

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT

John Doe 76C,

Court File No.: 62-C9-06-3962
Judge Gregg E. Johnson

Plaintiff,

vs.

ORDER

Archdiocese of St. Paul and Minneapolis
and Diocese of Winona,

Defendants.

On July 21, 2010, the above matter came duly before the Honorable Gregg E. Johnson for hearing in Courtroom 1280 of the Ramsey County Courthouse, in the city of Saint Paul, state of Minnesota.

The matter was before the Court upon Defendants' motions for an order granting Summary Judgment, pursuant to Rule 56, Minnesota Rules of Civil Procedure, and upon the papers filed in support of Defendants' motions.

Thomas B. Weiser, Esq., and Jennifer R. Larimore, Esq., from the law firm of Meier, Kennedy & Quinn, Chartered, appeared as counsel on behalf of Defendant Archdiocese of St. Paul and Minneapolis, in support of its motion. Anna M. Restovich, Esq., from the law firm of George F. Restovich & Associates, appeared as counsel on behalf of Defendant Diocese of Winona, in support of its motion. Jeffrey R. Anderson, Esq., and Michael G. Finnegan, Esq., from the law firm of Jeff Anderson and Associates, P.A., appeared as counsel on behalf of Plaintiff John Doe 76C, in opposition to said motions.


Now, therefore, based upon the proceedings, the file and records herein, and upon the oral arguments of counsel,

IT IS HEREBY ORDERED:

1. Defendants' motions for summary judgment are **GRANTED**.
2. The following memorandum is herein incorporated as a part of this order.

LET JUDGMENT BE ENTERED ACCORDINGLY

DATED: 10-12, 2010



Gregg E. Johnson
District Court Judge

MEMORANDUM

Plaintiff was born on June 11, 1967 and is 42 years old. Plaintiff's family began attending Risen Savior Catholic Church in Apple Valley, Minnesota, in 1968. Thomas Adamson was assigned as an Associate Pastor at Risen Savior from 1981 until 1984. Prior to 1981, Adamson served in a number of parishes in the Archdiocese of St. Paul and Minneapolis and the Diocese of Winona. Plaintiff's claims against Defendants are based upon Plaintiff's allegation that Adamson touched him in an inappropriate manner on four occasions in the summer of 1980 or 1981 when Plaintiff was 13 or 14 years old. Plaintiff alleges that the contact by Adamson during each incident occurred for a few seconds and the touch was over his clothing on three of the four occasions.

In the mid- to late- 1980s, a number of plaintiffs commenced lawsuits against Adamson and Defendants, claiming that Adamson had touched them inappropriately when they were minors. Between 1987 and 1991, 139 stories were reported on the lawsuits in the Minneapolis Star Tribune and the St. Paul Pioneer Press. Plaintiff's father

read several newspaper articles about the allegations of abuse by Adamson, and recalls hearing about the allegations through other parishioners and at mass by a priest.

In response to the widespread publicity surrounding Adamson, representatives of Risen Savior held a meeting with parishioners to discuss the allegations for "anyone to attend if need be," and Plaintiff's mother attended the meeting. At the meeting, parishioners were informed of the allegations against Adamson and were told that the allegations were one reason for Adamson's removal from the parish. Plaintiff's mother and father discussed the sexual abuse charges against Adamson with a pastor from Risen Savior on two occasions. In 1986, Plaintiff's mother asked Plaintiff if he had ever been sexually abused by Adamson, and Plaintiff responded in the negative.

On April 22, 2009, Plaintiff met with his Canon Law expert, Father Thomas Doyle, for approximately three hours. During that meeting, Plaintiff shared with Fr. Doyle that, at the time of the alleged incidents, Plaintiff felt emotionally paralyzed, shocked, and very isolated and confused. When Fr. Doyle asked Plaintiff if he felt that he could tell anyone about the abuse at the time it occurred, Plaintiff explained that, at the time of the abuse, he felt deathly afraid to tell anyone because of the relationship of his family to the Catholic church and to Adamson in particular.

