IN THE IOWA DISTRICT COURT IN AND FOR SCOTT COUNTY

JAMES N. WELLS, Plaintiff, vs. FATHER JAMES JANSSEN and DIOCESE OF DAVENPORT, Defendants.	)	Law No. 101220 **MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT AND REQUEST FOR ORAL ARGUMENT**

Comes now Defendant, Diocese of Davenport, by its attorneys, Lane & Waterman, and for its Memorandum in Support of its Motion for Summary Judgment states:

I. INTRODUCTION

Plaintiff filed the Petition in this case against Father James Janssen and the Diocese of Davenport. He alleges intentional infliction of emotional distress, breach of fiduciary duty, fiduciary fraud, negligent hiring, supervising, warning, documentation and retaining, and respondeat superior against the Diocese of Davenport. Each of these allegations arise out of alleged sexual abuse of Plaintiff while Plaintiff was a minor.

Plaintiff has admitted the authenticity of a letter he sent to Father James Janssen. SUF ¶ 2-3. This letter was sent on or about February 23, 1987. The letter stated in part:

> Last year my girlfriend convinced me to see a psycologist [sic] because I was having emotional problems.
> . . .
> It was his opinion that my problems were a direct result of the sexual abuse I was subjected to by you while I was a child.

This letter clearly outlines knowledge of the alleged sexual abuse at some time in 1986. The letter further states the compelling need for psychological counseling and knowledge that Plaintiff had an injury resulting from the sexual abuse.

II. SUMMARY JUDGMENT STANDARDS

Summary judgment is appropriate when there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law. See Iowa R. Civ. P. 237(c); Barshel v. City of Perry, 512 N.W.2d 565, 567 (Iowa 1994). "The purpose of summary judgment is to enable judgment to be obtained promptly without the expense of trial when there is no genuine or material issue of dispute." See Roberts v. Moore, 445 N.W.2d 384, 385 (Iowa Ct. App. 1989); 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."); Sorensen v. Shaklee Corp., 461 N.W.2d 324, 326 (Iowa 1990).

The party resisting summary judgment "may not rest upon the mere allegations or denials of his pleadings," but instead must set forth specific facts demonstrating the existence of a genuine issue of fact. See Hoefer v. Wisconsin Educ. Assoc. Inc Trust, 470 N.W.2d 336, 338 (Iowa 1991) (citing Iowa R. Civ. P. 237(e)). If the conflict relates only to the "legal consequences falling from undisputed facts, entry of summary judgment is proper." See Farm Bureau Mut. Ins. Co. v. Milne, 424 N.W.2d 422, 423 (Iowa 1988).

III. DEFENDANT IS ENTITLED TO SUMMARY JUDGMENT BECAUSE THIS CLAIM IS BARRED BY THE STATUTE OF LIMITATIONS.

In 1990, Iowa Code §614.8A went into effect, creating a new four 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 14 years of age, and the Iowa Supreme Court has used this definition when considering this issue. Doe v. Cherwitz, 518 N.W.2d 362, 365 (Iowa 1994).

Thus, §614.8A created a new discovery rule for child sexual abuse not discovered until adulthood. However, §614.8A is not retroactive, and applies only to claims arising after 1990. It does not revive claims that would have expired before its enactment. Frideres v. Schiltz, 540 N.W.2d 261, 267 (Iowa 1995).

If the four year statute of limitations of §614.8A does not apply, then a person is subject to the statute of limitations in Iowa Code §§614.1(2) and 614.8. Iowa Code §614.1 requires a person who has been sexually abused to bring a cause of action within two years of the last instance of abuse.

Therefore, a person who "discovered" the abuse prior to 1990 and a person who was at least 14 when the abuse occurred must file his or her cause of action within two years of the last instance of abuse or one year of attaining majority, whichever is later. See Iowa Code §§ 614.1(2) and 614.8.

