

[Cite as *Pagano v. Pagano*, 2006-Ohio-4503.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 87325

NICOLE PAGANO,	:	ACCELERATED
	:	
Plaintiff-Appellant	:	
	:	JOURNAL ENTRY
vs.	:	and
	:	OPINION
HELEN BERTHA PAGANO, ET AL.,	:	
	:	
Defendants-Appellees	:	

DATE OF ANNOUNCEMENT OF DECISION	:	AUGUST 31, 2006
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CHARACTER OF PROCEEDING:	:	Civil appeal from
	:	Common Pleas Court
	:	Case No. 525742

JUDGMENT	:	AFFIRMED.
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DATE OF JOURNALIZATION	:	
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APPEARANCES:

For plaintiff-appellant:	Jay Milano, Esq.
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MICHAEL J. CORRIGAN, J.:

{¶ 1} This case came to be heard upon the accelerated calendar pursuant to App.R. 11.1 and Loc.R. 11.1, the record from the Cuyahoga County Court of Common Pleas and the briefs of counsel. Plaintiff Nicole Pagano brought this suit against the estate of her grandfather, alleging he had sexually abused her as a four-year-old. Pagano informed her parents at the time the abuse occurred and the parents took her to a pediatrician for medical treatment. They even consulted with their minister and other family members about the abuse. But rather than seek civil or criminal sanctions, they cut off contact with the grandfather. Pagano then claimed to have repressed her memory of the abuse. After Pagano turned twenty-one years old, she saw her grandfather and claimed to recall her memory of abuse. She filed suit and her grandfather's estate (he died before the case had been decided) filed a motion for summary judgment on statute of limitations grounds under R.C. 2305.16. The court granted the motion, finding that Pagano knew that abuse had occurred, but waited more than two years after her eighteenth birthday to file her complaint.

{¶ 2} The issue in this appeal is whether the statute of limitations should be tolled for Pagano because, even though she informed her parents of the abuse at the time it occurred, she claims to have repressed the memory of abuse until after her twenty-first birthday, thus causing her to file her civil complaint outside the statute of limitations. We find the court

did not err on authority of *Doe v. Archdiocese of Cincinnati*, \_\_\_\_ Ohio St.3d \_\_\_\_, 2006-Ohio-2625, in which the syllabus states:

{¶ 3} "A minor who is the victim of sexual abuse has two years from the date he or she reaches the age of majority to assert any claims against the employer of the perpetrator arising from the sexual abuse when at the time of the abuse, the victim knows the identity of the perpetrator, the employer of the perpetrator, and that a battery has occurred. (*Doe v. First United Methodist Church* (1994), 68 Ohio St.3d 531, 1994-Ohio-531, 629 N.E.2d 402, paragraph two of the syllabus, followed.)"

{¶ 4} Pagano's claim that the statute of limitations should be tolled due to her repressing the memory of abuse is unavailing. In *Ault v. Jasko* (1994), 70 Ohio St.3d 114, 1994-Ohio-376, paragraph two of the syllabus states that "[t]he one-year statute of limitations period for sexual abuse in Ohio begins to run when 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.*" (Emphasis added.)

{¶ 5} There is no doubt that Pagano and her parents knew that the alleged sexual abuse had occurred. By her own admission, Pagano admitted that she knew her parents took steps to stop the abuse at the time it occurred. In the process, they severed all ties with the grandfather. Importantly, the parents were at one time a party to this case, albeit derivatively, for loss of consortium.

{¶ 6} With these undisputed facts, we find the court did not err by finding that Pagano, through the exercise of reasonable diligence, could have or should have discovered the abuse independent of any repressed memory.

Judgment affirmed.

It is ordered that appellees recover of appellant their costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Common Pleas Court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MICHAEL J. CORRIGAN  
JUDGE

ANTHONY O. CALABRESE, JR., J., CONCURS.

SEAN C. GALLAGHER, P.J., DISSENTS WITH  
SEPARATE OPINION.

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R.22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days

of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also, S.Ct.Prac.R. II, Section 2(A)(1).

COURT OF APPEALS OF OHIO EIGHTH DISTRICT

COUNTY OF CUYAHOGA

No. 87325

NICOLE PAGANO,	:	
	:	DISSENTING
	:	
Plaintiff-Appellant	:	OPINION
	:	
vs.	:	
	:	
HELEN BERTHA PAGANO, ET AL.,	:	
	:	
	:	
Defendants-Appellees	:	
	:	

DATE: AUGUST 31, 2006

SEAN C. GALLAGHER, P.J., DISSENTING:

{¶ 7} I respectfully dissent from the majority decision to affirm the trial court's granting of the defendant's motion for summary judgment. I would find, under these unique facts, the discovery rule is applicable and the statute of limitations was tolled because of Pagano's repressed memory syndrome.

{¶ 8} As the majority notes, there is no question that at the age of four, Pagano informed her parents of the abuse. Although she went to counseling for a number of years, the specific records of that treatment are not part of this record and we have no definitive information regarding whether she was aware of the

specific abuse or the identity of the perpetrator during that period. When she initially reported the incidents at the age of four, her parents and the professionals they consulted failed to take legal action. Pagano's parents took steps to keep her away from her grandfather, and she claims her memory was repressed. Her memory was then rekindled upon seeing her grandfather again when she was twenty-one years old.

{¶ 9} The victim in *Doe v. Archdiocese of Cincinnati*, 109 Ohio St.3d 491, 2006-Ohio-2625, was between the ages of twelve and fifteen at the time of the abuse, and he did not allege that he had repressed his memory of the alleged abuse. Here, Pagano was four years old and has alleged repressed memory. In both *Doe v. Archdiocese of Cincinnati*, supra, and *Doe v. First United Methodist Church*, 68 Ohio St.3d 531, 1994-Ohio-531, the court noted that "\* \* \*plaintiff knew the identity of the perpetrator and was *fully aware that a battery had occurred* at the time of the abuse." (Emphasis added.) Asserting that a four-year-old victim was fully aware that a battery had occurred under these facts is questionable.

{¶ 10} Although appellee takes issue with the fact that Pagano did report the incident when she was four years old, the act of informing an adult by no means establishes that a child of tender years fully understands that she has been sexually abused or that her memory could not be repressed. This is particularly so when, as here, the parents shield the victim from what happened.

{¶ 11} Pagano's expert, Dr. Daniel Brown, testified that Pagano did not reasonably know, nor could she have known, that she had been sexually abused. Other jurisdictions have found the discovery rule is applicable when the victim of sexual abuse may not have appreciated the wrongfulness of the conduct. See, e.g., *Hammer v. Hammer* (WI App. 1987), 418 N.W.2d 23.

{¶ 12} The Ohio Supreme Court has held that the discovery rule applies to toll the statute of limitations when a victim of childhood sexual abuse represses memories of that abuse until a later time. *Ault v. Jasko*, 770 Ohio St.3d 114, 117, 1994-Ohio-376.

There was evidence in this case that Pagano's memory of the abuse was repressed, and there is at least a material issue of fact as to when she later recalled the abuse. Accordingly, I would reverse the decision of the trial court and remand the case for further proceedings.