



IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

JAMES E. SHEEHAN,)
)
Plaintiff,)
)
v.) C.A. No. 07C-11-234 CLS
)
OBLATES OF ST. FRANCIS)
de SALES., et al.,)
)
Defendants.)

Submitted: September 11, 2009
Decided: October 27, 2009

Defendants' Motion for Summary Judgment
GRANTED IN PART; DENIED IN PART.

ORDER

Mark L. Reardon, Esquire, Colleen D. Shields, Esquire, Penelope B. O'Connell, Esquire, and Peter S. Murphy, Esquire, Elzufon Austin Reardon Tarlov & Mondell, P.A., Wilmington, Delaware, Attorneys for the Oblate Defendants.

Mark L. Reardon, Esquire, and James F. Kipp, Esquire, Elzufon Austin Reardon Tarlov & Mondell, P.A., Wilmington, Delaware, Attorney for Defendant Morrissey.

Thomas S. Neuberger, Esquire, Stephen J. Neuberger, Esquire, and Raeann Warner, Esquire, The Neuberger Firm, P.A., Wilmington, Delaware, Attorneys for Plaintiff.

SCOTT, J.

Background

According to the Complaint, James Sheehan (“Sheehan”) was sexually abused as a child by Francis L. Norris (“Fr. Norris”), a Roman Catholic Priest. This alleged abuse took place in April of 1962. Sheehan claims three acts of sexual abuse by Fr. Norris, including attempted rape and forced mutual masturbation. Plaintiff initiated this suit on November 30, 2007, after the passage of the Child’s Victim Act.¹ Sheehan claims damages from assault and battery, gross negligence, breach of fiduciary duty, fraud, conspiracy, and aiding and abetting.

On September 11, 2009, Defendants filed this Motion for Summary Judgment. In the motion, Defendants raise multiple counts for dismissal and each will be discussed in turn below. Sheehan filed his response in opposition of the motion on October 15, 2009.

Standard of Review

Summary Judgment may be granted if the Court concludes that “the pleadings, depositions, answers to interrogatories, 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 summary judgment

¹ 10 *Del. C.* § 8145.

as a matter of law.”² The moving party bears the initial burden of showing that no material issues of fact are present.³ Once this showing is made, the burden shifts to the nonmoving party to demonstrate that there are material issues of fact in dispute.⁴ In deciding a motion for summary judgment, the Court must view the record in the light most favorable to the nonmoving party.⁵ Summary judgment is inappropriate if a material fact is in dispute or if a more thorough inquiry into the facts is desirable to clarify the application of the law to the circumstances.⁶

Discussion

I. Reverend Joseph G. Morrissey’s Motion for Summary Judgment is Granted Because Plaintiff Cannot Make a Claim against Him.

The current Motion for Summary Judgment parallels the issue addressed by this Court in *Eden v. Oblates of St. Francis de Sales*.⁷ In *Eden* this Court granted a motion to dismiss in favor of Bishop Saltarelli (“Saltarelli”), who was sued “in his official capacity as agent or alter ego of the Diocese,” because the alleged conduct occurred more than ten years before he became Bishop. The Court concluded that Saltarelli could not have taken part in directing, ordering, ratifying, approving or consenting to

² Super. Ct. Civ. R. 56(c); *Burkhart v. Davies*, 602 A.2d 56, 59 (Del. 1991).

³ *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979).

⁴ *Id.* at 681.

⁵ *Brzoska v. Olson*, 668 A.2d 1355, 1364 (Del. 1995).

⁶ *Ebersole v. Lowengrub*, 180 A.2d 467, 470 (Del. 1962).

⁷ 2006 WL 3512482 (Del. Super. Dec. 4, 2006).

the actions alleged by Plaintiff and, therefore, could not be personally liable.⁸ The Court held that no genuine issue of fact existed on the issue and the claim against Saltarelli was dismissed.

The current case raises the same issue and, therefore, the Motion for Summary Judgment must be granted. Here, Plaintiff's First Amended Complaint names Rev. G. Morrissey ("Morrissey") as a defendant and sues Morrissey "in his official capacity as agent or alter ego of the Oblates."⁹ Morrissey is currently employed as the Provincial of the Wilmington-Philadelphia Province of the Oblates.¹⁰ Morrissey, however, did not become Provincial until January of 1986—twenty-four years after the alleged abuse took place. Following the Court's reasoning in *Eden*, the Court finds that Morrissey could not have directed, ordered, ratified, approved or consented to the alleged abuse that took place over two decades before he took his current position as the Provincial and over ten years before he was even ordained.¹¹ Accordingly, no genuine issue of fact exists on the issue and the claim against Morrissey must be dismissed.

