

**COURT OF APPEALS  
THIRD APPELLATE DISTRICT  
SHELBY COUNTY**

**JOHN DOE**

**PLAINTIFF-APPELLANT**

**CASE NO. 17-04-10**

**v.**

**ARCHDIOCESE OF CINCINNATI  
ARCHBISHOP DANIEL PILARCZYK,  
AND FATHER THOMAS HOPP**

**OPINION**

**DEFENDANTS-APPELLEES**

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**CHARACTER OF PROCEEDINGS: Civil Appeal from Common Pleas  
Court**

**JUDGMENT: Judgment reversed and cause remanded.**

**DATE OF JUDGMENT ENTRY: March 7, 2005**

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**SHAW, P.J.**

{¶1} Plaintiff-appellant (hereinafter “appellant”) appeals the judgment of the Shelby County Court of Common Pleas granting a Civ.R. 12(B)(6) motion to dismiss in favor of the defendant-appellees, the Archdiocese of Cincinnati (hereinafter “Archdiocese”), Archbishop Daniel Pilarczyk (hereinafter “Archbishop”), and Father Thomas Hopp.

{¶2} In March 2004, appellant filed a complaint against the Archdiocese, the Archbishop, and Hopp alleging, inter alia, breach of fiduciary duty, negligence, respondeat superior, intentional infliction of emotional distress, corrupt activities, and punitive damages. Specifically, in appellant’s first cause of action, appellant asserts that the Archdiocese breached its fiduciary duty when

**Defendant Archdiocese became aware of Hopp’s harmful conduct and/or molestation of students, yet breached its fiduciary duty to Plaintiff by failing to report Hopp’s illegal and harmful conduct, by concealing such conduct, by failing to take any action to investigate the details of Hopp’s conduct, by failing**

**to protect Plaintiff from harm, and by failing to identify Plaintiff as a victim in order to offer him aid and assistance, and by failing to warn and inform him of Hopp's propensities.**

{¶3} Complaint at ¶16. In appellant's second cause of action, appellant states that

**Defendant Archdiocese became aware of Hopp's harmful conduct and/or molestations of students, yet negligently failed to report Hopp's illegal and harmful conduct, concealed the conduct, failed to take any action to investigate the details of Hopp's conduct, failed to protect Plaintiff from harm, failed to identify Plaintiff as a victim in order to offer him aid and assistance, and failed to warn and inform him of Hopp's propensities.**

{¶4} Id. at ¶20. In appellant's third cause of action, appellant claims that the Archdiocese and the Archbishop ratified Hopp's sexual abuse "through concealment of the conduct, the breach of the duties described [in the first two causes of action], and the facilitation by Defendants of further wrongdoing by Hopp." Id. at ¶24. In the appellant's fourth cause of action, appellant alleges that the conduct described in the first three counts of the complaint was "outrageous and has caused severe and emotional distress." Id. at ¶27.

{¶5} In his fifth cause of action the appellant further alleges that the Archdiocese, the Archbishop, and Hopp conducted an "enterprise" pursuant to R.C. 2923.31. Id. at ¶30. Specifically, the appellant states:

**The persons controlling the affairs of the enterprise(s) have conducted and/or participated in, directly or indirectly, the affairs of the enterprise(s) through a pattern of corrupt activities or pattern or practice of corrupt activity in violation of O.R.C. §2923.32. Defendants Archdiocese, [Archbishop] and**

**Hopp maintained and exercised control over the enterprise(s) alleged.**

{¶6} Id. at ¶31. The complaint then proceeds to describe a detailed series of actions which the complaint alleges

**constitutes a “pattern of corrupt activity” and violates R.C. Section 2923.32, in that Hopp engaged in crimes of sexual offenses with minors, Defendants Archdiocese and [the Archbishop] failed to fulfill their legal obligations to report such crimes and participated in the concealment of such crimes, and the actions and/or knowing omissions of Defendants Archdiocese and [the Archbishop] facilitated Hopp’s conduct and/or prevented Plaintiffs from seeking treatment or minimizing future harm.**

{¶7} Id. at ¶¶38. Finally, in appellant’s sixth cause of action, appellant alleges that “[d]efendants’ conduct was intentional, malicious and/or with reckless disregard for the welfare of the Plaintiff, justifying an award of punitive damages.” Id. at ¶43.

