State of New Hampshire
Supreme Court

NO. 2022-0259

2022 Term
November Session

Larissa Troy

v.

Bishop Guertin High School and
Brothers of the Sacred Heart of New England, Inc.

RULE 7 APPEAL OF FINAL DECISION OF THE HILLSBOROUGH COUNTY SOUTH SUPERIOR COURT

Brief of Defendants/Appellees, Bishop Guertin High School and Brothers of the Sacred Heart of New England, Inc.

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QUESTIONS PRESENTED

I. Did the trial court correctly conclude that Plaintiff's claims were barred by the statute of limitations where Plaintiff has always known she was abused, that she was injured by the abuse, and that she was abused by an employee of Defendants on premises owned by Defendants during work hours, such that the limitations period began to run when Plaintiff reached the age of majority?

II. Did the trial court correctly conclude that the discovery rule did not operate to toll the limitations period as Plaintiff either knew or should have known that Defendants were potentially liable parties prior to the expiration of the statute of limitations in 2008?

STATEMENT OF FACTS

Plaintiff filed her lawsuit against Bishop Guertin High School ("Bishop Guertin") and the Brothers of the Sacred Heart (the "Order") (hereinafter collectively referred to as "Defendants") on May 18, 2018. Plaintiff's lawsuit was filed over 22 years after the two alleged sexual assaults that she says she suffered at the hands of Brother Shawn McEnany – her teacher at Bishop Guertin and a professed member of the Order. COMPLAINT, Apx. 206. Plaintiff's lawsuit was also filed almost one year after McEnany, the only other witness to these alleged events, had died.

Plaintiff's causes of action are premised on McEnany's behavior and the knowledge that the Order and Bishop Guertin had regarding that behavior. COMPLAINT, Apx. 206-212. In 1988, McEnany pleaded guilty to two counts of unlawful sexual contact, a Class D Crime under Maine law where McEnany was charged and convicted. Apx. 8-10. McEnany was accused of having engaged in improper sexual contact with a minor female in 1987, in Lewiston, Maine. *Id.*

In 1990, Brother Leo Labbe, Provincial of the New England Province of the Brothers of the Sacred Heart ("Br. Leo"), who knew about McEnany's past conviction, reassigned McEnany to Bishop Guertin High School. BR. LEO DEPOSITION, Apx. at 104-05. At the time McEnany was assigned to Bishop Guertin, the School was all-boys, and had not yet become co-ed. *Id.* at Apx. 103. The co-ed integration after a merger with Mount Saint Mary's school did not occur until 1992. *Id.* at Apx. 111. At no time prior to the Fall of 1997 did Br. Leo or McEnany tell the Bishop Guertin community about McEnany's past.

Plaintiff alleges she was the victim of two sexual assaults by McEnany in the Fall of 1995, her senior year at Bishop Guertin. The first

incident occurred early in the academic year. PLAINTIFF DEPOSITION, at Apx. 46. Plaintiff claims that McEnany approached her while she was sitting on a radiator in a large open area that housed lockers while she was talking with her sister, Noelle. *Id.* According to Plaintiff, as McEnany approached her, he moved in closely to Plaintiff, such that McEnany's body was between Plaintiff's legs, and Plaintiff could feel McEnany's genitals. *Id.* Plaintiff testified that she felt uncomfortable and "squiggled away" from McEnany. *Id.* at Apx. 48. Plaintiff also testified that she "instinctively" knew "something was wrong afterwards" and she turned to Noelle to warn her to "stay away" from McEnany. *Id.*

A second incident allegedly occurred in November 1995. PLAINTIFF DEPOSITION, Apx. 27. Plaintiff was a student in McEnany's class on a day the entire class was taking a test. *Id.* at Apx. 50. According to Plaintiff, McEnany excused her from the test and asked Plaintiff to follow him to the back of the full classroom. *Id.* at Apx. 50-51. Plaintiff complied and sat on a stool at the back of the room. *Id.* at Apx. 51. McEnany approached Plaintiff and, similar to the radiator incident, placed his body between Plaintiff's legs. *Id.* at Apx. 51-52. Plaintiff claims that she was able to feel McEnany's genitals touching her. *Id.* at Apx. 52. Then, while the rest of the class was actively taking a test just a few feet away, Plaintiff alleges that McEnany was able to get his hands inside of his long religious cassock, unzip his pants, and masturbate himself to climax. *Id.* at Apx. 52-53.

Plaintiff claims that, on the same day of the alleged classroom incident, she sought and obtained a meeting with the Dean of Students at Bishop Guertin, Susan Mansor ("Mansor"). PLAINTIFF DEPOSITION at Apx. 57-58. Plaintiff alleges that during this meeting, she informed Mansor of McEnany's abuse in the classroom. *Id.* According to Plaintiff, Mansor accused the Plaintiff of "making the story up" and that "it couldn't be true."

Id. Plaintiff also claims that Mansor warned her not to repeat the story.[1] *Id.* Plaintiff understood from the Mansor meeting that Bishop Guertin was not going to take any action against McEnany. *Id*. at Apx. 59.

After returning home following Plaintiff's meeting with Mansor, Plaintiff told her mother of the incident with McEnany in the classroom. PLAINTIFF DEPOSITION at Apx 59. Plaintiff testified that her mother didn't believe her either. *Id.* Plaintiff's mother told her in response that what Plaintiff was claiming "didn't happen." CHARUVASTRA RPT. Apx. 134.

In November 1997, McEnany was removed from Bishop Guertin following the public revelation of McEnany's 1988 conviction. PALADINO AFFIDAVIT, Apx. 126. The *Nashua Telegraph*, along with other media outlets, published several stories regarding the fact that McEnany had been placed at Bishop Guertin despite the School's knowledge of his prior conviction. *Id*. The story set off a "series of extraordinary events at [Bishop Guertin] and in the community at large." *Id.* at Apx. 127. As the headmaster of Bishop Guertin in 1997, Br. Leo, informed the faculty and the student body that McEnany had pleaded guilty to a charge of unlawful sexual contact with a minor female in 1988. *Id.* The students were "horribly upset" by the revelations of McEnany's prior conviction, and counselors at the School "had to clear their schedules to help the students, as well as adults, to deal with the news." *Id.*

The revelation of McEnany's prior conviction caused the media to descend upon Bishop Guertin. Paladino Affidavit, Apx. 127. A "phalanx of media camped at the doorstep of the school" and "television trucks and

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[1] Mansor denies any recollection of discussing with Plaintiff the conduct of McEnany in 1995. Mansor Dep. P. 29. Although Defendants controvert the factual assertion that Plaintiff had the meeting she describes with Mansor just as surely as the assertion that the assaults themselves actually took place, for the purposes of the motions for summary judgment and the Court order entering summary judgment, Defendants do not controvert the Plaintiff's recollection.

cameras as well as print reporters accosted students, faculty and visitors on their way in and out of the school.[2] *Id.* At the same time, Br. Leo drafted two letters to all parents of current students of Bishop Guertin regarding McEnany. BR. LEO LETTERS, Apx. at 203-05. Br. Leo wrote that he "addressed the entire school community about an important issue," and explained that McEnany had pleaded guilty to a sex offense in 1988. *Id*.