II. Oblate Defendants' Motion for Summary Judgment is Granted because Claims of Respondeat Superior Liability and Breach of Fiduciary Duty are not Permitted by the Child Victim's Act.

⁸ *Id.* at *8.

⁹ Pl.'s Am. Compl. ¶ 7.

¹⁰ *Id.*

¹¹ Morrissey was not ordained until 1977. Defs.' Mem. Supp. Summ. J. ¶ 2.

Pursuant to the Child Victim's Act, an entity is held liable for the acts of an individual committing sexual abuse against a minor if the person (1) was employed by the institution, agency, firm, business, corporation, or some other public or private legal entity and (2) that entity owed a duty of care to the victim, or the accused and the minor were engaged in some activity over which the legal entity had some degree of responsibility or control.¹² Furthermore, damages will only be awarded if there is a finding of gross negligence on the part of the legal entity.¹³ This express language of the statute provides the only circumstances in which an entity can be liable under the Act. The Act does not provide for a cause of action under a theory of *respondeat superior* or breach of fiduciary duty. Because the Act does not provide for such causes of action, summary judgment must be granted on these counts.

A. Respondeat Superior Liability

In certain cases, the doctrine of *respondeat superior* imputes liability to the employer for the wrongful acts of the employee if the employee was acting within the scope of employment.¹⁴ The foundation of the cause of action against the employer is negligence; the employee's negligence is

¹² 10 *Del. C.* § 8145(b).

¹³ *Id.*

¹⁴ *Fields v. Synthetic Ropes, Inc.*, 215 A.2d 427, 432 (Del. 1965) (citing RESTATEMENT (SECOND) OF AGENCY § 219).

imputed to the employer through application of this doctrine.¹⁵ Not only does the Child Victim's Act expressly state when an entity may be held liable, and thereby preclude a cause of action pursuant to the doctrine of *respondeat superior*, but the Act also requires a finding of *gross negligence* before liability attaches. Because the express language of the Act indicates when an entity is liable for a person's actions, it follows that a cause of action for *respondeat superior* is not permitted under the statute.

Accordingly, the cause of action pursuant to the doctrine of *respondeat superior* must be dismissed and the motion for summary judgment granted.

B. Breach of Fiduciary Duty

Summary judgment must also be granted in favor of Defendants for the claim of breach of fiduciary duty.¹⁶ In *Vai v. Catholic Diocese of Wilmington, Inc.*,¹⁷ Plaintiff argued that the first sentence of the Child Victim's Act gives the Superior Court jurisdiction over claims of breach of

¹⁵ *Fields*, 215 A.2d at 432.

¹⁶ A breach of fiduciary duty claim is established when Plaintiff shows: (1) that a fiduciary duty exists; and (2) that a fiduciary breached that duty. *Legatski v. Bethany Forest Assoc.*, 2006 WL 1229689, at *3 (Del. Super. Apr. 28, 2006).

¹⁷ *Vai v. Catholic Diocese of Wilmington, Inc.*, No. 08C-06-044, slip op. at 2 (Del. Super. Oct. 14, 2009).

fiduciary duty in connection with sexual abuse of a minor.¹⁸ The same argument is raised by Plaintiff in the current case.¹⁹

In *Vai*, the Court dismissed Plaintiff's argument because a claim of breach of fiduciary duty is an equitable claim within the jurisdiction of the court of chancery. The Court was not convinced that it must entertain every legal basis that could arise from the facts in the Plaintiff's complaint. Instead, the court dismissed the claim, but provided Plaintiff an opportunity to transfer the court to the court of chancery pursuant to 10 *Del. C.* § 1902. Accordingly, this Court follows the sound reasoning in the *Vai* case and dismisses the breach of fiduciary claim.

III. Oblate Defendants' Motion for Summary Judgment is Granted for the Claims of Fraud, Conspiracy, and Aiding and Abetting because the Act does not Revive Claims of Intentional Torts.

Counts IV, V, and VI of Plaintiff's Complaint allege that Oblate Defendant's engaged in fraud, conspiracy, and aiding and abetting. Each of these claims must be dismissed, and summary judgment granted, because intentional torts are not revived by the Act. The Delaware Legislature passed 10 *Del. C.* §8145 on July 9, 2007 and created a two year window to

¹⁸ The first sentence reads: "A cause of action based upon the sexual abuse of a minor by an adult may be filed in the Superior Court of this State" 19 *Del. C.* § 8145(a).

¹⁹ Pl.'s Answering Br. 23.

allow victims of childhood sexual abuse to bring civil suits previously barred by the statute of limitations.

