STATE OF RHODE ISLAND

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED August 31, 2021)

CHRISTOPHER GRAY,	**:**	
Plaintiff	**:**	
	:	
VS.	**:**	
	:	**C.A. No. PC-2010-6437**
THE ROMAN CATHOLIC BISHOP	**:**	
OF PROVIDENCE,	**:**	
Defendant	**:**	

DECISION

KRAUSE, J. Courts have long expressed compassion for victims of abhorrent misconduct by those in positions of power, authority, and trust. Those who are responsible for perpetrating despicable misdeeds are criminally prosecuted. Civil actions often follow in an effort to compensate victims for the harm they have sustained. Sometimes, however, plaintiffs are hindered by procedural impediments which prevent courts from addressing the merits of their claims. This is one of those cases.

As observed by the Supreme Court in *Ryan v. Roman Catholic Bishop of Providence*, 941 A.2d 174, 188 (R.I. 2008) (italics in original text):

> "We have genuine empathy for [the plaintiff]. She was the victim of heinous criminal conduct committed by one who showed himself to be unworthy of the honorific title that he once bore…The American judicial system as it exists today is admirable: it is the product of many decades of fine-tuning of an already excellent substantive and procedural construct which this country took with it when it parted ways with England.
>
> "Nevertheless, our judicial system is not a panacea that can satisfy everyone who has recourse to it. Some wrongs and injuries do not lend themselves to *full* redressments by the judicial system."

Background

On November 3, 2010, when plaintiff Christopher Gray was thirty-eight years old, he filed this action against The Roman Catholic Bishop of Providence, blaming the Bishop and the Diocese for his having been sexually assaulted by Michael LaMountain, a St. Kevin's Parish priest in Warwick, where Gray (age nine through eleven) was an altar boy from 1981-83.[1] Claiming that his recollection of those assaults had been psychologically repressed, he told no one about them until he was thirty-five years old in November of 2007, when he said that his suppressed memory had been restored.

Gray filed this lawsuit three years later, long after LaMountain had pled guilty and had been sentenced in January of 1999 by another justice of this court for having molested several other youngsters. Gray was not identified as one of his victims. LaMountain died in August of 2010.

The plaintiff, very much by design and not at all by accident or neglect, never formally served the defendant with the complaint, and the case lay dormant for more than eight years. In June of 2019, the defendant moved to dismiss it for lack of prosecution under Rule 41(b)(2) of the Superior Court Rules of Civil Procedure. For the reasons set forth herein, the Court grants that motion.

* * *

After the lawsuit had been filed in November of 2010, the plaintiff instituted no further action. In the spring of 2019, the Providence Journal learned that the case had been languishing

[1] The multi-count complaint alleges, *inter alia*, various dimensions of negligence by the defendant, vicarious liability for LaMountain's misconduct, as well as fraud and misrepresentation by the defendant.

for more than eight years and reported its pendency in a June 13, 2019 article. Another account was later published on September 6, 2019, after Gray had engaged in an interview with a Providence Journal reporter and recounted the history of his molestations by LaMountain. He also provided the reporter with audio recordings made in 2019 of his conversations with his primary attorney, Joseph P. Marasco, which disclosed Marasco's motives for not serving the defendant.

Immediately after the June 13, 2019 newspaper account, which only identified the plaintiff as "John Doe," the defendant filed its dismissal motion. A hearing on the dismissal motion, initially scheduled for July 10, 2019, was postponed because the plaintiff had just retained new (present) counsel. [2]

After the defendant's dismissal motion was referred to this Court, it engaged in a number of conferences with counsel, encouraging the parties to settle the case rather than just focusing on the defendant's dismissal motion. In October of 2019, arrangements were made for the plaintiff and members of his family to confer with ranking Diocese officials and with the Bishop himself in December of 2019 to discuss the plaintiff's personal sentiments, as well as any other subjects which might lead to a resolution of the case.

On March 19, 2020, however, plaintiff's counsel notified the Court that the parties were unable to resolve the case and that he intended to institute discovery proceedings. Limited to the dismissal issues, that discovery was not completed until April of 2021. The parties filed their final briefs and exhibits in June of 2021.

