

FILED
SIXTH JUDICIAL CIRCUIT

29 SEP 09 2013

[Signature]
CLERK OF THE CIRCUIT COURT
CHAMPAIGN COUNTY, ILLINOIS

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
CHAMPAIGN COUNTY, ILLINOIS

JANE DOE-1,)
)
Plaintiff,)
-vs-)
)
JON A. JAMISON, ST. JOSEPH-OGDEN)
CHSD #305 BOARD OF EDUCATION,)
CHAD UPHOFF, BRIAN BROOKS and)
JAMES M. ACKLIN)
)
Defendants.)

SCANNED

NO.: 2012-L-83

JURY TRIAL DEMANDED

**PLAINTIFF'S SURREPLY TO DEFENDANTS' RESPONSE TO HER SUPPLEMENTAL
MEMORANDUM OF LAW IN SUPPORT OF HER MOTION FOR LEAVE TO ADD
NEW DEFENDANTS, TO ADD RESPONDENT IN DISCOVERY, AND TO FILE
SECOND AMENDED COMPLAINT**

Plaintiff, Jane Doe-1, by and through their one of her attorneys, M. Dennis Mickunas, for her Surreply to Defendants' Response to Her Supplemental Memorandum of Law in Support of her Motion for leave to add new Defendants, to add Respondent in Discovery, and to file Second Amended Complaint, states as follows:

Introduction

Plaintiff filed her Motion and Memorandum of Law on June 13, 2013 seeking to add new Defendants VICTOR ZIMMERMAN ("Zimmerman") and TERRI REIN ("Rein"), and seeking to add new counts against existing Defendants. ST. JOSEPH-OGDEN CHSD #305 BOARD OF EDUCATION, CHAD UPHOFF, BRIAN BROOKS, and JAMES M. ACKLIN ("District Defendants"), and Zimmerman filed their Response in Opposition to Plaintiffs Motion on July 19, 2013. Plaintiff filed her "Supplemental Memorandum" in support of her Motion on July 29, 2013. District Defendants filed their Response to Plaintiffs Supplemental Memorandum ("Defs.' Sec. Resp.") on August 27, 2013. In their Response, the District Defendants and Zimmerman

for the first time raised the argument that the Plaintiff did not suffer “childhood sexual abuse.” The District Defendants further argue for the first time that the 1-year limitations period of the Tort Immunity Act applies, and that all claims against the District Defendants were untimely from the start.

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Argument

As is more fully argued below, the allegations made against Jamison *do constitute* childhood sexual abuse. Additionally, even if the 20-year limitation period for childhood sexual abuse does not apply, the 2-year limitation period for personal injury applies.

A. **The Plaintiff's Allegations Are Of Childhood Sexual Abuse.**

Section 13-202.2 of the Illinois Code states, in relevant part:

“‘Childhood sexual abuse’ means an act of sexual abuse that occurs when the person abused is under 18 years of age.

‘Sexual abuse’ **includes but is not limited to** sexual conduct and sexual penetration as defined in Section 11-0.1 of the Criminal Code of 2012. (Emphasis added.)

735 ILCS 5/13-202.2.

The District Defendants and Zimmerman opine that “Plaintiff’s allegations of conduct by Defendant Jamison do not fall within these definitions, nor are her allegations of the same type of conduct.” Defs.’ Sec. Resp., 3. The District Defendants and Zimmerman then proceed to correctly point out that the Plaintiff’s allegations do not *exactly* match the definitions of sexual conduct and sexual penetration given in Section 11-0.1 of the Criminal Code. In particular, the District Defendants and Zimmerman claim that the Plaintiff’s “most serious allegations then, that Jamison rubbed her thigh and back and that he kissed her passionately, do not allege conduct that is statutorily defined as ‘sexual conduct’ under Section 12-12.” Defs.’ Sec. Resp., 6. In a footnote, the District Defendants and Zimmerman provide their analysis of the phrase “includes but is not limited to” in which they state that the phrase “does not allow for the inclusion of

sexual harassment, sexual grooming, or other conduct that is dissimilar to the conduct listed or conduct negated by the listing,” Defs.’ Sec. Resp., 6, fn. 2.

