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1998 Survey of Rhode Island Law: Cases: Statute of Limitations

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Statutes of Limitations. *Smith v. O'Connell,* 997 F. Supp. 226 (D.R.I. 1998). The statute of limitations tolling provision for "unsound mind" under Rhode Island law refers to a mental condition that renders a person incapable of managing his or her daily affairs, and does not encompass more limited disabilities such as a selective inability to recall particular facts or reluctance to seek legal redress based on those facts.

FACTS AND TRAVEL

The plaintiffs allege that, as minors, they were victims of sexual abuse by various Roman Catholic priests in Providence, Rhode Island.[1] Suit was brought against the individual priests, the churches in which each served, and other officials of the Roman Catholic Diocese (defendants).[2]

Brothers Stephen and Michael Kelly made allegations of abuse against Fr. Robert Marcantonio. Stephen claimed that the abuse occurred throughout his high school years, while Michael alleged abuse during his high school years continuing into college.[3] Kenneth Smith alleged abuse by Fr. William O'Connell which allegedly transpired while the plaintiff attended high school.[4]

After he was abused, Kenneth Smith went on to attend college, served in the National Guard, was married and held numerous positions of employment.[5] In the years prior to the commencement of the action, Smith's troubled life included psychiatric counseling, as well as substance abuse and treatment programs. Smith had no recollection of the alleged abuses until sometime during 1991 or 1992.[6]

Michael Kelly, however, was fully conscious of the assaults ever since their occurrences.[7] He lived a stable life despite a drinking problem, and claimed that it was not until 1991 that he realized the improper nature of Fr. Marcantonio's actions.[8] Until that time, Kelley had the mistaken belief, at Fr. Marcantonio's direc-

1. *See* Smith v. O'Connell, 997 F. Supp 226, 230 (D.R.I. 1998).
2. *See id.*
3. *See id.*
4. *See id.*
5. *See id.* at 231.
6. *See id.*
7. *See id.*
8. *See id.*

tion, that the actions were part of his religious training regarding sexuality.[9]

Following the assaults, Stephen Kelly suffered turmoil in his personal life. While still in college, he turned to drug use and eventually withdrew from classes.[10] Subsequently, he was unable to maintain steady employment and lived off welfare benefits[11]. He eventually entered counseling to manage his depression and substance abuse.[12] It was during these counseling sessions when he revealed the assaults by Fr. Marcantonio. Like his brother, Stephen had always been aware of what had happened, but failed to recognized any wrongful conduct because he too was told that such activity was merely part of his religious training.[13]

All three plaintiffs filed suit in 1993, long after each had attained the age of majority.[14] At the time of the alleged abuses, twenty-one was the age of majority in Rhode Island for statute of limitations tolling purposes.[15]

BACKGROUND

Statute of Limitations

Prior to 1992, the Rhode Island law pertaining to claims of childhood sexual abuse required that suit must be brought within three years of the date of the alleged injury.[16] Subsequently, section 9-1-51 of the Rhode Island General Laws extended the statute of limitations to allow an action against the "perpetrator" to be commenced within seven years of when the victim discovered or should have discovered that sexual assault had occurred.[17] This amendment did not serve to revise section 9-1-14 (b), which maintains a three year statute of limitations for claims brought against non-perpetrators.[18] Further, any claim that had expired by stat-

9. *See id.*
10. *See id.*
11. *See id.* at 231-32.
12. *See id.* at 232.
13. *See id.*
14. At the commencement of the action, Kenneth Smith was 32 years old, while Stephen and Michael Kelly were ages 32 and 26 respectively. *See id.*
15. *See* R.I. Gen. Laws § 9-1-14(b) (1956) (1997 Reenactment).
16. *See id.*
17. *Id.*
18. *See Kelly*, 678 A.2d at 877.

ute prior to the enactment of the amendment would not be revived under the new law.

Tolling Provisions

The time period of limitations and the circumstances under which a claim is tolled must be assessed in determining if a claim fails due to statute of limitations expiration.

The first tolling provision at issue is contained in section 9-1-19 which delays the period of limitations from applying to a minor until the minor reaches the age of majority.[19] The same statute also prevents the period from running if the party seeking to bring the claim was of "unsound mind."[20] A third tolling provision at issue is provided for in section 9-1-20 which allows the cause of action to be brought when the harm was discovered; accrual of the statute of limitations period does not begin on the actual date of harm when the cause of action was fraudulently concealed.[21]

The hierarchy defendants did not contest that plaintiffs' period of limitations did not begin until each individual reached twenty-one years of age.[22] Defendants did vigorously challenge the further extension for the limitations period under both the "unsound mind" and "fraudulent concealment" provisions of section 9-1-19 and section 9-1-20, respectively.[23]

ANALYSIS AND HOLDING

All three plaintiffs filed suit in 1993, long after each had attained the age of majority. At the time of the alleged abuses, the three year limitation set forth in section 9-1-14(b) of the Rhode Island General Laws governed such claims.[24] The amendments by section 9-1-51, which extended the time period, did not come into

19. *See Smith*, 997 F. Supp. at 232.

