

ORIGINAL

IN THE SUPREME COURT OF OHIO

URANUS WATKINS,

Appellant,

v.

DEPARTMENT OF YOUTH
SERVICES,

Appellee.

CASE NO. 13-0824

On appeal from Case 12AP-959
Previously pending before Ohio's Tenth District
Court of Appeals

APPELLANT URANUS WATKINS'S MEMORANDUM IN
SUPPORT OF JURISDICTION

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RECEIVED
MAY 23 2013
CLERK OF COURT
SUPREME COURT OF OHIO

FILED
MAY 23 2013
CLERK OF COURT
SUPREME COURT OF OHIO

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**EXPLANATION AS TO WHY THIS CASE IS A CASE OF PUBLIC OR GREAT
GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL
QUESTION**

When a victim of childhood sexual abuse can bring an action against a state facility involves a constitutional question of great public and general interest. The legislature enacted a statute that allows the victims of sexual abuse to bring actions within 12 years of their 18 birthdays. However, if a childhood sexual abuse victim brings an action against a state facility, the action is time-barred two years after the child's 18th birthday. This issue involves a substantial constitutional question regarding equal protection for childhood sexual abuse victims in Ohio. Specifically, whether the shorter statute of limitations for victims of childhood sexual abuse in state facilities violates the Equal Protection Clause of the Constitution. This issue is presented to this Court for review below:

STATEMENT OF THE CASE AND FACTS

Ms. Watkins filed a complaint alleging that she was sexually abused while in the custody of the Department of Youth Services between the dates of April 2, 2000 and April 2, 2001. Ms. Watkins alleged that she was sexually abused by employees of the Department of Youth Services. On August 22, 2012, the Department of Youth Services filed a "Motion to Dismiss" arguing that the Plaintiff failed to state a claim because her action was governed by the two-year limitation on actions set forth in ORC 2743.16(A). Ms. Watkins argued that her claims were governed by the statute of limitations set forth in ORC 2305.111, titled Assault or Battery Actions – Childhood Sexual Abuse. The Court of Claims ruled that Ms. Watkins claims were conclusively time-barred pursuant to the two-year statute of limitations set forth in ORC 2743.16(A).

The Court of Claims reasoned that the statute of limitations set forth in ORC 2743.16, regarding claims against the State, takes precedence over all other statutes of limitations in the Ohio

Revised Code. The Court reasoned that Defendant's action accrued when she turned 18. Therefore, her claims were time-barred because she was suing the State rather than a private facility.

The effect of this ruling is that childhood sex abuse victims have a two-year statute of limitation if they sue a state-operated facility and a twelve-year statute of limitations if they sue a private facility. Ms. Watkins appealed this matter to the Tenth District Court of Appeals. The Tenth District affirmed the trial court's decision.

PROPOSITION OF LAW ONE

THE APPELLATE COURT ERRED IN SUSTAINING THE TRIAL COURT'S DECISION DISMISSING THE PLAINTIFF'S CLAIMS PURSUANT TO CIV. RULE 12(B)(6) BECAUSE THE PLAINTIFF'S CLAIMS ARE NOT CONCLUSIVELY TIME-BARRED BY THE STATUTE OF LIMITATIONS OF A SEX ABUSE ACTION.

Ms. Watkins' claims were filed within the statute of limitations set for childhood sexual abuse by the Ohio Legislature. Ms. Watkins' claims should be governed by the twelve-year statute of limitations that the legislature intended for sex abuse victims. The Legislature enacted ORC 2305.111, the childhood sexual abuse statute, to replace the common law discovery rule set forth *Ault v. Jasko* (1994), 70 Ohio St.3d 114. Under the common law discovery rule, a victim's claim for sexual abuse accrued upon discovery of the sex abuse or the party perpetrating the abuse. This rule left open the possibility that a cause of action may not accrue until decades after the sex abuse act. Under the "discovery rule," a plaintiff would have one year from the accrual of the action to file a lawsuit. The Legislature enacted ORC 2305.111 that made a claim for childhood sexual abuse accrue at the age of majority. The Plaintiff would then have 12 years to file a lawsuit after reaching the age 18. It was clear that the Legislature intended a lengthy statute of limitations for these types of cases.