---

[2] When originally filed, the complaint was, at the plaintiff's request, ordered sealed by a motion justice, and the plaintiff was denominated only as "John Doe." In 2019, after Gray had identified himself in the September 6, 2019 newspaper account, he also opted to unseal the case and substitute his own name as the "John Doe" plaintiff.

Shortly thereafter, the Court alerted the parties that it would determine if further proceedings were needed subsequent to its review of the pleadings. Having examined those submissions, the Court is satisfied that the facts and legal contentions have been adequately presented and that neither a hearing nor oral argument would aid the decisional process. Neither party has requested a hearing.

Absence of Service and Failure to Prosecute

Included within the discovery materials were the two audio recordings between the plaintiff and attorney Marasco, which the plaintiff had earlier provided to the Providence Journal. The first recording captured a discussion between Marasco and Gray on June 18, 2019. The second one reflects a conversation between Marasco, Gray, and his mother, Carleen Gray. Although the date of the second conference has not been identified, it occurred before July 3, 2019, when new counsel entered on behalf of the plaintiff. The Court need not expand the pages of this Decision unnecessarily with a recitation of all of those discussions. Transcripts of them, covering 144 pages, are included in the pleadings. They readily reflect that the plaintiff's failure to effectuate formal service of the complaint upon the defendant was an intentional and carefully calibrated decision. [3]

Marasco told Gray that effectuating service would have led to the complaint's certain dismissal, and "it would have been game over then." (Tr. 2 at 43.) He told Gray that he knew that when he filed the lawsuit that "the law is against you." (Tr. 1 at 7.) He gave Gray a copy of the report prepared by Gray's treating psychiatrist, Dr. Thomas J. Paolino, Jr., *id.* at 25, 34, and conceded to Gray that he had known years ago that Dr. Paolino was terminally ill (he died on February 17, 2013). He also said that Dr. Paolino's clinical evaluation of repressed memory of sexual abuse was "the thread that you're kind of hanging on to." (Tr. 2 at 47.)

[3] The transcripts of the two meetings are denoted Tr. 1 and Tr. 2.

At the second meeting, Marasco stated that he had purposefully delayed serving the defendant (whom he generally referred to as "the church" or "the diocese") because the lawsuit was effectively barred by the statute of limitations and that the claim of repressed memory would not overcome that time barrier, a caveat he had previously expressed during the June 18, 2019 meeting. (Tr. 1 at 52-53.)

Marasco additionally acknowledged that if they tried to resist the defendant's motion to dismiss for lack of prosecution, they would lose, and the case would be dismissed with prejudice. "So the idea was, let's institute a suit. Let it sit out there *** Bottom line is we played a little bit of procedural stuff to just keep the thing out there." (Tr. 2 at 16-17.) He also said that by sealing the case and utilizing a "John Doe" complaint, the case would be hidden from view while hoping for some legislative expansion of the statute of limitations or assistance from decisional law in an unrelated case pending in the Superior Court:

> "We filed a complaint and then we filed a motion to seal and a separate John Doe complaint, and I think probably that was just enough to confuse the courts down there. They didn't know what to do with the case that was sealed, so they just – they didn't close it, but they shipped it off to the record center and not to be heard from again." *Id.* at 19.

During their meetings, Marasco suggested three options. First, he could oppose the motion to dismiss for lack of prosecution at the then-scheduled July 10, 2019 hearing, but he conceded that they would not prevail: "I have nothing to write to say why it shouldn't be dismissed for failure to prosecute. *** "[I]t's for failure to prosecute, so we never served process on the case. We didn't do anything on the case." *Id.* at 29, 42. "If you go in on the 10th [of July] and try to argue against the motion to – for failure to prosecute, I can see no way that that is going to be successful." *Id.* at 56.

