IN THE CIRCUIT COURT OF THE COUNTY OF SAINT LOUIS
STATE OF MISSOURI

JOHN DOE 116, Plaintiff, v. MARIANIST PROVINCE OF THE UNITED STATES, *et al.*, Defendants.	)	Cause No. 12SL-CC00653 Division No. 19

ORDER AND JUDGMENT

Now before the Court is Defendants' Motion for Summary Judgment. The Motion was called, heard, and submitted on February 18, 2015. Defendants argue that all of Plaintiff's claims are barred by the statute of limitations, and that Count I is barred for the additional reason that non-perpetrators cannot be held liable for aiding and abetting childhood sexual abuse, and that Counts II and IV also fail as a matter of law pursuant to *Gibson v. Brewer*, 952 S.W.2d 239 (Mo. 1997). Having considered the pleadings, the arguments of counsel, reviewed the controlling authorities, and now being duly advised in the premises, the Court enters its order and judgment.

I. Background

Plaintiff was a student at Defendant Chaminade College Prep ("Chaminade") during the late 1960s and early 1970s, beginning in 1966 when he enrolled in the 7th grade. It was as a student at Chaminade that he first met Louis Meinhardt ("Meinhardt")[1], who was a teacher and coach at the school, and a member of the religious order Defendant Marianist Province of the United States ("Marianists"). The Marianists ran Chaminade. Plaintiff alleges in his Petition that while he was a student at Chaminade, Meinhardt watched Plaintiff in the shower,[2] and that on

another occasion he grabbed and fondled Plaintiff's genitals during a private tutoring session. Plaintiff claims that he repressed his memories of the alleged events, and therefore did not file his Petition until 2012. He seeks damages against the Marianists, Chaminade, and Father Martin Solma, the current head of the Marianists, on the theories that they aided and abetted Meinhardt's sexual abuse / battery (Count I), negligently supervised Meinhardt (Count II), intentionally failed to supervise Meinhardt (Count III), negligently failed to supervise children (Count IV), intentionally inflicted emotional distress (Count V), and breached their fiduciary duty (Count VI).

II. Whether the Statute of Limitations Bars Plaintiff's Claims

Defendants first argue that the statute of limitations bars all of Plaintiff's claims. Specifically, Defendants contend that the last incident of alleged abuse occurred during the first half of 1970, and that Plaintiff was sufficiently alarmed and distraught and remembered the incident such that his "damage resulting thereform [was] sustained and [was] capable of ascertainment." § 516.100 R.S.Mo. Pursuant to Defendants' theory, given the tolling provisions of § 516.170 R.S.Mo., Plaintiff should have filed his petition no later than his twenty-sixth birthday, which occurred in 1979. As noted above, Plaintiff contends that his memory was repressed as a result of the alleged abuses, and that therefore his damages were not "capable of ascertainment" pursuant to the Supreme Court's holding in *Powell v. Chaminade College Preparatory, Inc.*, 197 S.W.3d 576 (Mo. 2006).

Powell instructs us that the "salient issue" in these types of cases is whether a "reasonable person in [Plaintiff's] position would have known or been put on inquiry notice not just of the wrong and nominal immediate injury therefrom, but also that substantial, non-transient damage had resulted and was capable of ascertainment." *Powell*, 197 S.W.3d at 578. This test is an

"objective" one, meaning that when plaintiff "subjectively learned of the wrongful conduct" is irrelevant. *Id.* at 584. The Court elaborated by stating that if "the memory of the wrong was repressed *before* the victim had notice both that a wrong had occurred and that substantial damage had resulted, or *before* the victim knew sufficient facts to be put on notice of the need to inquire further as to these matters, then the claim would not yet have accrued at the time the victim repressed his or her memory of the events." *Id.* (emphasis added).

The Court concludes that, like the case in *Powell*, there is a genuine issue of material fact as to whether a "reasonable person in [Plaintiff's] situation would have been capable of ascertaining the substantial nature of the damages he suffered and for which he now seeks recompense." *Id.* at 586. Because there is "conflicting evidence of what [Plaintiff] knew at what point," there is a genuine issue of material fact that cannot be resolved by summary judgment but instead is a question for the finder of fact. *Id.* at 578; *ITT Commercial Fin. Corp. v. Mid-Am. Marine Supply Corp.*, 854 S.W.2d 371 (Mo. 1993). Accordingly, Defendants' Motion for Summary Judgment will be denied as to issue that the statute of limitations bars Plaintiff's claims.

III. Whether Defendants Can Be Held Liable as Aiders and Abettors to Meinhardt

The Plaintiff asserts in Count I of his Petition that Defendants should be held liable as aiders and abettors of Meinhardt's alleged malfeasance. Defendants argue contrarily that non-perpetrators cannot be held liable under the Childhood Sexual Abuse Act (§ 537.046 R.S.Mo.). The court finds that no court in Missouri with authority to bind this Court has directly decided this precise issue. However, this Court finds persuasive the analyses of the United States Court of Appeals for the Eighth Circuit concluding that non-perpetrator defendants cannot be held liable under § 537.046 R.S.Mo. *See Walker v. Barrett*, 650 F.3d 1198, 1208-1210 (8th Cir. 2011).

The court finds no genuine issues of material fact on this point, and that Defendants are entitled to judgment as a matter of law. *ITT Commercial Fin. Corp.* Therefore, Defendants' Motion will be granted as to Count I of Plaintiff's Petition.

IV. Whether Plaintiff's Negligence Claims are Barred by *Gibson v. Brewer*

Finally, Defendants contend that Counts II (Negligent Supervision) and IV (Negligent Failure to Supervise Children) are barred by the Missouri Supreme Court's decision in *Gibson v. Brewer*, 952 S.W.2d 239 (Mo. 1997), in which it was held that adjudicating these kinds of negligence claims against religious organizations would require a court to "excessively entangle itself in religious doctrine, policy, and administration," which in turn violates the First Amendment. *Gibson*, 952 S.W.2d at 250. Plaintiff counters by arguing that the Missouri Supreme Court misinterpreted federal First Amendment jurisprudence. Setting aside the question of whether Plaintiff is correct, this Court is bound to apply Missouri law, which was unambiguously set forth in *Gibson* and squarely applicable to the case at bar. *Doe v. Roman Catholic Archdiocese of St. Louis*, 347 S.W.3d 588 (Mo.App. E.D. 2011). Accordingly, there are no material facts in dispute on this point and Defendants are entitled to judgment as a matter of law on Counts II and IV of Plaintiff's Petition.

V. Order

Accordingly, it is ORDERED, that Defendants' Motion for Summary Judgment is hereby, GRANTED as to Counts I, II, and IV of Plaintiff's Petition, and DENIED in all other respects.

SO ORDERED this 24th day of March, 2015:

Gloria Clark Reno, Circuit Judge
Division 19

cc: counsel of record