The record reflects that the first evidence demonstrating that Defendants knew of Adamson's problem was in 1963. During that year, three priests of the Diocese of Winona had discussions about Adamson's inappropriate sexual conduct with young boys. Adamson was appointed Superintendent of two Catholic schools, assigned to assist at St. John's Church, and appointed Moderator of the Caledonia Deanery of the Council of Catholic Men. In 1964, Adamson told several fellow Diocesan priests that he had a

problem with a boy, and was transferred from his Superintendent position at a high school in Caledonia to an Assistant Principal position at a high school in Rochester. In the mid- to late-1960s, after the Diocese received additional reports of abuse, Adamson was sent to therapy with Dr. Frances Tyce for approximately 15 sessions over a three-month period. Adamson was then transferred to a Chaplain position at Lea College and an Assistant Pastor position at St. Theodore's Church.

In 1973 and 1974, the Diocese received many more reports that Adamson had sexually abused more young boys. Adamson was again referred to Dr. Frances Tyce for evaluation, and Dr. Tyce recommended in-patient therapy at the Institute of Living in Hartford, Connecticut. Upon discharge from the Institute, Adamson was diagnosed with "Sexual Orientation Disturbance." During 1974, many individuals within the Diocese were made aware of Adamson's sexual involvement with boys.

In 1975, Adamson was transferred to the Archdiocese. He lived and worked at St. Leo the Great Church, and participated in psychotherapy with Fr. Kenneth Pierre, a psychologist with the Consultation Services Center of the Archdiocese. In April 1975, Fr. Pierre sent a letter to Bishop Watters requesting that the Bishop allow Adamson to return to the Diocese and be reassigned to a church. In a letter dated April 19, 1975, Bishop Watters responded:

"While I do not question your evaluation regarding the progress Father Adamson has made, I must also add that I am convinced that he doesn't even begin to appreciate the numbers of people in at least five different communities across the entire Diocese who have finally pieced together incidents occurring over a 15 year span and who now openly raise questions about the credibility of all priests. Obviously, I am writing to you in confidence. You would only have to struggle through the painful sessions I've had with heart-broken and bewildered parents who only now have come to discover the source of some of the problems of their sons."

In 1976, Archbishop Roach assigned Adamson to an Administrator position at St. Boniface Church. Adamson was arrested and charged with indecent exposure in 1977, after having solicited sex with and exposed himself to a 16-year-old male in the sauna at a country club. In 1980, several boys at Immaculate Conception (a church within the Archdiocese) reported to Pastor Joseph Wajda that Adamson had sexually assaulted an eighth grade boy in the whirlpool at the YMCA. When Chancellor Carlson met with Adamson and informed him of these most recent allegations, Adamson admitted the incident. As a result, Adamson was hospitalized at St. Mary's hospital on January 4, 1981.

On February 2, 1981, after having been released from the hospital, Adamson was assigned as Associate Pastor at Risen Savior Church in Apple Valley. Adamson's appointment was not published in the Catholic Bulletin.

Plaintiff initiated this action by service of Summons and Complaint upon the Defendants in 2006. Plaintiff asserts claims of negligence, negligent supervision, negligent retention, and vicarious liability against Defendants arising out of the alleged physical assaults committed by Adamson. Plaintiff also asserts claims based on common-law fraud, namely false representations and intentional nondisclosure, against Defendants.

In June 2009, the Court presided over a *Frye-Mack* hearing pursuant to Defendants' motion to exclude expert testimony regarding repressed and recovered memory. The Court found that Plaintiff failed to show that the concept of repressed and recovered memory is generally accepted in the relevant scientific community, and failed to show that repressed and recovered memory evidence has foundational reliability based

on well-recognized scientific principles. Thus, the Court held that Plaintiff failed to meet his burden of proof under the *Frye-Mack* standard, and granted Defendants' motion.

