

IN THE SUPREME COURT OF OHIO

JANE DOE,

Plaintiff-Appellee,

vs.

ARCHDIOCESE OF CINCINNATI,

Defendant-Appellant.

Case No. 2006-1155

On Appeal from the Hamilton County
Court of Appeals, First Appellate District

Court of Appeals

Case No. C050438

Trial Court No. A-0409650

**THE CATHOLIC CONFERENCE OF OHIO *AMICUS CURIAE* BRIEF IN
SUPPORT OF DEFENDANT-APPELLANT**

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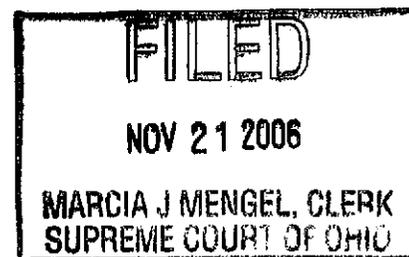


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I. INTRODUCTION

A. Interest of Amicus Curiae.

The Catholic Conference of Ohio (the "Conference") is the official representative of the Catholic Church in public matters affecting the Church and the general welfare of the citizens of Ohio. The Conference represents the Church's position before the Ohio General Assembly, various state departments, bureaus, agencies, and other organizations. The Conference also provides facilitation, coordination, and joint programming for diocesan groups involved in various Church ministries. The policies and activities of the Conference are governed by a Board of Directors comprised of every Roman Catholic Bishop exercising jurisdiction in Ohio. The Conference does not appear as *Amicus* to demean Plaintiff in any fashion or to in any way diminish the great harm that victims of sexual abuse have suffered. The Catholic Church of Ohio is working hard to promote healing and reconciliation for such victims and to do everything humanly possible to make sure such horrible abuses never happen again.¹

B. Efforts to Heal and Reconcile.

Each diocese in Ohio also has initiated a Safe Environment Program. The Safe Environment Programs are based on requirements outlined in the Charter for the Protection of Children and Young People, issued in 2002 by the U. S. Conference of Catholic Bishops. Over 450,000 Ohioans affiliated with Catholic churches and diocesan organizations have attended this training in recognizing and preventing childhood sexual abuse.

In accordance with the Charter, full-time and part-time employees and volunteers of the Catholic Church who, in their daily responsibilities, work directly with children must attend the Safe Environment Program. These persons also are subject to a mandatory background check.

¹ Even though Plaintiff's Complaint is filled with abuse language, she at times insists that this is a wrongful adoption case rather than a sexual abuse case. This seems inconsistent with her Complaint. In either event, we fail to see how the altered label could resolve the statute of limitation problems.

In January, 2005, a bill was introduced to require that clergy be mandated reporters of child abuse. As the bill worked its way through the legislative process, various provisions were added including the creation of a civil registry for adults similar to the SORN criminal registry. The legislation also extended the statute of limitations for civil suits by persons sexually abused as minors from two years beyond the age of majority to twelve years. The Catholic Church fully supported all of these changes to existing state law.

C. New Counseling Programs.

The Catholic Conference of Ohio on Wednesday, November 16, 2006, announced the creation of a new and additional counseling program for victims of sexual abuse. This program will establish assistance that can be obtained without necessarily applying through any agency of the Catholic Church. Attached as Exhibit A is a Press Release announcing this new counseling program.

II. STATEMENT OF CASE AND FACTS

Amicus Curiae adopts the statement of case and facts presented by Defendant Appellant Archdiocese of Cincinnati.

III. ARGUMENT

PROPOSITION OF LAW NO. 1:

**THE DOCTRINE OF EQUITABLE ESTOPPEL CAN TRUMP A
STATUTE OF LIMITATIONS DEFENSE ONLY WHEN A PLAINTIFF
RELIES UPON MISREPRESENTATIONS THAT PREVENT FILING OF
AN ACTION IN A TIMELY MANNER.**

Plaintiff comes before the judiciary in these proceedings seeking an adjudication of events that occurred approximately 41 years ago. The Complaint fails to plead any justification for the delayed filing. The priest perpetrator passed away long after the statutory filing period had expired. Plaintiff apparently seeks to excuse the delayed filing by alleging that she was

improperly induced to consent to adoption and to refrain from revealing the priest's parentage. Plaintiff fails to plead any conversations, statements, or representations relating to the timing of litigation or forbearance of such.