The purpose of a lengthy statute of limitations for sex abuse is obvious. Child sexual abuse is a large national problem. Research has shown that as many as one in four women and one in five men suffered abuse as a child and that almost 90% of abuse never gets reported. Considering how long victims often take to find the courage to speak out, the statute of limitations is detrimentally short and act as a barrier to justice. "It routinely takes the victims decades to come forward if they come forward at all. That's the nature of the reaction to child sexual trauma. It takes time." John Salvesen, Executive Director of the foundation to abolish child abuse, *The Morning Call*, July 10, 2012

The Supreme Court of Ohio ruled in *Pratte v. Stewart*, 125 Ohio St.3d 473, that ORC 2305.111 unambiguously sets a 12-year statute of limitations (time limit) for the filing of civil lawsuits based on childhood sexual abuse that occurred after the Aug. 3, 2006 effective date of that legislation and applies that same 12-year limitations period to the filing of suits based on abuse that occurred prior to Aug. 3, 2006, if no prior claim has been filed and if the limitations period under the previous version of the law had not expired before the new law took effect (See Attached Exhibit D). The Court held further that the 12-year time limit for filing child sexual abuse suits does not begin to run until a child victim reaches the age of majority (18). The Court additionally held that after a victim's 18th birthday, the 12-year limitations period is not tolled (stopped from running) based on the victim's failure to "discover" or recall the abuse due to repressed memories of those events because the legislation does not contain a tolling provision for persons with repressed memories.

The *Pratte* Court reasoned that legislature intended a lengthy statute for victims of childhood sexual abuse. The Court stated that

We can reasonably infer that the General Assembly considered repressed memory by increasing the limitations period for claims of childhood sexual abuse from one year to 12 years....It is reasonable to conclude that the legislature had *Ault* in mind when it increased

the limitation period from one year to 12 years and sought to afford victims a greater period of time in which to recover their repressed memories.

Id. At Paragraphs 54 and 55.

The Ohio Supreme Court did not contemplate the statute in conjunction with ORC 2743.16 regarding claims against the State.

Prior to the enactment of ORC 2305.111, private institutions and state-operated institutions were subject to the same statute of limitations period. The Court of claims previously followed the discovery rule, meaning the Plaintiff's cause of action did not accrue until the discovery of the abuse. The Court of claims allowed claims that were filed well beyond the age of majority under this common law rule. Victims were on equal footing whether the sexual abuse occurred in a public or private institution.

Even criminal prosecution statutes of limitations are longer than two years past a child's 18th birthday. Under ORC 2901.13, the State may prosecute a criminal defendant for a sex abuse act that occurs six years after the child reaches the age of majority. Depending on the circumstances, some abusive acts have no statute of limitations. This law applies to all perpetrators and victims equally. The criminal statutes recognize that a sufficient length of time after a child becomes an adult is necessary. A two-year statute of limitations is unreasonable.

The Court of Claims relies on a technicality in the law that the legislature and the Ohio Supreme Court could not have contemplated. ORC 2743.16 states in pertinent part:

(A) Subject to division (B) of this section, civil actions against the state permitted by sections 2743.01 to 2743.20 of the Revised Code shall be commenced no later than two years after the date of accrual of the cause of action or within any shorter period that is applicable to similar suits between private parties.

The Court of Claims reasoned that Ms. Watkins' claims accrued on her 18th birthday and that the statute of limitations set forth in ORC 2743.16 takes precedence over all other statute of limitations within the ORC. The Court cited *Cargile v. Ohio Department of Admin. Serv.*, 10th Dist. No. 11AP-

743, 2012-Ohio-2470. This ruling violates public policy. It does not take into account psychological conditions associated with childhood sexual trauma such as repressed memories and the shame of coming forward with a sexual abuse allegation. This ruling also deprived Ms. Watkins of equal protection of the law.

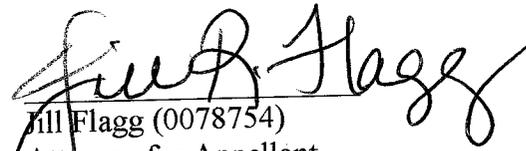
Ms. Watkins was deprived of equal protection of the law because there is a ten-year difference regarding the statute of limitations for childhood sexual abuse. The Fourteenth Amendment to the United States Constitution, provides that "no state shall ... deny to any person within its jurisdiction the equal protection of the laws." The Court of Claims' ruling effectively treats childhood sex abuse victims differently based on whether they were abuse at a private versus public facility. This distinction is arbitrary and could not have been intended by the legislature when it drafted ORC 2305.111.

For the foregoing reasons, Ms. Watkins asserts that a two-year statute of limitations for childhood sex abuse victims that sue the State is unreasonable, has no rational basis, is unconstitutional, and was not intended by the legislature.

CONCLUSION

Based on the foregoing, Ms. Watkins moves this Court to accept jurisdiction to correct the errors and unconstitutionality of the Tenth District Court of Appeals decision to affirm the trial court's decision to dismiss Ms. Watkins case.