Further explaining why service was never made, Marasco said:

> "We certainly didn't forget. The reason why we didn't serve it is the diocese lawyers would have immediately filed a motion to dismiss, based on the present status of the case law…[S]o that's why we didn't do it. If we served process, their response is, there is no set of facts upon which we can prevail. You know, it would have been game over then." *Id.* at 43.

As a second alternative, Marasco suggested that rather than resist the dismissal motion, they could, instead, voluntarily dismiss the case, which might be accomplished without prejudice, thereby leaving time to refile it if statute-of-limitations legislation relaxed the present time constraints, or if case law somehow changed the landscape. He cautioned, however, that the court would nevertheless retain discretion to dismiss the case with prejudice. (Tr. 1 at 31-32, 57; Tr. 2 at 49.)

The third option Marasco offered was to effect service of the complaint and hope that the court might look more favorably upon their resistance to the dismissal motion because at least, even though more than eight years had elapsed, a step forward had finally been taken. (Tr. 2 at 52.) "[M]y sense is that to keep the window open, you might be better off with that or going ahead and instituting – excuse me, going ahead and effectuating service of process." *Id.* at 57.

In the end, however, Marasco derided the merits of the case and said to Gray and his mother at the second meeting:

> "I would say that the possibility of ultimately recovering on the case is very, very, very, very, very low…[M]y belief is that there is very little chance to ultimately be successful on this...[I]f it were my son, I would probably say, listen, I don't think you are ever going to be successful on this." *Id.* at 53-55.

Further gauging the option of effectuating service, Marasco said:

> "I can make sure that the case is served, but as an attorney, I need – before I can sue someone, I need to believe that there is a valid cause of action, based on what the law is. And if I don't do that, I am not

> behaving within my ethics, okay. I do not believe that the changed law changes anything for you. Okay, so what I would be doing is a – sort of a tactical work-around to try to keep your case alive, hoping that the law changes later. Okay. I don't – so it would be kind of unethical for me. Unless I did, like, crazy mental gymnastics, you know. It would be unethical for me to really do that, and I am not sure that you, knowing that, I don't believe that there is a valid cause of action, want me to be the guy doing that, either, so what I would say is this; I would be prepared to make sure that that the case got served, but I would want to, at that point in time, withdraw as counsel, and let you get somebody that, you know you believe believes that it is still a valid case. *** [E]thically, I don't – I can't say to you, you don't have a case. And yet say, I'm going to represent you." *Id.* at 66-67, 73.

On July 3, 2019, present counsel replaced Mr. Marasco as the plaintiff's attorney.

The Motion to Dismiss

Dismissal motions like the one presently before the Court are typically fact driven, but we are guided by some settled rules of engagement, as outlined in, *e.g.*, *Duffy v. Town of West Warwick*, 196 A.3d 1100, 1103-04 (R.I. 2018) and *Norcliffe v. Resnick*, 694 A.2d 1210, 1212 (R.I. 1997). Those decisions make clear that a trial justice has discretion under Rules 41(b)(1) and (2) to grant a defendant's motion to dismiss a case if the plaintiff has failed to prosecute it for an extended period of time or otherwise failed to comply with the Superior Court's Rules of Civil Procedure. A plaintiff's failure to effect service within 120 days after commencing the action constitutes noncompliance with Rule 4(*l*) of the Superior Court Rules of Civil Procedure. Delay in procuring timely service may, at the very least, result in the court's dismissing the case without prejudice, or allowing service to be made within a specified time, but only if good cause for the failure has been demonstrated. Otherwise, dismissal may be expected with prejudice, which, under Rule 41(b)(3), "operates as an adjudication upon the merits." The Rules in play here are printed below. Some of the language is in bold print to highlight pertinent parts.

