

SECOND JUDICIAL DISTRICT COURT  
COUNTY OF BERNALILLO  
STATE OF NEW MEXICO

CV-91-08259

SUSAN MARTINEZ-SANDOVAL,

Plaintiff,

vs

FATHER ROBERT J. KIRSCH, ROMAN CATHOLIC CHURCH  
OF THE ARCHDIOCESE OF SANTA FE, INC., a New Mexico  
Corporation, and ST. THOMAS APOSTLE CHURCH IN  
ABIQUIU, NEW MEXICO,

Defendants.

COURT'S FINDINGS OF FACT  
AND  
CONCLUSIONS OF LAW

Comes now the Court and makes the following Findings of  
Fact and Conclusions of Law in the above entitled matter.

FINDINGS OF FACT

1. Susan Martinez-Sandoval (Martinez-Sandoval) filed her  
Complaint on August 28, 1991.
2. In the Complaint Martinez-Sandoval alleges that she  
had a sexual relationship with Father Kirsch (Kirsch) from the  
fall of 1973 through July, 1978, which relationship was the  
proximate cause of her suffering personal injuries.
3. Prior to August 27, 1988, Martinez-Sandoval believed  
and/or was aware of the following:
  - a. She was 15 years old at the time she asserts the first  
sexual relationship with Kirsch occurred. Kirsch was a priest  
in the Fifties (50's).

b. In the fall or winter of 1973, she had contracted a venereal disease from Kirsch for which she received treatment from Dr. Yordy.

c. In the summer of 1974, she believed her relationship with Kirsch to be "invasive," "overwhelming," "suffocating" and "unhealthy."

d. During the fall of 1974, she complained to a family friend that she was being bothered and/or sexually molested by Kirsch and asked that friend how she could get Kirsch to leave her alone. The friend advised her to tell Kirsch to leave her alone and that what Kirsch was doing was wrong.

e. Her friend took her to see Father Biczak regarding her complaints about Kirsch. She was not under any delusion at the meeting. She testified she told Father Biczak of her sexual relationship with Kirsch.

f. In February 1975, in reply to notes from Martinez-Sandoval, Charlotte Torres wrote a letter to her warning her to get away from Kirsch before he ruined her life like he had Charlotte's daughter.

g. In 1974-75, during her senior year at Highland High School in Albuquerque, she was very depressed, thought of suicide, skipped a lot of school, had poor grades and often stayed at home in bed.

h. In August 1976, Martinez-Sandoval became pregnant. She believes Kirsch was the father.

i. In September, 1976, Martinez-Sandoval consulted Louis Koplik, M.D. about an abortion. Dr. Koplik refused to perform the abortion and referred her to Dr. Downing. Dr. Downing performed an abortion on Martinez-Sandoval in October 1976.

j. After the abortion, Martinez-Sandoval felt traumatized about the abortion and consulted Joseph Prinz, M.D. about a tubal ligation.

k. After the abortion, Martinez-Sandoval was very depressed and thought of suicide.

l. After the abortion Martinez-Sandoval consulted Dr. Kellogg, a psychiatrist, for approximately four months. She received psychotherapy and anti-depressants and anti-anxiety medication.

m. In 1976, Martinez-Sandoval was upset when Father Kirsch told her that Father Sigler was sexually involved with two boys. She knew that Father Sigler's asserted acts were improper.

n. in 1977 as a result of her relationship with Kirsch she stopped attending the Catholic Church.

o. By 1978, Martinez-Sandoval knew that people would say that the relationship between her and Kirsch was wrong.

p. Martinez-Sandoval did not tell her husband about Kirsch because she was afraid of his reaction.

q. Martinez-Sandoval did not tell her mother, her husband or her sister about the sexual relationship between her and

Kirsch because she believed they would tell her that it was wrong.

r. In 1978, when she was 20 years old because of feelings of disability and depression, she went to the New Mexico Department of Vocational Rehabilitation where she consulted Sarah Feeney, Ph.D. a psychologist. For a period of 6 months, Dr. Feeney treated her with psychotherapy and with anti depressant medication.

s. In 1979, she received treatment at Kaiser Permanente for maladjustment and depression. The treatment consisted of anti-anxiety medication.

t. In 1989, she saw a general practitioner who gave her anti-anxiety medication and recommended that she see a psychological therapist.

u. Martinez-Sandoval has never repressed her memory of any of the facts of her relationship with Kirsch, the physical injuries she suffered, or that the relationship was causing some of her emotional problems. She has never suffered from repression, any dissociative disorder, or any other condition that has prevented her at any time from recalling or remembering any facts surrounding the sexual relationship with Kirsch.

4. Martinez-Sandoval was injured as a result of the sexual relationship with Kirsch as follows:

- a. physical injury of contracting venereal disease and receiving treatment therefore.
- b. physical injury of pregnancy and the resulting

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abortion.

c. emotional and psychological problems.

