

RENDERED: NOVEMBER 23, 2005; 10:00 A.M.  
NOT TO BE PUBLISHED

## Commonwealth Of Kentucky

### Court of Appeals

NO. 2004-CA-001886-MR

CHARLENE MOYERS

APPELLANT

APPEAL FROM JEFFERSON CIRCUIT COURT  
v. HONORABLE JUDITH E. MCDONALD-BURKMAN, JUDGE  
ACTION NO. 03-CI-004266

ROMAN CATHOLIC BISHOP OF  
LOUISVILLE

APPELLEE

OPINION  
AFFIRMING

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BEFORE: GUIDUGLI AND MINTON, JUDGES; ROSENBLUM, SENIOR JUDGE.<sup>1</sup>

GUIDUGLI, JUDGE: In this church abuse case, Charlene Moyers has appealed from the Jefferson Circuit Court's September 2, 2004, order dismissing her claim as barred by the applicable one-year statute of limitations. Because we agree with the circuit court that as a matter of law Moyers should reasonably have known that

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<sup>1</sup> Senior Judge Paul W. Rosenblum, sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

she had a cause of action over one year prior to the filing of her complaint, we affirm.

From the 1950s to the 1990s, the Roman Catholic Bishop of Louisville (hereinafter "the Church") employed Louis E. Miller as a priest. At a Christmas party on December 19, 1990, then-fifteen-year-old Moyers claims to have been sexually assaulted by Miller:

Q. And what did you tell [your uncle] about the specifics of the sexual assault on December 19, 1990?

R. That I went downstairs to the women's bathroom. And when I came out of the women's bathroom, that Louis Miller or Father Miller came out of the men's bathroom and that he told me to come over. And at that time I thought he was going to ask me something, and that's when he touched my right breast and passionately kissed me.

Q. And did you tell your uncle anything else?

R. I told him that was it at the time, and then I went back upstairs confused, not knowing what to do or what to say. Later on in the evening, the same evening, December 19, 1990, we were about to leave, and then that's when he got me over in the corner in front of - which is upstairs, the manager's office, and he got me on my left breast, just brushed it off and said, "This will last you for a while."<sup>2</sup>

Moyers did not tell anyone about the incident until early 2003.

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<sup>2</sup> Deposition of Charlene Moyers, Part II at 10-11.

In mid-April 2002, the Louisville Courier-Journal began a series of articles detailing the abuse problems arising in the Church. On April 14, 2002, the front page of the Sunday Courier-Journal contained an article entitled "Priest retires after allegation of past abuse", which detailed Miller's retirement after sexual abuse charges dating back to the 1960s and 1970s were filed with the Church. The same issue contained other articles related to the topic entitled "A BETRAYAL of TRUST" and "Abuse policy 'could use improvement'". A few days later, the first lawsuit was filed in Jefferson Circuit Court, alleging that the Church had not reported Miller's acts of child abuse and that the Church acted negligently in failing to discipline Miller and in failing to inform students and parents about the previous incidents. The plaintiff in that case specifically alleged that he was not aware that the Church had knowledge of Miller's prior sexual misconduct until he saw the April 14 article. An article appearing in the April 16 issue ("Claims against priest will be checked") reported that prosecutors were looking into the allegations of abuse. Articles published on April 20, April 26, April 27, April 28, May 1, and May 5, 2002, all detailed the filing of lawsuits involving Miller as the abuser. Other news reports appeared on local news television programs and on the radio.

Moyers was born and raised in Louisville, and has lived in the city for most of her life. She briefly lived in Indianapolis, Indiana, and served time for a felony conviction prior to 2002. Moyers is Catholic, and attended Sunday services periodically at different parishes. In Louisville, Moyers lived at several different addresses, generally with her two sons and her mother, and at times with her uncle. Moyers' uncle, Paul Martin, held an office in the Knights of Columbus, and he and her mother attended church services every Sunday. In the summer of 2002, Moyers recalls hearing her mother and uncle discussing the abuse scandal, and began "keying in", as she put it, to any mention of Miller's name. In late January 2003, after an evening of drinking, Moyers began having nightmares of the abuse she suffered, and reported the 1990 occurrence to her mother and uncle in February. In late April 2003, Moyers decided to contact Ross Turner, an attorney who worked in William McMurray's office. News articles identified McMurray as the attorney representing the plaintiffs in their respective suits against the Church. On May 13, 2003, Moyers filed her complaint in Jefferson Circuit Court against the Church. In an amended complaint filed a few days later, Moyers stated that she learned of the Church's conduct in the summer of 2002.

