

STATE OF MICHIGAN
COURT OF APPEALS

DECLAN DEMEYER,

Plaintiff-Appellant,

v

ARCHDIOCESE OF DETROIT, ARCHBISHOP
ADAM MAIDA, ARCHBISHOP GUMBLETON,
ARCHBISHOP EDMUND SZOKA, SACRED
HEART PARISH, SACRED HEART SCHOOL,
SACRED HEART SEMINARY, OUR LADY OF
LORETTO SCHOOL, OUR LADY OF LORETTO
RECTORY, OUR LADY OF LORETTO PARISH,
and GERALD SHIRILLA,

Defendants-Appellees.

UNPUBLISHED
February 28, 1997

No. 189716
Wayne Circuit Court
LC No. 93-328262

Before: Corrigan, P.J., and Young and T.G. Hicks,* JJ.

PER CURIAM.

Plaintiff appeals by right the order granting defendant Archdiocese's¹ and defendant Gerald Shirilla's motion for summary disposition in this assault and battery and negligent supervision case. We affirm in part, reverse in part and remand for proceedings consistent with this opinion.

Plaintiff Declan Demeyer, now 34 years old, alleged in his complaint that defendant Shirilla sexually assaulted him on various occasions from ages nine to sixteen (1972 through 1981). Plaintiff claims that he repressed the memory of this abuse until October 1992, when he underwent counseling after his arrest for spousal abuse.

Plaintiff first argues that defendant Shirilla's admissions of improper contact with him remove this case from the holding in *Lemmerman v Fealk*, 449 Mich 56; 534 NW2d 695 (1995). We agree.

* Circuit judge, sitting on the Court of Appeals by assignment.

In *Lemmerman*, our Supreme Court held that plaintiffs could not employ the discovery rule in *Chase v Sabin*, 445 Mich 190, 195-196; 516 NW2d 60 (1994), or the insanity grace period in MCL 600.5851; MSA 27A.5851, to extend the limitation period for “tort actions allegedly delayed because of the repression of memory of the assaults underlying the claim.” *Lemmerman*, *supra* at 76-77. The Court ruled that to allow the plaintiffs’ claims “would endanger precisely those policy goals advanced by statutes of limitation.” *Id.* at 74.

Even claims bolstered by verifiable evidence did not escape the toll of the statute of limitation. The Court also stated that its decision did not invite or signal affirmation of a claim that was supported by “objective and verifiable evidence” that would allow additional time for plaintiffs to pursue their claims under the discovery rule or the insanity grace period. *Id.* at 75, 77.

In a footnote, however, the Court added its holding did not address cases in which the defendant admitted sexual contact with the minor plaintiff. *Id.* at 77 n 15. Express and unequivocal admissions remove those cases from the arena of stale, unverifiable claims such as the two repressed memory cases in *Lemmerman*. *Id.*

Here, defendant Shirilla admitted in his deposition that he massaged plaintiff’s chest and stomach while in plaintiff’s bedroom in 1978. Aside from another occasion where he hugged plaintiff or shook his hand in the early 1980’s, defendant Shirilla denied any other contact, sexual or otherwise, with plaintiff. After plaintiff’s allegations in this case, the Archdiocese referred defendant Shirilla for a psychiatric evaluation in 1993. Under Archdiocesan policy, because the examining psychiatrists determined that plaintiff’s claims were well-founded, the Archdiocese removed defendant Shirilla from his post and sent him for treatment. Shirilla’s treatment included counseling and medication; he took Prozac to calm him and Depo Provera to curb his sex-drive.

In addition to the episode involving plaintiff, defendant Shirilla admitted to massaging several other boys. These massages occurred in defendant Shirilla’s private quarters, or in the boys’ bedrooms, while he and some of the boys were clothed only in their underwear. Also, a seminarian accused defendant Shirilla of sexual misconduct in 1973. Although the Archdiocese determined that the allegation was unfounded after a 1973 psychological report of defendant Shirilla, the Archdiocese nonetheless removed defendant Shirilla from the seminary. The Archdiocese ultimately reassigned defendant Shirilla to our Lady of Loretto Parish, where he met plaintiff.