Rule 41(b), Super. R. Civ. P., provides:

> **"(b) Involuntary Dismissal: Effect Thereof.**
>
> "(1) *On Court's Own Motion*. The court may, in its discretion, dismiss any action **for lack of prosecution where the action has been pending for more than five (5) years, or, at any time, for failure of the plaintiff to comply with these rules** or to proceed when the action is reached for trial. Notice that an action will be in order for dismissal on a day certain shall be served upon the plaintiff's attorney of record and upon the plaintiff if the plaintiff's address is known. If there is no attorney of record and if the plaintiff's address is not known, such notice shall be published as directed by the court in accordance with statutory provisions.
>
> "(2) *On Motion of the Defendant***.** On motion of the defendant the court may, **in its discretion, dismiss any action for failure of the plaintiff to comply with these rules** or any order of court**, or for lack of prosecution** as provided in paragraph (1) of this subdivision.[4]
>
> "(3) *Effect.* Unless the court in its order for dismissal otherwise specifies, **a dismissal under this subdivision (b)** and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction or for improper venue or for lack of an indispensable party, operates as an **adjudication upon the merits.**"

Paragraph (2) of Rule 41(b) specifically refers to the five-year fuse in paragraph (1) of that Rule, and both paragraphs reiterate the admonition of dismissal "for failure of the plaintiff to comply with these rules." In that regard, Rule 4(*l*) provides:

> "(l) **Summons: Time Limit for Service**. If service of the summons, complaint, Language Assistance Notice, and all other required documents is not made upon a defendant within one hundred and twenty (120) days after the commencement of the action the court upon motion or on its own initiative after notice to the plaintiff, **shall dismiss the action** without prejudice as to that defendant or direct that service be effected within a specified time; **provided that if the plaintiff shows good cause for the failure**, the court shall extend

[4] G.L. 1956 §§ 9-8-3 and 9-8-5 authorize the Superior Court (as well as other courts) to dismiss a case that is inactive for more than five years.

> the time for service for an appropriate period. This subdivision does not apply to service in a foreign country pursuant to subdivision (g)."

Underlying the purpose of the Rules of Civil Procedure is the declaration that they are intended to promote, among other goals, the resolution of actions with alacrity. *Ricci v. Ricci*, 689 A.2d 1051, 1052 (R.I. 1997). Rule 1 of the Superior Court Rules of Civil Procedure provides:

> "**(a) Scope of Rules.** These rules govern the procedure in the Superior Court of the State of Rhode Island in all suits of a civil nature whether cognizable as cases at law or in equity, with the exceptions stated in Rule 81. They shall be construed and administered to secure the just, **speedy**, and inexpensive determination of every action."

* * *

"[I]t is improper for an attorney to wait until after a complaint has been filed to determine whether he really has a valid claim against [] the named defendants." *Anderson v. Air West, Inc.*, 542 F.2d 522, 525 (9th Cir. 1976). There is no question that prior counsel in this case purposely took no action for more than eight years after filing the case, knowing full well that when he filed it in November of 2010, it was legally without basis and that, as eight years slid away, in 2019, he also knew that it would not withstand a motion to dismiss for lack of prosecution.

That, by itself, is ample reason to grant the defendant's motion to dismiss. Our Supreme Court has dismissed cases under Rule 41(b)(2) for much lesser periods of inaction. *E.g.*, *Norcliffe*, 694 A.2d at 1212 (holding that a fourteen month delay to effectuate service is "presumptively unreasonable"); *Simmons v. State*, 462 A.2d 974, 975 (R.I. 1983) (three-year delay in service); *Ricci*, 689 A.2d at 1052 (service delay of seven and a half months, and collecting other cases permitting dismissal for various periods of inaction). In *Duffy*, the Supreme Court affirmed the dismissal of an action which had withered for five years without any activity or service, taking note of the trial justice's concerns:

> "[W]here there's a delay of this magnitude, seven years from the time of the incident, five years from the time of the filing of the complaint and absolutely nothing has happened, … a message has got to be sent that the rules—we might as well just throw the rules away if we allow this lawsuit to be re-filed. I think this is a classic case of where Rule 41(b) should require a dismissal with prejudice." *Id*. at 1104 (quoting Gallo, J.).

Neither *Duffy, Norcliffe,* nor *Simmons* appended a requirement that a defendant needed to demonstrate prejudice to support its dismissal motion. Here, however, there is prejudice to consider.

