

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-001033-MR

DONNA CIRILLO

APPELLANT

v. APPEAL FROM BOYD CIRCUIT COURT
HONORABLE C. DAVID HAGERMAN, JUDGE
ACTION NO. 99-CI-00277

DONALD R. STAMBAUGH and
MATTIE JANE STAMBAUGH

APPELLEES

OPINION
AFFIRMING
** ** * * * * *

BEFORE: DYCHE, GUIDUGLI AND MILLER, JUDGES.

GUIDUGLI, JUDGE. Donna Cirillo (Cirillo) appeals from an order of the Boyd Circuit Court dismissing with prejudice her complaint as time barred by the provision of Kentucky Revised Statutes (KRS) 413.140(1)(a). We affirm.

Cirillo filed her complaint against her parents, Donald R. Stambaugh and Mattie Jane Stambaugh on March 31, 1999. At the time of the filing of her complaint, Cirillo was thirty-four (34) years old. In her complaint she alleges that her father sexually abused her from the time she was approximately five years old until the age of 13 years old. She also alleges that her mother

was aware of these events but did nothing to stop them and failed to report the abuse as required by law. She sought damages for physical, mental and emotional injuries, as well as for pain and suffering and destruction of her ability to earn an adequate living.

Immediately after receiving service of the complaint, the Stambaughs, through counsel, filed a motion to seal the record and a motion to dismiss. The motion to seal the record was granted ex parte on the same day (April 2, 1999). In their motion to dismiss, the Stambaughs attached a letter from Cirillo dated March 25, 1999, in which she requested that her parents issue a cashier's check made payable to her in the sum of seven hundred fifty thousand (\$750,000) dollars. She also indicated that she would be seeking an additional dollar amount as punitive damages. The Stambaughs sought dismissal of the complaint alleging that KRS 413.140(1)(a), setting forth a one (1) year statute of limitations for personal injuries, clearly barred her claim as untimely.

On April 7, 1999, William G. Platz, M.D. of the Saint Joseph Behavioral Medicine Network in Lexington, Kentucky, provided a note which is part of the court record (though not filed stamped) which stated, "Ms. Cirillo was seen today. At the time I do not feel she is able to attend court proceedings on 4/9/99." Also in the file but not filed stamped is a letter addressed to the Boyd Circuit Judge from Kit Andrews, MSW, a licensed clinical social worker in Frankfort, Kentucky, which sets forth in relevant part, the following:

Donna started therapy with me July 16, 1998. Her presenting problem was that she was feeling seriously depressed and anxious due to the events in her childhood she had started to remember a few months ago. Donna alleges (sic) that she experienced sexual abuse from her father from the age of 5 or 6 until the age of 13 as well as physical and emotional abuse from both parents. In the course of therapy, Donna has recalled more traumatic events and, in my opinion, she had (sic) repressed many memories of abuse.

Cirillo did not appear at the April 9, 1999 hearing.¹ That same day, the trial court dismissed the complaint as time barred based on KRS 413.140(1)(a). This appeal followed.

On appeal, Cirillo contends that the statute of limitations should have been tolled. She claims that she had repressed the memory of the sexual abuse and did not discover her injury until April, 1998, which would be within the one year statute of limitations. She further alleges that her parents' actions (the sexual and emotional abuse, and the failure to notify authorities) constitutes concealment and/or obstructive conduct thus tolling the statute as provided for in KRS 413.190(2). Though Cirillo makes a compelling argument that in cases of sexual abuse the statute of limitations should be tolled until discovered, the statutory and case law of this state does not support her position.

As to the statutory law, the General Assembly has not provided for such an exception as of this date. Although the Legislature has made other statutory exceptions (see KRS 413.140(2), (3), (4) and (5)), it has taken no action in this area

¹There is nothing in the original record or the appellate record regarding the April 9, 1999 hearing.

though it has addressed many other areas of the law involving sexual abuse and domestic violence. As to the case law, the cases of Rigazio v. Archdiocese of Louisville, Ky. App., 853 S.W.2d 295 (1993) and Roman Catholic Diocese v. Secter, Ky. App., 966 S.W.2d 286 (1998), cited by each party, supports the Stambaugh's position and not Cirillo's contentions.

In Sexton, supra, the trial court held that the one (1) year statute of limitation in KRS 413.140(1)(a) did apply as to the sexual abuser. The suit against the abuser was dismissed as time-barred and that issue was not appealed. However, on appeal this Court did affirm the trial court's determination that the statute was tolled as to the Roman Catholic Diocese because of the Church's concealment of relevant information. In Sexton, supra, at 287, the Diocese, after being court ordered, produced the "Canon 489" files or secret archive files, which contained information of a sensitive or scandalous nature. It was based upon the Diocese's knowledge of the accused's pedophilia behavior, its failure to act to protect the victims and its concealment of its knowledge and failure to act that tolled the statute of limitations as to the Diocese, but not as to the alleged abuser himself. The Secter case is clearly distinguishable from this case, but even so, it followed the one year statute of limitation as to the alleged abuser.

The other case relied upon by the parties hereto, Rigazio, supra, is factually more similar to the case before us, and specifically refuses to extend the statute of limitations to cases when one alleges he suffers from an unsound mind or has

repressed memory. In refusing to extend the "discovery rule" to sexual abuse cases, the Court held:

The appellants also assert that the statutes of limitations did not begin to run until Donald "discovered" his injury, and Donald did not discover his injury until after his suicide attempt in September 1987, at which time he claims he first recalled the abuse. The discovery rule, adopted in Kentucky in Tomlinson v. Siehl, Ky., 459 S.W.2d 166 (1970), and Hackworth v. Hart, Ky., 474 S.W.2d 377 (1971), at first applied only to claims arising from medical malpractice. In 1979, the Supreme Court extended the rule "to tort actions for injury resulting from a latent disease caused by exposure to a harmful substance." Louisville Trust Co. V. Johns-Manville Products Corp., Ky., 580 S.W.2d 497, 499 (1979). In 1980 KRS 413.245 was enacted applying a discovery rule to all claims of professional malpractice. Neither the Supreme Court nor the General Assembly has further extended the discovery rule. It should again be noted that at the time Donald's cause of action accrued, and for sometime thereafter, he was both aware of the abuse and past the age of reason. The fact that his memory of these events was thereafter suppressed, only to return years later, would not seem to present a circumstance falling within the discovery rule which relates to injuries which cannot be discovered with reasonable diligence.

Rigazio, 966 S.W.2d at 297.

Though the facts as alleged by Cirillo, if true, would be devastating to her, cause her severe psychological and emotional problems, have an unimaginable detrimental impact on her daily life, and be subject to recovery of untold compensatory and punitive damages, we believe the trial court ruled properly in dismissing her complaint based upon the law as exists today. Therefore, we affirm the order of the Boyd Circuit Court

dismissing Cirillo's complaint as time barred by the provisions
of KRS 413.140(1)(a).

ALL CONCUR.

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