In their motions for summary judgment, Defendants argue that Plaintiff's claims of negligence, negligent supervision, negligent retention, and vicarious liability should be dismissed as such claims are barred by the statute of limitations pursuant to Minn. Stat. § 541.073. Defendants assert that an action for damages based on personal injury caused by sexual abuse must be commenced within six years of the time the plaintiff knew or had reason to know that the injury was caused by the sexual abuse. Minn. Stat. § 541.073, subd. 2(a). Further, Defendants assert that the six-year statute of limitations applies to actions for damages commenced against a person who caused the plaintiff's personal injury either by (1) committing sexual abuse against the plaintiff, or (2) negligently permitting sexual abuse against the plaintiff to occur. Minn. Stat. § 541.073, subd. 3. As such, Defendants assert that the six-year statute of limitations applies to Plaintiff's claims of negligence, negligent supervision, negligent retention, and vicarious liability.

Defendants note that Plaintiff attempted to assert a legal disability under Minn. Stat. § 541.15 by arguing that he suffered from repressed memory and that such disability should toll the statute of limitations on his claims. However, Defendants contend, the Court has already ruled that Plaintiff failed to meet his burden of proof pursuant to *Frye-Mack* of demonstrating that evidence of "repressed and recovered memory" is reliable and generally accepted within the relevant scientific community. As a result, the Court granted Defendants' motion to exclude all such evidence. Defendants argue that Plaintiff's allegations that he repressed and subsequently recovered memories of the

alleged abuse are irrelevant, and, thus, Plaintiff cannot prove any disability that would toll the statute of limitations.

Defendants rely on *D.M.S. v. Barber*, 645 N.W.2d 383, 391 (Minn. 2002) for the proposition that the six-year period of limitation under the delayed discovery statute begins to run when the victim of sexual abuse reaches the age of majority. As such, Defendants assert that the statute of limitations for Plaintiff's non-fraud claims began to run when Plaintiff attained the age of 18 on June 11, 1985, and expired on June 11, 1991. Since Plaintiff did not commence this action until 2006, Defendants argue that they are entitled to summary judgment with respect to Plaintiff's claims of negligence, negligent supervision, negligent retention, and vicarious liability.

Next, Defendants argue that Plaintiff's fraud claims based on alleged affirmative misrepresentations and alleged intentional nondisclosure must be dismissed as such claims are barred by the statute of limitations. Defendants note that two different statutes could arguably govern the limitations periods of Plaintiff's fraud claims. The delayed discovery statute, Minn. Stat. § 541.073, applies to actions for damages arising from sexual abuse and establishes a six-year statute of limitations from the time the plaintiff knew or had reason to know the abuse caused injury. The fraud statute of limitations, Minn. Stat. § 541.05, also establishes a six-year statute of limitations and begins to run when plaintiff discovers the facts constituting the fraud. Defendants argue that Plaintiff's fraud claims are barred by Minn. Stat. § 541.073, as Plaintiff failed to file his claims prior to 1991, six years after Plaintiff reached the age of majority.

Defendants cite to an unpublished decision of the Minnesota Court of Appeals which held that the applicable statute of limitations for claims of sexual abuse arising out

of intentional misrepresentation, i.e., fraud, is Minn. Stat. § 541.05 subd. 1(6), as opposed to Minn. Stat. § 541.073. *Jane Doe 43C v. Diocese of New Ulm*, No. A08-0729, 2009 WL 605749 at * 5 (Minn. App. 2009). Defendants argue that the facts constituting fraud are deemed to have been discovered when, with reasonable diligence, they could and ought to have been discovered. *Blegen v. Monarch Life Ins. Co.*, 365 N.W.2d 356, 357 (Minn. App. 1985). Defendants further argue that, the mere fact that the aggrieved party did not actually discover the fraud will not extend the statutory limitation if it appears that the failure to discover it sooner was the result of negligence, and inconsistent with reasonable diligence. *Id.*

Defendants assert that Plaintiff was made aware of the fact that Adamson was a danger to children at the moment Plaintiff alleges he was abused in 1980 or 1981. Defendants cite to Fr. Doyle's testimony that Plaintiff told Fr. Doyle that, at the time of the alleged abuse, Plaintiff felt emotionally paralyzed, shocked, isolated, confused, and was deathly afraid to tell anyone of the abuse. Defendants also assert that Plaintiff was aware that Adamson was a danger to children when he learned of the sexual abuse accusations against Adamson during the mid-1980s through his family and church community. Finally, Defendants argue that Plaintiff was aware of extensive publicity in the media detailing various accusations of child abuse against Adamson in the late-1980s.