Dr. Paolino had treated the plaintiff for alleged suppression of recollection, and Marasco was well aware that his opinion was crucial to the plaintiff's claim. It was, as Marasco had said to him at their second 2019 meeting, the "thread that you're kind of hanging on to." (Tr. 2 at 47.)

The plaintiff's deliberate failure to serve the defendant and commence the formal litigation process negated the defendant's ability to depose Dr. Paolino and/or obtain further information and statements from him during the course of properly constructed litigation proceedings. The plaintiff responds that although Dr. Paolino's death is "truly unfortunate," his absence could not prejudice the defendant because Dr. Paolino "was not the Defendant's witness. His opinion was entirely in favor of the Plaintiff….There is no reason to believe that Dr. Paolino would have been helpful to the defense." (Pl.'s Mem., June 18, 2021 at 23.)

That type of response, if accepted, would essentially preclude a party-opponent's opportunity to confront and cross-examine the other party's witnesses. Cross-examination has been described by Professor Wigmore as "beyond any doubt the greatest legal engine ever invented for the discovery of truth." *State v Tiernan*, 941 A.2d 129, 134 (R.I. 2008). '"[I]t is the principal means by which the credibility of the witness and the truthfulness of his [or her] testimony can be tested.'" *Id.* (quoting *State v. Parillo*, 480 A.2d 1349, 1357 (R.I. 1984) and cases therein).

Although not as ascendant in civil actions as in criminal cases, our Supreme Court has nonetheless held that "[t]he importance of cross-examination extends to civil cases as well. 'Wisely employed it is perhaps the most powerful weapon in the arsenal of the lawyer in pursuit of the whole truth.'" *Pazienza v. Pazienza*, 595 A.2d 235, 240 (R.I. 1991) (quoting *Treharne v. Callahan*, 426 F.2d 58, 62 (3d Cir. 1970)).

The plaintiff's suggestion that Dr. Paolino's opinion solely benefitted the plaintiff and could not conceivably be of any assistance to the defendant presumes too much. Cases are legion which reflect that a party's own expert witness may well become its worst nightmare during cross-examination. In *State v. DiFraia*, 105 R.I. 169, 172, 250 A.2d 358, 360 (1969), the state offered no expert medical testimony to counter the defendant's experts and, instead, so skillfully cross-examined them that "it amounted to positive evidence for the state." In *Seddon v. Duke*, 884 A.2d 413, 415 (R.I. 2005), the Court said: "Cross-examination of expert witnesses inevitably involves questions seeking clarification and/or explanation of technical opinions and conclusions. Similarly, cross-examination can elicit testimony that is unfavorable to the party who introduced the report." *See State v. Thornton*, 800 A.2d 1016, 1041-45 (R.I. 2002) (observing the significant impairment of the opinion of the defendant's psychiatrist during cross-examination in a diminished capacity/insanity case).

Accordingly, this Court is disinclined to endorse the plaintiff's assumption that prejudice cannot possibly inure to the defense simply because Dr. Paolino's opinion – facially, but without close inquiry or cross-examination – purportedly can only assist the plaintiff. That assumption unwisely negates preponderant commentary and decisional authorities which discredit such a presupposition.

Further, the plaintiff also fails to take into account that the likelihood of locating and persuading other witnesses, including LaMountain's other victims, to testify is likely impractical and/or unrealistic. *See Kuhlmann v. Wilson*, 477 U.S. 436, 453 (1986) (noting the invariable "erosion of memory and dispersion of witnesses that occur with the passage of time") (internal quotation omitted). S*ee Ryan*, 941 A.2d at 181 (in the context of statutes of limitation, looking askance at "the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared") (citations omitted), and quoting *Wood v. Carpenter*, 101 U.S. 135, 139 (1879) (noting that "time is constantly destroying the evidence of rights").

