

the abuse until last year. The trial court dismissed her complaint because the period of limitations applicable to actions involving claims of childhood sexual abuse had expired.

Ms. Pratte argues that this statute of limitations, which was enacted in 2006, does not apply to her action. She argues that the former one-year limitations period applies, the running of which was tolled until she recovered her memories.

{¶ 2} Ms. Pratte says that Mr. Stewart sexually assaulted and molested her at least three times, the last in the fall of 1984. She repressed memories of the abuse until they surfaced 23 years later on April 20, 2007, triggered by the killings on the campus of Virginia Tech. Just under a year later, on April 14, 2008, Ms. Pratte filed a civil complaint. Mr. Stewart responded with a motion to dismiss her complaint as time-barred by the statute of limitations. The trial judge agreed with Mr. Stewart and dismissed her complaint.

{¶ 3} Before beginning our analysis, a brief look at the history of the limitations period for childhood sexual abuse actions would be helpful. The Supreme Court expressly adopted a limitations period in 1994 with its holding in *Doe v. First United Methodist Church* (1994), 68 Ohio St.3d 531, 629 N.E.2d 402. There the Court held that “[a] cause of action premised upon acts of sexual abuse is subject to the one-year statute of limitations for assault and battery.” *Id.* at ¶1 syllabus. A minor victim, however, “has one year from the date he or she reaches the age of majority to assert any claims against the perpetrator arising from the sexual abuse.” *Id.* at ¶2 syllabus. But this rule applied only “where the victim knows the identity of the perpetrator and is fully aware of the fact that a battery has occurred.” *Id.*

{¶ 4} Later that year, in *Ault v. Jasko* (1994), 70 Ohio St.3d 114, 637 N.E.2d

870, the Court addressed the situation where a minor victim repressed memories of the alleged abuse. The “discovery rule,” it held, applied to toll the limitations period in such situations. *Id.* at ¶1 syllabus. The limitations period did not begin to run, said the Court, until “the victim recalls or otherwise discovers that he or she was sexually abused, or when, through the exercise of reasonable diligence, the victim should have discovered the sexual abuse.” *Id.* at ¶2 syllabus.

{¶ 5} Yet, some members of the Court were uncomfortable applying the discovery rule to these types of actions. Two members of the *Ault* court believed that the majority had improperly strayed into the General Assembly’s domain. Chief Justice Moyer wrote in his dissent, “The majority opinion announces a rule of law that would permit a person at any age after any lapse of time between the alleged sexual abuse and the revived memory of such abuse to sue the alleged abuser for money damages.” *Id.* at 120 (Moyer, C.J., dissenting). “If that is to be the law of Ohio,” he continued, “it is the General Assembly that should declare it as such rather than this court.” Justice Wright agreed, saying, “the resolution of this issue lies with the legislature and not the judiciary.” *Id.* at 124 (Wright, J., dissenting). He observed that “[t]he Ohio General Assembly is the appropriate body to conduct hearings, consider expert testimony and, most important, fashion *standards*.” *Id.* Even Justice Resnick, joined by Justice Douglas, while concurring in the majority’s opinion, nevertheless agreed with the two dissenters that ideally the legislature should decide the issue. “I agree with the dissenting opinions that the General Assembly is the *most* appropriate body to establish a discovery rule in childhood sexual abuse cases.” *Id.* at 119 (Resnick, J., concurring). Still, she continued, “I believe that until the General Assembly chooses to act this court

is capable of interpreting the relevant statute of limitations to allow potentially valid claims to proceed.” Id.