Defendants assert that Plaintiff had enough information in the 1980s to file his fraud claims against Defendants, and that a reasonable person in Plaintiff's shoes should have known that any alleged representation made by Defendants that Adamson was not a danger to children was false. Defendants contend that, since Plaintiff waited until 2006

to commence this action, Plaintiff's fraud claims are barred by the statute of limitations pursuant to both Minn. Stat. § 541.073 and § 541.05.

Defendants also argue Plaintiff's claims of fraud should be dismissed on the merits. First, Defendants argue that there is no evidence that a representation was made by Defendants to Plaintiff that Adamson did not have a history of sexual abuse, nor was a representation made regarding Adamson's fitness to be a priest. Further, Defendants argue that, even if Adamson's continued employment constitutes a representation by Defendants that Adamson was not a danger to children, there is no evidence that such a representation was intended to induce any particular action by Plaintiff, or that Plaintiff took any particular action as a result of the alleged representation. Defendants assert that fraud claims typically contemplate a commercial relationship and a pecuniary loss flowing from a misrepresentation made in the course of that relationship, and are not generally brought in personal injury cases. Specifically, Defendant Archdiocese argues, courts have limited application of an action for fraud in the context of claims arising from sexual abuse.

Defendant Archdiocese cites to *Mars v. Diocese of Rochester*, 196 Misc.2d 349, 352 (N.Y. Sup. 2003), where the court stated that an action for fraud, where premised on childhood sexual abuse by a member of the clergy, would fail, unless the plaintiff identified damages that were separate and distinct from those flowing from the abuse. Defendant Archdiocese argues that Plaintiff has not alleged any damages in his fraud counts which are separate and distinct from the damages in his other claims. Defendant Archdiocese thus asserts that Plaintiff should not be permitted to recast his failed negligence claims as fraud claims in order to circumvent the statute of limitations.

Defendant Diocese argues that it is unreasonable to assert that Defendants sought to place Plaintiff in a position where he would be sexually abused by Adamson, and that there is no evidence in the record to support such an assertion. As such, Defendants argue that Plaintiff is unable to show any material issue of genuine fact as to his claim that Defendants made a false representation to induce Plaintiff to act or rely upon such representation.

Defendants argue that, with respect to Plaintiff's claim of fraud by intentional non-disclosure or concealment of material facts, Defendants had no affirmative duty to disclose to Plaintiff facts known to them regarding past reports of sexual abuse by Adamson. Defendants rely on *L & H Airco, Inc. v. Rapistan Corp.*, 446 N.W.2d 372, 380 (Minn. 1989) for the proposition that a party is not required to disclose material facts to another unless a fiduciary relationship exists between the parties or unless the disclosure would be necessary to clarify information already disclosed. Defendants argue that no representations were made by Defendants to Plaintiff or his family which would necessitate the need to clarify the information already disclosed.

Further, Defendants argue that Plaintiff is unable to establish that a fiduciary relationship exists between Defendants and Plaintiff. Defendants cite to an unpublished Minnesota Court of Appeals case, wherein the Court stated that the analysis of whether a fiduciary relationship existed would require the court to

“define the scope of the duty, if any, owed to individuals by their clergy, a matter fundamentally connected to issues of church organization and governance. Because it would necessarily involve the court in excessive entanglement in church matters by evaluating religious tenets and internal affairs of the church and archdiocese, the Constitution precludes us from making any such analysis.”

Ivers v. Church of St. William and The Archdiocese of St. Paul and Minneapolis, No. C2-98-519, 1998 WL 887536 at * 3 (Minn. App. 1998).

Defendants also cite to *Meyer v. Lindala*, 675 N.W.2d 635, 640 (Minn. App. 2004) for the proposition that providing faith-based advice or instruction, without more, does not create a special relationship so as to establish a duty to protect one from another's conduct, let alone a fiduciary relationship. Defendants argue that there is also no general duty to warn the general public that any particular individual might desire to harm them. Defendants acknowledge that, in certain exceptional cases, an individual may owe a legal duty to warn others of a third person's possible criminal activity. In such exceptional cases, Defendants argue, the imposition of such a legal duty turns on the issue of whether the criminal acts of the third person were sufficiently foreseeable, and one owes no duty to warn those endangered by the conduct of another except when one stands in some special relationship to either the person whose conduct needs to be controlled or to the foreseeable victim of that conduct.