Plaintiff immediately began to experience distress that she directly connected to McEnany's alleged abuse, her meeting with Mansor, and the response of her mother. CHARUVASTRA RPRT, Apx. 134-35. Plaintiff's expert, Dr. Anthony Charuvastra, wrote that "[t]he assault, and the reasons of the Dean at BGHS and her mother, were devastating for her." *Id.* at Apx. 134. Plaintiff reported to Dr. Charuvastra that the assault and the encounters with her mother and Mansor "changed everything" for her. *Id.* Plaintiff reported that she "no longer trusted any adult in authority" and felt "incredibly betrayed" by her mother. *Id*. Plaintiff further described how the alleged abuse "poisoned her experience of school." *Id.* Plaintiff "had a total loss of faith in school and adults," so she "threw [herself] into school work and running." *Id.* Plaintiff also reported to Dr. Charuvastra that she began to feel physically anxious "all the time" after the abuse. *Id.* at Apx. 135.

A year later, while a student at Providence College, Plaintiff "began having panic attacks" which were often followed by days of traumatic memories related to McEnany. CHARUVASTRA RPRT., Apx. 135. Plaintiff's "intrusive memories" of McEnany and the assaults have continued into the present. *Id.* Plaintiff further reported that she experienced anxiety and other

[2] In 1997, two of Plaintiff's younger sisters were students at Bishop Guertin, though they deny ever hearing about McEnany's departure from Bishop Guertin or of his prior conviction at the time. Plaintiff's mother also denies ever having seen the letters sent by Br. Leo to parents of current students.

emotional distress throughout her time in college, describing her experience as follows:

> As soon as I got to college, I was anxious every day. I was preoccupied with anxiety and the courses were taught by Brothers in the full robes, and religion was required. I was really uncomfortable going to classes taught by the Brothers. In college, my grades were C's and D's, I was just so preoccupied with my bad feelings and memories of the assault

Id.

Despite always knowing of the assaults, and despite experiencing admitted trauma related to those assaults, Plaintiff chose not to pursue a claim. CHARUVASTRA RPRT., at Apx. 136. She married a man she met her freshman year at Providence College, they had children, lived for a few years in France, and then settled down in East Hampton, New York. *Id.* at Apx. 131. Plaintiff testified that she tried to "bury" her feelings and made a conscious choice to not to think about the incidents with McEnany. *Id.* at Apx. 136.

Finally, in 2017, Plaintiff received a text message from her brother-in-law alerting her to a Facebook post on the Bishop Guertin Facebook page that referenced Plaintiff and her sisters. PLAINTIFF DEPOSITION, Apx. 32. Shortly thereafter, Plaintiff read an article in the *New York Times* about sexual abuse at Rosemary-Choate Hall. *Id.* at Apx. 35. With the Facebook Posting and the news article, Plaintiff began to think about McEnany's assaults. *Id.* This thinking led Plaintiff to research McEnany and Bishop Guertin. *Id.* at Apx. 35-36. Plaintiff claims that immediately upon conducting a Google search, Plaintiff easily discovered the Bishop Accountability website, which compiles information about those in the

Catholic Church with accusations of sexual abuse.[3] *Id.* Plaintiff alleges that upon discovering the Bishop Accountability website, that she learned McEnany had been initially placed at the School in 1990 despite Defendants' knowledge of McEnany's 1988 conviction. *Id.* at Apx. 64. Plaintiff claims that it was reading this information that led her to file suit against Defendants.

[3] Bishop Accountability was founded in 2003. In fact, one of the first two files published by Bishop Accountability upon its founding in 2003 was the New Hampshire Attorney General's Report on abuse within the Diocese of Manchester. *See* https://www.bishop-accountability.org/our-archives/#:~:text=BishopAccountability.org%20was%20officially%20founded,on%20the%20Diocese%20of%20Manchester.

STATEMENT OF THE CASE

This matter is before this Court following a grant of summary judgment in favor of Defendants by Judge Charles Temple of the Hillsborough County Superior Court. On February 22, 2022, Judge Temple issued his opinion on the cross-motions for summary judgment, finding that Plaintiff's claims were barred by the statute of limitations, and granting Defendants' Motion for Summary Judgment. ORDER ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT, at Apx. 311-323.

The Trial Court, recognizing that Plaintiff did not file suit within the limitations period, approached the issue of whether Plaintiff's case was barred by considering whether the discovery rule operated to toll the limitations period. *Id.* at Apx. 315. Accordingly, the Trial Court considered whether Plaintiff knew she had been injured, and whether she knew or should have known that her injury was proximately caused by the conduct of the Defendants. *Id.* at Apx. 315-16. The Trial Court approached the analysis by asking whether those two elements were present prior to May, 2015, three years prior to when Plaintiff filed suit, which is the amount of time a Plaintiff has to file suit following a true delayed discovery. *Id.* at Apx 316.

First, the Trial Court found that Plaintiff understood that the conduct of McEnany was wrongful, and that it caused her injury, given Plaintiff's own admissions of experiencing emotional distress immediately following the assault. *Id.* at Apx 318.

Second, the Trial Court concluded that Plaintiff either knew, or should have known, of the causal connection between her injuries and Defendants prior to May 2015. *Id.* at Apx. 323. The Trial Court's ruling in favor of Defendants was based on the fact that:

> the plaintiff knew in 1995 that she had been assaulted by Mr. McEnany; she knew in 1995 that he was a teacher at BGHS at the time of the assaults; and she knew in 1995 that the assaults occurred while she was on school premises.

Id. at Apx. 321. Further, the Trial Court held that after the meeting with Mansor "plaintiff was undoubtedly aware that the defendants were continuing to employ a known abuser, and that the defendants were doing nothing to protect her or others from him. *Id.* Accordingly, the Trial Court held that the discovery rule did not save Plaintiff's claims, and that her claims were barred by the statute of limitations.

