IN THE IOWA DISTRICT COURT IN AND FOR CLINTON COUNTY

JOHN DOE II, Plaintiff, vs. FATHER FRANCIS BASS, FATHER JAMES JANSSEN and DIOCESE OF DAVENPORT, Defendants.	)	Law No. LA 29867 **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 John Doe II filed his Petition on September 25, 2003. In his Petition, Doe II alleges that beginning in 1967, while a member of St. Joseph's Parish in Sugar Creek, Iowa, he was sexually abused by Defendants Janssen and Bass. Doe II bases his claims against

Defendant Diocese on its relationship to Defendants Janssen and Bass. Doe II was born on June 20, 1955, and would have turned eighteen years of age on June 20, 1973. Doe II has been aware of the abuse and has had feelings of guilt, shame and humiliation; i.e. injury or harm, from the time of the abuse until the present time. Doe II has known that the abuse caused his guilt, shame and some sickness and headaches from the time of the abuse until the present time.

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 1960'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 last incident occurred on December 31, 1974, the statute of limitations ran on Doe II's claims on December 31, 1976. See § 614.1(2).

Doe II filed suit here on September 25, 2003. Because Doe II did not file suit by December 31, 1976, his claim is presumptively barred by the statutes of limitations then in effect.

B. Even if Doe II proves he is entitled to use the extended statute of limitations provided by Iowa Code § 614.8A, his claim is still time-barred.

The Diocese anticipates that Doe II may try to excuse filing his claim almost 27 years late by arguing that Iowa Code § 614.8A should be applied here thereby providing him four years from his "discovery" of his claim. Even if he does so, his claim is still time-barred.

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).[1]

Thus, § 614.8A created a new 4 year statute of limitations for claims related to child sexual abuse not discovered until adulthood. However, § 614.8A was not retroactive; it did not revive claims that expired before its enactment. Frideres v. Schiltz, 540 N.W.2d 261, 167 (Iowa 1995). Additionally, the burden of proof regarding whether the discovery rule applies is on the plaintiff. See Doe v. Cherwitz, 518 N.W.2d 362, 364 (Iowa 1994); See also Callahan v. State, 464 N.W.2d 268, 273 (Iowa 1990).

If the plaintiff cannot prove the discovery rule is applicable, then the plaintiff is subject to the statutes of limitations discussed above in §§ 614.1(2) and 614.8. Furthermore, if the discovery rule is applicable, claims that expired prior to 1990 were not revived by the passing of § 614.8A. See Frideres, 540 N.W.2d at 267.

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

[1] Doe II testified to abuse that occurred later than when he was fourteen years of age, § 614.8A would have no applicability to these claims.

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 Doe II was aware he was abused in the 1960's by Defendants Janssen and Bass. Doe II also acknowledges that he has felt shame and guilt since the time of the abuse. Finally, Doe II has always known that the abuse was wrong and caused him problems such as headaches, sickness, shame, guilt and humiliation.

Just as in Frideres, the court here can determine that at some time prior to December 31, 1974, Doe II was knowledgeable about the abuse and aware enough of potential problems and that the problems resulted from the abuse. Doe II was therefore on inquiry notice regarding his claim since 1974. In this case, then, the facts certainly show Doe II was on inquiry notice about his claim no later than December 31, 1974, the last possible date of abuse.

Therefore, even if Doe II were able to: 1) allege he suffered from a "repressed memory" regarding the abuse and/or its effects on him so that his claims should not have been barred by the statute of limitations on December 31, 1976; and 2) allege that his claim did not expire prior to 1990 so he can attempt to use the four year statute of limitations in § 614.8A; then 3) Doe II's own testimony proves that Doe II was both aware of the abuse and that it caused him problems since the time of the last abuse in 1974; so 4) his right to file a claim in this matter expired at the latest on December 31, 1976. Doe II did not file suit until September 25, 2003, nearly 27 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 Doe II 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 7-15, 2004.

By: X U.S. Mail ____Fax
____Hand Delivered ____UPS
____FedEx ____Other

Signature