The First Appellate District entertained equitable estoppel arguments but recognized that:

In the present case the Archdiocese made no express statements to Doe regarding the length of time she had to bring a claim against it. Nor did the Archdiocese make any attempt or offer to settle Doe's potential claims. Because the Archdiocese made no direct or express statements, to successfully rely on equitable estoppel Doe must have alleged that the Archdiocese utilized "similar misrepresentations or conduct" to prevent her from filing suit.

Ct. Ap. Opin. ¶ 15.

The First District adopted the "similar conduct" test even though Plaintiff failed to plead any similar misrepresentations relating to the delay in filing the lawsuit. The First District apparently relies on general conclusory assertions in the Complaint that the conduct and actions of the Archdiocese were calculated to result in the forbearance of legal action. **Id. at ¶ 16; Complaint ¶ 25.** The Complaint pleads representations concerning adoption and "don't tell" issues but these statements do not constitute similar "misrepresentations" which prevent the filing of a lawsuit.

As noted by the Eighth Appellate District in Livingston v. Diocese of Cleveland (1998) 126 Ohio App. 3d 299 (app. den., 82 Ohio St. 3d 1412):

In their affidavits, appellants merely made statements to the effect that they were told by priests that they were "not to tell" of the incidents or that appellants would "bring down the church" if they filed suit. These statements, however, were insufficient to establish the first two elements of the doctrine of equitable estoppel.

Livingston, 126 Ohio App. 3d at 315.

In the most recent Doe case (Doe v. Archdiocese of Cincinnati) (2006) 109 Ohio St. 3d

491, 2006-Ohio-2625) the plaintiff sought to use equitable estoppel by claiming the defendant failed to volunteer facts relating to the essential elements of the offense. Doe did not involve a specific misrepresentation causing forbearance. In addressing this issue, Doe cited with favor the pronouncement from a sister court in New York:

It is therefore fundamental to the application of equitable estoppel for plaintiffs to establish that subsequent and specific actions by defendants somehow kept them from timely bringing suit

Doe, 109 Ohio St. 3d at 502 (citation omitted).

Plaintiff has pleaded no such subsequent and specific action.

PROPOSITION OF LAW NO. 2:

CONCLUSORY STATEMENTS CONCERNING ESSENTIAL ELEMENTS OF EQUITABLE ESTOPPEL MAY NOT BE ACCEPTED AS WELL-PLEADED ALLEGATIONS UNLESS THE COMPLAINT PLEADS SPECIFIC FACTS TO SUPPORT SUCH CONCLUSIONS.

Paragraph 25 of the Complaint recites the conclusion:

The Archdiocese authorized, ratified or participated in these acts . . . which were calculated to, and resulted in, . . . the withholding of and forbearance from any legal action

Neither the Complaint nor the lower Court's opinion references any specific conduct or actions that resulted in forbearance from legal action. Unsupported conclusions in a complaint are not admitted and cannot serve to withstand a motion to dismiss. See Schulman v. Cleveland (1972) 30 Ohio St. 2d 196, 198; Mitchell v. Lawson Milk Co. (1988) 40 Ohio St. 3d 190, 193. The opinion of this Court in State ex rel. Hickman v. Capots (1989) 45 Ohio St. 3d 324, 324 (internal citations omitted), opens with the well-established proposition that:

Unsupported conclusions of a complaint are not considered admitted and are not sufficient to withstand a motion to dismiss.

The problem here is not simply one of technical pleading deficiency. By merely pleading conclusions without specificity, Plaintiff hopes to re-invent the doctrine of equitable estoppel. If the requirement of misleading representations causing forbearance is eliminated, the statute of limitations for sexual abuse torts will have been repealed.

PROPOSITION OF LAW NO. 3:

THE DOCTRINE OF EQUITABLE ESTOPPEL CANNOT BE APPLIED TO BAR A STATUTE OF LIMITATIONS DEFENSE IF PLAINTIFF HAS NOT SPECIFICALLY PLEADED THAT AFTER REACHING THE AGE OF MAJORITY SHE RELIED UPON FRAUDULENT OR MISLEADING CONDUCT CAUSING FORBEARANCE FROM LITIGATION.

