IN THE IOWA DISTRICT COURT IN AND FOR CLINTON COUNTY

DONALD J. GREEN, Plaintiff, vs. FATHER JAMES JANSSEN AND THE DIOCESE OF DAVENPORT, Defendants.	)	Law No. LA 29990 **DEFENDANT DIOCESE OF DAVENPORT'S BRIEF IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT**

Defendant Diocese of Davenport, by and through its attorneys, Lane & Waterman LLP, for its Brief in Support of its Motion for Summary Judgment, states as follows:

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I. BACKGROUND FACTS

1. Plaintiff Donald J. Green filed his Petition on November 17, 2003. In his Petition, Green alleges that beginning in 1982, while a member of SS Philip & James Parish in Grand Mound, Iowa, he was sexually abused by Defendant Janssen. Green bases his claims against

Defendant Diocese on its relationship to Defendant Janssen. Green was born on November 15, 1966, and would have turned eighteen years of age on November 15, 1984. Green has been aware of the abuse, aware that the abuse was wrong, and was aware that the abuse psychologically harmed him from 1996 until the present time. He has sought counseling for the abuse since 1996.

II. SUMMARY JUDGMENT STANDARDS

Summary judgment is appropriate when there is no genuine issue of material fact and the movants are entitled to judgment as a matter of law. Iowa R. Civ. P. 237; Behr v. Meredith Corporation, 414 N.W.2d 339, 341 (Iowa 1987). When, as here, Defendants have properly supported their Motion for Summary Judgment, the burden shifts to the Plaintiffs to show that an issue of material fact exists. Plaintiffs may not rest on merely the allegations in their pleadings. Iowa R. Civ. P. 237(e); Hoefer v. Wisconsin Education Association Insurance Trust, 470 N.W.2d 336, 339 (Iowa 1991); Colonial Banking Company of Des Moines v. Dowie, 330 N.W.2d 279, 282 (Iowa 1983).

The purpose of summary judgment is to enable a party to obtain judgment promptly without unnecessary delay and the expense of trial in cases where there are no substantial or relevant factual issues to try. Northwestern Bank of Sioux City v. Steinbeck, 179 N.W.2d 471 (Iowa 1970). See also Baure v. Sern Fin.Co., 169 N.W.2d 850, 853 (Iowa 1969) ("The purpose of all summary judgment rules is to avoid useless trials.")

III. ARGUMENT

A. Defendant is entitled to summary judgment because this claim is time-barred by Iowa Code §§ 614.1(2) and 614.8.

Pursuant to Iowa Code §§ 614.1(2) and 614.8, the applicable statutes of limitations in the 1980's was two (2) years from the last incident of abuse, or when a person reached nineteen (19) years of age, whichever was later.

Assuming for the purpose of this Motion that the abuse incident occurred on December 31, 1982, the statute of limitations ran on Green's claim on November 15, 1985, the date Green turned 19 years of age.

Green filed suit here on November 17, 2003. Because Green did not file suit by November 15, 1985, his claim is presumptively barred by the statutes of limitations then in effect.

B. Green may not use the extended statute of limitations of § 614.8A.

The Diocese anticipates that Green may try to excuse filing his claim almost 18 years late by arguing that Iowa Code § 614.8A should be applied here thereby providing him four years from his "discovery" of his claim. However, § 614.8A has no applicability here.

In 1990, Iowa Code § 614.8A went into effect. Iowa Code § 614.8A created a new four (4) year statute of limitations for some sexual abuse causes of action. Iowa Code § 614.8A states as follows:

> *An action for damages for injury suffered as a result of sexual abuse which occurred when the injured person was a child, but not discovered until after the age of majority, shall be brought within four years from the time of discovery by the injured party of both the injury and the causal relationship between the injury and the sexual abuse.*

Iowa Code § 614.8A (2003).

Iowa Code § 702.5 defines a "child" as any person under fourteen (14) years of age, and the Iowa Supreme Court has used this definition when considering the use of "child" in the context of a claim under Iowa Code § 614.8A. See Doe v. Cherwitz, 518 N.W.2d 362, 365 (Iowa 1994).