{¶8} On April 13, 2004, the Archdiocese and the Archbishop filed a motion to dismiss appellant’s complaint pursuant to Civ.R. 12 (B)(6), which was granted based on the trial court’s ruling that appellant’s action was barred by the statute of limitations. Appellant now appeals this decision alleging three assignments of error. For the sake of judicial economy, the three assignments of error will be discussed together.

**THE TRIAL COURT ERRED IN DISMISSING PLAINTIFF’S CLAIMS WHEN THE COMPLAINT ADEQUATELY ALLEGED THAT PLAINTIFF’S KNOWLEDGE OF THE ABUSE PRIOR TO APRIL 2002 WAS INSUFFICIENT TO APPRISE HIM OF THE POSSIBILITY THAT THE ARCHDIOCESE OR THE ARCHBISHOP HAD BEEN NEGLIGENT IN FAILING TO**

**PROTECT HIM, IN FAILING TO PREVENT FURTHER HARM OR IN BREACHING A FIDUCIARY DUTY TO HIM.**

**THE TRIAL COURT FAILED TO APPLY THE DISCOVERY RULE AND EQUITABLE ESTOPPEL IN DETERMINING THE ALERTING EVENT FOR PLAINTIFF'S CLAIMS AGAINST THE ARCHDIOCESE, AND FAILED TO RECOGNIZE THAT THE STATUTE OF LIMITATIONS BAR IS A FACT-SENSATIVE DETERMINATION.**

**THE TRIAL COURT ERRED IN DISMISSING THE CORRUPT ACTIVITIES ACT CLAIM WHEN THE COMPLAINT ALLEGED THAT THE WRONGFUL CONDUCT DID NOT TERMINATE UNTIL APRIL 2002.**

{¶9} In *O'Brien v. Univ. Community Tenants Union, Inc.* (1975), 42 Ohio St.2d 242, 327 N.E.2d 753, syllabus, the Ohio Supreme Court stated that “[i]n order for a court to dismiss a complaint for failure to state a claim upon which relief can be granted (Civ.R. 12 (B)(6)), it must appear beyond doubt from the complaint that the plaintiff can prove no set of facts entitling him to recovery.” Furthermore, in reviewing a complaint for purposes of dismissing the action, a court must, as a matter of law, accept all of the factual allegations in the complaint as true, *Id.*, and “make all reasonable inferences in favor of the non-moving party.” *Mitchell v. Lawson Milk Co.* (1988), 40 Ohio St.3d 190, 192, 532 N.E.2d 753.

{¶10} In the appeal before us, both parties agree that the Ohio Supreme Court’s decision in *Doe v. United Methodist Church* (1994), 68 Ohio St.3d 531, 629 N.E.2d 402, is the governing law of this case. In *Doe*, a complaint was filed against the First United Methodist Church, Timothy S. Masten, and the Elyria City

School District alleging that Masten, a high school music teacher and music director at First United, sexually abused Doe over two hundred times between 1981 and 1984. In his complaint, Doe sought recovery for negligent hiring against the school district, as well as negligent and willful conduct on behalf of United Methodist because “the church had actual or constructive knowledge of Masten’s conduct with underage persons...,” and, therefore, failed to protect Doe from the specified conduct. *Id.* at 532.

{¶11} The *Doe* case came before the Ohio Supreme Court on an appeal from a Civ.R. 12(B)(6)/statute of limitations dismissal, and the Court preliminarily held that because Doe was aware that he was sexually abused by Masten when he reached the age of majority, then there was sufficient notice to trigger the commencement of the applicable statute of limitations to bar his claim against Masten. *Id.* at 538-39. The Court stated,

**a minor who is the victim of sexual abuse 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 where the victim knows the identity of the perpetrator and is fully aware of the fact that a battery has occurred.**

{¶12} *Id.* at 539. Moreover, the Court ruled that because the allegations against Masten were time barred by the statute of limitations, then the derivative claims based on Masten’s conduct against the church and the school district were barred as well pursuant to R.C. 2305.10. *Id.*

{¶13} However, the Ohio Supreme Court also addressed the independent claims arising from the alleged negligence of the school district and First United in

failing to take some action to protect Doe from Masten’s conduct. *Id.* The Court noted that these claims were “based upon the church’s and the school district’s *own acts or omissions* and have nothing to do with any theory of derivative liability.” *Id.* (emphasis in original). Regarding these independent claims, the Court stated:

**Thus, we recognize that the facts and events which triggered the statute of limitations on appellant’s claims for sexual abuse did not necessarily trigger the R.C. 2305.10 two-year period of limitations on appellant’s independent negligence claims against the church and the school district. *However, appellant has never claimed or argued that his knowledge of the sexual abuse was insufficient to apprise him of the possibility that the church or the school district had been negligent in failing to protect him from Masten. Under these circumstances, we are left to assume that the events that triggered the one-year statute of limitations for assault and battery were no different from the events that triggered the two-year statute of limitations that applies to appellant’s negligence causes of action against the church and the school district.***

*Id.* (internal citations omitted and emphasis added).

{¶14} Like *Doe*, in the instant case, appellant alleged in his complaint claims against the Archdiocese and the Archbishop that are independent of the claims against Hopp for the sexual abuse. These claims are based on the Archdiocese’s and the Archbishop’s *own acts or omissions* and have nothing to do with any theory of derivative liability. *Id.* Unlike *Doe*, however, appellant in this case has made a claim that his knowledge of the sexual abuse was insufficient to apprise him of the possibility that the church was negligent in failing to protect him from Hopp. Appellant’s complaint states:

**In April 2002, Plaintiff first learned that there were other victims of Hopp. Until that time, Plaintiff had no reason to believe that Defendants Archdiocese and Pilarczyk had ever known about Hopp’s abuse. *Until April 2002, Plaintiff’s knowledge of the abuse was insufficient to apprise him of the possibility that Defendants Archdiocese and Pilarczyk were negligent in failing to protect him, in failing to prevent further harm or in breaching a fiduciary duty to Plaintiff by failing to identify and assist him.***

Complaint at ¶7 (emphasis added).

{¶15} In dismissing appellant’s complaint in the present case, the trial court interpreted *Doe* as holding that, as a matter of law, “in sexual assault cases, the events triggering the limitations period for the abuse claim against the abuser also trigger the limitations period for negligence claims against the church.”

Decision and Order/Entry at p. 8. The trial court stated:

**Plaintiff’s allegations as to when he learned of Hopp’s other discipline are immaterial. The court in *Doe*...held that knowledge of the abuse itself and the identity of the clergy perpetrator is sufficient to apprise any claimants of the possibility of a claim against the church. The plaintiff’s knowledge of the abuse, his knowledge of the perpetrator, and his knowledge that he was a priest of the Archdiocese, was sufficient to apprise him of the possibility that the Archdiocese may have been negligent.**

Id. at 8-9.

{¶16} We disagree with the trial court’s reading of *Doe*. The language quoted earlier from the *Doe* decision clearly indicates that only because the plaintiff in *Doe* “never claimed that his knowledge of the sexual abuse was insufficient to apprise him of the possibility that the church or the school district had been negligent in failing to protect him,” that, *under those circumstances*, the

Ohio Supreme Court was *left to assume* that knowledge of the abuse also triggered knowledge of the possibility of independent claims against the church in that case.<sup>1</sup> *Doe*, supra at 539.

{¶17} In the case before us, appellant’s complaint specifically alleged insufficient knowledge to apprise him of the possibility that the Archdiocese and the Archbishop were negligent, thus falling squarely within the provisional circumstances outlined in *Doe*. In sum, we conclude that the appellant in this case has made the specific allegation, the absence of which was determinative in *Doe*, to wit: insufficiency of knowledge regarding the negligence of the Archdiocese until April 2002. As a result, if the allegations are true, the two-year statute of limitations in this case would not begin to run until that date, and the complaint is not subject to a Civ.R. 12(B)(6) dismissal. See *Doe*, supra at 539 (citing *Browning*

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<sup>1</sup> On this point, we also reject the interpretation of the First District Court of Appeals in *Cramer v. Archdiocese of Cincinnati* (2004), 158 Ohio App.3d 110, 814 N.E.2d 97, 2004-Ohio-3891. In *Cramer*, the court affirmed a Civ.R. 12(B)(6) dismissal of claims similar to those outlined in the case before us. *Id.* Like the instant case, the appellants in *Cramer* alleged insufficient knowledge to apprise them of the possibility that the Archdiocese were negligent. *Id.* However, like the trial court in the instant case, the *Cramer* court analyzed *Doe* and rejected this argument by opining that the notice of priest abuse is tantamount to notice of possible church involvement, which triggers the running of the two-year statute of limitations against the church as to all possible claims after the plaintiff reaches the age of majority. *Id.* at ¶14.