Defendants argue that, since Adamson had previously entered into and completed treatment prior to his assignment at Risen Savior, Defendants were under no duty to disclose Adamson's history to Plaintiff because they did not have sufficient information to believe that a crime would be committed by Adamson against Plaintiff. Defendants contend that, since Plaintiff is unable to establish that a fiduciary duty exists between himself and Defendants, or that a criminal act by Adamson against Plaintiff was reasonably foreseeable, Plaintiff's claims of intentional non-disclosure of material facts must fail. Defendants also argue that Plaintiff's claims based on fraud must be dismissed

as there is no evidence that Plaintiff relied upon any affirmative representation made by Defendants to Plaintiff regarding Adamson's fitness to be a priest.

Finally, Defendants argue that the First Amendment to the United States Constitution prevents Plaintiff from asserting that Defendants committed fraud, as the legal analysis of Plaintiff's fraud claims requires the Court to improperly engage in excessive entanglement under the Establishment Clause. Defendants note that Plaintiff's fraud claims are based on allegations that Defendants affirmatively represented to Plaintiff that Adamson was fit to be a priest by failing to disclose his history of sexual abuse. Defendants argue that, in order for the Court to address this issue, the Court would be required to analyze what qualifies an individual as "fit" to be a priest, and this inquiry is barred by the First Amendment. Further, Defendants assert that Plaintiff's fraud claims are essentially claims of clergy malpractice and must be dismissed because Minnesota does not recognize such claims.

Plaintiff argues that the statute of limitations applicable to Plaintiff's fraud claim is Minn. Stat. § 541.05, because it provides a statute of limitations specifically for fraud. Plaintiff cites to language in the statute which provides that, "the following actions shall be commenced within six years: ... (6) for relief on the ground of fraud, in which case the cause of action shall not be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud." Plaintiff cites to an unpublished Minnesota Court of Appeals decision, wherein the Court held that the fraud statute of limitations may be applied to fraud cases involving childhood sexual abuse. *Jane Doe 43C v. Diocese of New Ulm*, 2009 WL 605749 (Minn. Ct. App. March 10, 2009). Plaintiff notes that, in *Jane Doe 43C*, the Court held that the district court erred when it granted

summary judgment on the plaintiffs' intentional misrepresentation claim based on the delayed-discovery statute of limitations.

Plaintiff also cites to *John Doe 1 v. Archdiocese of Milwaukee*, 734 N.W.2d 827 (Wis. 2007), wherein the Wisconsin Supreme Court held that the plaintiff's claims for fraud were not barred, because it could not be determined when the plaintiff knew or should have known that the Archdiocese knew of the priests' past histories of sexually abusing children. Plaintiff notes that the Wisconsin statute of limitations for fraud is identical to Minnesota's fraud statute of limitations, and argues that Plaintiff's fraud claims must be analyzed separately from his negligence claims and claims for vicarious liability based on negligence. Thus, Plaintiff asserts that his fraud claim is governed by Minn. Stat. § 541.05.

Plaintiff further argues that the delayed discovery statute, Minn. Stat. § 541.073, does not govern Plaintiff's fraud claim. Plaintiff cites to language in that statute, which limits its applicability to situations where injury was caused to the plaintiff either by committing sexual abuse against the plaintiff or negligently permitting sexual abuse against the plaintiff to occur. Plaintiff argues that this language plainly excludes causes of action for intentional misrepresentation from the statute's scope. As a result, Plaintiff asserts that Minn. Stat. § 541.073 is not applicable to his fraud claim.

Plaintiff further asserts that the time of discovery for a fraud claim is a question of fact not appropriate for summary judgment. Plaintiff cites to *Estate of Jones by Blume v. Kvamme*, 449 N.W.2d 428, 431 (Minn. 1989), for the proposition that the question of when discovery could or should have reasonably been made is one of fact.