Contrary to Plaintiff's Statement of the Case, the Trial Court's discussion of the well-known abuse crisis in the Catholic Church was in no way the "gravamen" of the Trial Court's ruling. PLAINTIFF BRIEF at 20. The Trial Court pointed the general knowledge of the abuse crisis to simply buttress the fact that Plaintiff either knew or should have known that Defendants were potentially liable parties. *Id.* at Apx. 322. To suggest that it was the "gravamen" of the Trial Court's ruling is, at best, a gross mischaracterization.

SUMMARY OF ARGUMENT

The facts material to the statute of limitations here are undisputed: Plaintiff has always known that she was sexually abused in 1995. Plaintiff has always known the identity of her alleged abuser. Plaintiff has always known that she was abused on premises owned by Defendants and by an employee of the Defendants. Plaintiff has always known McEnany's conduct was wrongful and caused her injuries. As such, the discovery rule simply does not apply to these facts. Plaintiff, from the date of the alleged assaults, has had all the information necessary to bring claims against Defendants. Thus, the limitations period began to run when Plaintiff reached the age of majority, and, pursuant to RSA 508:4-g, expired in 2008, when she turned thirty. The trial court correctly concluded that Plaintiff's claims were time-barred, and the trial court's decision should be affirmed.

Even assuming the discovery rule did apply, Plaintiff cannot claim the benefit of it, as she conducted no investigation into her claims against Defendants from 1995, until 2017. Underlying the entirety of Plaintiff's argument on appeal is the idea that following the alleged meeting with Mansor, that it was reasonable for Plaintiff to believe that Defendants here bore no responsibility for her injuries.[4] According to Plaintiff, after Mansor took no action in response to her disclosure, "she reasonably concluded the school would not countenance, and was not then countenancing, a sexual abuser on its staff, and was therefore not a party." PLAINTIFF'S BRIEF at 28. Putting aside that Plaintiff waived this argument as it was never raised below, the gloss Plaintiff now puts on her understanding of that exchange is unreasonable, if not nonsensical. As the trial court correctly concluded, at the time Mansor rebuffed Plaintiff, she then knew that Bishop Guertin was

[4] Susan Mansor testified that she had no recollection of Plaintiff ever coming to her to disclose the conduct of McEnany. However, for purposes of this brief, we will assume that Plaintiff's allegations of disclosure to Mansor are true, as Plaintiff's arguments fail regardless.

not going to take any action against McEnany despite having information that he was at least possibly a sexual abuser. More importantly, nothing in the Mansor meeting could lead the Plaintiff to logically conclude that the Defendants were not potential parties to a civil lawsuit for McEnany's sexual abuse.

Thus, Plaintiff asks this Court to make sweeping changes to New Hampshire law regarding when a claim accrues, and the standards applicable to the discovery rule. To accept Plaintiff's arguments would dismantle decades of precedent establishing the *objective* standards that control questions regarding when a claim accrues and when plaintiffs are aware of their causes of action under the discovery rule. In its place, Plaintiff seeks to create a rule whereby the question of when a claim accrues is entirely within the *subjective* control of a plaintiff, wholly untethered to any objective standard. Ultimately, though, the questions relevant to this appeal are simple, and controlled by well-established principles of New Hampshire law.

Reduced to its essence, this case presents the exact factual situation that statutes of limitations were created to bar, and simultaneously the exact type of case that the discovery rule was never intended to save. Plaintiff sat on her rights for more than twenty years, never conducting any investigation to determine the parties responsible for her alleged injuries. By filing suit in 2018, ten years after the limitations period expired, Plaintiff is too late, and her claims are barred. The trial court, in a well-reasoned and thoroughly researched opinion, correctly concluded that Plaintiff's claims were time-barred, and should be affirmed.

ARGUMENT

I. Plaintiff claims are barred by the statute of limitations and she cannot invoke the discovery rule as she has always had all the facts necessary to understand that Defendants were possible wrong-doers.

Plaintiff's claims are barred by the statute of limitations. Pursuant to RSA 508:4-g, Plaintiff had until the age of thirty to bring her claims against Defendants. Plaintiff was born in 1978, and the abuse allegedly occurred in 1995, when Plaintiff was 17. As Plaintiff was a minor at the time of the abuse, the limitations period began to run the day she reached the age of eighteen. The limitations period expired in 2008. Plaintiff did not file her suit until 2018, a decade after she turned thirty. Plaintiff is too late, and her claims are barred. The ruling of the Trial Court should be affirmed.

The discovery rule was never intended to save a claim such as Plaintiff's, and it plays no role here. From the very date Plaintiff claims she was assaulted, she has had all of the information needed to bring claims against Defendants. Plaintiff has always known that she was assaulted by McEnany. Plaintiff has always known that McEnany's conduct was wrong, and that it caused her injuries. Plaintiff has always known that she was abused by an employee of Defendants, on the premises of a school owned by Defendants, during school hours. While Plaintiff spends numerous pages discussing the discovery rule, the analysis here need not go that far, as there was nothing Plaintiff needed to "discover" before the limitations period began to run.

The question that is central to this appeal is when did Plaintiff's claims accrue, and when did the limitations period begin to run? This question consists of a two-part test. Plaintiff first "must know or reasonably should have known that she has been injured;" and "second, a plaintiff must know or reasonably should have known that her injury was proximately

caused by conduct of the defendant." *Lamprey v. Britton Constr.*, 163 N.H. 252, 257 (2012). Once those two elements are present, a claim accrues, and the limitations period begins to run. Both of those elements were present here from the very date Plaintiff was assaulted. Since Plaintiff was a minor at the time of the abuse, the limitations period began to run when Plaintiff turned eighteen and expired when she turned thirty in 2008. RSA 508:4-g.

There is no requirement in any jurisdiction in the United States that a plaintiff must have actual knowledge that a party engaged in wrongdoing before the limitations period begins to run. But, that is what Plaintiff here is arguing. Plaintiff need not be certain of the causal connection between her injuries and the conduct of Defendants, as "the possibility that it existed will suffice to obviate the protections of the discovery rule." *Beane v. Dana S. Beane & Co., P.C.*, 160 N.H. 708, 713 (2010). Here, the connection between Plaintiff's injuries and the Defendants could not be any clearer. Plaintiff alleges to have been assaulted by an employee of Defendants, on the premises of a school owned and operated by Defendants, in the middle of a school day. Plaintiff's purported ignorance that Defendants were possibly responsible for her injuries does not allow her to invoke the discovery rule.

Statutes of limitations exist for a reason. They were created to "ensure timely notice to an adverse party and to eliminate stale or fraudulent claims." *Perez v. Pike Industries, Inc.*, 153 N.H. 158, 160 (2005) (quoting *Donnelly v. Eastman*, 149 N.H. 631, 634 (2003)). Statutes of limitations exist to establish a deadline "after which the defendant may legitimately have peace of mind." *Id.* Limitations periods further recognize that "after a certain period of time it is unfair to require the defendant to attempt to piece together his defense to an old claim." *Id.* Indeed, this is

such a case, as McEnany died in 2017, forcing Defendants to defend a stale claim without the only other witness to the alleged assaults.