Thus, § 614.8A created a new 4 year statute of limitations for claims related to child sexual abuse not discovered until adulthood. However, this statute only applies to the sexual abuse of children, and for the purposes of this statute, the child must be under fourteen (14) years of age. Green testified that he was fifteen (15) years of age at the time of the abuse. Therefore, § 614.8A does not apply in this case.

C. Even if Green proves he is entitled to use of the discovery rule, his claim is still time-barred.

Defendant also anticipates that Plaintiff will attempt to use the discovery rule to toll the statute of limitations. However, even using the discovery rule, Green's claim is still time-barred by §§ 614.1(2) and 614.8.

Under Iowa's discovery rule, the plaintiff is deemed to have "discovered" his or her cause of action when the plaintiff becomes aware of facts that would prompt a reasonable person to seek out information as to the extent of the sexual abuse he or she suffered, or the extent of the injuries he or she has suffered from the sexual abuse. See Frideres, 540 N.W.2d at 269; Frideres v. Schiltz, 113 F.3d 897, 899 (S.D. Iowa 1997); Woodroffe v. Hasenclever, 540 N.W.2d 45, 47 (Iowa 1995).

Thus, when the discovery rule applies to sexual abuse cases, a plaintiff is on notice and the statute of limitations begins to run when the plaintiff first recalls an incident of sexual abuse and knows, or should know of facts that would prompt a reasonable person to seek out

information regarding potential injuries. See Frideres, 540 N.W.2d at 169; Frideres 113 F.3d at 899; Woodroffe, 540 N.W.2d at 47.

In Woodroffe, the plaintiff was sexually abused during childhood by her uncle. The plaintiff allegedly repressed these memories of sexual abuse until she saw a psychologist in 1985, at which time she related some specific instances of her childhood sexual abuse. The plaintiff, however, did not file a cause of action against her uncle until 1992. See Woodroffe, 540 N.W.2d at 46. The defendant uncle claimed that the plaintiff's claims were barred by the two (2) year statute of limitations and that her cause of action expired in 1987. Plaintiff argued that her cause of action was not time barred because she continued to slowly remember more repressed memories of acts of sexual abuse until 1991. Id. at 48. Plaintiff claimed that because she had not remembered all of the specific acts of sexual abuse by her uncle until 1991, she had not discovered her claim until 1991 and could bring a cause of action under § 614.8A. Id. The court, however, refused to allow the plaintiff to bring her cause of action, holding the plaintiff was on inquiry notice in 1985 when she first saw a psychologist. Id. at 49. Thus, the court held that since the applicable two (2) year statute of limitations under Iowa Code § 614.1(2) began to run in 1985 when she first had recollection of some of the events and sought treatment, all of the plaintiff's claims against her uncle expired in 1987. Id. at 49. Additionally, the court ruled that Iowa Code § 614.8A did not apply and could not be used to revive her cause of action. Id. at 50.

Likewise, in Frideres, 113 F.3d at 989, the 8th Circuit, in applying Iowa law, held that while the discovery rule could be applied to the statute of limitations, Frideres could not bring a cause of action because she had been put on inquiry notice of her cause of action more than two (2) years prior to filing her claim. In Frideres, the plaintiff had always had some memory of specific instances of childhood sexual abuse. The plaintiff saw her family physician about her

depression beginning in 1982, and the physician recommended she seek further help or take an antidepressant. In 1988, the plaintiff also told her priest and several other people about the abuse. In 1990, the plaintiff saw a clinical psychologist and told the psychologist that she had been molested, but that "she did not feel the sexual abuse had affected her as an adult." Frideres, 540 N.W.2d at 261. The plaintiff then filed suit in 1991.