Rather than filing a response, the Church immediately filed a motion to dismiss, arguing that KRS 413.140, which

provides a one-year statute of limitations for personal injury claims, acted to bar Moyer's claim. The Church first argued that Moyers had one year from January 15, 1993, the day she reached her majority, to file her claim. Alternatively, the Church argued that the statute of limitations was not tolled beyond April 19, 2002, the date the first claim was filed against the Church in Jefferson Circuit Court, citing the wide publicity surrounding the abuse scandal. In response, Moyers argued that a factual issue existed as to whether a defendant had obstructed or concealed a cause of action. In reply, the Church stated that a reasonable person standard applied. By order entered October 2, 2003, the circuit court placed the matter in abeyance pending the filing of Moyers' discovery deposition regarding the statute of limitations argument.

Once the necessary discovery material, including Moyers' two-part deposition, was filed in the record, the Church filed a supplemental memorandum in support of its newly styled motion for summary judgment. The Church argued that Moyers had all of the information she needed to timely file her claim, and that an objective, reasonable person test applied to the issue of when the statute of limitations began to run, as opposed to a subjective one. On September 2, 2004, the circuit court entered the following Order Dismissing:

This matter is before the Court on Roman Catholic Bishop of Louisville's ("Archdiocese") Motion to Dismiss Plaintiff's Complaint pursuant to CR 12 on the basis that Plaintiff's claims are barred by the statute of limitations set forth in KRS 413.140. Having reviewed the motion and supplemental memorandum, the Plaintiff's response, having heard oral arguments on September 15, 2003 and again on August 16, 2004,<sup>3</sup> and based upon the record, including Plaintiff's deposition, this Court finds that Plaintiff's Complaint is untimely and must be dismissed.

Plaintiff filed her Complaint on May 13, 2003 alleging she suffered molestation and abuse by Reverend Louis Miller on December 19, 1990 when she was a minor (her date of birth being January 15, 1975), and that the Archdiocese knew of and concealed the abuse. Widespread media coverage began through every possible outlet (radio, television, newspapers, and internet) on April 14, 2002 and continued almost daily for months on end. This Court previously entered an Order in April 2003 in *Kaelin v. Roman Catholic Bishop of Louisville*, Jefferson Circuit Court, 03-CI-4330 addressing the issue of the statute of limitations in that case. The same statute of limitations applies here.

The one year statute of limitations begins to run when the cause of action arises and when a party has the capacity to sue. *Lexington-Fayette Urban [County] Government v. Abney*, Ky.App., 748 S.W.2d 376 (1988). Plaintiff herein was 15 years old on December 19, 1990 and turned 18 on January 15, 1993. She however filed this action May 13, 2003, some ten years later. The statute can be tolled where a defendant absconds, conceals himself, or by other indirect means obstructs the prosecution of

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<sup>3</sup> The certified record does not contain the videotaped recordings of these oral arguments.

the case. *Sect[e]r v. Roman Catholic Diocese of Covington, Ky.App.*, 966 S.W.2d 286 (1998). Obstruction can be found where a Defendant conceals a party's cause of action to such an extent that it cannot be discovered by the exercise of ordinary diligence on the part of the Plaintiff.

The Archdiocese argues that even if such concealment occurred, the tolling of the statute would have ended in April 2002 when the publicity of the sexual abuse by Archdiocese priests, including Louis Miller, erupted in the media as well as claims that the Archdiocese failed to report the abuse. The Archdiocese argues that such extensive publicity was sufficient to put any reasonable person on notice that he or she must act and assert any cause of action against the Archdiocese and in fact, that person is under a duty to exercise reasonable care and efforts to pursue any such claim. *Rigazio v. Archdiocese of Louisville, Ky.App.*, 853 S.W.2d 295 (1993).

