

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

U.W.,	:	
	:	
Plaintiff-Appellant,	:	
	:	
v.	:	No. 12AP-959
	:	(Ct. of Cl. No. 2012-05851)
Department of Youth Services,	:	
	:	(REGULAR CALENDAR)
Defendant-Appellee.	:	

D E C I S I O N

Rendered on April 25, 2013

Jill R. Flagg, for appellant.

Michael DeWine, Attorney General, and *Eric A. Walker*, for appellee.

APPEAL from the Court of Claims of Ohio

TYACK, J.

{¶ 1} U.W. is appealing the dismissal of her claim against the Ohio Department of Youth Services. She assigns a single error for our consideration:

THE TRIAL COURT ERRED BY DISMISSING THE PLAINTIFF'S CLAIMS PURSUANT TO CIV. RULE 12(B)(6) BECAUSE THE PLAINTIFF'S CLAIMS ARE NOT CONCLUSIVELY TIME-BARRED BY THE STATUTE OF LIMITATIONS OF A SEX ABUSE ACTION.

{¶ 2} The issue before the trial court was which statute of limitations to apply to her claim. U.W. filed her lawsuit over ten years after the sexual assaults she alleged had

occurred. If the overarching statute of limitations for lawsuits against State of Ohio entities contained in R.C. 2743.16 applied, the lawsuit was not timely.

{¶ 3} If R.C. 2305.111 were the applicable statute of limitations, then the lawsuit arguably could proceed.

{¶ 4} R.C. 2743.16(A) reads:

Subject to division (B) of this section, civil actions against the state permitted by sections 2743.01 to 2743.20 of the Revised Code shall be commenced no later than two years after the date of accrual of the cause of action or within any shorter period that is applicable to similar suits between private parties.

{¶ 5} R.C. 2743.16(C) provides for the statute of limitations to be tolled pursuant to R.C. 2305.16. R.C. 2743.16 does not provide for the tolling of the statute of limitations through the operation of R.C. 2305.111. R.C. 2305.111 reads:

(A) As used in this section:

(1) "Childhood sexual abuse" means any conduct that constitutes any of the violations identified in division (A)(1)(a) or (b) of this section and would constitute a criminal offense under the specified section or division of the Revised Code, if the victim of the violation is at the time of the violation a child under eighteen years of age or a mentally retarded, developmentally disabled, or physically impaired child under twenty-one years of age. The court need not find that any person has been convicted of or pleaded guilty to the offense under the specified section or division of the Revised Code in order for the conduct that is the violation constituting the offense to be childhood sexual abuse for purposes of this division. This division applies to any of the following violations committed in the following specified circumstances:

(a) A violation of section 2907.02 or of division (A)(1), (5), (6), (7), (8), (9), (10), (11), or (12) of section 2907.03 of the Revised Code;

(b) A violation of section 2907.05 or 2907.06 of the Revised Code if, at the time of the violation, any of the following apply:

(i) The actor is the victim's natural parent, adoptive parent, or stepparent or the guardian, custodian, or person in loco parentis of the victim.

(ii) The victim is in custody of law or a patient in a hospital or other institution, and the actor has supervisory or disciplinary authority over the victim.

(iii) The actor is a teacher, administrator, coach, or other person in authority employed by or serving in a school for which the state board of education prescribes minimum standards pursuant to division (D) of section 3301.07 of the Revised Code, the victim is enrolled in or attends that school, and the actor is not enrolled in and does not attend that school.

(iv) The actor is a teacher, administrator, coach, or other person in authority employed by or serving in an institution of higher education, and the victim is enrolled in or attends that institution.

(v) The actor is the victim's athletic or other type of coach, is the victim's instructor, is the leader of a scouting troop of which the victim is a member, or is a person with temporary or occasional disciplinary control over the victim.

(vi) The actor is a mental health professional, the victim is a mental health client or patient of the actor, and the actor induces the victim to submit by falsely representing to the victim that the sexual contact involved in the violation is necessary for mental health treatment purposes.

(vii) The victim is confined in a detention facility, and the actor is an employee of that detention facility.

(viii) The actor is a cleric, and the victim is a member of, or attends, the church or congregation served by the cleric.

(2) "Cleric" has the same meaning as in section 2317.02 of the Revised Code.

(3) "Mental health client or patient" has the same meaning as in section 2305.51 of the Revised Code.

(4) "Mental health professional" has the same meaning as in section 2305.115 of the Revised Code.

(5) "Sexual contact" has the same meaning as in section 2907.01 of the Revised Code.

(6) "Victim" means, except as provided in division (B) of this section, a victim of childhood sexual abuse.

(B) Except as provided in section 2305.115 of the Revised Code and subject to division (C) of this section, an action for assault or battery shall be brought within one year after the cause of the action accrues. For purposes of this section, a cause of action for assault or battery accrues upon the later of the following:

(1) The date on which the alleged assault or battery occurred;

(2) If the plaintiff did not know the identity of the person who allegedly committed the assault or battery on the date on which it allegedly occurred, the earlier of the following dates:

(a) The date on which the plaintiff learns the identity of that person;

(b) The date on which, by the exercise of reasonable diligence, the plaintiff should have learned the identity of that person.

(C) An action for assault or battery brought by a victim of childhood sexual abuse based on childhood sexual abuse, or an action brought by a victim of childhood sexual abuse asserting any claim resulting from childhood sexual abuse, shall be brought within twelve years after the cause of action accrues. For purposes of this section, a cause of action for assault or battery based on childhood sexual abuse, or a cause of action for a claim resulting from childhood sexual abuse, accrues upon the date on which the victim reaches the age of majority. If the defendant in an action brought by a victim of childhood sexual abuse asserting a claim resulting from childhood sexual abuse that occurs on or after the effective date of this act has fraudulently concealed from the plaintiff facts that form the basis of the claim, the running of the limitations period with regard to that claim is tolled until the time when the plaintiff discovers or in the exercise of due diligence should have discovered those facts.

{¶ 6} U.W. turned 18 in 2004. To that extent, she benefited from the clarity which R.C. 2305.111 brings to claims such as hers. However, the statutory framework enacted when the State of Ohio partially waived governmental immunity has not been amended to allow any claims to be pursued against the State of Ohio more than two years after the claims accrued. See for instance, *Cargile v. Ohio Dept. of Admin. Servs.*, 10th Dist. No. 11AP-743, 2012-Ohio-2470.

{¶ 7} Consistent with our prior rulings, which have always enforced the will of the Ohio legislature as we see it, we overrule the single assignment of error and affirm the judgment of the Court of Claims of Ohio.

Judgment affirmed.

DORRIAN and McCORMAC, JJ.

McCORMAC, J., retired, formerly of the Tenth Appellate District, assigned to active duty under the authority of Ohio Constitution, Article IV, Section 6(C).
