THE STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS SUPERIOR COURT

No. 217-2020-cv-00026

David Meehan

v.

New Hampshire Department of Health and Human Services et al

THIS DOCUMENT PERTAINS ONLY TO PLAINTIFF MEEHAN'S INDIVIDUAL CASE

THIS DOCUMENT DOES NOT PERTAIN TO CONTRACTOR DEFENDANTS

MOTION FOR JUDGMENT NOTWITHSTANDING VERDICT

The Department of Health and Human Services ("DHHS"), by and through counsel, pursuant to Rule 43, and for all those reasons in the full trial record – incorporated herein by reference in full – DHHS is entitled to judgment on all counts in the complaint.

A. All of Plaintiff's claims are barred by the three-year statute of limitations within the limited waiver of sovereign immunity.

RSA 541-B:14, IV provides that "[a]ny claim submitted under [RSA chapter 541-B] shall be brought within 3 years of the date of the alleged bodily injury, personal injury or property damage or the wrongful death resulting from bodily injury." It is undisputed that all of Plaintiff's claims arose no later than September 12, 1998. Indeed, Plaintiff stated that after the groin injury on September 12, 1998, all claimed abuse stopped. Therefore, Plaintiff must have filed this lawsuit no later than September 12, 2001. The burden, then, is on Plaintiff to prove the applicability of the discovery rule. *See Kelleher v. Marvin Lumber & Cedar Co.*, 152 N.H. 813, 824 (2005) ("Once the defendant establishes that the cause of action was not brought within

three years of the alleged act, the burden shifts to the plaintiff to raise and prove the applicability of the discovery rule.").

RSA 508:4, I, provides:

> [W]hen the injury and its causal relationship to the act or omission were not discovered and could not reasonably have been discovered at the time of the act or omission, the action shall be commenced within 3 years of the time the plaintiff discovers, or in the exercise of reasonable diligence should have discovered, the injury and its causal relationship to the act or omission complained of.

"Thus, the discovery rule exception does not apply unless the plaintiff did not discover, and *could not reasonably have discovered*, either the alleged injury or its causal connection to the alleged negligent act." *Beane v. Dana S. Beane & Co.*, 160 N.H. 708, 713 (2010) (quotation marks omitted; emphasis added).

As the New Hampshire Supreme Court recently reiterated, "the discovery rule employs an objective standard," so a "plaintiff's *subjective knowledge is not dispositive* of" this issue. *Troy v. Bishop Guertin High Sch.*, 176 N.H. 131, 136 (2023) (quotation marks omitted; emphasis added). Rather, "[a] party attempting to invoke the discovery rule will be held to a *duty of reasonable inquiry*." *Id.* at 137 (citing *Portsmouth Country Club v. Town of Greenland*, 152 N.H. 617, 624 (2005)) (emphasis added). "The discovery rule applies only when a plaintiff 'did not have, and could not have had with due diligence, the information essential to bringing suit.'" *Id.* (quoting *Portsmouth Country Club*, 152 N.H. at 624).

Further, for the statute of limitations to run, "a plaintiff need not be *certain* of this causal connection; the *possibility* that it existed will suffice to obviate the protections of the discovery rule." *Beane*, 160 N.H. at 713 (emphasis added). Significantly, "[r]egardless of how the predicate *facts* become (or should have become) available to a putative plaintiff, the claim

accrues at that point, even if the plaintiff lacks knowledge of his or her *legal* rights." *Ouellette v. Beaupre*, 977 F.3d 127, 139 (1st Cir. 2020).

The discovery rule, therefore, requires Plaintiff to have filed suit by the *earlier* of (a) when Plaintiff personally knew of his alleged injury and the *possibility* of a *factual* (not legal) connection to the Youth Development Center ("YDC"); or (b) when a *reasonable plaintiff*, *exercising reasonable diligence*, would have known of the alleged injury and the *possibility* of a factual (not legal) connection to the YDC.

