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 PLAINTIFF/APPELLANT, LARISSA TROY

November 22, 2022

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QUESTION PRESENTED

I. Did the court err in granting summary judgment on the issue of the statute of limitations, when Larissa Troy discharged her duty of inquiry in 1995, and could not have reasonably known of Bishop Guertin's and Sacred Heart's role in her injury until 2017? (The additional questions in the notice of appeal are subsumed herein.)

Preserved: PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT (Aug. 10, 2021), *Appx*. at 247; PLAINTIFF'S MEMO SUPPORTING PLAINTIFF'S SUMMARY JUDGMENT (Aug. 10, 2021), *Appx*. at 230; PLAINTIFF'S OBJECTION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT (Dec. 16, 2021), *Appx*. at 303.

STATEMENT OF FACTS

I. Larissa Was Twice Sexually Assaulted by her Teacher at Bishop Guertin

Larissa Troy was born in 1978 in Dracut, Massachusetts. She is the eldest of five sisters: Larissa, Noelle (1 year younger), Denise and Tanya (twins, 3 years younger), and a fifth (12 years younger). DENISE DEPOSITION at 8 (Sept. 16, 2021), *Appx*. at 82; INTERROGATORIES at 2 (Apr. 22, 2019), *Appx*. at 19.

Larissa attended Bishop Guertin, a private Roman Catholic high school in Nashua, New Hampshire, operated by the Brothers of the Sacred Heart of New England, Inc. She ran track in high school, and graduated in 1996. LARISSA DEPOSITION at 150 (May 11, 2021), *Appx*. at 27; LABBE DEPOSITION at 20-21, 67 (Apr. 16, 2019), *Appx*. at 87. That fall of 1996, Larissa matriculated at Providence College in Providence, Rhode Island, graduating four years later. After college and to the present, she has worked in sales of advertising, pharmaceuticals, and real estate. Larissa has been married for about 20 years, and currently lives in California. INTERROGATORIES at 3-5.

During Larissa's time at Bishop Guertin, Brother Shawn McEnany was known as a young, charismatic, gregarious, and involved teacher, with a big laugh, popular with students and respected by peers. LARISSA DEPOSITION at 74-75, 120, 127, 151; LETTER FROM LABBE TO PARENTS (Nov. 10, 1997), *Appx*. at 203; SACRED HEART PERSONNEL RECORD at 1-4 (Sept. 2, 2017), *Appx*. at 15.

In 1995, when Larissa was a junior at Bishop Guertin and having trouble at home, she was befriended by McEnany, who as a teacher and religious Brother became her confidant and trusted adult. Larissa felt specially treated by McEnany, "adored being around him," considered him a best friend, and on several occasions met privately in his office to discuss her personal and family

problems. LARISSA DEPOSITION at 75, 111; CHARUVASTRA RPT. at 3-5 (Dec. 7, 2018), *Appx*. at 129; ZIV RPT. at 5 (Nov. 18, 2019), *Appx*. at 149. There was no effort to hide their closeness at school, but Larissa believes her family was probably unaware how she felt about him. LARISSA DEPOSITION at 150-51.

Unfortunately, what Larissa perceived as a friendly, trusting relationship with a teacher and religious advisor, took a pernicious turn when McEnany sexually assaulted her at school.

The first sexual assault occurred in her junior year. Larissa was sitting on a radiator in the student locker area next to her sister Noelle. Larissa was wearing a skirt, and her legs were hanging over the edge. McEnany approached her, and moving in closely, positioned his body between her legs so that she felt his genitals pressing against hers through her underwear. At the age of 17, she had had no sexual experience. While it made her uncomfortable, Larissa did not understand what was happening at the time, nor even recognize it as something inappropriate, but just "squiggled away." LARISSA DEPOSITION at 91, 104, 107-11. Soon after, believing her sister was unaware of what McEnany had just done, Larissa told Noelle to "stay away" from McEnany. However, Noelle witnessed the interaction, and was confused by it and by Larissa's warning. LARISSA DEPOSITION at 107, 111; NOELLE DEPOSITION at 31 (June 3, 2020), *Appx*. at 72.