Plaintiff argues that he did not discover Defendants' fraud until 2001 or 2002, and his fraud claim is, thus, timely. Plaintiff argues that a cause of action for fraud must be commenced within six years of the discovery by the aggrieved party of the facts constituting the fraud. Minn. Stat. § 541.05 (2010). Plaintiff asserts that the six-year period begins to run when the facts constituting the fraud are discovered or, by reasonable diligence, should have been discovered. *Toombs v. Daniels*, 361 N.W.2d 801, 809 (Minn. 1985). Plaintiff contends that he did not know that he was sexually abused by Adamson until 2001 or 2002, and that he did not discover that Defendants knowingly placed a child molester at Risen Savior and allowed him access to kids until after he recovered a memory in 2001 or 2002. Since Plaintiff commenced this action in 2006, he argues that his fraud claim is not time-barred.

Plaintiff next argues that summary judgment is inappropriate because reasonable diligence in discovering fraud is a fact issue, and Plaintiff exercised reasonable diligence based on the information that he had. Plaintiff relies on *Buller v. A. O. Smith Harvestore Prods., Inc.*, 518 N.W.2d 537, 542 (Minn. 1994), for the proposition that a plaintiff must exercise reasonable diligence only when he or she has notice of a possible cause of action for fraud. Without notice of a possible cause of action for fraud, Plaintiff contends, he had no duty to exercise reasonable diligence to discover the fraud. Plaintiff asserts that, while there is evidence that Plaintiff's mother may have told him in 1986 that Adamson had been accused of sexually abusing children, there is no evidence that Plaintiff knew Adamson abused him until 2001 or 2002.

Plaintiff argues that it is unreasonable to argue that he should have discovered Defendants' fraud before he remembered being sexually abused by Adamson. Further,

Plaintiff argues that, even if he knew of allegations that Adamson had abused children in the past, because it did not personally involve himself, he had no reason to launch an investigation into whether Defendants knew that Adamson abused children before they transferred him to Risen Savior. Further, Plaintiff argues that, even if he knew of his own abuse before he recovered a memory, that fact did not put him on notice that Defendants knew Adamson had sexually abused children before they transferred him to Risen Savior.

Plaintiff asserts that he should be allowed to testify about his personal knowledge and experiences, because the Court's decision regarding the exclusion of evidence of repressed memories related solely to whether or not expert testimony would be allowed regarding the validity and reliability of the scientific theory of repression of memory. Plaintiff points to Rule 602 of the Minnesota Rules of Evidence, which provides that a witness may prove personal knowledge by the witness' own testimony. Thus, Plaintiff argues that he ought to be able to testify that he first came to have personal knowledge of Adamson's sexual abuse when he recovered a memory in 2001 or 2002.

Next, Plaintiff argues that Defendants made a false representation about Adamson being a child molester. Plaintiff contends that Defendants represented that Adamson could be trusted and that they did not know about Adamson's past abuse when they placed Adamson at Risen Savior. Plaintiff maintains that, when a Bishop appoints an individual to a parish, he acknowledges that the person can be trusted.

Plaintiff also asserts that Defendants' representation about Adamson was false, because both Defendants knew that Adamson could not be trusted, that he was a serial child molester, and that he was a grave risk to children at Risen Savior. Plaintiff notes that Defendant Diocese received six separate reports of Adamson's sexual abuse of

children, and that Adamson admitted to the Diocese that he sexually molested children on several occasions. Further, Plaintiff asserts that Defendant Archdiocese knew that Adamson sexually molested children before placing him at Risen Savior, and that Adamson admitted such behavior to the Archdiocese, as well.

Plaintiff argues that the question of fraudulent intent is one for the jury, and there is a fact issue regarding Defendants' intent to misrepresent Adamson to Plaintiff.

Plaintiff asserts that Defendants knew Adamson was a child molester, but held him out to be safe around children. Plaintiff refers to the testimony of several agents of Defendants who testified that they had received reports of Adamson's sexual abuse dating as far back as 1962, and that such reports continued to come to the Diocese and Archdiocese on a regular basis over the course of 20 years. Plaintiff argues that Defendants' actions demonstrate that they intended to deceive Plaintiff and other children and Risen Savior.