20. Section 9-1-19 states:

> § 9-1-19. Disability postponing running of statute.
> If any person at the time any such cause of action shall accrue to him or her shall be under the age of [twenty-one (21) years], or of unsound mind . . . the person may bring the cause of action, within the time limited under this chapter, after the impediment is removed.

R.I. Gen. Laws § 9-1-19 (1956) (1997 Reenactment).

21. *See id.* § 9-1-20.

22. *See Smith*, 997 F. Supp. at 233.

23. *See id.*

24. *See id.*

effect until well after three years of all plaintiffs reaching age twenty-one.[25] Accordingly, the statute could not be retroactively applied to claims which were previously time barred.[26] Since section 9-1-14 prevented their claims, plaintiffs sought an extension of the period of limitations via the "unsound mind" provision of section 9-1-19 and the "fraudulent concealment" provision of section 9-1-20.[27]

Unsound Mind

Although the statute does not explicitly define the term "unsound mind," case law has shown that construction of the term for statute of limitations tolling purposes includes consideration of "the historical categories of insanity, imprisonment, minority or absence from the country."[28] Plaintiffs sought to have the condition of "repressed memory" included in the ascribed categories triggering tolling.[29] In determining the boundaries of "unsound mind," the court turned to the legislative history of section 9-1-19. An examination of the context and language revealed that the "unsound mind" provision was to be narrowly construed; it "refer[s] only to conditions that render a person legally incompetent or incapable of managing his or her everyday affairs."[30] Further, if the legislature intended for the unsound mind provision to include a condition of repressed memory, it would have been superfluous to include a "discovery" provision in section 9-1-51.[31] Finally, it was clear from the legislature's omission of repressed memory from the language of section 9-1-19 that such a condition was not encompassed within the provision. This narrow construction was consistent with the Rhode Island Supreme Court's interpretations of the

25. *See id.*

26. Under the section 9-1-19 "minority" tolling provision, the statute of limitations expired for Kenneth Smith on April 10, 1984; Stephen Kelly on August 1, 1985; and Michael Kelly on February 26, 1991.

27. *See Smith*, 997 F. Supp. at 234-35.

28. Young v. Park, 359 A.2d 697, 699 n.3 (R.I. 1976).

29. Kenneth Smith asserted that the unsound mind exception was applicable because the trauma he experienced forced the repression of any memory of the assaults. The Kelly brothers also claimed that the exception applied to them for two reasons: first, they did not understand the wrongful nature of the conduct at the time it occurred, and second, the traumatic experience of instituting suit would have forced them to "re-live" the painful memories.

30. *Smith*, 997 F. Supp. at 235.

31. *See id.*

term as well as those in numerous other jurisdictions. The court deferred to the legislature by applying the term's "common meaning" and declined to define the term differently for statute of limitations purposes.[32]

Accordingly, the court was unable to apply the "unsound mind" provision to the conditions presented by the plaintiffs. Kenneth Smith, noted the court, managed his daily affairs without suffering from any sort of disability.[33] He also was never institutionalized for any drug or mental problems, nor was he at any time placed under guardianship or conservatorship.[34] Michael Kelly's claim of unsound mind failed for similar reasons. The evidence showed he was an able, functioning individual who held several jobs and he was never subject to any medical or physical treatment.[35] Stephen Kelly, despite his troubled life, also failed to meet the established criteria. Like the other two plaintiffs, he was at no time placed under guardianship or conservatorship.[36] Kelly's depression and concomitant difficulties evidenced an unsatisfactory life but did not rise to the legal standard required by section 9-1-19.[37]

Fraudulent Concealment

Section 9-1-20 allows the period of limitations to be tolled in cases where the plaintiff was unaware that a cause of action existed because the defendant fraudulently concealed it.[38] In such cases the period of limitations begins at the time the plaintiff discovers the existence of his or her cause of action, instead of from that date of actual injury.[39] An extension of the limitations period under this tolling theory requires the plaintiff to show that the defendant made a misrepresentation of fact, and that such misrepresentation fraudulently concealed the existence of plaintiff's cause of action.[40] The Rhode Island Supreme Court had previously construed "misrepresentation" to be "some representation or other af-

