COURT OF APPEALS
DECISION
DATED AND FILED

August 29, 2006

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2005AP1945

Cir. Ct. Nos. 2005CV1351
2005CV1977
2005CV4902

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

JOHN DOE 1,

PLAINTIFF-APPELLANT,

V.

ARCHDIOCESE OF MILWAUKEE,

DEFENDANT-RESPONDENT,

ALIAS INSURANCE COMPANY #1,

DEFENDANT.

JOHN DOE 2 AND JOHN DOE 3,

PLAINTIFFS-APPELLANTS,

V.

ARCHDIOCESE OF MILWAUKEE,

DEFENDANT-RESPONDENT.

CHARLES LINNEMAN,

PLAINTIFF-APPELLANT,

V.

ARCHDIOCESE OF MILWAUKEE,

DEFENDANT-RESPONDENT,

FRANKLYN BECKER,

DEFENDANT.

APPEAL from an order of the circuit court for Milwaukee County: MICHAEL D. GUOLEE, Judge. *Affirmed.*

Before Wedemeyer, P.J., Fine and Kessler, JJ.

¶1 FINE, J. John Doe 1, John Doe 2, John Doe 3, and Charles Linneman appeal an order dismissing their complaints against the Archdiocese of Milwaukee. They claim that the trial court erred when it concluded that their claims were barred by the statute of limitations. We affirm.

I.

¶2 This appeal is a consolidation of three lawsuits filed in Milwaukee County Circuit Court against the Archdiocese. Doe 1, Doe 2, and Doe 3's complaints are nearly identical. In 2005, they alleged that from 1973 to 1976, a

now-dead Roman Catholic priest, Siegfried Widera, abused them sexually. According to the complaints, the Archdiocese knew before Widera molested the Does that he "had sexually molested numerous children and … was a danger to children."

¶3 The Does alleged two causes of action against Widera's employer, the Archdiocese: fraud and negligent supervision. The Does claimed that the Archdiocese: (1) affirmatively represented that it "did not know that Siegfried Widera had a history of molesting children" and "did not know that Siegfried Widera was a danger to children," and (2) concealed Widera's history of sexual abuse. They also contended that the Archdiocese negligently retained and supervised Widera knowing that he had "dangerous and exploitative propensities as a child sexual exploiter."

¶4 According to the complaints, the Does did not discover or "have any reason to believe that Defendant Archdiocese had defrauded" them until 2004, when they found out that Widera "had been convicted of sexually molesting a minor boy before Widera [had] abused" them. The Does also alleged that they did not discover, or in the exercise of reasonable diligence should have discovered, their injuries or their cause "until recently because of the profound psychological damage that occurred as a result of the abuse and Defendants actions."

¶5 In 2005, Linneman alleged that in 1982 another Roman Catholic priest, Franklyn W. Becker, abused him sexually. Like the Does, Linneman claimed that the Archdiocese knew that Becker "had sexually molested numerous children" before he molested Linneman, and Linneman sued the Archdiocese for

fraud and negligent supervision.[1] According to Linneman's complaint, he did not know that the Archdiocese had defrauded him "until recently," and did not discover his injuries or their cause "until recently because of profound psychological damage that occurred as a result of the abuse and Defendants actions."

¶6 The Archdiocese moved to dismiss the Does' complaints, asserting, among other things, that the claims were barred by the applicable statute of limitations. *See* ***John BBB Doe v. Archdiocese of Milwaukee***, 211 Wis. 2d 312, 344–345, 565 N.W.2d 94, 106–107 (1997); ***Pritzlaff v. Archdiocese of Milwaukee***, 194 Wis. 2d 302, 316–317, 533 N.W.2d 780, 786 (1995). The trial court agreed and dismissed the Does' complaints.

¶7 Linneman subsequently stipulated that his claims "were substantially identical to the claims of the three plaintiffs, John Does 1-3," and agreed to the consolidation and dismissal of his claims, while preserving his right to appeal.

II.

¶8 A motion to dismiss for failure to state a claim tests the legal sufficiency of the complaint. ***John BBB Doe***, 211 Wis. 2d at 331, 565 N.W.2d at 101. "While we accept the facts pled as true for purposes of our review, we are not required to assume as true legal conclusions pled by the plaintiffs." ***Ibid.*** We will dismiss a complaint for failure to state a claim upon which relief can be granted only if "'it is quite clear that under no conditions can the plaintiff

[1] Linneman also sued Becker for "fiduciary fraud." The appellants do not assert this claim on appeal.

recover.'" ***Pritzlaff***, 194 Wis. 2d at 312, 533 N.W.2d at 784 (quoted source omitted).

¶9 "A threshold question when reviewing a complaint is whether the complaint has been timely filed, because an otherwise sufficient claim will be dismissed if that claim is time barred." ***Ibid.*** Under the "discovery rule," a statute of limitations is tolled until a plaintiff either discovers his or her injuries or their cause or, in the exercise of reasonable diligence, should have discovered those injuries and cause. *See* ***Hansen v. A.H. Robins, Inc.***, 113 Wis. 2d 550, 560, 335 N.W.2d 578, 583 (1983); ***Borello v. U.S. Oil Co.***, 130 Wis. 2d 397, 411, 388 N.W.2d 140, 146 (1986).