{¶ 6} The General Assembly had begun to act to resolve this important policy issue. And on May 1, 2006, it enacted the fruit of its action—Senate Bill 17, which, among other amendments, codified a statute of limitations for actions based on claims of childhood sexual abuse. “The bill was the subject of a great deal of lobbying by a number of interested parties.” *Vercellotti v. Husted*, 174 Ohio App.3d 609, 2008-Ohio-149, at ¶2. This is apparent from seeing how the bill changed from the initial version passed by the Senate. The initial version set the limitations period for bringing civil actions at 20 years. But this number first dropped to 10 years before coming to rest at 12 years. Id. at ¶7. A provision was added that tolls the running of the limitations period where the defendant has fraudulently concealed critical facts from the plaintiff. See Synopsis of House Committee Amendments to Sub. S.B. 17, LSC, Sub. S.B. 17, 126th General Assembly (H. Judiciary) Mar. 29, 2006. This was the only tolling provision in the final bill. Finally, the initial version contained a look-back period for actions that expired before the bill’s effective date but this provision was ultimately eliminated. See Synopsis. The amendments reflect the difficult policy choices that are properly the province of the General Assembly.

{¶ 7} The bill contained important provision in two types of law. It codified a new statute of limitations for childhood sexual abuse actions in R.C. 2305.111. This section formerly contained only the statute of limitations for assault and battery actions, the statute that the Supreme Court said applied to actions involving claims of childhood sexual abuse. The bill also, however, enacted uncodified law that specified the claims to

which the new statute of limitations applied. It is this uncodified law, governing the applicability of the new statute of limitations, that is at the heart of this appeal.

{¶ 8} On May 1, 2006, the General Assembly enacted Senate Bill 17 which codified a statute of limitations for civil actions based on claims of childhood sexual abuse. R.C. 2305.111(C) provided:

{¶ 9} “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.”

{¶ 10} According to Ms. Pratte’s complaint, she reached the age of majority on July 13, 1992, and thus she had twelve years from that date to file her action. She did not file her complaint until April 2008. In dismissing the complaint, the trial court stated the following: “The Court is of the view that the legislative intent of granting a twelve-year statute of limitations to a minor to bring an action for childhood sexual abuse was intended to permit the minor a period of time for the opportunity of any repressed

memory to be recalled.”

{¶ 11} In her first assignment of error, Ms. Pratte argues the trial court erred in retroactively applying Senate Bill 17 amendments of R.C. 2305.111 since those amendments only apply to abuse suffered after August 3, 2006. She refers us to the uncodified language of Section 3(B) of Senate Bill 17 which provides:

{¶ 12} “The amendments to section 2305.111 of the Revised Code made in this act shall apply to all civil actions for assault or battery brought by a victim of childhood sexual abuse based on childhood sexual abuse that occurs on or after the effective date of this act, to all civil actions brought by a victim of childhood sexual abuse for a claim resulting from childhood sexual abuse that occurs on or after the effective date of this act, to all civil actions for assault or battery brought by a victim of childhood sexual abuse based on childhood sexual abuse that occurred **prior** to the effective date of this act in relation to which a civil action for assault or battery has never been filed and for which the period of limitations applicable to such a civil action prior to the effective date of this act has not expired on the effective date of this act, and to all civil actions brought by a victim of childhood abuse for a claim resulting from childhood sexual abuse that occurred prior to the effective date of this act in relation to which a civil action for that claim has never been filed and for which the period of limitations applicable to such a civil action prior to the effective date of this act has not expired on the effective date of this act.” Page’s Ohio Revised Code Annotated, R.C. 2305.111, Annotations, §3(B).

{¶ 13} Pratte argues that amended R.C. 2305.111(c) can only apply to claims for childhood sexual abuse where the abuse occurred after the effective date of the legislation, to-wit: August 3, 2006. She argues that the clear intent of the legislature was

to extend the statute of limitations applicable to unexpired claims rather than reduce the time in which such claims may be brought. Furthermore, she argues that since the one-year statute of limitations expired long before August 3, 2006, unless *Ault* applies, she did not have an unexpired claim and R.C. 2305.111(C) does not apply.

{¶ 14} Stewart argues that the only “tolling” exception to the 12-year limitation period concerns fraudulent concealment of facts from the plaintiff. Stewart argues the amended statute clearly expressed the intent of the legislature to allow minor victims of sexual abuse additional time to discover their situations and their alleged assailants. Stewart notes that while the legislature provided a tolling of the limitations period for fraudulent concealment, it did not allow for a similar tolling for the victims’ alleged repressed memory of the events.