Defendant Shirilla’s admissions of physical contact with plaintiff and with numerous other boys during the same time period constitute express and unequivocal admissions of the conduct charged in plaintiff’s complaint. Combined with allegations of similar misconduct with the seminarian in 1973 and defendant Shirilla’s recent transfer from his post to treatment, the above evidence removes this case from the arena of stale and unverifiable claims reflected in the two repressed memory cases in *Lemmerman*. Whether defendant Shirilla’s contact with plaintiff was sexual and whether this conduct harmed plaintiff are questions for the trier of fact. Because plaintiff allegedly did not discover his injury until 1992, and the source of this injury has been verified, *Lemmerman* does not apply.

Thus, the discovery rule tolls the applicable statute of limitation in this case. *Lemmerman*, *supra* at 77 n 15; *Chase*, *supra* at 195-196. See also *Nicolette v Carey*, 751 F Supp 695, 699-700 (WD Mich, 1990); *Meiers-Post v Schafer*, 170 Mich App 174, 182-183; 427 NW2d 606 (1988). We therefore reverse the court's grant of summary disposition to defendant Shirilla and remand this case for continued proceedings. It is not clear, however, that the parties have completed discovery on the issue of when plaintiff first recalled the abuse. If plaintiff remembered the abuse earlier, his claim ultimately may be precluded.

Next, plaintiff argues that defendant Archdiocese's negligent failure to supervise defendant Shirilla contributed to plaintiff's injuries. We disagree. Even though *Lemmerman* does not bar plaintiff's claims against defendant Shirilla, the court appropriately dismissed his claims against defendant Archdiocese because he failed to show that defendant Archdiocese knew or should have known about defendant Shirilla's alleged pedophilic tendencies. In his 1973 report, the psychiatrist essentially concluded that the seminarian's allegations that defendant's behavior had sexual overtones were unfounded, although the psychiatrist stated that defendant Shirilla's behavior was "inappropriate" and "indiscreet" and "could be quite upsetting to young men of the age of the seminarians. . . ." The report did not address pedophilia. The doctor advised defendant Archdiocese that it need not restrict defendant Shirilla's ministry. Plaintiff failed to show that defendant Archdiocese was aware of defendant Shirilla's inappropriate behavior with other boys until 1993, when plaintiff filed his claim. At that time, defendant Archdiocese removed defendant Shirilla from his post and placed him in treatment. Before plaintiff's claim, defendant Archdiocese had no knowledge of defendant Shirilla's inappropriate behavior, aside from the 1973 incident; thus, it had no duty to protect plaintiff. See *Chivas v Koehler*, 182 Mich App 467, 475; 453 NW2d 264 (1990).

Finally, plaintiff contends that defendant Archdiocese fraudulently concealed his cause of action against defendant Shirilla. We disagree. Because the 1973 report essentially exonerated defendant Shirilla, because the issue of pedophilia was never raised at that time, and because defendant was unaware of further allegations against defendant Shirilla until plaintiff filed his claim in 1993, plaintiff failed to show that defendant Archdiocese knew of defendant Shirilla's alleged pedophilic tendencies. Because plaintiff cannot show that defendant Archdiocese knew of defendant Shirilla's alleged problems with pedophilia, plaintiff cannot show that defendant Archdiocese fraudulently concealed plaintiff's cause of action against Shirilla. *Bradley v The Gleason Works*, 175 Mich App 459, 462, 463; 438 NW2d 330 (1989); *Arent v Hatch*, 133 Mich App 700, 706; 349 NW2d 536 (1984).

Affirmed in part, reversed in part and remanded. We do not retain jurisdiction.

/s/ Maura D. Corrigan
/s/ Robert P. Young, Jr.
/s/ Timothy G. Hicks

¹ “Defendant Archdiocese” refers collectively to Archdiocese of Detroit, Archbishop Adam Maida, Archbishop Gumbleton, Archbishop Edmund Szoka, Sacred Heart Parish, Sacred Heart School, Sacred Heart Seminary, Our Lady of Loretto School, Our Lady of Loretto Rectory, and Our Lady of Loretto Parish. Any reference to “Archdiocese” is a reference to the Archdiocese of Detroit alone.