IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

__ _____,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 14 L 3073
	)	
Archdiocese of Chicago,	)	
	)	
Defendant.	)	

MEMORANDUM OPINION AND ORDER

The discovery rule does not extend the statute of limitation for filing a cause of action brought by a victim of childhood sexual abuse absent the victim's repressed memory. In addition, a subsequent legislative enactment cannot resurrect a cause of action that expired under a previous applicable statute of limitation. Since the plaintiff did not have a repressed memory, the two-year statute of limitation tolled two years after he reached majority. Since the plaintiff's case is now barred, the defendant's summary judgment order must be granted with prejudice.

Facts

On March 14, 2014, __ _____ filed a complaint against the Archdiocese of Chicago, alleging that Father ____ _____ had sexually abused _____ when he was a student. As the case proceeded in discovery, _____ filed two amended complaints. _____ ultimately provided greater explanation of the events underlying his complaint during his November 5, 2015 deposition.

_____ testified at his deposition that he was born on _____ _, 19__. In 19__ and 19__, when he was __-__ years old and in fifth through seventh grades, _____ attended _____ school, located at _____ in Chicago. At some point,

_____ was caught fighting with his older brother. This discovery led the school's principal, Sister _____, to remove _____ from class and begin counseling sessions with _____. _____ remembered _____ as being tall, with gray or white hair, and on the husky side. _____ did not recall if _____ wore glasses, but did recall that he had no facial hair.

_____ testified that, after the first counseling session, during which he was not abused, he told Sister _____ that he did not feel comfortable with _____ because of the way he hugged _____. According to _____, the purported counseling sessions took place in a room in a building adjacent to the school. He went to these sessions with _____ at least once a week and, at times, as frequently as three times a week, during a three- to four-month period.

_____ testified that _____ sexually abused him eight or nine times. The abuse included _____ massaging _____, and touching his stomach, penis, testicles, and buttocks, and masturbating him. _____ testified that on three occasions, _____ sodomized _____'s anus with his fingers and penis. _____ testified that on one occasion, a "Father _____" might have seen _____ abusing _____ through a door window. _____ testified that during this period he did not tell any family member of the abuse.

_____'s deposition testimony included the following colloquies:

Q. When you were a teenager what did you tell your mom about the sexual abuse by _____?
A. I don't think I told her everything. I don't think I told her who it was. I don't recall, maybe I did, but I know we did speak upon it. And I believe it started off with my cousin Linda.
Q. Your recollection is you've told your mom about the abuse no only by _____, but by Linda, too?
A. Yes.
Q. And that you told your mom about those things when you were a teenager?
A. Yes, I believe I was a teenager at the time.

Q. You told your mom about those things when you were in high school or at some other time?
A. Some other time, I mean it definitely wasn't in high school.
Q. Was it before high school, or after high school?
A. It was after high school, but I didn't graduate from high school, so I was still a teenager.
Q. So it would have been sometime – what age would you have been when you had this conversation with your mom?
A. Anywhere between __, __, probably.

* * *

Q. And you told your mom something about _____ having abused you?
A. I believe so.

* * *

Q. How about in the year 20__, did you ever at any time in the year 20__ have a recollection of Father _____ sexually abusing you?
A. Not that I can remember.
Q. It's possible though?
A. I mean anything is possible. I don't believe so though.
Q. Why don't you believe so?
A. Because I found other things, I found other ways to even take it out of my head, so....
Q. You feel like that for most of your life you've tried not to think about is; is that fair?
A. Yeah.

At one point, _____ testified that if he saw a picture of how _____ looked in 19__ or 19__, he would recognize him. That statement led to the following colloquies:

Q. Mr. _____, I'm showing you a photograph marked Exhibit 6. Do you recognize the person in this photo?
A. No.
Q. Do you believe that this person is Father _____, the man who abused you?

A. I don't believe he is or not because when I knew him that's not what he looked like.

* * *

Q. Did the man who abused you, did he tell you his last name was _____, or did somebody else tell you that?

A. Someone else told me that.

Q. Who told you that?

A. A friend, a long term friend of mine. . . .

* * *

Q. When did [he] tell you that Father ____'s last name was _____?

A. Last year, I believe.

* * *

Q. Has anybody other than [your friend] ever told you that Father ____'s last name was _____?

A. When it came about my brother and that's it.

* * *

Q. When did [your brother] tell you that Father ____'s last name was _____?

A. In the midst of when I first started seeing the therapist.

_____ also testified that he told his friend, _____ _____, many years ago after the last instance of sexual abuse.

Based on his deposition testimony, _____ filed on _____ __, 20__ his current, second-amended complaint. The complaint, once again, raises two counts, the first for negligence, and the second for willful-and-wanton conduct. _____ alleges that the Archdiocese staffed, supervised, managed, and administered _____ school and employed a person now known to _____ only as "Father ____."[1] _____ alleges that the Archdiocese, as an employer, is responsible for Father ____'s actions, behavior, and conduct.