However, Plaintiff contends that the “most serious allegations” of rubbing her thigh and back, and passionate kissing *are* similar to the conduct listed, and therefore *do* fall within the Section 13-202.2 definition of sexual abuse. SCANNED

Indeed, such actions are so similar that they are included in the definition of “childhood sexual abuse” elsewhere in the Code. Looking to the Abused and Neglected Child Reporting Act (“ANCRA”):

“‘Abused child’ means a child whose parent or immediate family member, or any person responsible for the child's welfare, or any individual residing in the same home as the child, or a paramour of the child's parent:

(c) commits or allows to be committed any sex offense against such child, as such sex offenses are defined in the Criminal Code of 2012 or in the Wrongs to Children Act, **and extending those definitions of sex offenses to include children under 18 years of age;**” (Emphasis added.) 325 ILCS 5/3

Therefore, the definition of “sexual conduct,” for purposes of ANCRA is modified as follows:

“Sexual conduct” means any intentional or knowing touching or fondling by the victim or the accused, either directly or through clothing, of the sex organs, anus, or breast of the victim or the accused, or any part of the body of a child ~~under 13 years of age~~, or any transfer or transmission of semen by the accused upon any part of the clothed or unclothed body of the victim, for the purpose of sexual gratification or arousal of the victim or the accused. 735 ILCS 5/12-12(e)

Clearly Jamison’s acts were done “for the purpose of sexual gratification or arousal of the victim or the accused.” Therefore, the allegations of rubbing Plaintiff’s thigh and back and passionately kissing the Plaintiff constitute “sexual offenses” for purposes of ANCRA; they are thus “similar to” the acts described in Section 12-12(e), and constitute “childhood sexual abuse” for the purposes of Section 13-202.2.

B. Even If The 20-Year Limitation Period of Section 13-202.2 Does Not Apply, The 2-Year Limitation Period of Section 12-211 Applies.

Even if this Court finds that Jamison's actions do not constitute childhood sexual abuse, the 2-year limitations period of Section 12-211 applies to the Plaintiff's personal injury claims. SCANNED

Section 13-211 of the Illinois Code of Civil Procedure states, in relevant part:

"Minors and persons under legal disability. If the person entitled to bring an action, specified in Sections 13-201 through 13-210 of this Act, at the time the cause of action accrued, is under the age of 18 years, or is under a legal disability, then he or she may bring the action within 2 years after the person attains the age of 18 years, or the disability is removed." 735 ILCS 5/13-211

Plaintiff's action here is for personal injury, with a limitation period governed by Section 13-202, which states, in relevant part:

"Actions for damages for an injury to the person *** shall be commenced within 2 years next after the cause of action accrued[.]" 735 ILCS 5/13-202


Therefore, the Plaintiff had until her 20th birthday to bring this action. Whether the conflicting one-year limitation period of the Tort Immunity Act governs was settled in *Bertolis v. Community Unit School Dist. No. 7*, 671 N.E.2d 79, 283 Ill.App.3d 874, 219 Ill.Dec. 414 (Ill. App. 4 Dist., 1996). Jennifer Bertolis was injured at Gillespie High School when she was 15 years old, and filed her complaint against the Community Unit School District No. 7, and the Gillespie, Illinois, Board of Education one day before her 20th birthday. The Appellate Court determined that Section 13-211 controlled rather than the Tort Immunity Act, stating:

"On appeal, we are asked to determine which of two applicable but conflicting statutes of limitation, contained in section 13-211 of the Code of Civil Procedure (Code) (735 ILCS 5/13-211 (West 1994)) and section 8-101 of the Local Governmental and Governmental Employees Tort Immunity Act (Tort Immunity Act) (745 ILCS 10/8-101 (West 1994)), governs the action. We conclude the two-year limitation period in section 13-211 of the Code controls[.]" *Bertolis*, 283 Ill.App.3d 874 at 875.

WHEREFORE, for these and other reasons detailed in Plaintiff's previously submitted Memoranda of Law in support of her Motion, Plaintiff respectfully asks that the Court allow her to file her Second Amended Complaint and Jury Demand, *instante*.

Respectfully submitted,

JANE DOE-1, Plaintiff
BY: M. DENNIS MICKUNAS, one of her attorneys

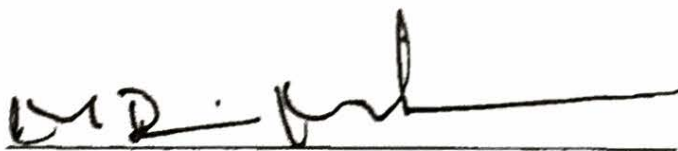

M. Dennis Mickunas

CERTIFICATE OF SERVICE

I, M. Dennis Mickunas, do hereby certify that I did, on the 9th day of September, 2013, send by First Class United States Mail, postage fully prepaid, a true and correct copy of the foregoing to:

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1710 Raymond Drive
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Therefore, given that the claims against the District and District Defendants were filed within the 2-year limitation period, it follows that the new claims that the Plaintiff seeks to add do relate back under Section 2-616.

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WHEREFORE, for these and other reasons detailed in Plaintiff's previously submitted Memoranda of Law in support of her Motion, Plaintiff respectfully asks that the Court allow her to file her Second Amended Complaint and Jury Demand, *instanter*.

Respectfully submitted,

JANE DOE-1, Plaintiff
BY: M. DENNIS MICKUNAS, one of her attorneys



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