Moreover, while we find the determination in *Doe* that *Doe* did not claim or argue that his knowledge was insufficient to apprise him of the possibility of negligence to be the key factor in the *Doe* decision on this issue, the *Cramer* court dismisses that language as dicta. *Id.* at ¶12 (“Although the discussion in *Doe* with respect to the plaintiff’s discovery of the employer’s culpability was obiter dicta, the appellants claim that it has been adopted in the holdings of Ohio’s courts.”).

Finally, the *Cramer* court, in our view, went beyond the scope of Civ.R. 12(B)(6) by ruling as a matter of law that appellants’ knowledge that the Archdiocese had employed the priest and the fact that repeated assaults had all occurred on church property were sufficient facts to put the appellants “on notice that there was a possibility that the Archdiocese had been negligent.” *Id.* at ¶16. We believe such a determination can only be made by the trier-of-fact and is not appropriately made via a motion to dismiss on the pleadings.

*v. Burt* (1993), 66 Ohio St.3d 544, 613 N.E.2d 993.) Accordingly, the first and second assignments of error are sustained.

{¶18} In appellant's third assignment of error, he alleges that he is not time barred by the five-year statute of limitations governing the Ohio Corrupt Activity Act. In response, the Archdiocese and the Archbishop argue that (1) appellant has failed to allege the appropriate elements necessary to prove an Ohio Corrupt Activities Act violation and (2) that the five-year statute of limitations has run because appellant was abused by Hopp more than five years ago. We disagree.

For example, the complaint states:

**The persons controlling the affairs of the enterprise(s) have conducted and/or participated in, directly or indirectly, the affairs of the enterprise(s) through a pattern of corrupt activities or pattern or practice of corrupt activity in violation of O.R.C. §2923.32. Defendants Archdiocese, [Archbishop] and Hopp maintained and exercised control over the enterprise(s) alleged.**

**Upon information and belief, since approximately 1950 through the present, Defendants have conspired to and have engaged in conduct in violation of Ohio statutory and common law, including but not limited to: intentionally, recklessly, and/or negligently concealing the criminal conduct of their agents, including Defendant Hopp; aiding and abetting the concealment of criminal conduct; aiding and abetting criminal sexual conduct; failing to report criminal conduct of their agents; obstructing justice; obstructing state and/or local criminal investigation; evading civil and/or criminal prosecution and liability; perjury; destroying and/or concealing documents and records; victim and witness intimidation; violating the civil rights of children and families; engaging in mail and/or wire fraud; and committing fraud and/or fraudulent inducement of their parishioners.**

**Said actions or inactions were committed in furtherance of their scheme to protect predatory priests and other clergy and/or agents from criminal or civil prosecution in order to maintain or increase charitable contributions and/or to avoid public scandal in the Roman Catholic Church.**

**The persons controlling or directing the affairs of the enterprise(s) knew that the enterprise's clergy and employees, including Defendant Hopp, were sexually exploiting and abusing children, including the Plaintiff, and they showed willful indifference and/or reckless or intentional disregard for the children under their guidance and/or supervision in order to further their scheme. As a result of their acts, the enterprise(s), intentionally and showing willful indifference and/or reckless disregard, maintained a web of predatory priests who perpetrated criminal acts of child abuse throughout Ohio for over fifty (50) years.**

**The prohibited criminal conduct of the enterprises(s) constitutes a pattern of corrupt activity, in that there were two or more predicate incidents of corrupt activity that are related to the affairs of the same enterprise, are not isolated, and are not so closely related to each other and connected in time and space that they constitute a single event.**

**Upon information and belief, persons controlling or directing the affairs of the enterprise(s) committed a continuing pattern of corrupt activity in furtherance of its scheme by engaging in fraudulent conduct across Ohio and the world, including but not limited to the following:**