Plaintiff's last claimed incident of abuse was in September of 1998. Plaintiff was released from YDC in 1999. Plaintiff, however, did not file this action until January 2020. A reasonable plaintiff, with a duty of reasonable inquiry, would have known of his injuries and the mere possibility of a factual connection to YDC well before January 2017. The evidence presented at trial demonstrates that Plaintiff knew about his alleged injuries long before January 2017. There is no dispute that Plaintiff knew about the alleged abuse and resulting injuries at the time the abuse occurred and never forgot about it.

The evidence also demonstrates that Plaintiff has always known of the possible connection of his alleged injuries to YDC. He has known since at least 1995 that YDC is a State-run facility – he was committed to the YDC by the Rockingham District Court on multiple delinquency charges – and he has always known that his alleged abusers were employees of YDC. Plaintiff also has always known that his alleged abusers were hired by YDC and supervised by higher-level officials.

Plaintiff testified multiple times about his knowledge of the possible factual connection between his alleged injuries and YDC. For instance, Plaintiff testified that he had been trying to tell people about what had happened to him at the YDC going as far back as 2002 – if not earlier.

Plaintiff The jury heard testimony of numerous and regular occasions where Plaintiff was telling his therapists since 2002, and for year after year, that he was having nightmares and flashbacks as a result of the abuse that he endured at the YDC. Plaintiff also testified, and the evidence shows, that Plaintiff filed a claim for social security benefits in 2012 based on the injuries – namely PTSD – that he claimed to have suffered as a result of what happened to him at YDC. Plaintiff's economist even used this year as a starting point for the economic damages calculation for Plaintiff's injuries at YDC. And, Plaintiff specifically testified, and Exhibit E1 shows, that at least as of October 8, 2013, Plaintiff was aware of his injury, and was aware of a potential causal connection between his injuries and the YDC. Specifically, Plaintiff was asked "if [Exhibit E1 – Seacoast Mental Health Records] is accurate, it means that in October of 2013, at least by then, you were aware of your injury and you were aware of a potential causal connection between your injuries and the detention center, correct?" Plaintiff responded, "it would implicate that, yes."[1] There was no evidence that Exhibit E1 – Plaintiff's own Seacoast Mental Health records – are inaccurate.

Moreover, even if Plaintiff did not *personally* know of the possible connection to YDC, a *reasonable* plaintiff in his position exercising *reasonable* diligence would have known of the possible connection based on that which is outlined above and for those reasons set forth more fully in the trial record. Additionally, in a similar case (*S.C. v. DHHS*), the plaintiff sued the State in 2011, more than eight years before Plaintiff's lawsuit, based on alleged abuse (including sexual abuse) perpetrated by YDC staff while he was a resident of YDC in 1997-1998. Exercising due diligence, Plaintiff should have brought his suit long before he did. Given his

[1] New Hampshire YDC trial: David Meehan testifies for fourth day (Part 3) (https://www.wmur.com/article/new-hampshire-ydc-trial-david-meehan-day-4-part-3/60581720) at 0:10:20-0:10:50 (last visited 4/27/2024).

lack of reasonable diligence since at least September 12, 1998, Mr. Meehan's own alleged subjective ignorance until 2017 does not satisfy his burden of proof under the discovery rule.

Because all of Plaintiff's claims are time-barred, this Court lacks subject-matter jurisdiction under RSA 541-B and DHHS is entitled to a verdict in its favor.

B. Even if Plaintiff's claims are not time-barred, DHHS is entitled to a verdict in its favor on the merits of all claims.