The second sexual assault occurred around Thanksgiving in Larissa's senior year. At her desk in McEnany's classroom during a test, McEnany informed her she was excused from the test, and called her to the back of the room. Knowing she was one of McEnany's favorite students, she felt honored for the respite from the quiz. In the back of the classroom, she sat herself on a high stool behind the other students who were completing the test. LARISSA DEPOSITION at 120-21, 126. McEnany, clothed in a cassock, approached her, and similar to the first time, pressed his body between her legs. She could feel

his penis on her knee, saw his hand rubbing back and forth under his robes, and noticed he was breathing heavily. Larissa felt McEnany ejaculate on her knee and leg. He then wiped his finger on her lips, and she tasted what she later understood was semen. LARISSA DEPOSITION at 120, 126-28, 132-33.

The class soon ended. Larissa, confused, upset, and angered by what had happened, but blaming herself, retreated to the bathroom. LARISSA DEPOSITION at 132-33, 137. The same day, she reported the assault to Bishop Guertin's Dean of Students, Susan Mansor – who had a statutory duty to report the incident to police.[1] Mansor told Larissa she was fabricating the assault, instructed her to not tell anyone, and threatened Larissa would get in trouble if she did. Larissa begged Mansor to believe her, and when she did not, Larissa felt rejected and scared, and regarded that what McEnany had done to her was her own fault. DEPOSITION at 105, 135-37; INTERROGATORIES at 7. She had gone to the Dean because she was "thinking that an adult was going to step in and help me," but her experience with Mansor caused Larissa to lose faith in adult authority. LARISSA DEPOSITION at 137; CHARUVASTRA RPT. at 6.

After the second assault, Larissa avoided McEnany at school, and later ignored him the one time she happened to see him on her campus in Providence, Rhode Island. CHARUVASTRA RPT. at 7; ZIV RPT. at 6. Others who attended Bishop Guertin in the same timeframe corroborated that McEnany was inappropriately physical with female students. ZIV RPT. at 5, 18, 33.

Since high school, as a result of the sexual assaults, Larissa has suffered emotional and psychological disorders which have manifested in physical symptoms, sexual dysfunction, anxieties about affection and intimacy, and hyper-vigilance regarding her own children. LARISSA DEPOSITION at 15,

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[1]RSA 169-C:29 (eff. Aug. 22, 1979) ("Any … teacher, school official, school nurse, school counselor … or any other person having reason to suspect that a child has been abused or neglected shall report the same in accordance with this chapter.").

152-53; INTERROGATORIES at 6; CHARUVASTRA RPT. at 7-10, 13-14; ZIV RPT at 7, 10-12, 14. Larissa's expert psychiatrist diagnosed her with a variety of conditions as a result of the abuse, which the defendant's medical expert disputes. CHARUVASTRA RPT., *passim*; ZIV RPT., *passim*.

II. Bishop Guertin Employed a Known Sexual Offender Without Informing Students or Parents

Unbeknownst to Larissa, nor any Bishop Guertin parents or students, the school hired and retained McEnany, who it knew was a convicted sex offender.

McEnany spent his career in Catholic institutions. SACRED HEART PERSONNEL RECORD at 3. In 1988, while he was a teacher at St. Dominic Academy, in Lewiston, Maine, McEnany sexually abused a 15-year female student in a parked car outside a nursing home. LABBE DEPOSITION at 28-29.

The State of Maine indicted McEnany for one count of Gross Sexual Misconduct, a Class-C crime, and three counts of Unlawful Sexual Contact, a Class-D crime.[2] He pleaded guilty and was found guilty of two counts of the latter. McEnany was sentenced to the maximum 364 days on each count, to run consecutively, plus restitution for the victim's counseling. The sentences were suspended for two years upon conditions, including that McEnany "not engage in elementary or secondary education as an instructor without prior permission of probation officer." STATE OF MAINE, NOTICE OF CONVICTION (Feb. 25, 1988), *Appx*. at 4.