{¶ 15} Normally, statutes are presumed to apply prospectively. The legislature, however, noted that this legislation was to be considered purely remedial in operation and further stated it was to be applied in a remedial manner in any civil action commenced on or after April 7, 2005, **regardless** of when the cause of action occurred and notwithstanding any other section of the Revised Code or **prior rule of law of this state**. R.C. 2305.10(G).

{¶ 16} In *Ault*, the Ohio Supreme Court stated that a childhood sexual abuse victim’s cause of action accrues only when the victim recalls or otherwise discovers that he or she was sexually abused.

{¶ 17} Thus, the legislature by enacting R.C. 2305.10(G) states that the twelve-year limitation period applies regardless of the previous rule of law established in *Ault*. Nowhere in the *Ault* decision does the Supreme Court state it bases its decision to

expand the statute of limitation on state or federal constitutional grounds. R.C. 2305.10(G) was seemingly passed with the *Ault* decision in mind, and we read the uncodified language with that in mind as well. The uncodified language states that the amendments to R.C. 2305.111 apply to all civil actions for assault and battery based on childhood sexual abuse that occurred prior to the effective date of the act and for which period of limitations applicable prior to the effective date has not expired. The limitation period in Ms. Pratte's claim has not expired according to *Ault* because of her repressed memory.

{¶ 18} Ms. Pratte's argument that the legislature did not intend to apply R.C. 2305.111(C) retroactively to her is not well taken. The assignment of error is Overruled.

{¶ 19} The judgment of the trial court is Affirmed.

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FAIN, J., concurring:

{¶ 20} Although I concur in both the judgment and the opinion of the court, I write separately in order to clarify my opinion concerning the issue of the retroactive application of the statute of limitations.

{¶ 21} Before the enactment of R.C. 2305.111, a victim of childhood sexual abuse had until one year after recalling or discovering that he or she had been sexually abused, or until one year after the victim, through the exercise of reasonable diligence, should have discovered that he or she had been the victim of sexual abuse, within which to bring a cause of action. This was by virtue of the tolling doctrine announced in *Ault v. Jasko* (1994), 70 Ohio St.3d 114. Thus, before the enactment of R.C. 2305.111, in

1996, the victim in this case could have brought a timely cause of action, since she had not yet recovered her repressed memory of the assault.

{¶ 22} After R.C. 2305.111 became effective, on August 3, 2006, it was too late, under that statute, for the victim in this case to bring her cause of action, since she attained majority on July 13, 1992, and it was then already more than twelve years after that date. The extinction of a vested, but as yet unfiled, cause of action, by virtue of a newly-enacted statute of limitations, immediately upon the effective date of the new statute of limitations, does not offend the Ohio Constitution so long as there is a ninety-day period between the date of the enactment of the statute and its effective date. This is so because one is deemed to have been put on notice of a statute at the time of its passage, rather than upon its effective date. *Matthews v. Raff, Admr* (1933), 45 Ohio App. 242, 15 Ohio L. Abs. 94, 95, error dismissed, 126 Ohio St. 511 (1933).

{¶ 23} Now it may be objected that the existence of the ninety-plus-day interval between the enactment of R.C. 2305.111 on May 2, 2006, when it was signed by Governor Taft, and August 3, 2006, its effective date, was of no value to the plaintiff in this case, because her memory of the abuse remained repressed throughout that period. But I am not prepared to hold that the fact that Pratte's memory was repressed during this period is of constitutional significance. If we were to hold that the existence of a repressed memory is of constitutional significance, then we would logically be required to hold that the tolling of the statute of limitations during the time that a plaintiff is suffering from repressed memory is constitutionally required.

