STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1054

Karen Britten,
Appellant,

vs.

The Franciscan Sisters d/b/a Sisters of the
Third Order Regular of Saint Francis of the
Congregation of Our Lady of Lourdes, et al.,
Respondents.

Filed April 29, 2008
Affirmed
Schellhas, Judge

Olmsted County District Court
File No. 55-CV-06-4887

Jeffrey R. Anderson, Kathleen Stafford, Jeff Anderson & Associates, P.A., E-1000 First National Bank Building, 332 Minnesota Street, St. Paul, MN 55101 (for appellant)

Thomas B. Wieser, Patrick M. Anderson, Meier, Kennedy & Quinn, Chartered, 2200 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2100 (for respondents)

Considered and decided by Halbrooks, Presiding Judge; Klaphake, Judge; and Schellhas, Judge.

U N P U B L I S H E D O P I N I O N

SCHELLHAS, Judge

Appellant seeks review of a grant of summary judgment to respondents,[1] arguing that the district court erred in dismissing her claims of vicarious liability, negligence, negligent supervision, and negligent retention as barred by the statute of limitations. Because we conclude that the district court did not err, we affirm.

FACTS

Appellant Karen Britten commenced suit on May 15, 2006, claiming that from 1964 to 1967, she was sexually abused by Sister Benen Kent, who was employed as a nun by respondent The Franciscan Sisters d/b/a Sisters of the Third Order Regular of Saint Francis of the Congregation of Our Lady of Lourdes. The abuse allegedly took place during appellant's weekly piano lessons with Sister Benen and began when appellant was six years old.

Appellant claims that she repressed her memories of the abuse and did not recover her memories until 1989, when she looked at some old music-theory notes in her parents' home. She realized Sister Benen's behavior had been "inappropriate," but she felt like a "freak" and felt that she had caused Sister Benen to abuse her. That night appellant told her fiancée about her memories, but she cannot recall whether she used the words "sexual abuse" when reporting her memories to him. About one month later, appellant informed her sister and her mother of her memories and asked her sister if Sister Benen had abused

[1] Initially, appellant also sought review of the grant of summary judgment as to respondent Dolore Rockers but subsequently withdrew her appeal as to Rockers and briefed only her appeal as to The Franciscan Sisters.

her. She recalls that she told her sister that Sister Benen "was sexually abusing me" and that Sister Benen had "fondled" her. Appellant and her sister discussed the abuse weekly or every other week thereafter. Appellant also contacted a childhood friend to ask if she had been abused by Sister Benen. At the time of her inquiry, both appellant's sister and her childhood friend reported that they had not been abused. Appellant felt hurt and betrayed and wanted to confront Sister Benen, but was too embarrassed and did not have enough strength to do it. Appellant did not forget the abuse between the time she first remembered it in 1989, until she commenced this lawsuit in 2006.

Appellant states that she has had emotional and psychological difficulties since childhood that continue to the present. Appellant reported to psychologist Mary Kenning, Ph.D., that she began to binge eat and purge when she was roughly nine years old and struggles with this behavior to the present. She also reported experiencing shame, depressed mood, inappropriate guilt, disorganization, low energy, suicidal ideation, and reported at least one "parasuicidal gesture" in which she intentionally took an overdose of aspirin. Appellant has been diagnosed with post-traumatic-stress disorder twice, in 2003 and 2004. A report from Dr. Kenning summarizes appellant's mental-health history and includes Dr. Kenning's opinion about appellant's condition.

According to Dr. Kenning, appellant was unable to bring suit against respondent until approximately 2002, because until then, she did not understand the wrongfulness of Sister Benen's actions. In roughly 2002, appellant's sister and childhood friend remembered being abused by Sister Benen, and appellant was able to see herself as a victim.

Appellant argues that the district court erred in its interpretation of the applicable law when it ruled that no genuine issue of material fact exists concerning whether appellant knew or should have known that she was sexually abused more than six years before the commencement of her lawsuit.

D E C I S I O N

Summary judgment is proper when there are no genuine issues of material fact and any party is entitled to a judgment as a matter of law. Minn. R. Civ. P. 56.03. On appeal from summary judgment, we review de novo whether there are any genuine issues of material fact and whether the district court erred in its application of the law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). We view the evidence in the light most favorable to the party against whom judgment was granted. *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). The moving party has the burden of showing the absence of a genuine issue of material fact. *Anderson v. State Dep't of Natural Resources*, 693 N.W.2d 181, 191 (Minn. 2005). A genuine issue of material fact exists when "reasonable persons might draw different conclusions from the evidence presented." *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1978). Although a genuine issue of material fact "must be established by substantial evidence," *Murphy v. Country House, Inc.*, 307 Minn. 344, 351, 240 N.W.2d 507, 512 (1976) (quotation omitted), a court deciding a motion for summary judgment, whether in the first instance or on appeal, must not weigh the evidence or determine credibility. *DLH*, 566 N.W.2d at 70; *Gagliardi v. Ortho-Midwest, Inc.*, 733 N.W.2d 171, 175 (Minn. App. 2007). "Determination of whether summary judgment was properly granted on statute of limitations grounds

depends in part on construction of the implicated statutes. Statutory construction is a question of law subject to de novo review." *D.M.S. v. Barber*, 645 N.W.2d 383, 386 (Minn. 2002) (citations omitted).