Plaintiff further asserts that he reasonably relied upon Defendants' misrepresentations. Plaintiff cites to *Berryman v. Riegert*, 175 N.W.2d 438, 443 (1970) for the proposition that, in a fraud action, the question of reliance is ordinarily for the jury. Further, Plaintiff argues that the reasonableness of such reliance is judged by the capacity and experience of the person that is allegedly deceived. *Berg v. Xerxes-Southdale Office Bldg. Co.*, 290 N.W.2d 612, 616 (Minn. 1980). Plaintiff maintains that, since he was a child at the time of the misrepresentations, he and his parents were very involved at Risen Savior, and his parents had a great deal of trust in Defendants and their agents, it was reasonable for Plaintiff to rely on Defendants' representations regarding Adamson.

Plaintiff asserts that Defendants had a duty to disclose their knowledge of Adamson's past abuse of children because of their superior knowledge. Plaintiff argues that, although one party to a transaction generally has no duty to disclose material facts to the other, one who has special knowledge of material facts to which the other party does not have access may have a duty to disclose these facts to the other party. *Klein v. First Edina Nat. Bank*, 196 N.W.2d 619, 622 (1972). Plaintiff contends that, since he was a child at the time Defendants placed Adamson at Risen Savior, and Defendants knew that Adamson was a child molester, Defendants had a duty to disclose this knowledge to Plaintiff.

Further, Plaintiff argues that Defendants had a duty to disclose their knowledge of Adamson because they were in a fiduciary relationship with Plaintiff. Plaintiff asserts that whether or not a fiduciary relationship exists is a question of fact, and maintains that there is evidence that Plaintiff and Defendants were in a fiduciary relationship. Plaintiff notes that he was involved in many activities at Risen Savior, Adamson supervised him as an altar boy, Adamson told Plaintiff about becoming a priest at the same time he was molesting Plaintiff, and that Plaintiff and his family had great respect and trust for the church and its priests. Plaintiff also notes that his family was very involved at Risen Savior, and his mother taught grade school religion. Plaintiff cites to Defendants' testimony that the pastor of a parish has the responsibility to safeguard the parishioners, and that priests have a special relationship to parishioners because they preside at mass and preach. For these reasons, Plaintiff asserts that the evidence demonstrates there was a fiduciary relationship between Plaintiff and Defendants.

Plaintiff contends that he will suffer pecuniary damages in the future for treatment and medication, as Dr. Mary Kenning concluded that Plaintiff will require “intensive outpatient therapy for an extended period of time, up to 10 years, including medication, alcohol treatment, and eating disorder or nutrition groups.” Plaintiff argues that, even though Defendant Archdiocese has paid for a portion of Plaintiff’s treatment, Defendants are still liable for the rest of Plaintiff’s pecuniary damages. Further, Plaintiff argues that, even if Plaintiff will not suffer a future pecuniary loss, the key in a fraud claim is that the person suffered damages, not whether those damages are economic or non-economic in nature.

Finally, Plaintiff argues that the First Amendment to the United States Constitution does operate to shield Defendants from liability. Plaintiff asserts that the intentional misrepresentation claim and the intentional non-disclosure claim are based on laws that apply to all organizations in Minnesota, and that the First Amendment does not shield an organization from generally applicable, neutral laws.

Plaintiff cites the “Lemon Test,” which provides a three-part test to determine whether a neutral law violates the Establishment Clause: (1) the law must have a secular purpose; (2) the primary or principal effect of the law must neither advance nor inhibit religion; and (3) the law must not foster an excessive government entanglement with religion. Plaintiff argues that the laws in question do not have the enhancement or inhibition of religion as their primary or principal effects. Further, Plaintiff argues that there is no threat of excessive entanglement between government and religion in the application of fraud or fiduciary duty law. Thus, Plaintiff asserts, since Defendants’

conduct violated neutral tort laws that should apply in any employment context, the First Amendment shield Defendants from liability.

Summary judgment is appropriate only if “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law.” Minn. R. Civ. P. 56.03; *DLH, Inc. v. Russ*, 566 N.W.2d 60 (Minn. 1997).

