IN THE IOWA DISTRICT COURT FOR SCOTT COUNTY

JOHN DOE III,

Plaintiff,

vs.

FATHER JAMES JANSSEN, FATHER FRANCIS BASS, THEODORE ANTHONY GEERTS, and THE DIOCESE OF DAVENPORT,

Defendants.

Law No. 101428

REFILED

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:

TABLE OF CONTENTS

I. BACKGROUND FACTS

1. Plaintiff John Doe III filed his Petition on October 28, 2003. In his Petition, Doe alleges that beginning in 1964, while a member of St. Joseph's Parish in Fort Madison, Iowa, he

was sexually abused by Defendants Janssen, Bass, and Geerts. Doe bases his claims against Defendant Diocese on its relationship to Defendants Janssen, Bass and Geerts and the Diocese.

2. Doe was born on March 8, 1952.

3. Doe turned eighteen years of age on March 8, 1970.

4. On or about July 22, 1998, when Doe was 46 years old, he sent a letter to the Bishop of the Diocese of Davenport. The letter states in relevant part that:

> *"This letter is to inform you that I was sexually molested by Fathers Janssen, Bass, and Geerts at St. Joseph's Church in Fort Madison and at Farmington. This abuse occurred over a long period of time during the '60's and involved several boys. It has taken me this long and professional therapy to get to this point where I am able to divulge this to you."*

See letter attached to Plaintiff's Response to Defendant Diocese's Request for Admissions, attached here as Exhibit A.

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.

The letter in Exhibit A is silent as to when the last incident allegedly occurred, except to say the abuse occurred "during the '60's." Assuming for the purpose of this Motion that the last incident occurred on December 31, 1969, the statute of limitations ran on Doe's claims on December 31, 1971. See § 614.1(2).[1]

Doe filed suit here on October 28, 2003. Because Doe did not file suit by December 31, 1971, his claim is presumptively barred by the statutes of limitations then in effect.

B. Even if Doe 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 may try to excuse filing his claim almost 32 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:

[1] Using § 614.8 would result in the statute of limitations running on March 8, 1971, the date Doe turned 19. Since the date obtained by using § 614.1(2) could possibly be later (e.g. December 31, 1971), that is the date we shall use here.

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, § 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 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 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 from the letter in Exhibit A that in July 1998, Doe was aware he was abused in the 1960's by Defendants Janssen, Bass, and Geerts. In that letter, Doe also acknowledges having received professional therapy which had assisted him in being able to "divulge" this information about the abuse to the Bishop.

Just as in Frideres, where the plaintiff sought advice from several people, including her priest and family physician more than two (2) years prior to the filing of her action, the court here can determine that at some time prior to July 22, 1998, Doe was knowledgeable about the abuse and aware enough of potential problems that he sought "professional therapy." Doe was therefore on inquiry notice regarding his claim at the time he first sought professional therapy.

While the letter in Exhibit A does not specify when Doe first obtained "professional therapy" (it could have been years prior to 1998), we know that date had to precede July 22, 1998. In this case, then, the facts certainly show Doe was on inquiry notice about his claim no later than July 22, 1998.

Therefore, even if Doe were be able to: 1) prove 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, 1971; and 2) prove 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) the letter in Exhibit A proves that Doe was on "inquiry notice" regarding his claim no later than July 22,

1998; so 4) his right to file a claim in this matter expired on July 22, 2002. Because Doe did not file suit until October 28, 2003, he was more than 15 months 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 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. See Id.

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.

LANE & WATERMAN LLP

By Rand S. Wonio
Rand S. Wonio 06080

Attorneys for Defendant
Diocese of Davenport

Of Counsel:
LANE & WATERMAN LLP
220 N. Main St., Ste. 600
Davenport, IA 52801-1987
Phone: (563) 324-3246
FAX: (563) 324-1616

Copy to:

Craig A. Levien
Betty, Neuman & McMahon
600 Union Arcade Building
111 E. Third Street
Davenport, IA 52801

Jeffrey Anderson
Patrick Noaker
JEFF ANDERSON & ASSOCIATES
E. 1000 First National Bank Bldg.
St. Paul, MN 55101

Edward N. Wehr
Wehr, Berger, Lane & Stevens
900 Kahl Building
326 W. Third Street, Suite 900
Davenport, IA 52801

Michael J. McCarthy
McCarthy, Lammers & Hines
701 Kahl Building
Davenport IA 52801

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 2-25, 2004.

