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NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2010-CA-000814-MR

SAMUEL LEE EDWARDS GREYWOLF

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE GARY D. PAYNE, SENIOR JUDGE
ACTION NO. 02-CI-02231

ROMAN CATHOLIC DIOCESE
OF COVINGTON

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: DIXON, KELLER AND VANMETER, JUDGES.

DIXON, JUDGE: Appellant, Samuel Lee Edwards Greywolf, appeals from an order of the Fayette Circuit Court granting summary judgment in favor of Appellee, the Roman Catholic Diocese of Covington, finding that Greywolf's action against the Diocese was barred by the statute of limitations. Finding no error, we affirm.

On May 30, 2002, Greywolf filed an action in the Fayette Circuit Court against the Diocese alleging that he had been sexually abused by an unknown priest in the mid-1970's. Greywolf asserted claims for sexual molestation, battery, negligent supervision and retention, reparations, breach of fiduciary duty, equitable estoppel, and fraudulent misrepresentation. In an affidavit filed in January 2006, Greywolf identified the priest as Father John Modica and stated that the abuse occurred at the rectory of Mary Queen of the Holy Rosary Roman Catholic Church in the fall of 1974, when Greywolf was seventeen years old. He claimed that Father Modica sexually abused him after providing him with marijuana and alcohol.

Following discovery, the Diocese moved for summary judgment on the claims of sexual molestation, battery, and negligent supervision and retention based upon Kentucky Revised Statutes (KRS) 413.140(1)(a), the one-year statute of limitations applicable to actions for "an injury to the person of the plaintiff." The Diocese moved for summary judgment on the remainder of the claims based upon insufficiency of the evidence. On April 16, 2010, the trial court rendered a thorough opinion and order granting summary judgment in favor of the Diocese. The trial court initially found that there was no genuine issue of material fact as to the Diocese's knowledge that Modica had engaged in childhood sexual abuse. In fact, the evidence established that the Diocese concealed its knowledge of Modica's behavior no later than June 1975, when it received a letter from Modica's supervisor reporting numerous instances of abuse by Modica. As such,

the trial court ruled that the statute of limitations for Greywolf's claims was tolled under KRS 413.190(2) as of that date.

Nevertheless, the trial court further determined that Greywolf failed to prove that he acted with reasonable care and diligence to discover that he had a potential claim against the Diocese during the twenty-seven years that had elapsed since the alleged incident. The trial court cited to the 1993 extensive publicity in Lexington surrounding the sexual abuse scandal involving Father Leonard Nienaber in the Diocese of Covington and, more specifically, at Mary Queen of the Holy Rosary parish where Greywolf was abused. Further, the court pointed out that during the same time period, there was substantial coverage throughout Kentucky¹ and nationwide concerning sexual abuse scandals in the Catholic Church. The court commented,

Greywolf testified that he did not regularly read daily newspapers or watch television news broadcasts throughout the 1990's and does not do so today. He also testified that, during the 26-year period when he was allegedly obstructed from filing a claim against the Diocese, he never saw any news reports of allegations of sexual abuse by priests of the Diocese in Covington. The fact that Greywolf claims not to have been actually aware of the media coverage of the Diocese cases is irrelevant, however. "Reasonable diligence" is an objective standard. . . . The question is what a reasonable person would have done, not what this plaintiff actually did. Greywolf cannot establish that he acted with reasonable diligence, since he did nothing to determine whether he

¹ The *Lexington Herald-Leader* also devoted a substantial amount of coverage during this time period to the criminal charges of Father Earl Bierman, another priest of the Diocese of Covington, who was convicted of sexually abusing numerous students at Covington Latin School in Northern Kentucky in the 1960's and 1970's. In April, October and November 1993, articles reported that several of Bierman's victims had filed civil suits against the Diocese of Covington.

might have a claim against the Diocese. (Citation omitted).

Following the entry of the trial court's opinion and order, Greywolf appealed to this Court.

A motion for summary judgment shall be granted “if the pleadings, depositions, answers to interrogatories, stipulations, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Kentucky Rules of Civil Procedure (CR) 56.03. 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.*, 807 S.W.2d 476, 480 (Ky. 1991). Further, summary judgment is only proper “where the movant shows that the adverse party could not prevail under any circumstances.” *Id.* (Citing *Paintsville Hospital Co. v. Rose*, 683 S.W.2d 255 (Ky. 1985)). 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. CR 56.03; *Scifres v. Kraft*, 916 S.W.2d 779, 781 (Ky. App. 1996). 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.*, 833 S.W.2d 378, 381 (Ky. 1992).

Greywolf argues on appeal that although the trial court was correct in ruling that the statute of limitations was tolled under KRS 413.190(2), it erred in essentially finding that the tolling ended in 1993. Greywolf maintains that he did not regularly read daily newspapers or watch television news broadcasts during the scandals involving Nienaber and Bierman. In fact, Greywolf claims that he was not aware that he had a cause of action against the Diocese until he saw a television advertisement for a Lexington attorney who indicated he was planning on filing a lawsuit concerning sexual abuse by Catholic priests and requested that anyone with knowledge of such contact him. Thus, Greywolf concludes that the trial court erred in determining that he should have known he had a cause of action against the Diocese prior to the time he filed his complaint. We disagree.