This is the exact type of case statutes of limitation were created to bar. The trial court was correct in concluding that Plaintiff's claims were time-barred, and should be affirmed.

a. Plaintiff understood from the time of the alleged abuse that the conduct of McEnany was both wrongful and that it caused her injuries.

The factual record in this case indisputably demonstrates that Plaintiff understood the conduct of McEnany to be wrongful, and further understood that she had suffered a legally cognizable injury that she directly connected to the conduct of McEnany. After the first alleged incident of abuse, Plaintiff told her sister to "stay away" from McEnany, a clear recognition that the conduct of McEnany was inappropriate and wrong. PLAINTIFF DEPOSITION, Apx. at 48. After the second incident in the classroom, Plaintiff sought out the Dean of Students at Bishop Guertin to report the behavior of McEnany. Plaintiff further claims to have told her mother of McEnany's conduct immediately following the classroom incident. Finally, as the Trial Court correctly noted, Plaintiff was seventeen years old at the time of this conduct, "an age at which any reasonable person would know that Mr. McEnany's behavior was highly inappropriate." ORDER ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT, Apx. at 317. Plaintiff knew that McEnany's conduct was wrongful.

A plaintiff may be charged with knowledge of an injury even when the "plaintiff may not have understood the full extent of the harm that would result from the defendants' conduct." *Furbush v. McKittrick*, 149 N.H. 426, 431 (2003). There is no requirement that a Plaintiff be fully aware of every aspect of her injuries. *Id.* The discovery rule was never intended to "toll the statute of limitations until the full extent of the plaintiff's injury has manifested itself." *Id.*

Plaintiff understood that the abuse caused her injuries, and she directly connected her injuries to the conduct of McEnany. Plaintiff immediately began experiencing trauma resulting from both the alleged

abuse by McEnany, as well as Plaintiff's reports to her mother and Mansor. Plaintiff's expert, Dr. Anthony Charuvastra, wrote in his report that "[t]he assault, and the reactions of [Mansor] and her mother, were devastating for [Plaintiff]." CHARUVASTRA RPRT., Apx. 134. Plaintiff's issues began in high school and continued into her adulthood at Providence College and beyond. *Id.* at Apx. 134-35. The incidents with McEnany "changed everything" for Plaintiff, caused her to lose trust in adults in positions of authority, and "poisoned her experience of school." *Id.* at Apx. 134.

As a result of the incidents with McEnany, Plaintiff began to feel anxious "all the time." CHARUVASTRA RPRT., Apx. 135. Plaintiff's time at Providence College was difficult for her, as she was "so preoccupied" with her "bad feelings and memories of the assault." *Id*. Plaintiff further experienced panic attacks in college that were followed by "days of traumatic memories related to Brother Shawn." *Id.* The "intrusive memories" of McEnany have continued into the present. *Id*.

The trial court found, based on these facts, that Plaintiff understood both that the conduct of McEnany was wrongful, and that Plaintiff had been injured by his conduct. ORDER ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT, Apx. 323. The trial court concluded that Plaintiff "frequently thought about the assaults in the days, months, and years after they occurred and knew that they were causing her psychological harm." *Id.* at Apx. 318.

Plaintiff's statements that she understood she had suffered at least some injury, which she connected to the conduct of McEnany is more than sufficient to begin the statute of limitations clock.

b. From the date of the alleged assaults, Plaintiff has had all the information necessary to bring claims against Defendants.

There was nothing for Plaintiff to "discover" about her claims, and she had everything she needed to bring claims against Defendants from the date of the alleged assaults. Here, as the trial court correctly noted, "the Plaintiff knew in 1995 that she had been assaulted by Mr. McEnany; she knew in 1995 that he was a teacher at BGHS at the time of the assaults; and she knew in 1995 that the assaults occurred while on school premises." ORDER ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT, Apx. 321. Plaintiff has always known that she was abused by an employee of the Defendants while she was on premises owned by the Defendants. The discovery rule does not apply to the factual scenario presented by this case.

The discovery rule was designed "to provide relief in situations where the plaintiff is unaware of either his injury or that the injury was caused by a wrongful act or omission." *Glines v. Bruk,* 140 N.H. 180 (1995). The discovery rule only applies in cases where a plaintiff "did not discover, and could not reasonably have discovered either the alleged injury or its causal connection to the alleged negligent act." *Perez*, 153 N.H. at 160. Plaintiff need not be fully aware of her injuries or of the connection of her injuries to the wrongdoing of a particular defendant. *Beane*, 160 N.H. at 713. All that is required is that "a plaintiff could reasonably discern that he suffered some harm caused by the defendant's conduct." *Id.* Plaintiff does not need to be certain of the causal connection between her injuries and the conduct of Defendants here, as "the possibility that it existed will suffice to obviate the protections of the discovery rule." *Id.*

The discovery rule only applies in cases where the plaintiff "did not discover, and ***could not reasonably have discovered***" the causal connection between her injuries and the conduct of the defendant. *Perez*, 153 N.H. at

160 (emphasis added). That is simply not the case here. Plaintiff alleges she was abused by an employee of Defendants on the premises of a school owned by Defendants in the middle of a school day. One of the alleged instances of abuse occurred in the middle of a classroom while a class was actively ongoing. This is not the type of case the discovery rule was created to address. There was nothing preventing Plaintiff from understanding that she was injured, or from understanding the involvement of a particular defendant. Plaintiff's argument on appeal is essentially that she was ignorant of the possibility that Defendants here were possibly liable for her injuries. Ignorance does not trigger the discovery rule. *See, e.g. Glines v. Bruk,* 140 N.H. 180 (1995); *Perez,* 153 N.H. 158; *Rice v. Diocese of Altoona-Johnstown*, 255 A.3d 237 (Pa. 2021).

Further, Plaintiff ignores a critical piece: there was no need for her to have actual knowledge of wrongdoing by the Defendants to be on notice that she had causes of action against them. From the very date of the assaults, Plaintiff has had sufficient information to bring several causes of action against the Defendants here based on either vicarious liability, or direct negligence claims, such as: negligent hiring, retention, supervision, or any of a number of other torts. For example, Plaintiff could have brought suit against Defendants alleging negligence in failing to properly supervise or train McEnany and failing to create proper policies and procedures.