Frideres claimed that her actions were not time-barred because she did not understand the connection between the abuse and her injuries as an adult until she began seeing a clinical psychologist in 1990. Frideres, 113 F.3d at 899. The defendant claimed that the plaintiff was aware of enough facts surrounding her abuse so as to put her on inquiry notice more than two (2) years prior to the filing of her action. The court agreed with the defendant, finding that "Frideres had enough knowledge linking the abuse and the resultant injuries, as evidenced by her visits to her family physician and priest in search of advice, to put her on inquiry notice more than two years prior to the commencement of this action." Id. The court noted that "Even if Frideres recognized additional injuries after her treatment with her psychologist in 1990, this fact does not revive Frideres's claims for injuries occurring much earlier than this date." Id. at footnote 3. The 8th Circuit continued that "As the Supreme Court of Iowa stated, 'The statute of limitations begins to run when a plaintiff first becomes aware of facts that would prompt a reasonably prudent person to begin seeking information as to the problem and its cause.'" Id. (citing Woodroffe, 540 N.W.2d at 48. "At that time, a person is charged with knowledge of facts that would have been disclosed by a reasonably diligent investigation." Id. Finally, the 8th Circuit noted that "Because Frideres remembered the abuse and was aware of enough of its effects to seek help more than two years prior to the commencement of her action, her action is time-barred." Id.

Likewise, in this case, we know that Green was aware he was abused in 1982 by Defendant Janssen. Green also acknowledges that he has known that the abuse psychologically harmed him since 1995 when he told his wife about the abuse. In 1996, he told his parish priest about the abuse, sought counseling and also reported the abuse to the Diocese. Green testified that he knew the abuse harmed him psychologically in 1996, and he has told many people about the abuse since 1996.

Just as in Frideres, where the Plaintiff sought advice from several people including her priest and family physician more than two years prior to the filing of her action, the court here can determine that at some time prior to December 31, 1996, Green was knowledgeable about the abuse and aware enough of potential problems and that the problems resulted from the abuse. Green was knowledgeable enough about the abuse and the harm to him that he sought psychological counseling in 1996, specifically for help concerning the abuse. Green was therefore on inquiry notice regarding his claim since 1996. By his own sworn testimony, it is uncontested that Green had "discovered" his claim no later than December 31, 1996, the year in which he sought professional therapy.

Therefore, even if Green were able to allege that the discovery rule should toll the statute of limitations, Green's own testimony proves that Green was both aware of the abuse and that it caused him psychological problems no later than 1996. Green's right to file a claim in this matter expired at the latest on December 31, 1998, two years after this "discovery". Green did not file suit until November 17, 2003, nearly 5 years beyond any limitations period possibly applicable here.

In analyzing the effects of statutes of limitations, the U.S. Supreme Court has stated that, "The length of the [limitations] period allowed for instituting suit inevitably reflects a value

judgment concerning the point at which the interests in favor of protecting valid claims are outweighed by the interests in prohibiting the prosecution of stale ones." Union Pacific RR Co. v. Beckham, 138 F.3d 325, 330 (8th Cir. 1998) (quoting Johnson v. Railway Express Agency, Inc., 421 U.S. 454, 463-64, 95 S. Ct. 1716, 1722, 44 L.Ed.2d 495 (1975)). Additionally, the Eighth Circuit stated that, "Important policies, such as rapid resolution of disputes, repose for those against whom a claim can be brought, and avoidance of litigation involving lost evidence or distorted testimony of witnesses, underlie statutes of limitations." Union Pacific, 138 F.3d at 330. Accordingly, "Statutes of limitations 'for gaining access to the federal courts are not to be disregarded by courts out of a vague sympathy for particular litigants.'" Id. "In the long run, experience teaches that strict adherence to the procedural requirements specified by the legislature is the best guarantee of even-handed administration of the law." Baldwin County Welcome Center v. Brown, 466 U.S. 147, 152, 104 S.Ct. 1723, 1726, 80 L.Ed.2d 196 (1984); Mohasco Corp. v. Silver, 447 U.S. 807, 826, 65 L.Ed.2d 532, 100 S.Ct. 2486 (1980).

Regardless of the issues involved in this case, and regardless of whatever sympathies this Court may have for Green with respect to his claims here, the best guarantee of even-handed administration of the law for all involved requires strict adherence to the limitations periods specified by the Iowa Legislature.

IV. CONCLUSION

For the foregoing reasons, Defendant, Diocese of Davenport, respectfully requests this Court enter a summary judgment in its favor and dismiss Plaintiff's action with prejudice.

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Proof of Service

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on 1-15, 2004.

By: X U.S. Mail ____ Fax
____ Hand Delivered ____ UPS
____ FedEx ____ Other

Signature