* * *

The Court also declines to accept the plaintiff's reliance on the doctrine of laches to counter the defendant's dismissal motion. Laches is an equitable defense which debars an action by a litigant who has negligently sat on his or her rights, typically to the detriment of the other party. *School Committee of City of Cranston v. Bergin-Andrews*, 984 A.2d 629, 644 (R.I. 2009). Although delay, alone, has been said to be insufficient to create prejudice under the doctrine of laches, *Raso v. Wall*, 884 A.2d 391, 395 (R.I. 2005), plaintiff asserts that without demonstrated prejudice "delay in itself has never been a basis for dismissal" in a laches case. (Pl.'s Mem., June 18, 2021 at 15.) In *Mattatall v. State*, 947 A.2d 896, 900 n.6 (R.I. 2008), however, the Supreme Court held:

> "There comes a time when the 'prejudice' precondition to a finding of laches ***can be presumed***. *Northern Trust Co. v. Zoning Board of Review of Westerly*, 899 A.2d 517, 520 (R.I. 2006) (mem.) ('Given the egregious nature of the delay * * *, presuming prejudice to [the adverse party] gives us no pause.')." (Emphasis added.)

Moreover, it is the plaintiff, not the defendant, who has unjustifiably taken no action in this case. *See also Desamours v. State*, 210 A.3d 1177, 1184 (R.I. 2019) (observing that although passage of time, alone, might not implicate laches, the petitioner had "not offered a credible explanation for the twelve-year delay, [because he] knew from the moment that he signed the plea form that his plea could result in [adverse] deportation consequences"). *Id.* at 1184. Here, too, the plaintiff has failed to present an acceptable rationale for deliberately failing to serve the defendant. Like the petitioner in *Desamours*, counsel knew from the moment that he filed the action that it could not withstand dismissal under existing law.[5]

That mind-set never changed. Indeed, it was exacerbated as time elapsed, because he knew not only that the claim was without basis when he filed it in November of 2010, he also knew in 2019 that it was wide open to dismissal for lack of prosecution. *See Cine Forty-Second St. Theatre Corp. v. Allied Artists Pictures Corp.*, 602 F.2d 1062, 1067 (2d Cir. 1979) (noting that "deliberate tactical intransigence may be responsible for the interminable delays and costs that plague modern complex lawsuits").

Frankly, the plaintiff is the only party in this action accountable for temporal delinquency. *See Fabrikker v. Charlton Co., Inc*., No. 82-0486-MA, 1982 WL 52117, at *7 (D.Mass. 1982) (protracted inaction by a litigant, knowing that the opposing party could enforce its rights to the detriment of that litigant demonstrated "complete disregard of [that litigant's] responsibilities"). *See also Matter of Bryer*, 72 A.D.3d 532, 533 (N.Y.A.D. 2010) (finding that petitioner, who was

[5] Although *Mattatall* and *Desamours* are postconviction relief actions with underlying criminal bases, the doctrine of laches extends to such cases, *Raso,* 884 A.2d at 394, because they are considered civil in nature. *D'Alessio v. State*, 101 A.3d 1270, 1275 (R.I. 2014); *DePina v. State*, 79 A.3d 1284, 1288–89 (R.I. 2013).

capable of exercising his legal rights, had no valid excuse for a twelve-year delay and was therefore "guilty of gross laches").

* * *

The plaintiff attempts to discount his inaction because he had alerted the defendant of the lawsuit's existence, was willing to share information, and had some dialogue regarding his settlement requests. This Court finds those entreaties insufficient to mitigate the purposeful delay tactics here. This is particularly so when viewed against counsel's utterances that he had "played a little bit of procedural stuff" and "confused the courts," expressing gratification that the case had been buried in a storage facility, "not to be heard from again." From those remarks, a court could readily "conclude that the [plaintiff's] excuses for [his] inactivity on the case were somewhat overstated, if not altogether disingenuous." *Harvey v. Town of Tiverton*, 764 A.2d 141, 143-44 (R.I. 2001).

