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John Doe 28B, Appellant (C9-99-2164) John Doe 28A Appellant (C0-00-2165), vs. Archdiocese of St. Paul and Minneapolis, Respondent, Church of St. Albert the Great, et al., Respondents, Father Ronan Liles, Respondent, Brother Edmund Frost, Defendant.

C9-99-2164

COURT OF APPEALS OF MINNESOTA

2000 Minn. App. LEXIS 618

June 20, 2000, Filed

NOTICE: [*1] THIS OPINION WILL BE UNPUBLISHED AND MAY NOT BE CITED EXCEPT AS PROVIDED BY MINN. STAT. § 480A.08, SUBD. 3 (1998).

SUBSEQUENT HISTORY: Petition for Further Review Denied August 22, 2000, Reported at: *2000 Minn. LEXIS 540*.

PRIOR HISTORY: Hennepin County District Court. File No. PI995266.

DISPOSITION: Affirmed.

CASE SUMMARY:

PROCEDURAL POSTURE: Appellants claimed that the Hennepin County District Court (Minnesota) erred by granting summary judgment in favor of appellees, a church and two clergymen, after determining that the statute of limitations had run under *Minn. Stat. § 541.073*, subd. 2 (1996) on appellants' sexual abuse claims.

OVERVIEW: Appellants' claims alleging sexual abuse against appellees, a church and two clergymen, were dismissed as untimely. Appellants argued on appeal that the delayed discovery statute, *Minn. Stat. § 541.073*, subd. 2 (1996), tolled the statute of limitations on their claims. Appellants argued that they were not aware that they were sexually abused until 1991. Even though appellants may not have verbalized or formally acknowledged their abuse, a reasonable person who felt upset about the sexual contact and lied to relatives in order to avoid talking about the sexual contact should have known of the abuse. Testimony did not present a

legally sufficient explanation for appellants' delay in bringing this action. Dismissal was affirmed.

OUTCOME: Judgment affirmed. Record showed that appellants had feelings of guilt and shame from the time that the incidents took place. Accordingly, appellants knew or should have known that their injuries were caused by sexual abuse six years prior to commencing litigation.

CORE TERMS: sexual abuse, sexually abused, sexual contact, statute of limitations, summary judgment, dreams, reasonable person, remember, rectory, abused, sexual, upset, overwhelming evidence, disability, encounter, guilt, reason to know, camping trip, overnight, alcohol, kissed, penis, kiss, delayed discovery, causal connection, matter of law, years prior, repressed, feelings, memory

LexisNexis (TM) HEADNOTES - Core Concepts:

Civil Procedure > Summary Judgment > Summary Judgment Standard
Civil Procedure > Appeals > Standards of Review > De Novo Review

[HN1] On appeal from summary judgment, the reviewing court must determine if there are any genuine issues of material fact and whether the district court erred in its application of the law.

Torts > Intentional Torts
Torts > Procedure > Commencement

[HN2] Generally, personal injury claims based on intentional torts are governed by a two-year statute of limitations. *Minn. Stat. § 541.07*, subd. 1 (1996). But if a plaintiff is under the age of 18 at the time of the action, the statute of limitations is suspended until one year after

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the plaintiff reaches the age of majority. *Minn. Stat. § 541.15 (a)(1)* (1996).

Torts > Intentional Torts > Assault & BatteryTorts > Procedure > Commencement

[HN3] In addition to the general statute of limitations, the delayed discovery rule protects individuals who are psychologically, physically or emotionally unable to recognize that they have been abused within the time constraints of *Minn. Stat. § 541.07, .15 (a)(1)*.

Torts > Intentional Torts > Assault & BatteryTorts > Procedure > Commencement

[HN4] Under the delayed discovery statute, a victim of sexual abuse must bring a suit within six years of the time that the victim knew or had reason to know that the injury was caused by the sexual abuse. *Minn. Stat. § 541.073, subd. 2* (1996).

Civil Procedure > Summary Judgment > Summary Judgment StandardTorts > Procedure > Commencement

[HN5] Whether or not a reasonable person knew or should have known that he or she was abused is judged by an objective standard and is, in some contexts, a question of fact for the jury. But summary judgment is appropriate where there is overwhelming evidence that a reasonable person in the same situation as complainant should have known they were abused.

