

ORIGINAL

IN THE SUPREME COURT OF OHIO

U.W.,
Plaintiff-Appellant,

vs.

DEPARTMENT OF YOUTH SERVICES,
Defendant-Appellee,

CASE NO.: 13-0824

ON APPEAL FROM THE TENTH DISTRICT
APPELLATE DISTRICT

COURT OF APPEALS CASE NO.
12AP000959

REPLY BRIEF OF APPELLANT U.W.

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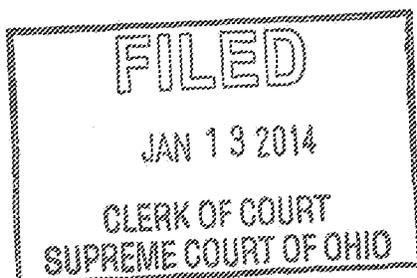


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2. The lower court erroneously deemed that U.W.’s claims were time-barred considering *only* the two-year statute of limitations against state actors.

3. Childhood sexual abuse cases are fundamentally different than contract and other tort cases.

B. The plain text of the twelve-year statute of limitations and absence of an exception for claims brought against the state indicate that the legislature intended for the twelve-year statute to apply to all civil cases involving childhood sexual abuse.

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ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

A. U.W.'s claims were not "conclusively" time-barred because U.W.'s Claims did not accrue under the "discovery" rule before the enactment of the statute of limitations for childhood sexual abuse.

The twelve-year statute of limitations applies to U.W.'s claims. The appellee errantly argues that U.W.'s claims expired before the enactment of the twelve-year statute of limitations. "The twelve-year statute of limitations applies to civil actions arising from childhood sexual abuse that occurred prior to the effective date of that subsection, August 3, 2006, if no prior claim has been filed and if the *former* limitations period had not expired before that subsection." *Pratte v. Stewart*, 125 Ohio St.3d 473 at Syllabus. Therefore, if U.W.'s claims under the "discovery rule" did not expire by Aug. 3, 2006, then her claims became subject to the twelve-year statute of limitations with no tolling period. Whether U.W.'s claims expired under the discovery rule was a question of fact and the appropriate subject of a motion for summary judgment, not a motion for failure to state a claim under Civ. Rule 12(B)(6). U.W. asserts that she had not discovered her injuries before the enactment of the twelve-year statute of limitations.

U.W.'s Claims did not accrue under the "discovery" rule before the enactment of the new statute of limitations for the childhood sexual abuse by August 3, 2006. U.W.'s complaint does not mention repressed memories. However, whether U.W. discovered the sex abuse was an issue of fact that could not be determined on the face of the complaint. Therefore, the Court of claims dismissal on the basis that the Plaintiff failed to state a claim because the statute of limitations had "conclusively" expired, was inappropriate.

Additionally, the lower court erroneously deemed that U.W.'s claims were time-barred considering only the two-year statute of limitations against state actors, not the discovery rule or whether the complaint alleged repressed memories. The journal entries in both the court of claims

and the Tenth district cite only O.R.C. 2743.16 as its basis for the its ruling that U.W.'s claims are time-barred. Consequently, that basis should only be considered.

The Appellee further argues that if the Court makes an exception for childhood sexual abuse cases then Plaintiff's with other types if claims such as contract or tort claims that exceed two years will file suit. Childhood sexual abuse cases are fundamentally different than contract and other tort cases. The literature referenced in U.W.'s merit brief indicates that psychological response to childhood sexual trauma requires a longer statute of limitations. Most other types of disputes and trauma do not induce this type of psychological response.

B. The plain text of the twelve-year statute of limitations and absence of an exception for cases brought against the state indicate that the legislature intended for the twelve-year statute to apply to all civil cases involving childhood sexual abuse.

The plain text instructs that *all* civil actions that involve childhood sexual abuse have a twelve-year statute of limitations. The legislature could have explicitly made an exception for actions against the state when it enacted the twelve-year statute of limitations for childhood sexual abuse. It did not. The legislature could have referenced O.R.C.2743.16. It did not. The Appellee attempts to create an exception to the twelve-year statute of limitations where an exception does not exist and was not created by the legislature. Any exception to the lengthy statute would defeat the intended explicit purpose of legislature in creating the statute. Additionally, canons of statutory construction require the subsequently enacted twelve-year statute to be an exception to the two-year statute of limitations.

C. U.W. did not waive a constitutional argument with regard to her claims.

U.W. raised an equal protection argument at the first opportunity in the Tenth District Court of Appeals. The appellant asserted the equal protection arguments in her tenth district and explained concisely how the application of these statutes violated the Equal Protection clause of the Constitution. Specifically, that the Court of Claims' ruling would effectively treat childhood sexual abuse victims differently based on whether the facility where the abuse took place was public or private. U.W.'s merit brief expounds on this previously raised argument.

CONCLUSION

For the foregoing reasons, the judgment of the Court of Claims should be reversed. Only the legislature can create an exception the twelve-year statute of limitation for childhood sexual abuse. The court cannot create an exception where one does not exist. Additionally, apply an exception to the childhood sexual abuse statute of limitations would violate the Equal Protection Clause of the Constitution.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Jill R. Flagg, Attorney-At-Law, certify that a true and correct copy of the foregoing was sent by First Class United States Mail to Appellee's attorney, Mike DeWine, Esq. at 150 E. Gay St., 18th Floor, Columbus, OH 43215 on November 1, 2013 and State Solicitor, Eric E. Murphy 30 East Broad Street, 17th Floor, Columbus, OH on January 12, 2014.

Respectfully Submitted,

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