Plaintiff's contention that he should not be penalized because, regardless of his purposeful and calculated failure to effect service for over eight years, the defendant was aware of the allegations anyway and had been afforded plenty of time to consider them, is entirely unacceptable in the circumstances of this case. Subscribing to that proposal would essentially stand Rule 41 on its head, inappropriately assigning liability to the defendant for not responding to a lawsuit, service of which the plaintiff had designedly held in abeyance because he knew it had no legs. As aptly said in *Anderson*, 542 F.2d at 525, affirming the trial court's grant of a federal Rule 41(b) motion to dismiss with prejudice:

> "Plaintiff's assertion that they could, and should, have been planning earlier is an attempt to switch the burden of going forward with the action to the defendants. The plaintiff cannot in this manner escape her responsibility to diligently prosecute the action."

That the plaintiff's inaction was the product of prior counsel's inventive artistry does not exempt his case from the privation of dismissal with prejudice. *See id.* at 526 (holding that "plaintiff cannot avoid this dismissal by arguing that she is an innocent party who will be made to suffer for the errors of her attorney"); s*ee Link v. Wabash Railroad Co*., 370 U.S. 626, 633–34, and at n.10 (1962) ("[K]eeping this suit alive merely because plaintiff should not be penalized for the omissions of his own attorney would be visiting the sins of plaintiff's lawyer upon the defendant.").

"[O]ne of the main purposes of Rule 41(b) is to ensure the efficient and expeditious resolution of controversies; this purpose would be undermined were we to allow plaintiff to proceed with his complaint, even if his previous attorney was responsible for the delay." *Duffy*, 196 A.3d at 1104. *See also Lima v. Holder*, 758 F.3d 72, 79 (1st Cir. 2014) (noting that precise and unequivocal handiwork of attorneys, including their concessions and admissions, are binding upon their clients); *McLyman v. Miller*, 52 R.I. 374, 161 A. 111, 112 (1932) ("Admissions of attorneys bind their clients in all matters relating to the progress and control of the case.") (citation omitted); *accord, Washington Trust Co. v. Bishop*, 78 R.I. 157, 158, 80 A.2d 185, 186 (1951).

This Court is, of course, not unmindful that by assessing the consequences of this decision upon the plaintiff (as distinguished from his counsel), the plaintiff's claims will be extinguished.[6]

[6] "While the strength or weakness of the plaintiff's case may be a factor in determining the harshness of dismissal in a particular case, … the court should not closely scrutinize the merits of an action when reviewing … dismissal" under Rule 41(b). *Anderson*, 542 F.2d at 525-26 (describing plaintiff's inaction as "a clear showing of willful delay in the service of process"). And while this Court takes no position on the merits of the plaintiff's claims or any defenses to them, it would be remiss not to briefly identify other sentries which might impede the plaintiff's passage, even if he could, *arguendo*, surmount the instant procedural dismissal motion. In 2016, the Supreme Court held that repressed memory, alone, will not toll the statute of limitations as an "unsound mind exception" to prevent a time-barred dismissal "against *nonperpetrator*-defendants"). *Hyde v. Roman Catholic Bishop of Providence*, 139 A.3d 452, 465 (R.I. 2016) (emphasis added). Demonstrating "unsound mind" requires proof of the plaintiff's inability, when examined *objectively*, to manage his day-to-day affairs, a seemingly high bar to clear. *Id*. at 463-65. *See Roe v. Gelineau*, 794 A.2d 476, 484, 486 (R.I. 2002); *Kelly v. Marcantonio*, 678 A.2d 873

The Court has carefully weighed, as it must, the interest in disposing of cases on their merits against "the court's need to manage its docket, the public interest in the expeditious resolution of litigation, and the risk of prejudice to the defendants from delay[.]" *Duffy*, 196 A.3d at 1103. And when assessing that balancing process, the Supreme Court has reminded us more than once that we "need not view the evidence in a light most favorable to the plaintiffs." *Id*. (internal citations omitted).

Conclusion

Withal, it is the view here that the plaintiff has not demonstrated adequate reason, much less good cause, to withstand the defendant's motion to dismiss his case.

