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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(San Joaquin)

L.A.,

Plaintiff and Appellant,

v.

THE ROMAN CATHOLIC BISHOP OF
STOCKTON et al.,

Defendants and Respondents.

C057895

(Super. Ct. No. CV031343)

Plaintiff, who has been designated the fictitious name L.A., appeals from a judgment following the sustaining of a demurrer, without leave to amend, to her complaint for damages against defendants The Roman Catholic Bishop of Stockton, the Pastor of Presentation Church, and the Pastor of St. Anne Church (collectively, defendants). The allegations of the complaint are, in all material respects, identical to those of the plaintiff in a related case before us, *D.D. v. The Roman Catholic Bishop of Stockton*, C057260 (D.D.).

Our opinion in *D.D.*, which we are filing contemporaneously with this decision, governs the disposition of this appeal. We

shall therefore affirm the judgment for the reasons set forth in our lengthy discussion in that case.

FACTUAL BACKGROUND

Since this is an appeal following an order sustaining a demurrer, we summarize and accept as true all well-pleaded material allegations of the complaint. (*Hensler v. City of Glendale* (1994) 8 Cal.4th 1, 8, fn. 3; *Shoemaker v. Myers* (1990) 52 Cal.3d 1, 7.) We exercise our independent judgment in reviewing a demurrer to determine whether the factual allegations of the complaint state a cause of action. (*Schmidt v. Foundation Health* (1995) 35 Cal.App.4th 1702, 1706.)

The complaint

Plaintiff alleges she was the victim of horrific and continuous acts of sexual abuse by Doe 6, a priest, teacher and agent of defendants. The abuse occurred between 1981 and 1984, when plaintiff was between the ages of seven and nine. Defendants and their employees knew of the abuse and concealed, condoned, and otherwise failed to protect plaintiff from Doe 6, despite actual or constructive notice that he had abused other minors and was a chronic child molester.

Plaintiff, now well into adulthood, "immediately repressed all memories of said harassment, abuse, and molestation as a direct result of the trauma inflicted by [Doe 6], and had no awareness of the actions, injury, or wrongfulness of such acts" at the time they occurred.

On December 20, 2004, plaintiff recovered her memory of the sexual abuse when, while riding in an elevator, she smelled a certain mixture of body odor and cologne, which triggered her childhood memories of being molested. During this elevator ride, plaintiff "discovered that her psychological injuries and/or illness, were actually caused by the childhood sexual harassment, molestation and abuse she suffered at the hands of DOE 6, while she was a minor parishioner and student."

Plaintiff seeks damages against defendants based on a number of legal theories, including negligent supervision, negligent hiring and retention, failure to warn, constructive fraud, sexual battery, assault, and sexual harassment.

Procedural history

Plaintiff filed her complaint on December 6, 2006. Defendants demurred, inter alia, on the ground that the complaint was time-barred. The trial court agreed with defendants and sustained the demurrer without leave to amend. The court's order states in pertinent part:

"IT IS ORDERED that the Demurrer be, and is hereby, sustained without leave to amend . . . on the ground that: [¶] 1) *Hightower v. Roman Catholic Bishop of Sacramento* (2006) 142 Cal.App.4th [759] is applicable. Plaintiff's claim lapsed prior to January 1, 2003. Plaintiff enjoyed a one-year revival window, and she did miss it. Further, her claims against non-direct perpetrators are barred by the statute of limitations[, section] 340.1[, subdivision] (c). [¶] 2) Assuming a tolling

of the statute of limitations based on repressed memory, plaintiff is barred by the one-year statute for personal injury claims that existed at the time her cause of action accrued-- December 20, 2004--old C[ode of] C[ivil] P[rocedure] section 340."

DISCUSSION

I. Plaintiff's Arguments for Reversal Are Without Merit

Plaintiff's arguments are indistinguishable from those raised by the plaintiff in *D.D.* We reject each of them for the reasons we have fully explained in our opinion in that case.

II. *Hightower* Controls

Plaintiff also asserts that the trial court incorrectly relied on *Hightower v. Roman Catholic Bishop of Sacramento* (2006) 142 Cal.App.4th 759 (*Hightower*) in ruling that her claim was time-barred because she did not avail herself of the revival window that opened in 2003 under section 340.1, subdivision (c). She points out that, unlike *Hightower*, who was aware of the sexual abuse *at the time it was perpetrated*, she pleaded that she had no awareness of the sexual abuse until she recovered her repressed memory in late 2004.

However, as we point out in *D.D.*, the part of the *Hightower* opinion upon which plaintiff relies was *dictum*. The essence of *Hightower's* holding was that in creating the one-year revival window, "[t]he Legislature . . . drew a clear distinction between claims that were time-barred and those that were not," and that permitting application of the delayed discovery

provision of section 340.1, subdivision (a) to Hightower's case "would obliterate that distinction." (*Hightower, supra*, 142 Cal.App.4th at pp. 767-768.) That holding remains equally applicable to plaintiff's claim here.

DISPOSITION

The judgment is affirmed. Defendants shall recover costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1), (2).)

_____ BUTZ _____, J.

We concur:

_____ SCOTLAND _____, P. J.

_____ BLEASE _____, J.