Plaintiff asserted claims of breach of fiduciary duty and negligence (specifically, negligent hiring, retention, training and supervision). This court previously ruled that discretionary function immunity, *see* RSA 541-B:19, I(c), narrows Plaintiff's claims in the following way: policy decisions regarding the general hiring, training, and supervision of staff are barred by discretionary function immunity; but derelictions of duty in violation of established common law duties of care are not barred by sovereign immunity. *See* Order on DHHS's Motion to Dismiss the Master Complaint Nos. 1 and 2, pp. 24-39. Notwithstanding this ruling and the burden of proving what the common law duties of care of the leadership of a secure juvenile detention facility might have been in 1996-1998, Plaintiff elected not to call his designated liability expert, Dr. Patrick McCarthy, a standard of care/policies expert. As a result, the Plaintiff presented no evidence to establish the standard of care for the DHHS leadership during the relevant time periods. There was no evidence to support the notion that DHHS breached its standard of care in relation to the causes of action alleged. In the absence of actual evidence, the jury was left to speculate about what the standard of care was. How could a jury of laypeople in 2024 have any idea what the leadership of a juvenile detention facility like YDC was required to have for hiring, training and supervision policies and procedures twenty-eight years ago? Clearly, they could not.

To succeed on a claim of negligent hiring and retention, a plaintiff must prove he was injured in a foreseeable way by "an employee that the employer knew or should have known was unfit for the job so as to create a danger of harm to third persons." *Marquay v. Eno*, 139 N.H. 708, 718 (1995). For example, "a school . . . has a duty not to hire or retain employees that it knows or should know have a propensity for sexually abusing students." *Id*. at 720. Quite simply, Plaintiff has presented no evidence that could support a finding that DHHS knew or should have known that Plaintiff's alleged abusers – Buskey, Davis, Woodlock, Murphy – created a danger of harm to juveniles held at YDC. Plaintiff also failed to submit any evidence as to the hiring process for any of these four individuals and what, if anything, was known at the time of the hiring.

To succeed on a claim of negligent training or supervision, a plaintiff must prove that the defendant negligently failed to provide clear instructions or adequate supervision to an employee, *regarding a foreseeable risk of harm attendant to the employee's job*, and that the plaintiff was injured as a result. *Cutter v. Town of Farmington*, 126 N.H. 836, 841 (1985).

Plaintiff presented no evidence that could support a finding that DHHS failed to adequately train or supervise the alleged abusers regarding a foreseeable risk of harm attendant to their jobs. All of the harm that Plaintiff alleges he suffered at the hands of his alleged abusers stemmed from independent criminal conduct, of which DHHS had no notice of, that was well-outside the scope of their employment. The evidence demonstrates that DHHS provided clear instructions and adequate supervision to employees at YDC relating to issues attendant to their jobs, such as the proper use of force in situations necessitating the use of physical force on a juvenile and the unambiguous prohibition of any physical or sexual abuse. DHHS did not have a duty to train employees not to sexually assault or intentionally physically assault juveniles, and

Plaintiff has presented no evidence that DHHS was aware of a foreseeable risk of unlawful assaults at YDC such as to create a heightened duty to supervise related to this issue.

Finally, Plaintiff' breach of fiduciary duty claim is grounded on DHHS's alleged failure to use due care in the hiring, retention, training and supervision of its employees. *See* Order on DHHS's Mot. to Dismiss the Master Complaint Nos. 1 and 2, p. 38. Therefore, that claim fails as a matter of law for the same reasons set forth above. WHEREFORE, DHHS respectfully requests that this honorable court:

A. Grant this Motion; and

B. Issue Judgment in Favor of DHHS; and

C. Grant such other relief as is just and equitable.

Respectfully Submitted,

New Hampshire Department of Health and Human Services; Department of Youth Development Services; Division of Children, Youth, and Families; Division of Juvenile Justice Services; and Sununu Youth Services Center, a/k/a Youth Development Center and Youth Development Services Unit, f/k/a State Industrial School and Adolescent Detention Center

By their attorney,

JOHN M. FORMELLA
ATTORNEY GENERAL

Date: May 13, 2024

/s/ Brandon F. Chase

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent via the Court's electronic filing system to all parties of record on the date above.

/s/ Brandon F. Chase
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