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

Signature R. J. Norris

IN THE IOWA DISTRICT COURT IN AND FOR SCOTT COUNTY

JOHN DOE III, Plaintiff, vs. FATHER JAMES JANSSEN, FATHER FRANCIS BASS, THEODORE ANTHONY GEERTS AND THE DIOCESE OF DAVENPORT, Defendants.	Law No. 101428 PLAINTIFF'S RESPONSE TO DEFENDANT DIOCESE'S REQUEST FOR ADMISSIONS

COMES NOW, Plaintiff, John Doe III, by and through his attorneys, Betty, Neuman & McMahon, L.L.P., and submits the attached Response to Defendant Diocese's Request for Admissions.

BETTY, NEUMAN & McMAHON, L.L.P.

By _____
Craig A. Levien
SC00003129
600 Union Arcade Building
111 E. Third Street
Davenport, IA 52801
(563) 326-4491
(563) 326-4498 - Fax

ATTORNEYS FOR PLAINTIFF
JOHN DOE III

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause by depositing a copy thereof in the United States Mail, postage prepaid, in envelopes addressed to each party at their respective address disclosed on the pleadings as follows:

Patrick Noaker
Jeff Anderson
E. 1000 First National Bank Bldg.
332 Minnesota Street
St. Paul, MN 55101

Rand Wonio
LANE & WATERMAN
220 N. Main Street
Suite 600
Davenport, IA 52801

Michael J. McCarthy
McCARTHY, LAMMERS & HINES
701 Kahl Building
Davenport, IA 52801

Edward N. Wehr
WEHR, BERGER, LANE & STEVENS
326 W. Third Street
Suite 900
Davenport, IA 52801

On the 31st day of December, 2003.

IN THE IOWA DISTRICT COURT FOR SCOTT COUNTY

JOHN DOE III, Plaintiff, vs. FATHER JAMES JANSSEN, FATHER FRANCIS BASS, THEODORE ANTHONY GEERTS, and THE DIOCESE OF DAVENPORT, Defendants.	Law No. 101428 **DEFENDANT DIOCESE'S REQUEST FOR ADMISSIONS TO PLAINTIFF**

Comes now Defendant Diocese of Davenport by its attorneys Lane & Waterman pursuant to Iowa Rule of Civil Procedure No. 1.510 and requests that Plaintiff admit or deny the following matters, if not admitted, specifically deny the matter(s) or set forth in detail the reason why Plaintiff cannot truthfully admit or deny the same:

1. Attached as Exhibit "A" is a true and genuine copy of a letter from Plaintiff addressed to Bishop, Diocese of Davenport.

ADMIT X

DENY _____

2. The signature on Exhibit "A" is the true and genuine signature of Plaintiff.

ADMIT X

DENY _____

3. Attached as Exhibit "B" is a true and genuine copy of the envelope that was used by Plaintiff to mail Exhibit "A".

ADMIT X

DENY _____

4. Exhibits "A" and "B" were mailed by or on behalf of Plaintiff on or about July 22, 1998.

ADMIT x

DENY _____

Rand S. Wonio

Rand S. Wonio 06080

Attorneys for Defendant Diocese of Davenport

Of Counsel:

LANE & WATERMAN
220 N. Main St., Ste. 600
Davenport, IA 52801-1987
Phone: (563) 324-3246
FAX: (563) 324-1616

Copies to:

Craig A. Levien
Betty, Neuman & McMahon
600 Union Arcade Building
111 E. Third Street
Davenport, IA 52801

Edward N. Wehr
Wehr, Berger, Lane & Stevens
900 Kahl Building
326 W. Third Street, Suite 900
Davenport, IA 52801

Michael J. McCarthy
McCarthy, Lammers & Hines
701 Kahl Building
Davenport IA 52801

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 12-11, 2003.

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

Signature Y. Robson

Bishop
Diocese of Davenport

Dear Bishop,

This letter is to inform you that I was sexually molested by Fathers Janssen, Geerts, and Bass at St. Joseph's Church in Fort Madison and at Farmington. This abuse occurred over a long period of time during the '60's and involved several boys. It has taken me this long and professional therapy to get to this point where I am able to divulge this to you.

If any of these men are in positions where they have contact with boys at this time please remove them immediately.

Very sincerely,