That the discovery rule is inapplicable to Plaintiff's claims is not a particularly close call. This Court has already addressed identical arguments in different contexts in *Glines v. Bruk*, 140 N.H. 180 (1995) and *Perez v. Pike Industries, Inc*., 153 N.H. 158 (2005). In *Glines*, the plaintiff was injured while attempting to lift a mechanized loading dock. The *Glines* plaintiff filed suit against the owner of the premises alleging that his injury was caused by a defect in the loading dock. During discovery, plaintiff

discovered that two other parties may have been liable for his injuries, and attempted to add them to the suit. The trial court found that the statute of limitations had expired as to the two new parties and this Court affirmed.

In affirming the trial court in *Glines*, this Court discussed that the discovery rule did not apply to plaintiff's allegations against the two new defendants. *Id.* at 181-82. It discussed the issue as follows:

> At the time of his injury, the plaintiff knew that his injury was caused by a defect in the loading dock. The plaintiff, however, argues that at the time of his injury, he did not know that negligence *by defendants Hyman and Chestnut Hill* may have caused his injury. The plaintiff misconstrues the purpose of the discovery rule.

Id. at 181 (emphasis added). This Court went on to hold that "any reasonable review of the plaintiff's accident should have caused him to include as a possible wrong-doer the manufacturer or installer of the particular piece of equipment that caused the accident." *Id.* at 182. This Court ultimately found that "the plaintiff knew both the fact of the injury to his back and the fact that there was some causal link to the defective loading dock," such that the plaintiff's claims were barred. *Id.*

Similarly, in *Perez*, the plaintiff was injured while loading furniture on to a truck when his foot sank into a patch of soft pavement on the edge of a highway. *Perez*, 153 N.H. at 159. The plaintiff in *Perez* brought negligence claims against the State of New Hampshire, and several other State entities alleging that his injuries was caused by the negligence of agents of the New Hampshire Department of Transportation. *Id.* Later, plaintiff attempted to add Pike Industries as a defendant after the plaintiff discovered that Pike held a subcontract for maintenance of the subject roadway. *Id.* The trial court in *Perez* granted Pike's motion to dismiss on statute of limitations grounds. *Id.*

On appeal, the plaintiff in *Perez* argued that he could not reasonably have known that the State had entered into a subcontract with Pike, such that the discovery rule applied to toll the statute of limitations. *Id.* at 160. This Court disagreed, and affirmed the dismissal of Pike as a defendant. *Id.* at 163. In so holding, this Court reasoned that:

> In dismissing the plaintiff's claim against Pike, the trial court correctly reasoned that the plaintiff's failure to investigate and identify the subcontractor who actually applied the pavement to the highway does not warrant the application of the discovery rule. Similar to the plaintiff in *Glines*, the plaintiff in this cause should have known to include "as a possible wrong-doer" the subcontractor who actually paved that portion of the highway.

Id. at 161 (quoting *Glines*, 140 N.H. at 182).

The logic of *Perez* and *Glines* applies equally here. The core of Plaintiff's argument is that despite being abused by an employee of Defendants on the premises of Bishop Guertin, during school hours, that she could not reasonably have been expected to know that the Defendants were possibly responsible for her injuries. Defendants here are no different than the defendants in *Perez* and *Glines*. Defendants have always been readily ascertainable to Plaintiff, and nothing was preventing her from understanding Defendants were "possible wrong-doers" aside from Plaintiff's own purported ignorance. There is simply no difference between Plaintiff's argument here, and the argument made by the plaintiffs in *Glines* and *Perez* that was rejected by this Court. This argument should, again, be rejected.

At the time the abuse occurred, Plaintiff either knew or should have known that the Defendants here were "possible wrong-doers." *See Glines*, 140 N.H. at 182. Any reasonable person would understand that the owner

of the premises where they were sexually assaulted, as well as the employer of the person committing the sexual assault, would be "possible wrong-doers." *See id*. Plaintiff's argument is that she was simply ignorant that Defendants here were possible wrong doers.

Under well-established New Hampshire law, the discovery rule does not apply to Plaintiff's allegations. Accepting Plaintiff's own explanation as true, her failure to recognize these Defendants and file suit within the limitations period is due to nothing more than Plaintiff's own ignorance that Defendants were possibly liable for her injuries. Therefore, the Trial Court's ruling should be affirmed.

II. Even assuming the discovery rule applied, Plaintiff cannot claim the benefit of it as she failed to exercise reasonable diligence in investigating her claims.

a) Plaintiff's argument that she "discharged" her duty of inquiry by making a report to Mansor is raised for the first time on appeal and, even considering the merits, Plaintiff's argument is without merit.

Indispensable to Plaintiff's overarching argument on appeal is the idea that Plaintiff's report to the Dean of Students "discharged" her duty to investigate her claims. PLAINTIFF BRIEF, at P. 9. However, Plaintiff has waived this argument. The idea that Plaintiff discharged her duty of inquiry in 1995 was never argued before the trial court. In Plaintiff's various memorandums of law on the Summary Judgment record, Plaintiff only ever made two arguments relevant to the statute of limitations before the trial court. *See* Apx. 230-245. First, Plaintiff argued that she did not make the connection between her injuries and the alleged abuse until 2017. *Id.* Second, Plaintiff argued that she did not, and could not, have known that the Defendants were possibly responsible for her injuries until she discovered McEnany's 1988 conviction. *Id.* Plaintiff has never argued that she "discharged her duty of inquiry," and this Court should not consider it.

"This court has consistently held that we will not consider issues raised on appeal that were not presented in the lower court." *LaMontagne Builders v. Bowman Brook Purchase Group*, 150 N.H. 270, 274 (2003). Plaintiff has never argued that she discharged her duty of inquiry by reporting the alleged abuse to Mansor. That argument is found nowhere in Plaintiff's various briefs below, nor did Plaintiff argue it to the trial court at oral argument. Indeed, the word "discharge" does not appear in the oral argument transcript. Plaintiff has thus waived this argument as the Trial Court did not have the opportunity to consider it, and the Defendants did not have an opportunity to respond to this argument before the trial court.

Addressing the merits of Plaintiff's argument that she "discharged" her duty of inquiry, it quickly becomes clear that the argument is baseless. Plaintiff argues that because Mansor allegedly responded to Plaintiff's report of McEnany's conduct with "unqualified rejection" that Plaintiff "reasonably concluded the school would not countenance, and was not then countenancing, a sexual abuser on its staff, and was therefore not a party." PLAINTIFF BRIEF at P. 28.