{¶ 24} My understanding of the holding in *Ault v. Jasko*, *supra*, is that the tolling of the statute of limitations because of a repressed memory was adopted by the Supreme

Court of Ohio not because it was deemed to have been constitutionally required, but because it was good policy, and the Ohio General Assembly had not, as of that time, chosen to legislate in this area.

{¶ 25} I would agree that policy reasons exist that might justify the tolling of a statute of limitations during any period of time that the plaintiff is suffering from repressed memory of the events out of which the cause of action arises. But the legitimate interests of both plaintiffs and defendants are at stake in these cases, since a defendant has a legitimate interest in requiring that suit be filed before his or her ability to defend is compromised by stale evidence and lost memory. I am of the view that it is for the legislature to balance these policy considerations, and I reject the view that the Ohio constitution requires that statutes of limitations be tolled during periods of repressed memory.

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GRADY, J., concurring:

{¶ 26} The essence of Plaintiff-Appellant's argument, as I understand it, is that the tolling provisions with respect to discovery announced in *Ault v. Jasko* (1994), 70 Ohio St.3d 114, remain applicable to the version of R.C. 2305.111 which became effective in 2006.

{¶ 27} Claims for relief alleging childhood sexual abuse, being grounds on which to commence a common law action for assault and battery, were subject to the one-year statute of limitations in R.C. 2305.111 when *Ault* was decided. *Ault* held that, in addition to the tolling provisions for minority in R.C. 2305.16, the one year statute of limitations

was tolled in an action for assault and battery brought on claims of childhood sexual abuse when the victim failed to discover the abuse due to repressed memory, until the victim discovers or should have discovered the abuse. Explaining its purpose, the *Ault* court wrote:

{¶ 28} “. . . Use of the discovery rule eases the unconscionable result to innocent victims who by exercising even the highest degree of care could not have discovered the cited wrong. By focusing on discovery as the element which triggers the statute of limitations, the discovery rule gives those injured adequate time to seek relief on the merits without undue prejudice to . . . defendants.” *Id.*, at 116, quoting *Oliver v. Kaiser Community Health Fund* (1983), 5 Ohio St.3d 111, 114.

{¶ 29} *Ault* imposed a judicial equitable tolling rule on the one-year period of limitations in R.C. 2305.111, on a finding that in cases of repressed memory tolling was necessary to prevent unfairness to otherwise diligent plaintiffs until they discovered their injury. The dissents in *Ault* viewed the grounds for that equitable relief on which the majority relied to be insufficient, and for that reason would defer to a legislative action on the matter. The amendments to R.C. 2305.111 that became effective in 2006 represent that legislative response.

{¶ 30} The current version of R.C. 2305.111 preserves the one-year statute of limitations for all actions for assault and battery, except those “brought by a victim of childhood sexual abuse based on childhood sexual abuse.” R.C. 2305.111(C). Such actions must now be brought “within twelve years after the cause of action accrues, . . .” which is “upon the date on which the victim reaches the age of majority.” *Id.* The twelve-year period is tolled per that section only when the defendant has fraudulently

concealed the abuse, until the plaintiff discovered or should have discovered it.

{¶ 31} The tolling provisions for repressed memory announced in *Ault*, being an equitable remedy judicially imposed in relation to a one-year statute of limitations, do not apply to the manifestly different twelve-year statute of limitations for actions on claims for childhood sexual abuse to which R.C. 2305.111(C) now governs. The same “unconscionable result” the one-year statute could produce cannot be assumed to apply to the twelve-year statute, and equitable remedies are highly fact-sensitive.

{¶ 32} Plaintiff-Appellant suggests that *Ault’s* discovery rule survives nevertheless, because the General Assembly did not expressly reject the tolling provision regarding repressed memory when it amended R.C. 2305.111. That argument ignores the fact that the new enactment is a subsequent exercise of the legislative power pursuant to Section 1, Article II of the Ohio Constitution, which is unaffected by a prior pronouncement of the judicial branch pursuant to Section, Article IV on a different matter. The fact that the two coordinate branches of government addressed the same concerns does not require that they do it in the same way or reach the same result.

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