Plaintiff claims that she timely filed her Complaint on May 13, 200[3]; that it was filed within 30 days after the anniversary of the first local newspaper article; and that it is a jury's job to decide if the statute has run. Plaintiff had all means of media available to her and she lived in Louisville during 2002.

The Court finds as a matter of law that the Plaintiff had a duty to exercise due diligence to bring her claims to court within one year of April 2002 and that she failed to do so.

The Plaintiff, Charlene Moyers' Complaint against Defendant, Roman Catholic Bishop of Louisville is DISMISSED as barred by the applicable statute of limitations.

This is a final and appealable Order, there being no just cause for delay.

This appeal followed.

On appeal, Moyers continues to argue that whether she knew or should have known that she had a claim against the Church is a question of fact for a jury, meaning that summary judgment was not proper. As before, the Church argued that Moyers' claim was barred by KRS 413.140, as she did not file suit within one year after she reached the age of majority. Even if her claim were tolled by application of KRS 413.190(2), the statute began to run between April 14 and May 11, 2002; thus, Moyers' complaint was untimely filed on May 13, 2003. The Church also raises the argument that in Secter, this Court misapplied KRS 413.190, the tolling statute.

While the order on appeal is entitled "Order Dismissing", we shall review this appeal under the standard of review applicable to summary judgments:

The standard of review on appeal of a summary judgment is whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law. Kentucky Rules of Civil Procedure (CR) 56.03. There is no requirement that the appellate court defer to the trial court since factual findings are not at issue. Goldsmith v. Allied Building Components, Inc., Ky., 833 S.W.2d 378, 381 (1992). "The record must be viewed in a light most favorable to the party opposing the motion for summary judgment and all doubts are to be resolved in his favor." Steelvest, Inc. v. Scansteel Service Center,



Inc., Ky., 807 S.W.2d 476, 480 (1991).  
Summary "judgment is only proper where the  
movant shows that the adverse party could  
not prevail under any circumstances."  
Steelvest, 807 S.W.2d at 480, citing  
Paintsville Hospital Co. v. Rose, Ky., 683  
S.W.2d 255 (1985).<sup>4</sup>

KRS 413.140(1)(a) provides that an action for personal injury must be brought within one year from the date the cause of action accrued. KRS 413.170(1) acts to extend the limitations period if the person entitled to bring the action was an infant or of unsound mind at the time the cause of action arose. That person is permitted to bring the action within the permitted period of time after the disability is removed. In the present matter, Moyers was an infant when the alleged abuse took place, meaning that the statute of limitations did not begin to run until she reached her eighteenth birthday on January 15, 1993, unless the statute was tolled. KRS 413.190 is a tolling statute, and applies to those situations where the cause of action accrues when a resident is absent from the state or where the action was obstructed. In particular, KRS 413.190(2) provides:

When a cause of action mentioned in KRS 413.090 to 413.160 accrues against a resident of this state, and he by absconding or concealing himself or by any other indirect means obstructs the prosecution of the action, the time of the continuance of the absence from the state or obstruction

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<sup>4</sup> Scifres v. Kraft, 916 S.W.2d 779, 781 (Ky.App. 1996).

shall not be computed as any part of the period within which the action shall be commenced.

Obviously, if KRS 413.190(2) did not operate to toll the statute of limitations, the statute would have run on January 15, 1994, when Moyers turned nineteen years old. Based upon the circumstances of this case, we shall assume that the tolling provision of KRS 413.190(2) applies.

The question in this case is whether the statute of limitations issue presents a factual or legal determination. "Where the pertinent facts are not in dispute, the validity of the defense of the statute of limitations can and should be determined by the court as a matter of law. . . . Where, however, there is a factual issue upon which the application of the statute depends, it is proper to submit the question to the jury."<sup>5</sup> The factual issue presented in Lynn Mining was essentially whether a nuisance was temporary or permanent. In Adams v. Ison,<sup>6</sup> the former Court of Appeals addressed KRS 413.190(2) as it operated to toll the statute of limitations in a malpractice suit: "[T]he statute of limitations is tolled where the physician by concealing the facts of liability, delayed or prevented suit. Then the statute begins to run only when the fraud or concealment is revealed or the facts

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<sup>5</sup> Lynn Mining Co. v. Kelly, 394 S.W.2d 755, 759 (Ky. 1965).