Respectfully submitted,

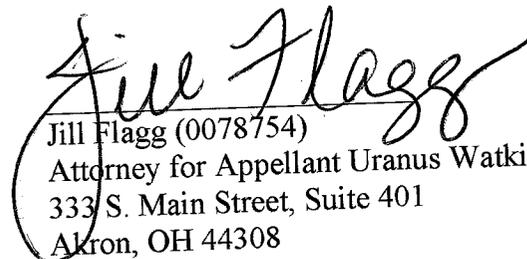


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CERTIFICATE OF SERVICE

I, counsel for the Uranus Watkins, do hereby certify that I served a copy of the foregoing pleading upon the Ohio Attorney General at 30 E. Broad St., 14th Floor, Columbus, OH 43215, on this 23rd day of May, 2013, by way of regular US mail delivery.

Respectfully submitted,


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IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

U.W.,	:	
	:	
Plaintiff-Appellant,	:	
	:	
v.	:	No. 12AP-959
	:	(Ct. of Cl. No. 2012-05851)
Department of Youth Services,	:	
	:	(REGULAR CALENDAR)
Defendant-Appellee.	:	

D E C I S I O N

Rendered on April 25, 2013

Jill R. Flagg, for appellant.

Michael DeWine, Attorney General, and *Eric A. Walker*, for appellee.

APPEAL from the Court of Claims of Ohio

TYACK, J.

{¶ 1} U.W. is appealing the dismissal of her claim against the Ohio Department of Youth Services. She assigns a single error for our consideration:

THE TRIAL COURT ERRED BY DISMISSING THE PLAINTIFF'S CLAIMS PURSUANT TO CIV. RULE 12(B)(6) BECAUSE THE PLAINTIFF'S CLAIMS ARE NOT CONCLUSIVELY TIME-BARRED BY THE STATUTE OF LIMITATIONS OF A SEX ABUSE ACTION.

{¶ 2} The issue before the trial court was which statute of limitations to apply to her claim. U.W. filed her lawsuit over ten years after the sexual assaults she alleged had

occurred. If the overarching statute of limitations for lawsuits against State of Ohio entities contained in R.C. 2743.16 applied, the lawsuit was not timely.

{¶ 3} If R.C. 2305.111 were the applicable statute of limitations, then the lawsuit arguably could proceed.

{¶ 4} R.C. 2743.16(A) reads:

Subject to division (B) of this section, civil actions against the state permitted by sections 2743.01 to 2743.20 of the Revised Code shall be commenced no later than two years after the date of accrual of the cause of action or within any shorter period that is applicable to similar suits between private parties.

{¶ 5} R.C. 2743.16(C) provides for the statute of limitations to be tolled pursuant to R.C. 2305.16. R.C. 2743.16 does not provide for the tolling of the statute of limitations through the operation of R.C. 2305.111. R.C. 2305.111 reads:

(A) As used in this section:

(1) "Childhood sexual abuse" means any conduct that constitutes any of the violations identified in division (A)(1)(a) or (b) of this section and would constitute a criminal offense under the specified section or division of the Revised Code, if the victim of the violation is at the time of the violation a child under eighteen years of age or a mentally retarded, developmentally disabled, or physically impaired child under twenty-one years of age. The court need not find that any person has been convicted of or pleaded guilty to the offense under the specified section or division of the Revised Code in order for the conduct that is the violation constituting the offense to be childhood sexual abuse for purposes of this division. This division applies to any of the following violations committed in the following specified circumstances:

(a) A violation of section 2907.02 or of division (A)(1), (5), (6), (7), (8), (9), (10), (11), or (12) of section 2907.03 of the Revised Code;

(b) A violation of section 2907.05 or 2907.06 of the Revised Code if, at the time of the violation, any of the following apply:

(i) The actor is the victim's natural parent, adoptive parent, or stepparent or the guardian, custodian, or person in loco parentis of the victim.

(ii) The victim is in custody of law or a patient in a hospital or other institution, and the actor has supervisory or disciplinary authority over the victim.

(iii) The actor is a teacher, administrator, coach, or other person in authority employed by or serving in a school for which the state board of education prescribes minimum standards pursuant to division (D) of section 3301.07 of the Revised Code, the victim is enrolled in or attends that school, and the actor is not enrolled in and does not attend that school.

(iv) The actor is a teacher, administrator, coach, or other person in authority employed by or serving in an institution of higher education, and the victim is enrolled in or attends that institution.

(v) The actor is the victim's athletic or other type of coach, is the victim's instructor, is the leader of a scouting troop of which the victim is a member, or is a person with temporary or occasional disciplinary control over the victim.

(vi) The actor is a mental health professional, the victim is a mental health client or patient of the actor, and the actor induces the victim to submit by falsely representing to the victim that the sexual contact involved in the violation is necessary for mental health treatment purposes.

(vii) The victim is confined in a detention facility, and the actor is an employee of that detention facility.