We first consider whether the district court properly construed Minn. Stat. § 541.073 (2006), the "delayed-discovery statute" when it concluded that the statute bars appellant's claims against respondents as time-barred. Under the delayed-discovery statute, "[a]n action for damages based on personal injury caused by sexual abuse must be commenced within six years of the time the plaintiff knew or had reason to know that the injury was caused by the sexual abuse." Minn. Stat. § 541.073, subd. 2(a). The statute of limitations can be tolled if the victim suffered from a disability under Minn. Stat. § 541.15 (2006), such as infancy or insanity. Minn. Stat. §§ 541.073, subd. 2(d), .15(a).

The Minnesota Supreme Court has interpreted the meaning of the delayed-discovery statute in three cases involving alleged sexual abuse. In the first case, *Blackowiak v. Kemp*, the court said that "concepts of sexual abuse and injury within the meaning of [Minn. Stat. § 541.073, subd. 2(a) (1992)] are essentially one and the same, not separable—as a matter of law one is 'injured' if one is sexually abused." 546 N.W.2d 1, 3 (Minn. 1996). The *Blackowiak* court made clear that

> [w]hile the manifestation and form of the injury is significant to the victim, it is simply not relevant to the ultimate question of the time at which the complainant knew or should have known that he/she was sexually abused. The question is answered by an application of the objective, reasonable person standard.

Id. Further, while recognizing "that whether a plaintiff had reason to know of the abuse is generally a question of fact for a jury," the court concluded that the "plaintiff's own deposition testimony overwhelmingly demonstrate[d] that he knew of the sexual abuse long prior to 1986 and that the cause of action expired prior to the commencement of [the] action." *Id.*

In the second case, *W.J.L. v. Bugge*, the supreme court interpreted *Blackowiak* and stated that

> the statute of limitations begins to run once a victim is abused unless there is some legal disability, such as the victim's age, or mental disability, such as repressed memory of the abuse, which would make a reasonable person incapable of recognizing or understanding that he or she had been sexually abused.

573 N.W.2d 677, 681 (Minn. 1998). Applying a "reasonable-person" standard to the facts, the *Bugge* court said that neither the plaintiff nor his expert explained

> why a reasonable person who had been sexually abused, as alleged by W.J.L., would not either know or have reason to know that she had been the victim of such abuse more than six years prior to the commencement of [the] lawsuit. Merely not thinking about the abuse is not enough to delay the running of the statute of limitations.

Id. at 682. W.J.L.'s claim that she had been confused, had not thought about the abuse after it ended, and was incapable of understanding the nature of the sexual abuse and the extent of her injuries or the connection between them, was insufficient because it dealt only with what *she* knew, not what a reasonable person would have known. *Id.* W.J.L.'s claim was insufficient to raise a genuine issue of material fact to survive summary judgment on statute-of-limitations grounds. *Id.*

In the third case, *D.M.S. v. Barber*, which involved the application of the delayed-discovery statute to minors, the supreme court reiterated that to decide when the limitations period begins to run, a court should ask when a reasonable person in the victim's shoes would have known that he or she was sexually abused, 645 N.W.2d 383, 387 (Minn. 2002), and concluded that a minor is incapable of knowing that he or she has been sexually abused and that "absent some other disability that serves to delay the running of the statute of limitations, the six-year period of limitation under the delayed discovery statute begins to run when the victim reaches the age of majority." 645 N.W.2d at 390.

In the case before us, appellant argues that a victim cannot know or have reason to know that he or she has been abused until the victim understands that the acts which constituted the abuse were wrongful and thus abusive. Appellant also argues that psychological coping mechanisms, such as shame, guilt, and self-blame and conditions such as her post-traumatic-stress disorder, are mental disabilities that toll the statute of limitations. In *ABC v. Archdiocese of St. Paul & Minneapolis*, 513 N.W.2d 482, 486 (Minn. App. 1994), ABC argued that she had been unable "to see the situation clearly and recognize that she had been a victim of abuse." She argued that the limitations period should not have begun to run until she realized that the defendants' actions amounted to abuse. This court rejected that argument:

> ABC is asking the court to apply a subjective standard, based upon her own mental and emotional state, in order to determine whether ABC "should have known" that she had been a victim of sexual abuse. Such a standard has no basis in law. *ABC's inability to comprehend that her situation had*

> *been abusive does not toll the statute of limitations.* We hold that the case should be viewed under an objective standard: whether a reasonable person in ABC's situation "should have known" of the abuse.

ABC, 513 N.W.2d at 486 (emphasis added). In *Blackowiak*, the supreme court approved our holding in *ABC*. 546 N.W.2d at 2.

As in *ABC*, appellant essentially asks us to apply a subjective standard, based upon her own mental and emotional state, including her post-traumatic-stress disorder and the presence of coping mechanisms such as self-blame, in order to determine whether she should have known that she had been a victim of sexual abuse. Such a standard has no basis in the law, and we therefore reject appellant's argument. We find no error in the district court's conclusion that the question under the delayed-discovery statute is when a reasonable person knew or had reason to know that the acts which constitute the abuse took place. In this case, applying the reasonable-person standard to the facts, the evidence overwhelmingly supports a conclusion that appellant knew or should have known that she had been sexually abused when she recalled the abuse in 1989. No genuine issue of material fact exists. Appellant's claims are barred by the statute of limitations set forth in Minn. Stat. § 541.073, subd. 2(a).

Affirmed.

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