

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-001610-MR

WILL L. MCGINNIS III

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE THOMAS L. CLARK, JUDGE
ACTION NO. 02-CI-02278

ROMAN CATHOLIC DIOCESE
OF COVINGTON and ROMAN
CATHOLIC DIOCESE OF
LEXINGTON

APPELLEES

OPINION

AFFIRMING

** **

BEFORE: EMBERTON, CHIEF JUDGE; SCHRODER, JUDGE AND JOHN D.
MILLER, SENIOR JUDGE.¹

EMBERTON, CHIEF JUDGE. Will L. McGinnis III, filed a complaint on June 3, 2002, alleging that in early 1983 or 1984, he was sexually abused by Father Bill Fedders and that the Roman Catholic Diocese of Lexington knew of the abuse and actively concealed information. At the time of the alleged abuse

¹ Senior Judge John D. Miller sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

McGinnis was fourteen years of age. The trial court dismissed the action based on the applicable statute of limitations.

McGinnis first discussed the allegation with the Bishop of the Lexington Diocese, J. Kendrick Williams, in October of 1993. Then in a letter to Williams dated August 1, 1994, McGinnis outlined three alleged incidents of abuse involving Father Fedders and offered to take \$200,000 in settlement of the matter. Sometime after August 1994, McGinnis obtained legal counsel who, on February 3, 1995, sent another letter to Bishop Williams advising him that he represented McGinnis with regard to the allegations against the church and Father Fedders. The Diocese responded on February 24, 1995, offering only to pay for reasonable counseling expenses for McGinnis, which he rejected. Seven years later, on June 3, 2002, McGinnis filed a pro se complaint in the Fayette Circuit Court alleging he was sexually abused by Father Fedders and that the Diocese concealed the abuse. In response, the Diocese moved to dismiss the complaint asserting that the complaint was time-barred and failed to state a claim upon which relief could be granted. McGinnis filed an amended complaint on June 21, 2002, alleging that the Diocese violated KRS² 620.030 by failing to report Father Fedders' abuse. After hearing arguments, the court held the action was barred by the statute of limitations.

² Kentucky Revised Statutes.

Since the trial court considered matters outside the pleadings, its ruling must be considered a summary judgment. As such, this court is not required to defer to the trial court's findings.³ However, even under the broad scope of review of the summary judgment standard, we affirm the trial court.

A civil action for damages suffered as a result of child sexual abuse or assault shall be brought before the expiration of the latest time periods specified in KRS 413.249(2):

- (a) Within five (5) years of the commission of the act or the last of a series of acts by the same perpetrator;
- (b) Within five (5) years of the date the victim knew, or should have known, of the act; or
- (c) Within five (5) years after the victim attains the age of eighteen (18) years.

McGinnis filed his action well beyond the time periods specified. The last act of alleged abuse occurred in 1984, and the complaint was not filed until 2002. At the time McGinnis filed his action he knew, or should have known, of the abuse as evidenced by his 1993 letters sent to Bishop Williams and the hiring of counsel. Finally, McGinnis turned eighteen in 1987, again beyond the time provision in KRS 413.249(2)(c).

³ Paintsville Hospital Co. v. Rose, Ky., 683 S.W.2d 255 (1985).

Relying on Roman Catholic Diocese of Covington v. Selter,⁴ McGinnis contends that statute was tolled. The Selter case, involving the Diocese of Covington, was brought by John Selter who alleged that the Diocese knew of a pattern of abuse by a teacher and guidance counselor, Earl Bierman, at a school operated by the Diocese. Although Selter's abuse occurred in 1976 and he was aware of the abuse within one year of obtaining majority, he filed his action beyond the five-year statute of limitations. The court held, however, that because the Diocese had knowledge of Father Bierman's abuse of children before the abuse of Selter and yet continued to conceal the abuse, the statute was tolled until Selter discovered the Diocese's knowledge in 1992 when he learned from media reports that Bierman had sexually abused other students. The court applied KRS 413.190(2), which provides that any period during which a person obstructs the prosecution of a case against him shall not be computed as any part of the period within which the action is to be commenced. The statute was tolled until Selter became aware of the Diocese's concealment of its knowledge of Bierman's actions:

Selter neither knew nor had reason to know that he had a potential cause of action against the Diocese for causing tortious injury to him due to the Diocese's

⁴ Ky. App., 966 S.W.2d 286 (1998).

concealment of its knowledge of Bierman's actions toward other students.⁵

In contrast to the facts in Secter, here there is no evidence that the Diocese concealed or had knowledge of abuse of children by Father Fedders either during McGinnis's minority or between the age of his majority and the time he notified the Diocese of his claims.

The trial court correctly ruled that McGinnis's claim is barred by the statute of limitations.

The judgment is affirmed.

MILLER, SENIOR JUDGE, CONCURS.

SCHRODER, JUDGE, DISSENTS AND FILES SEPARATE OPINION.

SCHRODER, JUDGE, DISSENTING. There are issues of fact regarding tolling. I would reverse and remand to at least allow discovery into the appellees' knowledge of prior abuse, or the potential for such by this particular priest, and the concealment, if any.

⁵ Id. at 290.

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