Torts > Intentional Torts > Assault & BatteryTorts > Procedure > Commencement

[HN6] Because the victim is immediately on notice of the causal connection between the sexual abuse and the injury, the statute of limitations begins to run immediately unless there is some legal disability, such as the victim's age, or mental disability, such as repressed memory of the abuse, which would make a reasonable person incapable of recognizing or understanding that he or she had been sexually abused.

Torts > Intentional Torts > Assault & Battery

[HN7] Concepts of sexual abuse and injury within the meaning of *Minn. Stat. § 541.073, subd. 2* (1996) are essentially one and the same, not separable--as a matter of law one is "injured" if one is sexually abused.

Torts > Intentional Torts > Assault & BatteryTorts > Procedure > Commencement

[HN8] A claimant's subjective inability to recognize that sexual contact is in fact sexual abuse does not delay the statute of limitations from running, absent a disability.

COUNSEL: Jeffrey R. Anderson, Barbara J. Felt, Reinhardt and Anderson, St. Paul, MN (for appellants).

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Paul, MN (for respondent Archdiocese of St. Paul and Minneapolis).

Robert L. McCollum, Teri E. Bentson, McCollum, Crowley, Vehanan, Moschet & Miller, Ltd., Bloomington, MN (for respondent Church of St. Albert).

Joseph M. Stocco, Law Offices of Skrien & Stocco, Minneapolis, MN (for respondents Dominicans and Church of St. Albert the Great).

JUDGES: Considered and decided by Anderson, Presiding Judge, Randall, Judge, and Willis, Judge.

OPINIONBY: ANDERSON

OPINION: UNPUBLISHED OPINION

ANDERSON, Judge

On appeal from summary judgment appellants challenge the dismissal of their sexual abuse claims. Appellants argue that the delayed discovery statute, *Minn. Stat. § 541.073, subd. 2* (1996), tolled the statute of limitations on their claims for sexual abuse occurring between 1969 and 1975. Because there is no genuine issue of material fact [*2] that appellants knew or should have known of the abuse more than six years prior to bringing their claims in 1997, we affirm.

FACTS

Appellants John Doe 28A (born September 11, 1958) and John Doe 28B (born May 11, 1957) allege that they were sexually abused by two clergymen between 1969 and 1975. John Doe 28A and John Doe 28B are brothers, both raised in a devout Catholic family. The boys met respondent Father Ronan Liles at a Boy Scout camp in 1969. Father Liles allegedly showered with the boys, and hugged and kissed them during the camping trip. After the camping trip, Father Liles regularly took the boys to the movies, miniature golfing, and out to eat. Father Liles also allowed the boys to stay at St. Albert's rectory for overnight visits; during the overnight visits, Father Liles had the boys sleep with him in his bed.

John Doe 28A claims that Father Liles began sexually abusing him in the summer of 1970. John Doe 28A remembers Father Liles fondling his penis twice after the camping trip. Father Liles also allegedly put his penis between John Doe 28A's legs; John Doe 28A pretended to be asleep because he did not enjoy what was happening and did not want Father [*3] Liles to know that he was awake. Father Liles' sexual touching of John Doe 28A continued into John Doe 28A's teenage years. In 1975, when John Doe 28A was intoxicated Father Liles removed John Doe 28A's underwear and attempted

to penetrate him anally; John Doe 28A was 17 years old. John Doe 28A left the rectory and hitchhiked home at 4 A.M. that morning because he did not want to stay at the rectory.

Brother Edmund Frost lived at St. Albert's rectory and also engaged in sexual contact with John Doe 28A. One evening, Brother Frost gave John Doe 28A alcohol, slept in the same bed with him and kissed him on the mouth with his tongue. The next morning John Doe 28A woke up without his clothes on. John Doe 28A does not recall being upset by the kiss but he was confused about why he did not have his clothes on.

John Doe 28B also claims that he was sexually abused. John Doe 28B remembers that Father Liles gave him alcohol when he stayed overnight at the rectory in 1971. He remembers that Father Liles kissed him with his tongue, but he does not remember thinking that the kiss was unusual. John Doe 28B also remembers that Brother Frost masturbated him one night in 1973; he was surprised [*4] and upset by Brother Frost's behavior.