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[1] Apparently as a result of _____'s inability to identify _____ by photograph during _____'s deposition, the second-amended complaint does not refer to the alleged perpetrator as Father ____ _____.

_____ alleges that the incidents of sexual abuse occurred either within view of other Archdiocese employees or in areas of unnecessary privacy that should have aroused their suspicions of Father _____'s conduct. According to _____, Sister _____ and other Archdiocese employees knew or should have known that Father ____ was having an inappropriate relationship with _____ and permitted it to continue. Further, _____ alleges that the Archdiocese had previously received complaints about Father _____'s inappropriate conduct and, therefore, knew or should have known of his particular unfitness for his position.

_____ alleges that after he had been sexually abused by Father _____, _____ was fearful to talk to anyone about the abuse. _____ further alleges that Father _____ was an authority figure viewed by the general public as a holy man. _____ alleges that, as a result, he repressed his memory of the incidents, causing him to sustain irreparable psychological damage.

_____ testified that on March 14, 2014 he went to see a counselor, ___ _____, at _____ for alcohol-abuse assessment. _____ believed that he had been abusing alcohol for five to 10 years. At the first counseling session, _____ disclosed _____'s name to _____. _____' notes of her initial meeting with _____ included the statement: "Client explained how his mom was also molested as a child and that he told her as a teenager that this trauma happened, but did not want to talk about it." _____ testified that he remembered making that statement to _____.

Based on these allegations, _____ claims that the Archdiocese acted negligently by failing to: (1) supervise Father _____ so that he would not be alone with children; (2) institute procedures to prevent such occurrences; (3) protect _____ from sexual assault; (4) investigate prior complaints or concerns about Father _____; (5) implement rules and regulations so that Father _____ would not be allowed to touch any children; and (6) terminate his employment. _____ alleges that these failures by the Archdiocese led _____ to

develop various psychological coping mechanisms that made him incapable of ascertaining the damage Father _____ had caused. _____ alleges that only after seeking psychological treatment in 20__ did he, "become cognizant of his injuries and the sexual abuse that he had repressed and connected them at that time with the emotional and mental issues he has stemming from such abuse."

Count two, based on willful-and-wanton conduct, rests on the same factual allegations as count one. In addition, _____ alleges that, during the period of his sexual abuse, the Archdiocese employed an administrator who had the responsibility to oversee and supervise employees and to develop rules and regulations for their conduct. He further alleges that this administrator knew or should have known that without rules against unchaperoned activities with children, illicit behavior, including sexual assault, could and would occur. According to _____, the Archdiocese knew or should have known that the administrator failed to implement any rules or regulations to protect children from sexual assault. Based on these additional allegations, _____ claims that the Archdiocese acted willfully and wantonly by failing to: (1) investigate and perform a background check of its agents and employees; (2) prohibit its employees from participating in unchaperoned activities with _____ absent any rules or regulations; and (3) remove, discharge, or transfer Father _____ given its knowledge that keeping him on staff would not provide children with a safe environment. _____ repeats the same allegations contained in count one as to the cause of his injuries.

On March 16, 2016, the Archdiocese filed its summary judgment motion. The Archdiocese presents the singular argument that the statute of limitation for sexual abuse bars _____'s complaint. According to the Archdiocese, the factual record establishes that _____ knew by the time he reached majority at age 18 in 19__ that he had been injured by Father _____'s sexual abuse. Since _____ cannot establish that he repressed his memories of the abuse, his cause of action expired when he reached 20 on _____ _, 19__.

_____ responds to the motion by arguing that the facts delayed the running of the statute of limitations. According to _____, a cause of action exists only after a plaintiff knows both that: (1) an injury occurred; and (2) it was wrongfully caused. Since _____ only learned through counseling with _____ in 20__ that his psychological problems had been caused by Father _____'s sexual abuse, the statute of limitations did not even begin to run until 20__.

The Archdiocese replies that if a plaintiff claiming sexual abuse does not have a repressed memory, the two-year statute of limitations begins to run at the age of majority. According to the Archdiocese, the statute of limitations for _____'s claim expired in 19__.