This is a noteworthy argument for several reasons. First, Plaintiff's conclusion that, because Bishop Guertin was not going to take any action in response to her disclosure, it was "not a party" is an entirely unreasonable conclusion to draw from that interaction.[5] The trial court drew the only reasonable conclusion from Plaintiff's meeting with Mansor: "[a]t that point, the plaintiff was undoubtedly aware that the defendants were continuing to employ a known abuser, and that the defendants were doing nothing to protect her or others from him." ORDER ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT, Apx. 321. Further, Plaintiff's purported conclusion was entirely contradictory. On the one hand, Plaintiff acknowledges that at the time of the meeting with Mansor that Plaintiff understood the School was not going to take action in response to her report of abuse. This is an admission that Plaintiff understood at that time that Defendants were engaged in wrongdoing by not taking action in response to her report. But, at the same time, Plaintiff argues that it was reasonable for her to conclude that Defendants here were "not a party" because Bishop Guertin and the Order refused to take action. These two conclusions cannot be true at the same time.

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[5] It is noteworthy that Plaintiff does not cite to the record to support this statement. Nowhere in the extensive factual record developed in this case does Plaintiff testify that she came to this supposed conclusion.

Further, from a practical perspective, Plaintiff's argument does not make any sense. Plaintiff's argument appears to be that because Defendants, upon receipt of knowledge of McEnany's conduct, did not immediately admit wrongdoing to Plaintiff, that Plaintiff was free to assume that Defendants were not possibly liable, thus permanently tolling the limitations period. Unsurprisingly, Plaintiff cites no case law to support the proposition that a plaintiff can "discharge" her duty of inquiry simply by making a report of alleged wrongdoing to a potential defendant. Defendants are unaware of any case law from any court in the United States that would support such a finding.

Plaintiff's argument, if accepted, would fundamentally alter New Hampshire law regarding the discovery rule. Indeed, it would obliterate the discovery rule and the duty of inquiry entirely. Following Plaintiff's logic, by making the report to Mansor, the limitations period was tolled, such that Plaintiff could file suit at just about any time she saw fit, as Plaintiff was in control of when the limitations period would again begin to run. What if Plaintiff never received that text message from her brother-in-law that triggered her to investigate? Under Plaintiff's theory, had she been "triggered" to investigate McEnany in 2017, 2030, or 2050, her claims would still be timely as her argument places her in subjective control of when the limitations period would begin to run.

Such a rule is unsustainable. Creating this type of an exception would permit plaintiffs to make reports of wrongdoing to potential defendants, and then sit on their claims for years. It would encourage plaintiffs to bring stale claims at a time when evidence has been lost, witnesses have died, and memories have faded. Indeed, this is such a case. McEnany died on July 14, 2017. Had Plaintiff brought this claim within the limitations period, McEnany would have been alive and able to provide his

side of the story, and the essential evidence for the Defendants to defend this case. Instead, all that is left is Plaintiff's version of events and the testimony of witnesses regarding conduct occurring more than twenty years ago.

The Plaintiff did not discharge her duty of inquiry. The Trial Court should be affirmed.

b) Had Plaintiff exercised any diligence in investigating her claims, she easily would have discovered McEnany's prior conviction and Defendants' knowledge of it.

As Plaintiff is the one seeking to invoke the discovery rule, she bears the burden of establishing that it applies. *Beane*, 160 N.H. at 713. Further, any party that is seeking to invoke the discovery rule is held to a duty of reasonable inquiry. *Portsmouth Country Club* v. *Town of Greenland*, 152 N.H. 617, 624 (2005). The discovery rule does not save Plaintiff, as she conducted no investigation into the potential liability of Defendants until 2017, almost ten years after the limitations period expired. As Plaintiff failed to diligently investigate her claims within the limitations period, she can be held on inquiry notice of her claims against the Defendants here as a matter of law. *See Rice v. Diocese of Altoona-Johnstown*, 255 A. 3d 237 (Pa. 2021).

It is well-established that a plaintiff may not claim the benefit of the discovery rule where she did not exercise reasonable diligence in investigating her claims. *Perez*, 153 N.H. at 161 (holding that "the trial court correctly reasoned that the plaintiff's failure to investigate and identify the subcontractor who actually applied the pavement to the highway does not warrant the application of the discovery rule.") The discovery rule may only be invoked in cases where a plaintiff "did not discover, and could not reasonably have discovered either the alleged injury or its causal connection to the alleged negligent act." *Perez*, 153 N.H. at 160. The key phrase, as relevant here, is "could not reasonably have discovered." *Id.*

The question, then, is whether Plaintiff exercised reasonable diligence in investigating her claims. The factual record in this case leaves only one possible answer to that question: No. In fact, Plaintiff conducted no investigation at all.

Plaintiff's claims of delayed discovery rest entirely on the premise that she could not reasonably have understood that Defendants were possibly liable for her injuries until 2017 when she discovered that McEnany was placed at Bishop Guertin despite Defendants' knowledge of his prior conviction.

The standard here is an objective one. The discovery rule is not controlled by the subjective understanding of Plaintiff. The question is what a reasonable person exercising due diligence in investigating her claims would have discovered. *Beane*, 160 N.H. at 713. By even the most generous of standards, any individual who conducted a basic investigation would have discovered Defendants' knowledge of McEnany's prior conviction. Defendants' knowledge of his conviction in 1990, was widely publicized in 1997, by various news media stories in print and on television. Whether Plaintiff herself knew of this information is irrelevant, as she can be held to have constructive knowledge of it.

Indeed, Plaintiff implicitly acknowledges this point. In 2017, Once she finally conducted such a Google search, Plaintiff immediately discovered the Bishop Accountability website and several stories regarding McEnany and the Defendants' knowledge of his prior conviction. PLAINTIFF DEPOSITION, Apx. at 64.

Numerous other jurisdictions that have considered similar fact patterns have held that where a plaintiff knows of the abuse, knows the identity of the abuser, and knows she has been injured by the abuse, the plaintiff is under a duty to investigate her claims and can be held to be "on notice" of her claims against other possibly responsible parties. *See Doe v. Catholic Bishop for the Diocese of Memphis*, 306 S.W. 3d 712 (Ct. App. Tenn. 2008); *One Star v. Sisters of St. Francis*, 752 N.W. 2d 668 (S.D. 2008); *Rodriguez v. Miles*, 799 N.W. 2d 722 (S.D. 2011); *Steinke v.*