In a series of incidents in 1973, Father Liles showered with John Doe 28B, fondled John Doe 28B's genitals, placed his penis between John Doe 28B's legs and ejaculated, attempted to penetrate John Doe 28B anally, and attempted to perform fellatio on John Doe 28B; John Doe 28B was 16 years old. John Doe 28B testified that Father Liles' touching made him uncomfortable and that he "just wanted it over." John Doe 28B told Father Liles that his actions hurt and told him to stop. Father Liles continued to kiss John Doe 28B even after he graduated from high school, when he was 18 years old. Both appellants continued to maintain contact with Father Liles after the sexual contact ended.

John Doe 28A claims that he first began to recognize that he was abused in 1991, after he was a victim of mugging. After the assault, John Doe 28A began having nightmares of sexual acts being perpetrated on him. His dreams became increasingly detailed and one night the face of Father Liles appeared in his dreams. In 1993, John Doe 28A disclosed the acts of sexual abuse to a counselor during alcohol abuse treatment.

After John Doe 28A completed alcohol treatment, [*5] he spoke to his brother John Doe 28B about their mutual experience. The brothers then contacted the Archdiocese to report the abuse. The Archdiocese referred the brothers to Dr. Walter Bera for counseling. Dr. Bera testified that it took appellants years to understand or even suspect that they were victimized because people in positions of authority and trust had victimized them. Dr. Bera further testified that appellants did not know that they were victims of sexual abuse until John Doe 28A first had dreams about Father Liles in

1991. Dr. Bera believes that appellants did not have reason to know that the acts of Father Liles and Brother Frost were sexual abuse even though they remembered the acts at issue.

DECISION

Appellants claim that the district court erred in granting respondents' motions for summary judgment. [HN1] On appeal from summary judgment, this court must determine if there are any genuine issues of material fact and whether the district court erred in its application of the law. *Hubred v. Control Data Corp.*, 442 N.W.2d 308, 310 (Minn. 1989). This court reviews the evidence in the light most favorable to the party against whom judgment [*6] was granted. *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993).

Appellants allege that they were abused from 1969 through 1975. Appellants assert that they were not barred from bringing a claim of sexual abuse in 1997 because they were not aware that they were sexually abused until 1991. [HN2] Generally, personal injury claims based on intentional torts are governed by a two-year statute of limitations. *Minn. Stat. § 541.07*, subd. 1 (1996). But if a plaintiff is under the age of 18 at the time of the action, the statute of limitations is suspended until one year after the plaintiff reaches the age of majority. *Minn. Stat. § 541.15 (a)(1)* (1996).

[HN3] In addition to the general statute of limitations, the delayed discovery rule protects individuals who are psychologically, physically or emotionally unable to recognize that they have been abused within the time constraints of *Minn. Stats. § § 541.07, .15 (a)(1)*. *W.J.L. v. Bugge*, 573 N.W.2d 677, 680 (1998). [HN4] Under the delayed discovery statute, a victim of sexual abuse must bring a suit within six years of the time that the victim knew or had reason to know that the injury was caused by the sexual abuse. [*7] *Minn. Stat. § 541.073*, subd. 2 (1996). The parties do not dispute that appellants complain of conduct that is defined as sexual abuse. Further, as a matter of law, "one is injured if one is sexually abused." *Blackowiak v. Kemp*, 546 N.W.2d 1, 3 (Minn. 1996).

The critical issue then becomes: when did appellants know or have reason to know that the injury was caused by the sexual abuse? [HN5] Whether or not a reasonable person knew or should have known that he or she was abused is judged by an objective standard and is, in some contexts, a question of fact for the jury. *ABC v. Archdiocese of St. Paul & Minneapolis*, 513 N.W.2d 482, 486 (Minn. App. 1994). But summary judgment is appropriate where there is overwhelming evidence that a reasonable person in the same situation as complainant should have known they were abused. *Id.* at 487-88. [HN6] Because the victim is immediately on notice of

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the causal connection between the sexual abuse and the injury, the statute of limitations begins to run immediately unless there is some legal disability, such as the victim's age, or mental disability, such as repressed memory of the abuse, which would make a [*8] reasonable person incapable of recognizing or understanding that he or she had been sexually abused.