Analysis

The Archdiocese brings its motion pursuant to the Code of Civil Procedure section that authorizes summary judgment, "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005. A defendant moving for summary judgment may disprove a plaintiff's case by introducing affirmative evidence that, if uncontroverted, would entitle the defendant to judgment as a matter of law – the so-called "traditional test" – *Purtill v. Hess*, 111 Ill. 2d 229, 240-41 (1986) – or may establish that the plaintiff lacks sufficient evidence to establish an element essential to a cause of action – the so-called "*Celotex* test" – *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986), *followed Argueta v. Krivickas*, 2011 IL App (1st) 102166, ¶ 6.

Illinois courts have recognized that cases involving a plaintiff's repressed memory often present a fact question as to when the applicable statute of limitation begins to run. *See, e.g., Hobert v. Covenant Children's Home*, 309 Ill. App. 3d 640, 642 (3d Dist. 2000). The resolution of this type of uncertainty is generally a job for the trier of fact. *See, e.g., Knox College v. Celotex Corp.*, 88 Ill. 2d 407, 417 (1981) (trier of fact must determine when plaintiff had sufficient

information as to defect to start running of limitations period); *Witherell v. Weimer*, 85 Ill. 2d 146, 156 (1981) ("In many, if not most, cases the time at which an injured party knows or reasonably should have known both of his injury and that it was wrongfully caused will be a disputed question to be resolved by the finder of fact."). The questions may, however, be decided by a court as a matter of law if the facts are undisputed and only one conclusion is possible. *See Knox College*, 88 Ill. 2d at 416-17. A plaintiff that asserts the discovery rule in response to a statute-of-limitations defense bears the burden of demonstrating the rule's applicability. *See Koelle v. Zwiren*, 284 Ill. App. 3d 778, 786 (1st Dist. 1996).

Each of _____'s complaints has alleged that his memory of Father _____'s sexual abuse had been repressed. At his deposition, however, _____ testified conclusively that in his late teens he told his mother of Father _____'s sexual assaults, although _____ could not recall precisely what he told his mother. While it is entirely understandable that _____ during his life would have tried not to think or talk about this sexual abuse, his conscious efforts are far different from the unconscious repression of memories resulting from the same stressful, traumatic, tragic, or guilt inducing incidents.

This distinction frames the two parties' arguments. According to the Archdiocese, since _____ did not suffer from a repressed memory, the then-applicable statute of limitation barred his claim as of _____ _, 19__, two years after he reached majority. That provision stated:

> An action for damages for personal injury based on childhood sexual abuse must be commenced within 2 years of the date the person abused discovers or through the use of reasonable diligence should discover that the act of childhood sexual abuse occurred and that the injury was caused by the childhood sexual abuse.

735 ILCS 5/13-202.2(b) (eff. Jan. 1, 1994). In contrast, _____ argues that since he was unable to link his current emotional and addictive disorders to his past sexual abuse until after he began therapy in

20__, the discovery rule contained in the then-current version of the two-year statute tolled the running of the statute. (That version is still in effect as of the date of this order.) That provision states:

> Notwithstanding any other provision of law, an action for damages for personal injury based on childhood sexual abuse must be commenced within 20 years of the date the limitation period begins to run under subsection (d) or within 20 years of the date the person abused discovers or through the use of reasonable diligence should discover both (i) that the act of childhood sexual abuse occurred and (ii) that the injury was caused by the childhood sexual abuse. The fact that the person abused discovers or through the use of reasonable diligence should discover that the act of childhood sexual abuse occurred is not, by itself, sufficient to start the discovery period under this subsection (b). Knowledge of the abuse does not constitute discovery of the injury or the causal relationship between any later-[ ] discovered injury and the abuse.

735 ILCS 5/13-202.2(b) (eff. Jan. 1, 2014).

The plain language of both provisions makes evident that each incorporates the common-law discovery rule. The rule developed in response to what had been seen as harsh results resulting from the literal application of statutes of limitation. *See Knox College*, 88 Ill. 2d at 414. According to the Supreme Court, actual awareness of a cause of action is not the rule. As explained, the event triggering the statutory period, "is not the first knowledge the injured person has of his injury, and . . . is not the acquisition of knowledge that one has a cause of action against another for an injury he has suffered." *Id.* at 415. Rather, "the statute starts to run when a person knows or reasonably should know of his injury and also knows or reasonably should know that it was wrongfully caused." *Id., citing Witherell*, 85 Ill. 2d at 156, and *Nolan v. Johns-Manville Asbestos*, 85 Ill. 2d 161, 171 (1981). As has been clarified, the term "wrongfully caused," "does not mean that the plaintiff must have knowledge of the

defendant's negligent conduct before the statute is triggered." *Knox College*, 88 Ill. 2d at 415.