At that time, Brother Leo Labbe was Sacred Heart's Provincial,[3] the duties of which were oversight of all its schools in New England, including St. Dominic in Maine and Bishop Guertin in New Hampshire. As Provincial, Labbe was closely involved in McEnany's Maine case: he attended McEnany's

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[2] In 1988 in Maine, Class C crimes were punishable by up to 5 years incarceration and a $5,000 fine. Class D crimes were punishable by up to 364 days incarceration and a $2,000 fine. 17-A MRSA § 4-A.

[3] A Provincial is "[a]n officer acting under the superior general of a religious order, and exercising a general supervision over all the local superiors in a division of the order called a province." Arthur Vermeersch, THE CATHOLIC ENCYCLOPEDIA (1911) <http://www.newadvent.org/cathen/12514b.htm>.

courtroom appearances on the institution's behalf, was present when McEnany was convicted and sentenced, and understood that the Maine court disallowed McEnany from having contact with students for the duration of the sentence. LABBE DEPOSITION at 27, 39, 41. Sacred Heart paid McEnany's restitution costs and attorney's fees, and removed him to its retirement residence in Rhode Island. LABBE DEPOSITION at 34-35, 38-39.

In 1990, shortly after McEnany was released from the no-teaching condition, Labbe, acting within his authority, hired McEnany at Bishop Guertin because he understood McEnany was a good teacher. LABBE DEPOSITION at 41, 49-50, 82; SACRED HEART PERSONNEL RECORD at 4. Without any evidence, Labbe believed McEnany had been rehabilitated, and that his abuse was directed only toward girls, while Bishop Guertin was still an all-boys school. LETTER FROM LABBE TO PARENTS (Nov. 10, 1997); LABBE DEPOSITION at 20-21, 27, 42-43. Labbe admits he did not take the evidence of McEnany's sexual predation seriously, that he hired McEnany without any evaluation even though he knew there were specialists who did such assessments, and without any deliberation among parents, peers, or the Board of Trustees. LABBE DEPOSITION at 44-49, 59, 65-67.

At the time McEnany was hired, Bishop Guertin was an all-boys school, but there was active discussion about merging with another all-girls school, which would make Bishop Guertin coeducational. Labbe, who as Provincial was also a Sacred Heart Trustee, was involved in these decisions, and Bishop Guertin began admitting girls in 1991 or 1992, not long before Larissa arrived. LABBE DEPOSITION at 43-44, 50.

Even though Labbe knew McEnany was convicted of sexually abusing a female student before he was placed at Bishop Guertin, and refrained from assigning McEnany to St. Dominic because it was co-ed, Bishop Guertin took no precautions when it began admitting girls. There was no investigation or

assessment, and no notice to parents or the school. Bishop Guertin instituted no monitoring or supervision, and allowed McEnany opportunities for contact alone with students at off-campus retreats. LABBE DEPOSITION at 41-44, 50-54, 59-60, 63-64, 82.

In 1997, the year after Larissa graduated, a news report revealed McEnany's Maine conviction, LABBE DEPOSITION at 75; *Trn*. at 18, causing local media attention for about two months. PALADINO AFFIDAVIT ¶ 10 (Oct. 12, 2021), *Appx*. at 126. In response, Bishop Guertin removed McEnany from his position. LABBE DEPOSITION at 77.

At the time, Larissa was attending college in Rhode Island, and received no contemporaneous notice from anyone of the revelations about McEnany's prior record. LARISSA DEPOSITION at 152. Larissa's mother, Diane Franey, does not remember getting any communication from the school, even though her other daughters were still students there. DIANE DEPOSITION at 30-31 (June 3, 2020), *Appx*. at 67; DENISE DEPOSITION at 8; TANYA DEPOSITION at 8 (Sept. 14, 2021), *Appx*. at 78.