The victim was not in a position to assert her claims until she reached the age of majority. Yet the Complaint does not assert reliance thereafter upon any misconduct or misrepresentation relating to forbearance. It is pleaded that Plaintiff was induced to permit the adoption of the child and not disclose the true parentage, but these are not misrepresentations relating to forbearance. These alleged inducements occurred during Plaintiff's minority and at or about the time of the sexual misconduct. Plaintiff does not and could not plead that she relied upon non-existent representations. This is particularly true since the lower Court's opinion assumes that there was some sort of reliance for approximately 37 years.

The Twelfth Appellate District, Court of Appeals noted the absence of reliance after reaching the age of majority in A.S. v. Fairfield School District, (2003), 2003 Ohio 6260, ¶10:

While the evidentiary materials submitted by appellants indicate that Schweikert made the alleged comments to R.N. during their relationship, and that no action was taken against Schweikert during his relationship with the victims, they fail to demonstrate that after appellants both turned 18, appellees engaged in any misrepresentations or conduct aimed at misleading appellants with regard to the filing of their claims, or which precluded them from filing their claim within the applicable statute of limitations.

PROPOSITION OF LAW NO. 4:

THE PROPER FORUM FOR EFFORTS TO AMEND STATUTES OF LIMITATIONS FOR PARTICULAR TORTS IS THE OHIO GENERAL ASSEMBLY.

Some continue to argue that all limitation periods should be eliminated in sexual abuse cases; but the appropriate forum for such debates is the Ohio General Assembly. As noted by Justice Wright in his Ault dissent:

Suffice it to say, it is my sincere belief that the resolution of this issue lies with the legislature and not the judiciary. The Ohio General Assembly is the appropriate body to conduct hearings, consider expert testimony and, most important, fashion standards.

Ault v. Jasko (1994) 70 Ohio St. 3d 114, 124.

Similarly, this Court in Doe v. Archdiocese of Cincinnati (2006) *supra* adopted the language of a sister court speaking to the legislative role:

We conclude as we began: however reprehensible the conduct alleged, these actions are subject to the time limits created by the Legislature. Any exception to be made to allow these types of claims to proceed outside of the applicable statutes of limitations would be for the Legislature as other States have done. Zumpano, 849, N.E. 2d 926, 2006 WL 395229.

109 Ohio St. 3d at 503.

The Ohio General Assembly now has spoken to the issue. Am. Sub. S.B. 17, 126th General Assembly. Scores and scores of witnesses testified. Expert testimony was evaluated. Legal advice was obtained. At the end of the process, legislators rejected proposals to reopen expired statutory limitation periods and thereby permit 35 year old claims to be filed. Instead, the Ohio General Assembly enacted new stringent protections against child abuse, including: (1) much more comprehensive reporting requirements; (2) expanded background checks and training

requirements for those regularly in contact with children; and (3) new procedures for identification and registry of past offenders.

IV. CONCLUSION

The First Appellate District's Decision stretches the doctrine of equitable estoppel to the breaking point. If equitable estoppel can serve to defeat a statute of limitations defense, even in the absence of misrepresentations or misconduct causing forbearance, then all lapsed claims can be revived and the judiciary will have adopted an exception to the statute of limitations even though that exception was rejected by the Ohio General Assembly.

Justice Lundberg Stratton, in the Doe Opinion, noted the New York sister court's apprehension concerning attempts to broaden the equitable estoppel doctrine:

However, if the doctrine of equitable estoppel were to be applied as broadly as plaintiffs suggest, the statute of limitations would rarely be available as a defense.

109 Ohio St. 3d at 502.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing was served by regular U.S. mail, first class postage prepaid, upon the following counsel this 21st day of November, 2006:

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A handwritten signature in black ink, consisting of a large, stylized 'C' followed by a vertical line and a loop, positioned above a horizontal line.