Kurzak, 803 N.W. 2d 662 (Ct. App. IA 2011); *Dempsey v. Johnston*, 299 S.W 3d 704 (Ct. App. Miss. 2009); *Doe v. Archdiocese of Cincinnati*, 109 Ohio St. 3d 491 (Ohio 2006); *Doe v. Archdiocese of Washington*, 114 Md. App. 169 (1997); *Rice v. Diocese of Altoona-Johnstown*, 255 A. 3d 237 (2021); *Kelly v. Marcantonio*, 187 F. 3d 192, 201 (1st Cir. 1999); *Mark K. v. Roman Catholic Archbishop*, 79 Cal Rptr. 2d 73, 79 (Ct. App. 1998); *Ceveneni v. Archbishop of Wash.*, 707 A.2d 768, 773 (D.C. 1998); *Doe v. Roman Catholic Archbishop of Archdiocese of Detroit*, 692 N.W. 2d 398, 406 (Mich. Ct. App. 2004); *Clay v. Kuhl*, 198 Ill. 2d 603, 610 (Ill. 2000); *Parks v. Kownacki*, 193 Ill. 2d 164, 177-78 (Ill. 2000); *Zumpano v. Quinn*, 849 N.E. 2d 926, 930 (N.Y. 2006); *Doe v. Roman Catholic Diocese of Charlotte, N.C.*, 775 S.E. 2d 918, 923 (N.C. Ct. App. 2015); *Colosimo v. Roman Catholic Bishop of Salt Lake City*, 156 P. 3d 806, 819 (Utah 2007).

The Pennsylvania Supreme Court, in *Rice v. Diocese of Altoona-Johnstown*, 255 A. 3d 237 (Pa. 2021), recently addressed this exact issue. In *Rice*, the plaintiff alleged that she was abused by Father Charles Bodziak, a priest of the Diocese of Altoona-Johnstown, between 1974 and 1981. *Id.* at 240. To invoke the discovery rule, Rice argued that she could not have known the Diocese was possibly liable until the release of the Pennsylvania Grand Jury Report on Sexual Abuse in the Catholic Church on March 1, 2016. *Id.* at 246. Rice argued she could not possibly have known that the Diocese was liable without the Grand Jury Report, which detailed the fact that the Diocese had covered up allegations of abuse and moved clergy around to different parishes despite knowledge of prior allegations. *See id.*

The Pennsylvania Supreme Court disagreed with Rice, ultimately holding that her claims were time-barred. *Id.* at 255-56. The Court reasoned that "Rice knew of her injury at the time of each alleged assault and she

knew that Bodziak caused the injury." *Id*. at 251. Rice thus knew she had a cause of action against Bodziak, but she "did not file suit against Bodziak and seek discovery from the Diocese." The *Rice* Court further explained that what Rice really was arguing was "ignorance of a secondary cause of the known legal injury." *Id.* (quotations omitted). The Pennsylvania Supreme Court thus held that as Rice's claims were "based on Bodziak's alleged conduct, she was on inquiry notice regarding other potentially liable actors, including the Diocese, as a matter of law." *Id.*

Plaintiff here is making the exact argument rejected by the Pennsylvania Supreme Court in *Rice*. The thrust of Plaintiff's arguments on appeal is that regardless of how widely known Defendants' knowledge of McEnany's 1988 conviction was, or how publicly available that information was, the limitations period would not begin to run until Plaintiff, herself, became aware of it. If such were the standard, though, what would be left of the duty of a plaintiff to diligently investigate her claims?

From a policy perspective, where would the line be drawn on Plaintiff's theory? Plaintiff's argument, at its core, is that the limitations period was permanently tolled until Plaintiff discovered Defendants' knowledge of McEnany's conviction. Had Plaintiff discovered this information in, for instance, 2030, and then filed suit, under Plaintiff's theory, her claims would still be timely. Following Plaintiff's logic to its conclusion, there would never have been a point at which her claims became barred.

Plaintiff's attempts to explain her failure to investigate are not persuasive. Plaintiff admits she made a conscious choice to put the incidents with McEnany behind her and she made a choice not to pursue claims against Defendants. *See* CHARUVASTRA RPRT., Apx. 136. However,

a conscious choice to not think about an incident does not trigger the discovery rule. *See, e.g., Doe v. Maskell*, 342 Md. 684, 691-92 (Md. 1996) (noting in consideration of whether to accept memory repression as a means of tolling the limitations period that "[i]t is crystal clear that in a suit in which a plaintiff "forgot" and later "remembered" the existence of a cause of action … that suit would be time barred.")

Plaintiff heavily relies on the First Circuit case of *Ouellette v. Beaupre*, 977 F.3d 127 (1st Cir. 2020) to argue that it was reasonable for Plaintiff to not understand that Defendants here were potentially liable for her injuries. PLAINTIFF BRIEF, at P. 31, 35, 36. In *Ouellette*, the plaintiff was sexually abused by a police officer in the 1980s, but did not file suit until 2015. None of the instances of abuse occurred at the police station or any other city-owned locations. *Id.* at 131. The abuse occurred at the plaintiff's mother's house, as well as on trips to other cities in Maine. *Id.* The significant question on appeal was whether the Plaintiff knew or should have known that the institutional defendants were potentially responsible. *Id.* at 142. In 2015, Ouellette learned that other victims had made allegations against the same police officer who abused him. *Id.* at 131. It was undisputed in *Ouellette* that, prior to 2015, there was nothing in the public sphere regarding allegations of abuse against the officer, and Ouellette was the first person to come forward. *Id.* at 142.

The factual situation presented here is readily distinguishable from *Ouellette*. Here, the alleged assaults occurred on the premises of Bishop Guertin in the middle of a school day. In *Ouellette*, the abuse occurred away from the workplace, thus significantly lessening the connection between the conduct and the institutional defendants. Further, here, there was a multitude of information in the public sphere regarding prior allegations of abuse against McEnany and his 1988 conviction. In

Ouellette, there was nothing. The logic of the First Circuit in *Ouellette* simply does not apply to these facts.

Finally, Plaintiff makes a meal of the Trial Court's reference to abuse within the Catholic Church being a fact of common knowledge in New Hampshire. *See* PLAINTIFF BRIEF at P. 30-31. But, the Trial Court's discussion of the knowledge of abuse within the Catholic Church was not indispensable to the trial court's ultimate decision on summary judgment. ORDER ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT, Apx. 322-23. The Trial Court made reference to the widely publicized abuse scandal in the Catholic Church simply as further evidence of what Plaintiff would have discovered had she diligently investigated her claims. *Id.* Further, the Trial Court had authority to take judicial notice of this fact. *See* N.H. R. Evid. 201(a).

That the abuse scandal in the Catholic Church had become an issue of common knowledge by May, 2015, cannot reasonably be disputed. Whether or not Plaintiff herself saw the New Hampshire Attorney General's Report, or any of the other multitude of sources in the public sphere regarding the cover-up of abuse within the Catholic Church, is irrelevant. What is relevant is that this information existed and was available to anyone who cared to look.