**In 1962, the Vatican prepared a document for "all Patriarchs, Bishops and Other Diocesan Ordinaries" entitled "Instruction On The Manner Of Proceedings In Cases of Solicitation." This document was supplied to, and was binding upon, all American bishops and officials, including agents of Defendant Diocese.**

**The document cautioned that "[This text is] (sic) to be diligently stored in the secret archives of the Curia as strictly confidential." The document was essentially an instruction manual on how to handle allegations of sexual abuse made against priests and other religious agents "in a most secretive way, and after they have been defined and given over to**

**execution, they are to be restrained by perpetual silence...under penalty of excommunication.” The method of inquisition of the accused is set forth, as are possible penalties, ranging from suspension from the celebration of Mass to reduction to the status of lay brother.**

**Further, it is clear that one objective of the Vatican was to suppress scandal attaching to priest molestation cases for the express purpose of avoiding financial loss. The document specifically advised that “delinquent” priests should not “[remain] in a certain place, i.e. should be transferred to another assignment, if necessary to [sic] ‘remove the near occasion (i.e. temptation) [sic]...or for the prevention of scandal or reparation for it.’” [sic]**

**The document never even mentions the victims of “delinquent priests”; nor does the document advise or direct bishops and other church officials to give notice of potential risk to any civil or religious authority, in order to protect future victims and prevent future molestation.**

**The document never advises or directs bishops and other church officials to report criminal sexual conduct of “delinquent” priests to appropriate law enforcement agencies.**

**In April of 1990 at a Midwest Canon Law Society conference in Ohio, Bishop James Quinn of Cleveland gave an address titled “NCCB Guidelines, and other Considerations in Pedophilia Cases,” in which he stated:**

**Nevertheless, personnel files should be carefully examined to determine their content. Unsigned letters alleging misconduct should be expunged. Standard personnel files should contain no documentation relating to possible criminal behavior. Serious moral questions, signed allegations, those should be a part of the secret file anyhow. But they still subpoena them. But comb through your files.**

**Now what files have been subpoenaed, they cannot be tampered with; destroyed, removed; that constitutes obstruction of justice and contempt of court. Prior, however, thought and study ought to be given if you think**

**it is going to be necessary; if there's something there you really don't want people to see you might send it off to the Apostolic Delegate, because they have immunity to protect something that is potentially dangerous, or that you consider to be dangerous, you might send it there.**

**The conduct described above constitutes a “pattern of corrupt activity” and violates R.C. Section 2923.32, in that Hopp engaged in crimes of sexual offenses with minors, Defendants Archdiocese and [the Archbishop] failed to fulfill their legal obligations to report such crimes and participated in the concealment of such crimes, and the actions and/or knowing omissions of Defendants Archdiocese and [the Archbishop] facilitated Hopp's conduct and/or prevented Plaintiffs from seeking treatment or minimizing future harm.**

**Hopp engaged in numerous incidents of sexual offenses, and notice of such conduct was given to Defendants Archdiocese and [the Archbishop] on many occasions.**

Complaint at ¶¶31-39 (internal citations omitted).

{¶19} We have reviewed the complaint and reject the allegation of the Archdiocese and the Archbishop that the essential elements of the offense/cause of action were not sufficiently plead. See *Universal Coach v. New York Transit Authority* (1993), 90 Ohio App.3d 284, 290-91, 629 N.E.2d 28. Moreover, R.C. 2923.34(K) describes the statute of limitations associated with the Ohio Corrupt Activity Act, and it states that a cause of action may be commenced “at any time within five years after the unlawful conduct terminates or the cause of action accrues....” R.C. 2923.34(K). Pursuant to our discussion, *supra*, we conclude that because appellant alleged insufficient knowledge to apprise him of the possibility that the Archdiocese and the Archbishop were engaged in corrupt activities pursuant to R.C. 2923.32 until April 2002, then, if proven, his time would accrue

beginning on that date. Accordingly, appellant would have until April 2007 to be within the five-years statute of limitations stated in R.C. 2923.34(K). Thus, the third assignment of error is sustained.

{¶20} In sum, all three assignments of error are sustained, the judgment of the Common Pleas Court of Shelby County dismissing the complaint on a Civ.R. 12(B)(6) motion is reversed and the matter is remanded to that court for further proceedings according to law.

*Judgment Reversed and Cause Remanded.*

**CUPP AND BRYANT, JJ., concur.**