One of the Attorneys for *Amicus Curiae*, the
Catholic Conference of Ohio

Catholic Conference of Ohio

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News Release

November 16, 2006

Counseling Assistance Fund

FOR IMMEDIATE RELEASE

Contact:

Timothy V. Luckhaupt

614-224-7147

FUND CREATED TO SUPPORT COUNSELING FOR ABUSE SURVIVORS

Counseling services aimed at those more comfortable seeking care outside the Church.

The Catholic Bishops, through the Catholic Conference of Ohio, have created a new fund, independent of the Church, to help adult survivors of childhood sexual abuse. The **Counseling Assistance Fund** is designed to provide counseling or similar mental health services for persons who were sexually abused as minors by clergy or other representatives of the Catholic Church.

Currently, each Ohio Catholic Bishop, through the diocese's Victim Assistance Program, offers survivors of abuse the opportunity to receive counseling or other assistance, to aid in the healing process. This new Fund offers another option for healing.

The new Counseling Assistance Fund will consider claims from those who were abused by clergy or other representatives of the Catholic Church and were Ohio residents at the time. The Web site www.counselingassistancefund.org has been created to assist those wishing to file a claim.

"This Fund is different from existing forms of assistance because it will serve people who are reluctant to contact the Church for counseling or similar mental health services. This new Fund provides an opportunity for persons to present their needs for counseling through a process independent of the Church," said Timothy Luckhaupt, executive director of the Catholic Conference of Ohio. "Experts confirm that counseling is a vital part of the healing process, and we want all survivors of abuse to know they have choices and support in getting counseling."

"Counseling is a critical component for victims of childhood sexual abuse who often have kept the abuse secret for many years," said Darla Bolon, a Columbus clinical social worker who has counseled survivors of sexual abuse for 25 years. "It is a great benefit that the Church is making the issue so public and open."

"The effects of sexual abuse don't end with the abuse incident," Bolon said. "Often as adults, victims have issues with trust because they were abused by someone in the Church whom they trusted. Providing a way for them to work outside the Church is key."

About the Fund

The eight dioceses and one eparchy comprising the Catholic Conference of Ohio have contributed a total of \$3 million that has been placed in a Fund with Fifth Third Bank, Central Ohio as Trustee. Administrative expenses are paid directly by the Catholic Conference to assure that all money is available for counseling services. The Fund will accept claims over the next 18 months, beginning November 16, 2006.

The Counseling Assistance Fund is accessed through a Claim Form that can be submitted to one of the Fund's Counseling Claims Administrators. The Counseling Claims Administrators have been appointed by county probate court judges. Their role is to help an individual file a claim, not to determine the merits or validity of any claim. This is the role of the Claims Award Panel.

Terms of the Fund Provide That:

- One member of the Claims Award Panel be appointed by Lawrence Belskis, Senior Judge of the Probate Court of Franklin County. The person appointed is Michael Close, retired judge, Franklin County Court of Appeals, currently in private law practice with Wiles, Boyle, Burkholder and Bringardner.
- One member of the panel be appointed by Yvette McGee Brown, President, Center for Child and Family Advocacy, Columbus, OH. The person appointed is Kim Davis, Director, Children's Hospital Behavioral Health, Columbus, OH.
- The remaining member of the panel be appointed by the other two appointed members. A determination made by a majority of these members currently appointed and serving will be final.

Persons whose claims are approved may obtain services from any mental health provider licensed in the state where the claimant resides. Providers will be paid directly by the Fund.

A claim may be made unless the person has:

- Previously reached a settlement of an abuse claim with any Bishop, Diocese or Catholic entity.
- Legal action pending as to an abuse claim;
- Received a determination by a court as to any abuse claim;
- Previously received counseling or financial assistance for counseling or is currently receiving counseling or financial assistance for counseling under a Diocesan Victim Assistance Program.

A person who elects to file a claim with the Counseling Assistance Fund is not eligible to make a claim or receive assistance from a Diocesan Victim Assistance Program.

Reaching Survivors of Sexual Abuse

On the Web site www.counselingassistancefund.org can be found the Claim Form, reference links, and background information on the Fund. Anyone who does not have Web access, or who needs assistance completing the Claim Form can call any Counseling Claims Administrator. These persons have been appointed by county probate court judges to assist individuals in filing a claim. The names and contact information are as follows:

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