Plaintiff could have taken any number of actions to investigate her claims against Defendants. But, what Plaintiff is not permitted to do under well-established New Hampshire law is to do nothing. Plaintiff here made the conscious choice to attempt to move on with her life and to not pursue a claim against Defendants within the limitations period. Under any objective standard, Plaintiff either knew or should have known that she had causes of action against Defendants long before May, 2015, and the grant of summary judgment in favor of Defendants should be affirmed.

III. Plaintiff has waived her equitable tolling arguments as they were not raised in the Trial Court; but even if they had been, such arguments fail.

a) Plaintiff's fraudulent concealment argument was never raised in the Trial Court; and, even if it was, there was nothing concealed from Plaintiff that prevented her from understanding she had claims against Defendants.

Plaintiff's argument that the statute of limitations was tolled pursuant to the doctrine of fraudulent concealment is waived as Plaintiff never raised this argument before the Trial Court on the Summary Judgment record. "This court has consistently held that we will not consider issues raised on appeal that were not presented in the lower court." *LaMontagne Builders*, 150 N.H. at 274. This argument was never briefed before the Trial Court, and Plaintiff never made this argument at the Summary Judgment hearing before the Trial Court. As such, Plaintiff has waived this argument.

It is obvious why Plaintiff did not raise this argument before the trial court: the information Plaintiff alleges was concealed from her has been public since 1997. There is no dispute in this case that the information Plaintiff relies on as being allegedly "concealed" was made public in 1997. Plaintiff's fraudulent concealment theory appears to be that the alleged "concealment" did not cease until Plaintiff actually discovered the information. Plaintiff's argument is incompatible with New Hampshire law on fraudulent concealment tolling of the statute of limitations, and should be rejected.

For the limitations period to be tolled pursuant to fraudulent concealment, Defendants must have done "something affirmative in nature designed or intended to prevent, and which does prevent, the discovery of

facts giving rise to a cause of action." *Lamprey v. Britton Const., Inc.*, 163 N.H. 252, 259 (2012).

Plaintiff appears to be confusing two different issues. The question of what Defendants knew regarding McEnany's history prior to the alleged abuse of Plaintiff is relevant to the issue of whether Defendants are liable for Plaintiff's injuries. The separate question raised under the doctrine of fraudulent concealment is whether Defendants concealed from Plaintiff "facts essential to her causes of action." *Lakeman v. LaFrance*, 102 N.H. 300, 303-04 (1959). Plaintiff is unable to show any facts that were concealed from her that prevented her from understanding that she had causes of action against Defendants.

Remarkably, Plaintiff attempts to argue, without any citation to case law, "that Bishop Guertin later acknowledged its transgressions does not undo the concealment at the time of the assaults, did not make Larissa aware of Bishop Guertin's role, and cannot negate for Larissa the forced ignorance its inaction cause." PLAINTIFF BRIEF at P. 38. Again, Plaintiff is attempting to create a new subjective rule where it matters not whether Defendants cured any alleged concealment, so long as Plaintiff was not, herself, made aware of it. But, this is not the law, and Plaintiff cites no case law support for her argument. The limitations period is tolled pursuant to fraudulent concealment only until Plaintiff has discovered the information concealed or "could have done so in the exercise of reasonable diligence." *Lakeman*, 102 N.H. at 303-04. As such, even assuming that the limitations period was tolled pursuant to fraudulent concealment, the limitations period began to run in 1997 when Plaintiff could have discovered the information had she exercised reasonable diligence.

Nothing was concealed from Plaintiff that prevented her from understanding she had claims against Defendants. Even assuming there

was, such concealment ended in 1997. Plaintiff's fraudulent concealment argument should be rejected.

b) The balance of equities weighs in favor of Defendants, as Plaintiff sat on her rights for more than twenty years, forcing Defendants to now attempt to defend a stale claim.

Plaintiff also argues that the "balance of the equities" weighs in Plaintiff's favor, such that the limitations period should be tolled. Plaintiff's argument relies heavily on the idea that because Defendants were allegedly made aware of Plaintiff's allegations when Plaintiff claims to have disclosed the abuse to Mansor, that Defendants have had adequate notice of this claim and it is, thus, just to apply the discovery rule.

The discovery rule was created to avoid the harsh results sometimes imposed by the statute of limitations where the injury or the existence of a particular defendant, were inherently unknowable. *Raymond v. Eli Lilly & Co.*, 117 N.H. 164, 170 (1977); *Rowe v. John Deere*, 130 N.H. 18, 23 (1987). But, that is not the case here. Plaintiff understood she was injured from the date of the alleged abuse, and the Defendants here have always been readily identifiable. The balance of equities, in reality, weighs heavily in favor of Defendants. First, as is discussed at length above, Plaintiff never investigated her claims until 2017. Plaintiff should not be permitted to obtain the benefit of the discovery rule where she failed to exercise reasonable diligence in investigating her claims. Further, even assuming Plaintiff disclosed the alleged abuse to Defendants, it would be reasonable for Defendants to assume that because Plaintiff failed to bring her claims within the statutory limitations period, that she was not going to be pursuing a claim.

Plaintiff slept on her rights for twenty years, and Defendants are now forced to defend a stale claim where the key witness, McEnany, is now deceased and unable to assist Defendants in defending this suit. Defendants are thus only left with Plaintiff's story, and the faded memories of other witnesses who are attempting to recall events occurring more than twenty

years prior. Such a situation is inherently unjust. The Trial Court’s decision should be affirmed.

CONCLUSION

Plaintiff had until 2008 to bring suit against the Defendants. By filing her suit in 2018, a decade after the limitations period expired, Plaintiff is too late.

Plaintiff has always had the information necessary to bring her claims against Defendants. There was nothing preventing Plaintiff from understanding Defendants were possible wrong-doers aside from Plaintiff's own ignorance and failure to exercise diligence in investigating her claims.

Now, due to Plaintiff's inaction, Defendants are forced to attempt to defend a stale claim involving conduct occurring more than twenty years ago. This is exactly the type of case the statute of limitations was created to bar, and the exact case that the discovery rule was never intended to save.

The decision of the Trial Court granting summary judgment in favor of Defendants should be affirmed.

Respectfully submitted,

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Dated: January 6, 2023

CERTIFICATION & REQUEST FOR ORAL ARGUMENT

I hereby certify that this brief contains no more than 9,500 words, exclusive of those portions which are exempted.

I hereby certify that on January 6, 2023, copies of the foregoing will be forwarded to the parties registered on this Court's e-filing system.

Full oral argument is requested. John M. Edwards, Esq., shall present argument on behalf of Defendants.

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