Summary judgment is mandatory against a party who fails to establish an essential element of the claim if that party has the burden of proof, because this failure renders all other facts immaterial. *Bebo v. Delander*, 632 N.W.2d 732, 737 (Minn. App. 2001). The evidence presented must be viewed in a light most favorable to the non-moving party. *Vieths v. Thorpe Financial Co.*, 232 N.W.2d 776 (Minn. 1975). The non-moving party in a motion for summary judgment must present specific facts showing genuine issues for trial. *Marose v. Hennameyer*, 347 N.W.2d 509 (Minn. App. 1984); *Thiele v. Stitch*, 425 N.W.2d 580, 583 (Minn. 1988). The evidence cannot be merely colorable, but must be significantly probative. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249-250 (1986). This must be established by substantial evidence. *Pischke v. Kellen*, 384 N.W.2d 201 (Minn. App. 1986).

In reviewing the record, the Court agrees with Defendants that all of Plaintiff’s claims are barred by the applicable statutes of limitations. Therefore, Defendants’ motions for summary judgment must be granted.

In June 2009, the Court ruled that Plaintiff failed to meet his burden of proof under the *Frye-Mack* standard, as he failed to demonstrate that the theory of repressed

and recovered memory is generally accepted in the relevant scientific community and that it has foundational reliability based on well-recognized principles. Accordingly, Defendants' motion to exclude evidence and testimony regarding repressed and recovered memory was granted.

Plaintiff's claims against Defendants of negligence, negligent supervision, and negligent retention, and for vicarious liability, are barred by the statute of limitations pursuant to Minn. Stat. § 541.073. As Defendants correctly argue, the statute of limitations with respect to those claims began to run upon Plaintiff's eighteenth birthday on June 11, 1985, and expired on June 11, 1991. Plaintiff commenced this action in 2006. Since the Court has already ruled that evidence of repressed and recovered memory must be excluded, Plaintiff is unable to produce evidence of a legal disability which would toll the statute of limitations beyond the six-year period. Thus, Defendants are entitled to summary judgment with respect to Counts I, II, III, and IV of Plaintiff's Complaint.

Plaintiff's claims of fraud against Defendants are also barred by the statute of limitations pursuant to Minn. Stat. § 541.05. While the Court agrees with Plaintiff that his fraud claims are governed by Minn. Stat. § 541.05 rather than Minn. Stat. § 541.073, the Court nevertheless finds that Plaintiff failed to satisfy the statute of limitations embodied therein. Under Minn. Stat. § 541.05, subd. 1(6), causes of action for relief on the grounds of fraud, in which case the cause of action shall not be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud, shall be commenced within six years. As Defendants properly assert, the facts constituting the fraud are deemed to have been discovered when, with reasonable diligence, they could

and ought to have been discovered. Thus, Plaintiff should have commenced his fraud claims within six years from the time he learned, or should have learned in the exercise of reasonable diligence, that Adamson was a danger to children.

The Court finds that there is ample evidence in the record demonstrating that Plaintiff was aware of the fact that Adamson was a danger to children in the 1980s. First, Plaintiff's knowledge of Adamson's harmful conduct towards him is evidenced by the deposition testimony of Fr. Doyle. According to that testimony, Plaintiff told Fr. Doyle that, at the time of the alleged abuse, Plaintiff felt emotionally paralyzed, shocked, isolated, confused, and was deathly afraid to tell anyone of the abuse due to his family's relationship to Adamson and the Church. Further, Plaintiff learned through his family and church community in 1984 that Adamson had been accused of sexually abusing children. Plaintiff's mother discussed the allegations with him in the mid-1980s, there was extensive publicity in the media detailing those allegations in the late-1980s, and Plaintiff discussed the allegations and alleged abuse with his girlfriend in the 1990s. The Court finds that Plaintiff learned, and should have learned in the exercise of reasonable diligence, of the facts constituting the fraud in the 1980s. As Plaintiff did not commence this action until 2006, Defendants are entitled to summary judgment with respect to Counts V and VI of Plaintiff's Complaint.

GEJ