5. Martinez-Sandoval was aware of the physical injury due to the venereal disease in 1973.

6. Martinez-Sandoval was aware of the physical injury due to the pregnancy and the resulting abortion in 1976.

7. Martinez-Sandoval was aware of some of her emotional and psychological problems since 1974 and she related some of them to her relationship with Kirsch. Since 1974 she has been aware the relationship (1) had caused her uncomfortableness, (2) was invasive, (3) was overwhelming, (4) was causing her to be distrustfulness, (5) had, on occasion, caused her to question her worthiness and (6) had on occasion caused her to have anger towards Kirsch. Prior to August 1988 she did not appreciate the full extent of her psychological problems, or the full extent of how these problems related to the sexual relationship with Kirsch or the proper treatment needed to treat them.

8. At all times material hereto, Martinez-Sandoval was aware (1) of her age, (2) of Kirsch's approximate age, (3) Kirsch was a priest and (4) of her sexual relationship with Kirsch.

9. For many years prior to August 29, 1988 Martinez-Sandoval was aware that it was wrongful for she and Father Kirsch to have a sexual relationship.

10. For many years prior to August 29, 1988, Martinez-Sandoval was aware of the factual elements necessary for a cause of action against these defendants.

11. Martinez-Sandoval with reasonable diligence should have discovered that a claim existed long prior to August 29, 1988.

12. Defendants did not conceal any facts from Martinez-Sandoval.

13. Martinez-Sandoval was always aware of all facts surrounding her sexual relationship with Kirsch, the facts of her physical injuries, and many of the facts of her emotional and psychological injuries. Martinez-Sandoval was aware of more facts relating to the injury than either of the defendants.

14. All Requested Findings of Fact contrary to these findings are herein denied as not being relevant or not being supported by the weight of the evidence.

#### CONCLUSIONS OF LAW

1. The Court has jurisdiction over the parties hereto and the subject matter hereof.

2. Section 37-1-8, NMSA 1978 (1990 Repl.) is the applicable Statute of Limitation. The Statute of Limitations on this cause of action would have run prior to August 1981 unless tolled by lack of discovery by fraudulent concealment.

3. Martinez-Sandoval has the burden of proving the tolling of the Statute of Limitations.

4. The knowledge of physical harm or injury is sufficient discovery of injury to prevent the tolling of the Statute based upon the lack of discovery of injury. If physical injury is known, the fact that psychological injury is unknown or the extent of it is unknown will not toll the statute even if the subsequent suit is filed for psychological damage only.

5. Martinez-Sandoval has failed:

- a. to present any evidence that prior to August 1988 she was unaware of the factual elements of a cause of action against these defendants arising out of the alleged sexual relationship with Kirsch.
- b. to present any evidence that prior to August 1988 that she could not with reasonable diligence have discovered the claim she asserts against defendants arising out of the alleged sexual relationship with Kirsch except for the full extent of the psychological injury.
- c. to present any evidence that the defendants concealed any of the factual elements of her asserted claim against the defendants.

6. Martinez-Sandoval has failed to carry her burden of proof to establish:

- a. that prior to August 1988, she was unaware of the factual elements of a cause of action against the defendants arising out of the alleged sexual relationship with Kirsch.

- b. that prior to August 1988, she could not with reasonable diligence have discovered the claim she asserts against these defendants arising out of the alleged sexual relationship with Kirsch.
- c. that the defendants concealed any of the factual elements of her asserted claim against the defendants.

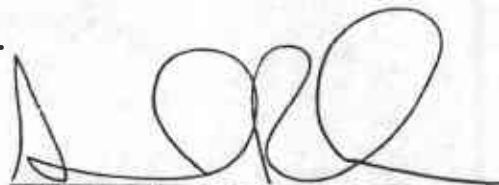
7. Damages due to psychological injuries suffered due to the alleged sexual relationship do not constitute a separate cause of action from physical injuries suffered from the same incident. Knowledge of either injury, with knowledge of the other necessary factual elements of a cause of action will prevent the tolling of the Statute of Limitations.

8. It is not appropriate for trial court to weigh the policy factors (i.e. the availability or non availability of evidence) or equities in applying the Statute of Limitations. Such is an appropriate consideration for Appeal Courts in determining the appropriate law to apply in all cases.

9. Each party should bear their own costs.

10. Judgment should be entered in conformity with these Findings of Fact and these Conclusions of Law.

11. All other Conclusions of Law contrary to these conclusions are herein denied.

  
GERALD R. COLE, DISTRICT JUDGE

CC:  
Bruce Pasternack  
Karen Kennedy  
Arthur Beach  
Nancy Hollander & Michelle Guttman

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