To deny the defendant's dismissal motion would not only condone and discharge deliberate, protracted inaction, backdropped by an intent to "confuse the courts," it would also erode the goals which undergird the Rules of Civil Procedure. Put plainly, courts simply cannot function efficiently unless they can effectively require and, indeed, rely on compliance with reasonable rules, and our first Rule of Civil Procedure sensibly demands that the Rules be employed "to secure the just, speedy, and inexpensive determination" every time. There is no question that in this instance they were not.

(R.I. 1996). Additionally, in *Doe v. Portsmouth Abbey School*, No. 20-500 (mem.) (Smith, J.) (D.R.I. filed Aug. 18, 2021), the court noted that although the General Assembly, in 2019, enlarged the statute of limitation period for sexual abuse claims under G.L. 1956 § 9-51-1, that amendment distinguished claims against perpetrator and non-perpetrator defendants, a divergence which has generated "much debate." *Id*. at 4-5. In *Edwardo, et al. v. Gelineau, et al*., 2020 WL 6260865 (R.I. Super., Oct. 16, 2020) (Vogel, J.), the trial justice dismissed complaints against the Bishop, the church, and the parochial school where clerics had allegedly molested children. "[T]he Legislature clearly intended to limit the word 'perpetrator' to the *actual* abuser, [and] the enlargement of the statute of limitations does not revive Plaintiffs' claims which were time barred at the time the amendment to § 9-1-51 took effect." *Id*. at 1, 12.

Accordingly, the defendant's motion must be granted, and this case is dismissed with prejudice. Pursuant to Rule 41(b)(3), judgment shall also enter in favor of the defendant.

Postscript

The within ruling is, perforce, limned by the narrow procedural margins of Rule 41(b), and, other than briefly noting some potential issues relating to the plaintiff's claims (*see* footnote 6), it does not nor is it intended to posit any opinion as to the material facts underlying the complaint, the merits of the questions presented, or any potential defenses thereto.

The Court is constrained, however, to move to a different square on the board and express its disquietude that this case has not been settled. Just under twenty years ago, thirty-six similar actions, many identical to this one, were collectively resolved, notwithstanding justifiable defenses to several of those cases.

Dispensing with enforceable statute of limitations defenses which "posed a significant impediment" to many of the lawsuits, the Diocese nevertheless authorized substantial compensatory awards to all of the plaintiff-parishioners, including those whose cases were manifestly vulnerable to dismissal motions. Resolution of all thirty-six cases was a direct result of earnest settlement and mediation proceedings. *Ryan,* 941 A.2d at 178-79.

This Court renews the Supreme Court's sensitive observations prefacing this Decision and especially notes the Court's emphasis on the "judiciary's obligation" to pursue "a crucially important aspect of the American judicial system," namely, meaningful settlement and mediation efforts. *Id.* at 185 n.20, and 186. The Supreme Court has emphasized that judges should actively pursue "this state's sound policy of favoring settlement and/or mediation of disputes." *Id*. at 187.

Notably, the Supreme Court, even in the context of the very disputes it decides, has simultaneously and openly encouraged the parties to settle them. Particularly instructive is the Court's advisement in *Greensleeves, Inc. v. Smiley*, 942 A.2d 284, 294 n.19 (R.I. 2007):

> "It appears to us that this case has taken on a life of its own; we can perceive no sufficient reason why this particular litigation did not come to an end long ago.…We find the long pendency of this case to be truly regrettable, and we earnestly encourage the parties and their attorneys to make every effort to dispose of [it] by engaging in meaningful settlement negotiations."

Consistent with all of the foregoing declarations, this Court entrusts these parties with the responsibility of engaging in serious and conscientious efforts to resolve this case, even as it winds through any appellate process.

Failure to commit to that endeavor would do scant justice to the eminently sensible efforts showcased in three dozen comparable cases which were settled some twenty years ago.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE:	**Gray v. The Roman Catholic Bishop of Providence**
CASE NO:	**PC-2010-6437**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**August 31, 2021**
JUSTICE/MAGISTRATE:	**Krause, J.**
ATTORNEYS:	
For Plaintiff:	**Albin S. Moser, Esq.**
For Defendant:	**Eugene G. Bernardo, II, Esq.** **Howard Merten, Esq.**