supreme Court opined that application of the discovery rule is appropriate when a plaintiff would otherwise be denied the ability to bring a cause of action because of the latent nature of the injury or the inability to discover the causal connection between the injury and a breach of duty. *Id*. The Court stated, however, that application of the discovery rule is not appropriate in cases involving repressed memory. *Id*. at 76-77. The Court cautioned, however, that its decision should not be read as stating that assault-based tort actions that plaintiffs are unable to timely assert because of alleged memory repression should never be recognized and expressed no opinion regarding long-delayed tort actions based on sexual assaults that defendants admit committing when the victims are minors. *Id*. at 77 n 15.

Plaintiff argues that because defendant Sigler admitted committing sexual abuse, the statute of limitations should not bar plaintiff's claim under the footnote in *Lemmerman*. A similar argument was rejected in *Guerra v Garratt*, 222 Mich App 285, 288-292; 564 NW2d 121 (1997), however, in which this Court concluded that footnote 15 in *Lemmerman* created no exception to the statute of limitations on the basis of repressed memory. Accordingly, even if plaintiff's memory was repressed, the statute of limitations would nevertheless bar his claim.

In any event, plaintiff has not shown that his memory was repressed. Rather, letters to his parents reveal that he has been aware of the sexual abuse, that he "tried to bury the last 28 years of [his] life," and that he had "been trying to bury the abuse all [his] life." In another letter, plaintiff recalled telling a girlfriend about the abuse when he was approximately seventeen years of age. Thus, even if an exception to the statute of limitations existed in cases involving repressed memory, the record here discloses that plaintiff's memory was not repressed.

Plaintiff also contends that the statute of limitations was tolled because of insanity. MCL 600.5851(1) provides that if a person entitled to bring a claim is insane at the time that a claim

accrues, he may bring the action within one year after the disability has lifted. MCL 600.5851(2) defines "insane" as "a condition of mental derangement such as to prevent the sufferer from comprehending rights he or she is otherwise bound to know and is not dependent on whether or not the person has been judicially declared to be insane." Nothing in plaintiff's complaint or the lower court record tends to show that plaintiff was insane within the meaning of MCL 600.5851(2). Even if plaintiff had been insane at the time his cause of action accrued, however, his complaint evidences that his disability had lifted at least by May 2002, when he claims to have learned of defendants' alleged conspiracy. Because plaintiff failed to file suit within one year after his disability lifted, MCL 600.5851(1) did not operate to avoid the statute of limitations.

Finally, plaintiff argues that application of the statute of limitations to bar his claim would violate his federal constitutional guarantee of equal protection because no such statute of limitations exists for a criminal charge of first-degree criminal sexual conduct, MCL 750.520b(1)(b)(iii) (sexual penetration with a child between 13 and 16 by a person in a position of authority). The Equal Protection Clause of the federal constitution guarantees that no person shall be denied the equal protection of the law. US Const, Am XIV; *W A Foote Memorial Hosp v Jackson*, 262 Mich App 333, 343; 686 NW2d 9 (2004). The essence of the Equal Protection Clause is that the government not treat persons differently on the basis of characteristics that do not warrant disparate treatment. *Id*. "'Unless the discrimination impinges on the exercise of a fundamental right or involves a suspect class, the inquiry under the Equal Protection Clause is whether the classification is rationally related to a legitimate governmental purpose.'" *Morales*, *supra* at 49-50, quoting *Frame v Nehls*, 452 Mich 171, 183; 550 NW2d 739 (1996). If the challenged legislation creates a classification scheme that infringes on a fundamental right or affects an inherently suspect classification, such as race or national origin, courts apply a strict scrutiny analysis. *Morales*, *supra* at 50.

Plaintiff does not contend that the statute of limitations impinges on the exercise of a fundamental right or that he is a member of a suspect class. Indeed, civil litigants in general do not constitute a suspect classification. Thus, the rational basis test applies. Under this test, a statute is presumed constitutional if the classification scheme is rationally related to a legitimate governmental purpose. *Id*. at 51. "A rational basis exists for the legislation when any set of facts, either known or that can be reasonably conceived justifies the discrimination." *Id*. The petitioner bears the burden of proving that the classification is arbitrary and unreasonable. *Id*.

A rational basis exists for the Legislature's enactment of a statute of limitations for civil suits involving criminal sexual conduct while no such statute of limitations exists for criminal actions prosecuting such conduct. A legitimate governmental purpose of enacting a statute of limitations regarding civil claims is to prevent against stale and fraudulent claims and to encourage plaintiffs to diligently pursue claims. *Ward v Rooney-Gandy*, 265 Mich App 515, 521; 696 NW2d 64 (2005). On the other hand, the fact that the Legislature has not enacted a statute of limitations for criminal prosecutions charging first-degree criminal sexual conduct may evidence the heightened importance of apprehending sex offenders and prosecuting them criminally. The Legislature apparently distinguished the apprehension and criminal prosecution of sex offenders from suits brought merely to recover monetary damages. The apprehension and criminal prosecution of sex offenders and the prevention of stale civil claims are both legitimate governmental purposes. The classification scheme of applying a statute of limitations in civil

cases but not in criminal prosecutions is rationally related to those governmental purposes. Accordingly, plaintiff's equal protection argument fails.

Because applying the statute of limitations in this case would not offend plaintiff's equal protection guarantees and plaintiff's attempts to distinguish this case from *Doe* are unavailing, *Doe* governs the outcome of this case as it did in *Reinhardt*. As in *Doe*, plaintiff was aware of a possible cause of action against defendants at the time that the sexual abuse occurred. The "entire constellation of facts" were either known or should have been known to plaintiff at that time. *Doe*, *supra* at 644. Defendants' conduct amounted to nothing more than mere silence, which is insufficient to constitute fraudulent concealment. *Id*. at 645. Plaintiff argues that his case is distinguishable from *Doe* because the plaintiff in that case did not allege civil conspiracy as a cause of action. The plaintiff in *Doe* did, however, allege "a conspiracy of silence," on the part of the defendant. Moreover, the allegations in *Reinhardt* were identical to the instant case, and this Court determined in *Reinhardt* that summary disposition for the defendants was required. Also, as in *Doe*, plaintiff's argument that further discovery is necessary fails. Even if further discovery revealed evidence of a church-wide conspiracy to conceal abusive priests' activity, such a conspiracy would not have operated to conceal from plaintiff his cause of action against defendants, of which he either knew or with diligent inquiry should have known at the time that the abuse occurred. *Id*. at 646, 649.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Brian K. Zahra