A straight application of the statute of limitations here would mean Plaintiff's claim was time barred prior to 1989 (two years from the date mentioned in the 1987 letter to Father Janssen).

Plaintiff, undoubtedly, will argue that the discovery rule applies in this case. Under Iowa's discovery rule, the statute of limitations begins to run and 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.

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 (Iowa 1995).

Thus, as the statute of limitations and 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 recognizes a causal relationship between the abuse and a potential injury. See Woodroffe, 540 N.W.2d at 49; Frideres, 113 F.3d at 899. The statute of limitations begins to run even though the plaintiff may not be aware of **all instances of sexual abuse or all injuries**. See Woodroffe, 540 N.W.2d at 49; Frideres, 113 F.3d at 899.

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. However, the plaintiff did not file a cause of action against her uncle until 1992. Woodroffe, 540 N.W.2d at 46. The uncle claimed that the plaintiff's claims were barred by the two 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 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 the two year statute of limitations under Iowa Code §614.1 began to run in 1985 and all of the plaintiff's claims against her uncle expired in 1987. Id. at 49.

Likewise, in Frideres, 113 F.3d at 989, the 8th Circuit held that while the discovery rule could be applied to toll the statute of limitations, the plaintiff in Frideres could not bring a cause of action because she had been put on inquiry notice of her cause of action in 1988 and thus her claim had expired in 1990. In Frideres, the plaintiff had always had some memory of specific instances of childhood sexual abuse, but did not file suit until 1991. Plaintiff told several people about the abuse, including telling her priest about the abuse in 1988. The plaintiff also saw her family physician about her depression in 1982, and the physician recommended she seek further help or take an antidepressant. 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 261. Plaintiff 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. Defendant claimed that the plaintiff was aware of enough facts surrounding her abuse so as to put her on inquiry notice more than two years prior to the filing of her action. The Court noted that "mere knowledge of abuse will not necessarily start the running of the limitations", but

> Frideres had enough knowledge linking the abuse and the resulting 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...Because Frideres remembered the abuse and was aware of enough of its affects to seek help more than two years prior to the commencement of her action, her action is time barred. Id.

Likewise, the Iowa Supreme Court has acknowledged that memory of abuse and knowledge that the abuse caused the plaintiff to feel "humiliated and depressed" was enough to constitute discovery and start the statute of limitations running. Claus v. Whyle, 526 N.W.2d 519 (Iowa 1994). In Claus, plaintiff was abused by her father, and told a nurse in 1983 that her father had abused her and that "she felt humiliated and depressed and had told her mother about

what had happened". Id. The Court held that plaintiff's claim was time barred because "she was aware of her alleged injury and its abusive nature at the latest....when she related the incident to hospital personnel" and failed to bring a claim within the applicable period of the statute of limitations. Id. at 526.

In this case, Plaintiff has alleged sexual abuse. He has admitted to the authenticity of a letter Plaintiff wrote and sent to Defendant, Fr. James Janssen on February 27, 1987. Plaintiff claims in his letter that he went to see a psychologist some time the year prior to writing his letter (i.e. 1986). This act of going to the psychologist, along with the Plaintiff's statement of the psychologists connection between Plaintiff's depression and the alleged sexual abuse, is clear proof that Plaintiff was on inquiry notice of the link between any abuse and his claimed injuries no later than 1986. Frideres, 113 F.3d at 899. The two-year statute of limitations of §614.1(2) would apply in this instance because discovery was made prior to the enactment of 614.8A. Plaintiff was an adult in 1986, so using the two-year statute of limitations, Plaintiff's claim was time-barred after December 31, 1988. See Frideres, 113 F.3d 897 Woodroffe, 540 N.W.2d 45; Claus, 526 N.W.2d 519.

IV. CONCLUSION

For the foregoing reasons, Defendant, Diocese of Davenport, respectfully requests the Court enter 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

11/12, 2003

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

Signature S. Knight