> The discovery rule, as it has come to be understood,
>
> is not the same as a rule which states that a cause of action accrues when a person knows or should know of both the injury and the defendants' negligent conduct. Not only is such a standard beyond the comprehension of the ordinary lay person to recognize, but it assumes a conclusion which must properly await legal determination. Moreover, if knowledge of negligent conduct were the standard, a party could wait to bring an action far beyond a reasonable time when sufficient notice has been received of a possible invasion of one's legally protected interests.

Nolan, 85 Ill. 2d at 170-71 (citations omitted). As a result, "a plaintiff need not have knowledge that an actionable wrong was committed before the period begins to run." *Knox College*, 88 Ill. 2d at 415-16. With that understanding, the Supreme Court held that, "when a party knows or reasonably should know both that an injury has occurred and that it was wrongfully caused, the statute begins to run *and the party is under an obligation to inquire further to determine whether an actionable wrong was committed.*" *Nolan*, 85 Ill. 2d at 171 (emphasis added). *See also Hawley v. Kenley*, 261 Ill. App. 3d 307, 311 (3d Dist. 1994).

The incorporation of the discovery rule into each of the statutes of limitation quoted above is, in this case, ultimately irrelevant. The reason is that if a plaintiff, "alleging childhood sexual abuse was aware of the abuse as it occurred and does not allege that she repressed the memories of that abuse, the limitations period begins to run at the time the plaintiff reaches the age of majority." *Parks v. Kownacki*, 193 Ill. 2d 164, 176 (2000), *citing Clay v. Kuhl*, 189 Ill. 2d 603, 610 (2000). In both *Parks* and *Clay*, the Supreme Court considered cases in which each plaintiff alleged that as a child or teenager she had been sexually abused by a priest, but that her memories had not been repressed. *See Parks*, 193 Ill. 2d at 168-73,

177-78; *Clay*, 189 Ill. 2d at 605-06, 610. Further, each of the plaintiffs alleged that not until much later in life did she link her psychological problems to the sexual abuse. *See Parks*, 193 Ill. 2d at 174-75; *Clay*, 189 Ill. 2d at 605-06. In each case, the court concluded that the discovery rule could not save a cause of action for childhood sexual abuse based on: (1) an actual memory of the abuse; but (2) an alleged lack of understanding of proximate causation to subsequent injuries. *See Parks*, 193 Ill. 2d at 177 ("While [Parks] alleges that she did not know that the sexual relationship was wrong, it is clear from her actions – telling her parents, reporting [the priest] to [a superior] – that she knew that [the priest] had wronged her"); *Clay*, 189 Ill. 2d at 613 ("Accepting [Clay]'s argument in support of delayed discovery . . . would improperly create a subjective standard by which accrual of a cause of action would have to be measured").

Although _____'s second-amended complaint alleges that he had a repressed memory, his deposition testimony establishes unequivocally that he did not since as a late teenager he told his mother something about the sexual abuse. That singular but overriding fact transforms this case into one nearly identical to the ones considered by the Supreme Court in *Parks* and *Clay*. As in *Parks*, _____'s admission to his mother implicitly concedes that he knew as early as the late 19__s that Father _____'s actions had been wrongful. And as in *Clay*, _____'s delayed therapeutic catharsis cannot provide the consistency needed to establish when the statute of limitation begins to run. In short, the statute of limitation applicable to _____'s cause of action expired on _____ _, 19__, two years after he reached his majority. No other conclusion is possible.

_____ presents a counterargument that an amendment to the statute of limitation effectively tolls the running of the statute until two years after _____ realized that Father _____'s sexual abuse caused _____'s current injuries. In support of that argument, _____ relies on the 2004 amendment to Code of Civil Procedure section 5/13-202.2 that explicitly provides: "Knowledge of the abuse does not constitute discovery of the injury or the causal relationship between any later-discovered injury and the abuse." 735 ILCS 5/13-202.2 (eff.

Jan. 1, 2004). While that additional language might, at first glance, appear to draw into question this court's analysis, the amendment is temporally and legally irrelevant. It is a "long-established rule" that, "once a claim is time-barred, it cannot be revived through subsequent legislative action without offending the due process protections of our state's constitution." *Doe A. v. Diocese of Dallas*, 234 Ill. 2d 393, 411 (2009), *citing M.E.H. v. L.H.*, 177 Ill. 2d 207, 214-15 (1997), and *Galloway v. Diocese of Springfield*, 367 Ill. App. 3d 997, 1000 (5th Dist. 2006). Again, the inexorable conclusion is that the two-year statute of limitation in effect on _____ _, 19__ barred _____'s cause of action.

Conclusion

For the reasons presented above, it is ordered that:

(1) the defendant's summary judgment motion is granted; and
(2) this case is dismissed with prejudice.

_____
John H. Ehrlich, Circuit Court Judge