<sup>6</sup> 249 S.W.2d 791, 793 (Ky. 1952).

discovered or should have been discovered by the exercise of reasonable diligence by the injured patient." In that case, the court determined that the patient was entitled to get into court to try the factual issue of whether the statute of limitations was tolled by the physician's obstruction of the malpractice action.

In relation to church abuse cases, this Court in Roman Catholic Diocese of Covington v. Secter<sup>7</sup> held that the Diocese obstructed the prosecution of Secter's action within the meaning of KRS 413.190(2) by failing to comply with its legal duty to report child abuse to law enforcement authorities pursuant to the statute then in effect, KRS 199.335.<sup>8</sup> Because Secter filed his lawsuit within one year of learning that the Diocese knew of his abuser's propensities and failed to report the information, his suit was timely filed. Secter saw television news reports in November 1992 that Bierman had abused other students, and filed suit on October 29, 1993, within one year of seeing those reports. This Court held that it was proper for the trial court to allow the jury to determine whether the Diocese's inaction or concealment of the abuse tolled the statute of limitations under KRS 413.190.

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<sup>7</sup> 966 S.W.2d 286 (Ky.App. 1998).

<sup>8</sup> The statute now in effect is KRS 620.030.

In Adams and Secter, the factual issue the jury was permitted to decide directly addressed whether the statute of limitations should be tolled based upon the actions of the physician or the Diocese, respectively. In the present case, the question is not whether the Church concealed its knowledge; we shall assume that it did. The question, rather, is whether Moyers timely filed her complaint from the time the concealment was revealed. Pursuant to Adams, the statute begins to run as soon as the concealment is revealed, or the facts were or should reasonably have been discovered. This is an objective test regarding when Moyers should be charged with reasonably knowing that the concealment had been uncovered.

It is undisputed that Moyers lived and worked in Louisville in April 2002, when the church abuse scandal broke. Whether or not she actually read the newspaper or listened to news reports, Moyers had access to the local newspaper, and had televisions at home and a radio in her automobile, all of which reported on the church abuse scandal. While the record does not contain any examples of the television or radio coverage, the record is replete with newspaper articles detailing the Church's cover-up of its knowledge of past abuse, in particular abuse by Miller, as well as detailing the many resulting lawsuits filed against the Church. While Moyers relies upon a Courier-Journal poll conducted in late May 2002 that revealed that many people

in the area were unaware of the scandal, the Church points out that the poll was conducted of the general public, not of people, such as Moyers, who claimed to have been abused by Miller or some other priest. We agree with the Church's reliance upon two decisions from the 6<sup>th</sup> Circuit Court of Appeals,<sup>9</sup> for the proposition that Moyers should be charged with knowledge of the abuse scandal in April 2002 because of the widespread publicity. We disagree with Moyers' assertion that it makes any difference that her complaint was filed a mere thirty days after the first anniversary of the news reports, as opposed to several years later. Because there are no factual issues for a jury to decide, as in Lynn Mining, Adams, and Secter, the question as to whether the statute of limitations bars Moyers' claim was properly decided by the circuit court as an objective question of law. Based upon the widespread publicity surrounding the abuse scandal and lawsuits, coupled with her claim to have been a victim of abuse, as a matter of law Moyers should reasonably have discovered the facts of the Church's concealment during mid- to late-April 2002. Therefore, her complaint was untimely filed in May 2003. The circuit court properly dismissed Moyers' suit through the summary judgment procedure because the Church was entitled to a judgment as a matter of law.

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<sup>9</sup> Hughes v. Vanderbilt Univ., 215 F.3d 543 (6<sup>th</sup> Cir. 2000), and Ball v. Union Carbide Corp., 385 F.3d 713 (6<sup>th</sup> Cir. 2004).

As we are affirming the circuit court's summary judgment, we need not address the Church's argument that the Secter decision misinterprets KRS 413.190.

For the foregoing reasons, the Jefferson Circuit Court's Order Dismissing is affirmed.

ALL CONCUR.

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