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 authorized period of time after the disability is removed. In this case, because Greywolf was a minor when the alleged abuse took place, the statute of limitations on his claims began to run when he reached his eighteenth birthday on June 16, 1975, 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. As applicable to this case, 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 shall not be computed as any part of the period within which the action shall be commenced.

“Obstruction might also occur where a defendant conceals a plaintiff's cause of action so that it could not be discovered by the exercise of ordinary diligence on the plaintiff's part.” *Rigazio v. Archdiocese of Louisville*, 853 S.W.2d 295, 297 (Ky. App. 1993).

As the trial court herein noted, the seminal case in Kentucky on the tolling of statutes of limitations in lawsuits brought by victims of childhood sexual abuse is *Roman Catholic Diocese of Covington v. Secter*, 966 S.W.2d 286, 290 (Ky. App. 1998), wherein a panel of this Court held:

[W]here the law imposes a duty of disclosure, a failure of disclosure may constitute concealment under KRS 413.190(2), or at least amount to misleading or obstructive conduct. [Citation omitted]. KRS 199.335,² the statute in effect when these incidents occurred, imposed a legal duty on any person to report child abuse to law enforcement authorities. The Diocese failed to comply with this duty, and such failure constitutes evidence of concealment under KRS 413.190(2).

In *Secter*, the Court determined that the Diocese of Covington obstructed the prosecution of John Secter's cause of action by continually concealing the fact that it had knowledge of the accused's propensities well before the time that Secter was

² KRS 199.335 has now been replaced by KRS 620.030.

abused, and that the Diocese even continued to receive reports of sexual abuse of other students during part of the time period in which Sector was abused. *Id.*

Notwithstanding the application of the tolling provision, the law still imposes a duty on a plaintiff to exercise reasonable care and diligence in pursuing a cause of action. For the defendant's concealment to toll the running of the statute of limitations, it must hide the plaintiff's cause of action in such a manner that it cannot be discovered by the exercise of ordinary diligence. Pursuant to *Adams v. Ison*, 249 S.W.2d 791, 793 (Ky. 1952), 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 the plaintiff should be charged with reasonably knowing that the concealment had been uncovered.

It is undisputed that Greywolf lived in Lexington during the 1993 publicity concerning the Diocese. We agree with the trial court that whether Greywolf availed himself of the newspapers and television reports is irrelevant; there is no dispute that he readily had access to such. Accordingly, even if the Diocese concealed Modica's sexual abuse for a number of years, Greywolf was still under a legal duty to pursue his cause of action when facts or circumstances provided him, or would have provided a reasonable person, notice that a claim may exist. In other words, Greywolf simply could not remain oblivious to a cause of action when information was available that it existed.

In reaching its decision, the trial court relied upon two unpublished decisions of this Court – *Azerot v. Roman Catholic Bishop of Louisville*, 2005 WL 2899483

(Ky. App. 2005)(2004-CA-000666-MR), and *Moyers v. Roman Catholic Bishop of Louisville*, 2005 WL 3116116 (Ky. App. 2005)(2004-CA-001886-MR). In both cases, panels of this Court held that the plaintiffs' sexual abuse claims were barred by the statute of limitations because they could not show they acted with reasonable care and diligence to discover facts that would have supported their causes of action against the Diocese in Louisville. Notably, in *Moyers*, the Court held that widespread media coverage in Louisville and nationwide in 2002³ was sufficient to charge the plaintiff with constructive knowledge of events underlying her cause of action despite her claim that she did not hear or see any of the media reports. While neither *Moyers* nor *Azerot* are published decisions, we believe they comport with *Secter*, and agree with the trial court that they are essentially analogous to the instant case:

Applying the reasonable diligence requirement and the reasoning in the *Moyers* and *Azerot* decisions to the facts of this case, this Court concludes that Greywolf failed to discharge his burden of coming forward with evidence that he exercised ordinary care and diligence in pursuing his purported claim against the Diocese.

Moreover, we find no merit in Greywolf's argument that the trial court was bound by the April 2002 date established in *Moyers* and *Azerot* and to "re-start the statute of limitations any earlier . . . would contradict[] the Court of Appeals precedent in those cases." The specific date on which a plaintiff living in Louisville should have become aware through Louisville media of a potential

³ The panels in both *Moyers* and *Azerot* ruled that the statute of limitations began running on plaintiffs' claims against the Louisville Diocese in April 2002.

claim against the Archdiocese of Louisville has absolutely no relevance to when a Lexington plaintiff should have become aware through Lexington media that he had a claim against the Diocese of Covington. We believe the trial court established the correct statute of limitations date with respect to Greywolf's claims.

Finally, the Diocese presents several arguments concerning whether it concealed its knowledge of Modica's actions or whether it failed to comply with the requirements for reporting child abuse. However, these issues were essentially resolved against the Diocese in the trial court's opinion and order and no cross-appeal was filed. As such, we will not consider the Diocese's arguments herein.

For the reasons set forth herein, we affirm the Fayette Circuit Court's Opinion and Order granting summary judgment in favor of the Roman Catholic Diocese of Covington.

ALL CONCUR.

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