¶10 The appellants contend that their negligent-supervision claim is timely under the discovery rule because: (1) they "recently" discovered their latent sexual-assault injuries, *see* WIS. STAT. § 893.54(1) ("action to recover damages for injuries to the person … shall be commenced within 3 years or be barred"), and (2) the Archdiocese "actively concealed" its knowledge about the priests. Were we writing on a clean slate, we might very well agree with appellants. But we are not. This case is controlled by ***John BBB Doe***.

¶11 ***John BBB Doe*** addressed whether the discovery rule could save claims brought by the victims of intentional, non-incestuous sexual assault against the individual priests after statutes of limitation have run. ***John BBB Doe*** held that, as a matter of law, the victims knew, or in the exercise of reasonable diligence should have known, that they were injured when they were assaulted. ***Id.***, 211 Wis. 2d at 340, 342, 565 N.W.2d at 104, 105. Under ***John BBB Doe***, once the victims knew that they were injured, they had "a duty to inquire into the injury that result[ed] from [the] tortuous activity." ***Id.***, 211 Wis. 2d at 340, 565

N.W.2d at 105. ***John BBB Doe*** thus concluded that the discovery rule did not save the victims' claims against the priests because the statute of limitations began to run no later than the date of the last sexual assault:

> [i]n cases where there has been an intentional, non-incestuous assault by one known to the plaintiff, and the plaintiff sustains actual harm at the time of the assault, the causal link is established as a matter of law. These plaintiffs knew the individual priests, knew the acts of sexual assault took place, and knew immediately that the assaults caused them injury. We therefore conclude that these plaintiffs discovered, or in the exercise of reasonable diligence, should have discovered all the elements of their causes of action against the individual perpetrators at the time of the alleged assault(s), or by the last date of the alleged multiple assaults.

Id., 211 Wis. 2d at 344–345, 565 N.W.2d at 106–107; *see also* ***Pritzlaff***, 194 Wis. 2d at 316–317, 533 N.W.2d at 786 (cause of action against Archdiocese accrued when sexual relationship with priest ended).

¶12 Under ***John BBB Doe***, the discovery rule also does not save the appellants' negligent-supervision claims. Like the victims in ***John BBB Doe***, the appellants, as a matter of law, knew the individual priests, knew that the priests had sexually assaulted them, and knew or should have known at the time of the assaults that they had been injured. ***Id.***, 211 Wis. 2d at 344–345, 565 N.W.2d at 106–107. They thus had a corresponding "duty to inquire" into the cause of their injuries no later than the date of the last sexual assault, which would have revealed the facts they now assert make the Archdiocese liable. *See* ***id.***, 211 Wis. 2d at 364, 565 N.W.2d at 115 ("claim of repressed memory of past sexual abuse does not delay the accrual of a cause of action for non-incestuous sexual assault"). Any liability that the Archdiocese might have under a negligent-supervision theory "accrued at the same time that the underlying intentional tort claims accrued." ***Id.***, 211 Wis. 2d at 366, 565 N.W.2d at 115; *see also* ***Pritzlaff***, 194 Wis. 2d at 312, 533

N.W.2d at 784 (statute of limitations for actions against the Archdiocese began on same date as the cause of action accrued against the individual priest). Accordingly, the appellants' negligent-supervision claims against the Archdiocese are barred by the statute of limitations.

¶13 The appellants' fraud claims are also barred by the statute of limitations despite their contention that the claims are timely under WIS. STAT. § 893.93. Section 893.93 provides, as relevant here:

> **(1)** The following actions shall be commenced within 6 years after the cause of action accrues or be barred:
>
> ….
>
> (b) An action for relief on the ground of fraud. *The cause of action in such case is not deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the fraud.*

(Emphasis added.) The appellants claim that their fraud claims are thus timely because they did not "discover" that they had been defrauded by the Archdiocese until 2004. We disagree.

¶14 The fraud-claims statute of limitations begins to run:

> "[w]hen the information brought home to the aggrieved party is such as to indicate where the facts constituting the fraud can be effectually discovered upon diligent inquiry[. I]t is the duty of such party to make the inquiry, and if he fails to do so within a reasonable time he is, nevertheless, chargeable with notice of all facts to which such inquiry might have led."

Koehler v. Haechler, 27 Wis. 2d 275, 278, 133 N.W.2d 730, 731–732 (1965) (quoted source omitted); *see also* ***Stroh Die Casting Co. v. Monsanto Co.***, 177 Wis. 2d 91, 117–118, 502 N.W.2d 132, 142 (Ct. App. 1993) (diligent investigation required for fraud claim).

¶15 As we have seen, under ***John BBB Doe***, the appellants are deemed, as a matter of law, to have discovered their injuries no later than the last sexual assault. ***Id.***, 211 Wis. 2d at 344–345, 565 N.W.2d at 106–107. Accordingly, they had a duty to seek out the cause of their injuries, ***Koehler***, 27 Wis. 2d at 278, 133 N.W.2d at 731–732, and the six-year statute of limitations began to run at that time. The appellants' fraud claims are time barred under WIS. STAT. § 893.93.

By the Court.—Order affirmed.

Publication in the official reports is not recommended.