W.J.L., 573 N.W.2d at 681.

Appellants do not allege any particular disability that prevented them from pursuing their claims against Father Liles and Brother Frost prior to 1991. In addition, at oral argument, appellants conceded that this is not a case of repressed memory. Instead, appellants claim that (1) there is a lack of overwhelming evidence that they knew of the abuse prior to 1991, and (2) the expert testimony explains why they could not understand the causal link between the sexual contact and the abuse.

Appellants assert that summary judgment was inappropriate because there is no overwhelming evidence that they knew or should have known of the abuse prior to 1991. In support of this proposition appellants cite *Doe v. Redeemer Lutheran Church, 555 N.W.2d 325, 327-28 (Minn. App. 1996), review denied (Minn. Jan. 15, 1997)*. In *Redeemer*, this court affirmed a jury finding that the victim did not know of the abuse until 1990 even though the abuse occurred from 1967 to 1969. *Id. at 326-27.*

Here there is [*9] substantial evidence appellants knew or should have known they were sexually abused. Unlike *Redeemer*, we are reviewing a grant of summary judgment, not a jury verdict. In addition, the victim in *Redeemer*, had only "a vague sense of having a shameful secret and not even himself being aware of what that was about." *Id. at 326*. Here, the record shows that John Doe 28A and John Doe 28B were always seriously troubled about the contact and had more than a vague sense of shame. John Doe 28A testified that at the time of the attempted anal penetration by Father Liles he felt that Father Liles had breached their friendship and trust. He further testified that he was upset, embarrassed and ashamed of the sexual encounters. In a 1994 letter to Father Liles, John Doe 28B wrote that he had bad dreams for years, that he lied to his wife about the dreams so he did not have to tell her about the dreams, and that he tried unsuccessfully to forget the sexual encounters. Even though appellants may not have verbalized or formally acknowledged their abuse, a reasonable person who felt upset about the sexual contact and lied to relatives in order to avoid talking about the sexual [*10] contact should have known of the abuse. *See Blackowiak, 546 N.W.2d at 2-3* (holding that an individual who knowingly

did not disclose the abuse to a counselor and was "freaked out" after an encounter with respondent and a young boy, demonstrated that he knew or should have known about the sexual abuse ten years before bringing his claim).

Appellants also offer the expert testimony of their therapist, Dr. Walter Bera, in support of their contention that they did not know of the sexual abuse until the early 1990's. Although Dr. Bera's testimony demonstrates that appellants' experiences were undoubtedly confusing and painful, his testimony does not present a legally sufficient explanation for appellants' delay in bringing this action. Instead, Dr. Bera's testimony attempts to establish that appellants were unable to make a causal connection between the sexual contact and sexual abuse.

Appellants assert that Dr. Bera's testimony suggests that the running of the statute of limitations under *Minn. Stat. § 541.073* should not be measured by the date of the occurrence of either the sexual abuse or the injury, but rather the knowledge that one caused the other. This [*11] reasoning was specifically rejected in *Blackowiak, [HN7]*

concepts of sexual abuse and injury within the meaning of this statute are essentially one and the same, not separable--as a matter of law one is "injured" if one is sexually abused.

Blackowiak, 546 N.W.2d at 3. Therefore, [HN8] appellants' subjective inability to recognize that the sexual contact was in fact sexual abuse does not delay the statute of limitations from running, absent a disability. *See W.J.L., 573 N.W.2d at 681*. Although appellants undoubtedly felt confusion, guilt, and self-blame, these reasons, however understandable, are not sufficient justification for the delay in bringing this action. *See J.J. v. Luckow, 578 N.W.2d 17, 20 (Minn. App. 1998)* (a reasonable person should recognize that feelings of guilt and self-doubt are recognition of injury), *review denied (Minn. July 16, 1998)*.

Appellants did not have a physical, psychological or emotional disability that prevented them from recognizing that abuse by respondents caused their injuries. The record shows that appellants had feelings of guilt and shame from the time that the incidents took place. [*12] Accordingly, appellants knew or should have known that their injuries were caused by sexual abuse six years prior to commencing litigation in 1997.

Affirmed.