(viii) The actor is a cleric, and the victim is a member of, or attends, the church or congregation served by the cleric.

(2) "Cleric" has the same meaning as in section 2317.02 of the Revised Code.

(3) "Mental health client or patient" has the same meaning as in section 2305.51 of the Revised Code.

(4) "Mental health professional" has the same meaning as in section 2305.115 of the Revised Code.

(5) "Sexual contact" has the same meaning as in section 2907.01 of the Revised Code.

(6) "Victim" means, except as provided in division (B) of this section, a victim of childhood sexual abuse.

(B) Except as provided in section 2305.115 of the Revised Code and subject to division (C) of this section, an action for assault or battery shall be brought within one year after the cause of the action accrues. For purposes of this section, a cause of action for assault or battery accrues upon the later of the following:

(1) The date on which the alleged assault or battery occurred;

(2) If the plaintiff did not know the identity of the person who allegedly committed the assault or battery on the date on which it allegedly occurred, the earlier of the following dates:

(a) The date on which the plaintiff learns the identity of that person;

(b) The date on which, by the exercise of reasonable diligence, the plaintiff should have learned the identity of that person.

(C) An action for assault or battery brought by a victim of childhood sexual abuse based on childhood sexual abuse, or an action brought by a victim of childhood sexual abuse asserting any claim resulting from childhood sexual abuse, shall be brought within twelve years after the cause of action accrues. For purposes of this section, a cause of action for assault or battery based on childhood sexual abuse, or a cause of action for a claim resulting from childhood sexual abuse, accrues upon the date on which the victim reaches the age of majority. If the defendant in an action brought by a victim of childhood sexual abuse asserting a claim resulting from childhood sexual abuse that occurs on or after the effective date of this act has fraudulently concealed from the plaintiff facts that form the basis of the claim, the running of the limitations period with regard to that claim is tolled until the time when the plaintiff discovers or in the exercise of due diligence should have discovered those facts.

{¶ 6} U.W. turned 18 in 2004. To that extent, she benefited from the clarity which R.C. 2305.111 brings to claims such as hers. However, the statutory framework enacted when the State of Ohio partially waived governmental immunity has not been amended to allow any claims to be pursued against the State of Ohio more than two years after the claims accrued. See for instance, *Cargile v. Ohio Dept. of Admin. Servs.*, 10th Dist. No. 11AP-743, 2012-Ohio-2470.

{¶ 7} Consistent with our prior rulings, which have always enforced the will of the Ohio legislature as we see it, we overrule the single assignment of error and affirm the judgment of the Court of Claims of Ohio.

Judgment affirmed.

DORRIAN and McCORMAC, JJ.

McCORMAC, J., retired, formerly of the Tenth Appellate District, assigned to active duty under the authority of Ohio Constitution, Article IV, Section 6(C).

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

U.W.,	:	
	:	
Plaintiff-Appellant,	:	
	:	
v.	:	No. 12AP-959
	:	(Ct. of Cl. No. 2012-05851)
Department of Youth Services,	:	
	:	(REGULAR CALENDAR)
Defendant-Appellee.	:	

JUDGMENT ENTRY

For the reasons stated in the decision of this court rendered herein on April 25, 2013, the assignment of error is overruled. Therefore, it is the judgment and order of this court that the decision of the Court of Claims of Ohio is affirmed. Costs shall be assessed against appellant.

TYACK, DORRIAN & McCORMAC, JJ.

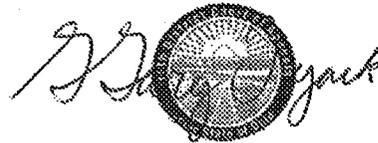
/S/JUDGE _____

McCORMAC, J., retired, formerly of the Tenth Appellate District, assigned to active duty under the authority of Ohio Constitution, Article IV, Section 6(C).

Tenth District Court of Appeals

Date: 04-25-2013
Case Title: URANUS WATKINS -VS- OHIO DEPARMENT OF YOUTH SERVICES
Case Number: 12AP000959
Type: JEJ - JUDGMENT ENTRY

So Ordered

A handwritten signature in cursive script, appearing to read "G. Gary Tyack", is written over a circular seal. The seal features a central emblem, possibly a scale of justice, surrounded by text that is partially obscured by the signature.

/s/ Judge G. Gary Tyack

The Supreme Court of Ohio

CERTIFICATE OF ASSIGNMENT

The Honorable John Waverly McCormac, a retired judge of the Tenth District Court of Appeals, is assigned effective April 3, 2013, to preside in the Tenth District Court of Appeals, for the days of April 16, April 17 and April 18, 2013 and to conclude any proceedings in which he participated that are pending at the end of that period.



Maureen O'Connor
Chief Justice

13JA0880