Being originally from Massachusetts, Larissa's mother Diane subscribed to a Boston newspaper, not New Hampshire papers, and her sister Noelle does not generally follow the news. DIANE DEPOSITION at 25; NOELLE DEPOSITION at 25. Although Larissa maintained contact with her mother and sisters, they talked of other things. LARISSA DEPOSITION at 33, 152.

III. Larissa Realized in 2017 the Causal Connection Between the Sexual Abuse and her Psychological Issues

In May 2017, Larissa got a text from her brother-in-law congratulating her about a social media post he had seen promoting Bishop Guertin, which featured Larissa and her sisters and their past success on the Bishop Guertin track team. The text upset Larissa because "I felt that it was … a lie; that it was touting … my sisters and I being this great big success from Bishop Guertin, and it felt wrong to me." LARISSA DEPOSITION at 11, 11-14; CHARUVASTRA RPT. at 8; ZIV RPT. at 10.

A few weeks later, her curiosity was piqued when she read a newspaper article about a sexual abuse case at a different private high school, leading her to do an internet search on Brother Shawn McEnany. Clicks led her to a website whose mission is "documenting the abuse crisis in the Roman Catholic Church," *see* <https://www.bishopaccountability.org/>, where she learned that McEnany had been convicted of sexual assault in Maine before he became her teacher and abuser at Bishop Guertin. LARISSA DEPOSITION at 11-15, 152; INTERROGATORIES at 7; CHARUVASTRA RPT. at 8; ZIV RPT. at 10. McEnany died in 2017. SACRED HEART PERSONNEL RECORD at 3.

Before Larissa's discovery, she had "not thought about it at all," ZIV RPT. at 10, but became "furious that the school [used her picture.] I remember thinking I absolutely hated the high school. I started to think about it. I remembered brother Shawn and what happened there, and I was intensely angry about it." ZIV RPT. at 10.

Larissa for the first time discussed with her husband and sisters the two high school sexual assaults. CHARUVASTRA RPT. at 8. It occurred to her that her first sexual experiences were forced on her by McEnany and that he robbed her of her innocence. Larissa nascently began to realize a connection between her long-standing emotional issues and McEnany's sexual assaults on her.

LARISSA DEPOSITION at 153; CHARUVASTRA RPT. at 7-8; CHARUVASTRA AFFIDAVIT ¶¶ 4-7 (Aug. 5, 2021), *Appx*. at 145.

STATEMENT OF THE CASE

In her internet research, Larissa found the name of a lawyer with experience in sexual abuse cases. She sued Bishop Guertin and Sacred Heart in May 2018, about a year after her brother-in-law's text caused her to realize the connection between her emotional issues and McEnany's sexual assaults on her. As McEnany is deceased, Larissa's suit is against the institutional actors only. It alleges that Bishop Guertin and Sacred Heart were negligent in hiring, retaining, and supervising McEnany, and that they were negligent in their supervision and protection of Larissa, to whom they owed a "parental proxy" duty. *Marquay v. Eno*, 139 N.H. 708, 718 (1995). COMPLAINT (May 18, 2018), *Appx*. at 206; ANSWER (July 2, 2018), *Appx*. at 213.

Bishop Guertin and Sacred Heart filed a motion to dismiss, asserting that the statute of limitations had already run. Larissa objected and filed a memorandum of law. MOTION TO DISMISS (June 28, 2021), *Appx*. at 227; MEMO SUPPORTING DISMISSAL (June 28, 2021), *Appx*. at 221; PLAINTIFF'S OBJECTION TO MOTION TO DISMISS (Aug. 10, 2021), *Appx*. at 249; MEMO OF LAW OPPOSING DISMISSAL (Aug. 10, 2021), *Appx*. at 261.