32. *See id.* at 237-38.
33. *See id.*
34. *See id.*
35. *See id.*
36. *See id.* at 238.
37. *See id.*
38. *See* R.I. Gen. Laws § 9-1-20 (1956) (1996 Reenactment).
39. *See id.*
40. *See id.*

firmative conduct amounting in fact to such a representation which could reasonably deceive another and induce him to rely thereon to his disadvantage.[41] A defendant declining to offer information that would assist in proving a plaintiff's cause of action does not rise to the level of misrepresentation to be considered fraudulent concealment;[42] it must be shown that the defendant actively mislead the plaintiff by misrepresenting material facts that would provide the basis for a cause of action. Further, the plaintiff must show that the reliance on the misrepresentation was *justifiable*, and led to the erroneous belief that no cause of action existed.[43]

Plaintiffs' claims of fraudulent concealment against the hierarchy defendants rested on the dual assumption that the hierarchy defendants were both aware of the individual priests' behavior and failed to report it, and that they engaged in a conspiracy to "cover-up" the assaults.[44]

The arguments put forth by the plaintiffs were unclear as to whether the fraudulent concealment occurred before or after the alleged abuses. The court reasoned that if it were the former, the hierarchy defendants actions (or lack thereof) were irrelevant to the determination that they concealed the existence of plaintiffs cause of action *after* the abuses occurred.[45] In the latter instance, several flaws would cause the claim to fail. First, the plaintiffs showed no evidence in support of the allegation that the hierarchy defendants made misrepresentations to them.[46] Indeed, plaintiffs had admitted that they had no communications with the hierarchy defendants.[47] They also had never shown any evidence linking the post-abuse transfers of the individual priests to the concealment of their causes of action.[48] Also, section 9-1-20 was already construed to exclude the failure to volunteer information as an act of actual misrepresentation; plaintiffs showed no evidence that such action in their cases would give rise to a tolling of the limitations period.[49]

41. Caianiello v. Shatkin, 82 A.2d 826, 829 (R.I. 1951).
42. Kenyon v. United Elec. Ry. Co., 151 A. 5, 8 (R.I. 1930).
43. Travers v. Spidell, 682 A.2d 471, 472-73 (R.I. 1976).
44. *See* Smith v. O'Connell, 997 F. Supp. 226, 238-39 (D.R.I. 1998).
45. *See id.* at 239.
46. *See id.*
47. *See id.*
48. *See id.*
49. *See id.*

Plaintiffs further argued that the hierarchy defendants' silence did constitute an actual misrepresentation because the failure to disclose knowledge of the priests' actions was a breach of the fiduciary relationship between the parties.[50] In the absence of any such evidence, the court refused to infer the existence of a fiduciary relationship between the parties merely because plaintiffs had some kind of association with the churches in the past.[51] Even if such a relation did exist, it would not have imposed a duty on the hierarchy defendants to make disclosures following the abuse.[52] The duty of the churches would have been to prevent acts of abuse, not to volunteer after-the-fact information that would amount to an admission of liability.[53] Finally, the court rejected the plaintiffs' argument because there was no evidence that the hierarchy defendants' actions concealed their causes of action.[54]

Plaintiffs asserted the fraudulent concealment argument against Fr. Marcantonio also. The priest had told plaintiffs that his actions were part of their religious training, thus causing the plaintiffs' mistaken belief that the actions were normal and acceptable.[55] Accordingly, plaintiffs alleged that there was no reason to believe a cause of action existed.[56] The court rejected this claim because the statements, though dishonest and deplorable, were insufficient to support a fraudulent concealment claim.[57] As a matter of law, it was unreasonable for the plaintiffs, as competent adults, to have relied on such statements.[58] Therefore, the claims against Fr. Marcantonio were time barred since the three year limitations period had already run.[59]

CONCLUSION

In *Smith v. O'Connell*, the Rhode Island Supreme Court applied the common meaning of "unsound mind" and found that the claims in this case did not comport with the common usage of the

50. *See id.*
51. *See id.*
52. *See id.* at 240.
53. *See id.*
54. *See id.*
55. *See id.*
56. *See id.*
57. *See id.* at 240-41.
58. *See id.*
59. *See id.*

term for tolling purposes. In addition, the court rejected plaintiffs' claim of fraudulent concealment in that defendants' silence or failure to offer information did not constitute actual misrepresentation, and that plaintiffs' reliance on the defendant's statement was not reasonable. Therefore, the did not allow a tolling of the limitations period, and granted defendants' motion for summary judgment.

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