Only certain claims are revived by the Act. The Act revives claims if (1) the alleged abuser was employed by an entity and, (2) the entity owed a duty of care to the alleged victim or had some degree of responsibility or control over the alleged abusers actions. A finding of gross negligence is required for damages to be awarded against the entity. Based on this language, a claim must be based on gross negligence to be revived by the Act. Claims of fraud,²⁰ conspiracy,²¹ and aiding and abetting²² are intentional torts, not based on gross negligence, and, therefore, these causes of action are not revived by the Act. Accordingly, these claims are time-barred by the statute of limitations and must be dismissed.²³

IV. Oblate Defendants' Motion for Summary Judgment is Denied because 10 Del. C. § 8145 is Not Unconstitutional.

²⁰ The elements of fraud are:

- (1) a false representation, usually one of fact, made by the defendant; (2) the defendant's knowledge or belief that the representation was false or was made with reckless indifference to the truth; (3) an intent to induce the plaintiff to act or to refrain from acting; (4) the plaintiff's action or inaction taken in justifiable reliance upon the representation; and (5) damage to the plaintiff as a result of the reliance.

Stephenson v. Capano Dev., Inc., 462 A.2d 1069, 1074 (Del. 1983).

²¹ Civil conspiracy is defined as "the combination of two or more persons or entities either for an unlawful purpose, or for the accomplishment of a lawful purpose by unlawful means, resulting in damage." *Anderson v. Airco, Inc.*, 2004 WL 2827887, at *3 (Del. Super. Nov. 30, 2004).

²² The three elements of aiding and abetting are: (1) underlying tortious conduct; (2) knowledge; and (3) substantial assistance. *Id.*

²³ Such actions are barred after three years. *See 10 Del. C. § 8106.*

Defendants argue that section 8145(b) of the Delaware Code violates Delaware's due process clause and is unconstitutional. Specifically, Defendants argue that the Federal due process provisions and Delaware's due process provisions cannot be construed as identical and, therefore, the Court's interpretation of the Delaware due process clause need not follow the analysis of the federal provision. Instead, Defendants claim that the running of the time to sue creates a vested right and the clause forbids the legislature's attempt to void vested rights in putative defendants. Therefore, Defendants' argue that the statute of limitations is more than just an arbitrary determination of when a claim is no longer pursuable and argues that once the statute of limitation has passed the defendant is legally exempt from such actions. On the other hand, Plaintiff claims that the Delaware and Federal due process statutes should be interpreted similarly. This exact issue has recently been addressed by the Court in *Whitwell v. Archmere Academy, Inc.*,²⁴ which rejected the constitutional argument made by the defendants.

The Delaware Supreme Court has specifically held that Delaware's civil due process clause has "substantially the same meaning" as the Federal due process clause.²⁵ The United States Supreme Court has held that revival

²⁴ 2008 WL 1735370 (Del. Super. April 16, 2008).

²⁵ *Helman v. State*, 784 A.2d 1058, 1070 (Del. 2001).

of time-barred civil actions is constitutional.²⁶ In *Chase Securities Corp. v.*

Donaldson, the Court states:

The Fourteenth Amendment does not make an act of state legislation void merely because it has some retrospective operation. What it does forbid is taking of life, liberty, or property without due process of law Assuming that statutes of limitation, like other types of legislation, could be so manipulated that their retroactive effects would offend the Constitution, certainly it cannot be said that lifting the bar of a statute of limitation so as to restore a remedy lost through mere lapse of time is per se an offense against the Fourteenth Amendment.²⁷

It follows, therefore, that if both the Federal and State clauses have “substantially the same meaning,” that such revival statutes also comply with Delaware’s due process clause.

Furthermore, in *Whitwell*, the Court reasoned that statute of limitations are “legislative creations (which, are arbitrary legislative determinations of when a claim should no longer be pursuable), their expiration does not disturb a vested right.”²⁸ Therefore, the legislature can alter statutes of limitations if it determines that public policy favors extending the limitations period. Great weight is given to the General Assembly’s articulation of public policy and the court presumes a new

²⁶ *Chase Sec. Corp. v. Donaldson*, 325 U.S. 304, 315 (1945).

²⁷ *Id.* at 315-16/

²⁸ *Whitwell*, 2008 WL 1735370, at *2.

statute is constitutional.²⁹ The Delaware Supreme Court has stated that “Courts are not super-legislatures and it is not a proper judicial function to decide what is or is not wise legislative policy.”³⁰ Through its passage of the Act, the Delaware General Assembly has shown that public policy favors revival of particular child abuse cases. Because the Act is not unconstitutional, Defendants’ Motion for Summary Judgment is denied.

IT IS SO ORDERED.

/s/ Calvin L. Scott
Judge Calvin L. Scott, Jr.

²⁹ *Whitwell*, 2008 WL 1735370, at *1.

³⁰ *Helman v. State*, 784 A.2d 1058, 1068 (Del. 2001).