Both plaintiff and defendants then filed motions for summary judgment on the issue of the application of the statute of limitations. Each filed objections to the other's, and memoranda of law. PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT (Aug. 10, 2021), *Appx*. at 247; PLAINTIFF'S MEMO SUPPORTING PLAINTIFF'S SUMMARY JUDGMENT (Aug. 10, 2021), *Appx*. at 230; DEFENDANT'S MEMO OPPOSING PLAINTIFF'S SUMMARY JUDGMENT (Oct. 12, 2021), *Appx*. at 261; DEFENDANT'S MOTION FOR SUMMARY JUDGMENT (Nov. 18, 2021), *Appx*. at 291; PLAINTIFF'S OBJECTION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT (Dec. 16, 2021), *Appx*. at 303.

The parties also filed motions regarding admissibility of newspaper articles covering the 1997 revelation of the Maine convictions and McEnany's

legal proceedings, but because the court indicated it did not consider them, the issue was deemed moot. PLAINTIFF'S MOTION TO STRIKE (Dec. 16, 2021), *Appx*. at 299; OBJECTION TO MOTION TO STRIKE (Dec. 28, 2021), *Appx*. at 306; ORDER (Feb. 22, 2022), *Addendum* at 57, *Appx*. at 310.

The Hillsborough County (South) Superior Court (*Charles S. Temple*, J.) held a hearing on January 7, 2022. There was initially confusion regarding which motion was being decided, but the parties agreed that the hearing was to determine whether the case was barred by the statute of limitations. *Trn*. at 3-4.

Larissa argued that she complied with the statute of limitations because she did not discover the connection between her life-long dysfunctions and the sexual assaults she suffered until she read the BishopAccountability.org website in 2017, and also did not know until then that Bishop Guertin knowingly employed a sex offender.

The court granted Bishop Guertin's request for summary judgment, holding that Larissa's suit was barred by the statute of limitations. Without citation to *any* evidence in the record, the court asserted, as the gravamen of its decision, that "by May 2015, it was common knowledge that Catholic institutions in New Hampshire and elsewhere had a practice of knowingly employing men who had previously sexually abused children." It thus concluded that Larissa knew enough regarding both injury and causation at the time of the assaults to begin the limitations clock. ORDER ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT at 12 n.4 (Feb. 22, 2022), *Addendum* at 55, *Appx*. at 311.

The court also summarily ruled on the remaining motions. ORDER (Feb. 22, 2022), *Addendum* at 57, *Appx*. at 310. Larissa requested reconsideration, to which the defendants objected, and which the court denied. MOTION FOR RECONSIDERATION (Mar. 10, 2022), *Appx*. at 325; OBJECTION TO RECONSIDERATION (Mar. 28, 2022), *Appx*. at 336; MOTION TO STRIKE (Mar.

28, 2022) (omitted from appendix); NOTICE OF DECISION (Apr. 29, 2022), *Addendum* at 58, *Appx*. at 346. Larissa appealed.

SUMMARY OF ARGUMENT

Larissa Troy was twice sexually assaulted when she was in high school by Brother Shawn McEnany, her trusted teacher and religious advisor. Years later – typical of sexual abuse survivors – Larissa realized that her lifelong dysfunctions were related to the assaults.

The superior court found that the statute of limitations began to run at the time of the assaults. However, Larissa fulfilled her duty of inquiry the day she was sexually assaulted, when the total rejection of her report to the Dean of Students reasonably indicated to her that the school would not countenance a known sexual offender on its staff. She did not learn until 2017, when, after her curiosity was piqued by a marketing photo of her at Bishop Guertin, she investigated and learned that Bishop Guertin and Sacred Heart employed McEnany, even though they knew he was a convicted sexual offender.

Application of the discovery rule is equitable. In these circumstances, it would contravene the purpose of both the statute of limitations and the discovery rule to allow Bishop Guertin and Sacred Heart to avoid liability for violating their duty to protect students from sexual assault on campus.

Accordingly, this court should reverse.

ARGUMENT

I. Discovery Rule Exception to Statute of Limitations

A. Larissa Did Not Until 2017 Realize a Causal Connection Nor Learn of Bishop Guertin's Role

Statutes of limitations exist "to insure that defendants receive timely notice of actions against them." *Dupuis v. Smith Properties, Inc*., 114 N.H. 625, 629 (1974). Traditionally, the New Hampshire period of limitations for torts was six years.

Beginning around the 1950s, courts developed the "discovery rule" to "facilitate the vindication of tort victims' rights," *Heath v. Sears, Roebuck & Co.*, 123 N.H. 512, 523 (1983), "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, 182 (1995); *United States v. Kubrick*, 444 U.S. 111, 122 (1979) ("That [the plaintiff] has been injured in fact may be unknown or unknowable until the injury manifests itself; and the facts about causation may be in the control of the putative defendant, unavailable to the plaintiff or at least very difficult to obtain."); *Shillady v. Elliot Community Hospital*, 114 N.H. 321, 323 (1974) ("[T]olling the running of the statute in such a situation is based on the unfairness which would result to a plaintiff blamelessly ignorant of her injury whose action would be cut off before she was aware of its existence.").

In 1986, the New Hampshire legislature reduced the standard statute of limitations to three years, and simultaneously codified the discovery rule. *Conrad v. Hazen*, 140 N.H. 249, 251 (1995). The discovery rule applies in sexual assault cases. *McCollum v. D'Arcy*, 138 N.H. 285 (1994).

In 2009, New Hampshire enacted a longer statute of limitations for sex abuse cases. It provided that suit may be brought "within the later of"

> I. Twelve years of the person's eighteenth birthday; or
>
> II. Three 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.

RSA 508:4-g (2009) (emphasis added).[4] Section II is the codification of the discovery rule, and most jurisdictions have discovery rules similar or identical to New Hampshire's. *See* Annotation, *Running of Limitations Against Action for Civil Damages for Sexual Abuse of Child*, 9 A.L.R.5th 321 (1993).

> The discovery rule is two-pronged, and both prongs must be satisfied before the statute of limitations begins to run. First, a plaintiff must know or reasonably should have known that she has been injured; second, a plaintiff must know or reasonably should have known that her injury was proximately caused by conduct of the defendant. 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 defendant's alleged act.

Lamprey v. Britton Construction, Inc., 163 N.H. 252, 257 (2012) (citations omitted); *Petition of DCYF*, 173 N.H. 613, 616 (2020). The plaintiff has the burden to prove application of the discovery rule. *Dobe v. NH DHHS*, 147

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[4]The statute was amended again in 2020 to entirely eliminate time-based limitations, but the amendment does not apply to this case. However, the parties stipulated below to application of the 2009 statute, which was in effect when Larissa filed suit. ORDER ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT at 5. Because the discovery rule under the common law, the 1986 general limitations statute, and the 2009 sexual assault limitations statute are elementally identical, differing versions of the prior statute do not alter the analysis.

N.H. 458, 461 (2002).

In New Hampshire, several sexual abuse discovery rule cases have been reported. *McCollum v. D'Arcy*, 138 N.H. at 285 (involving repressed memory); *Conrad v. Hazen*, 140 N.H. at 249 (addressing mostly retrospective legislation, leaving open the question here). In *Sinclair v. Brill*, 857 F.Supp. 132 (D.N.H. 1994), the New Hampshire federal district court found that the plaintiff did not make the causal connection between the childhood abuse she suffered and her injuries until much later in life, thus tolling the limitations period.

Larissa knew in 1995 that she was assaulted. While the discovery rule does not "toll the statute of limitations until the full extent of the plaintiff's injury has manifested itself," *Lamprey*, 163 N.H. at 257, McEnany is deceased and it is not his conduct at issue here.

When Larissa reported the assault to Bishop Guertin's Dean of Students, Susan Mansor, who was a mandatory reporter but did nothing, it was fair for Larissa to assume that McEnany's action toward her was an anomaly and that the school had no role. *See Doe v. Hononegah Community High School*, 833 F. Supp. 1366, 1376 (N.D. Ill. 1993) ("[I]t may have been reasonable for plaintiff to believe that the sexual abuse was caused by nothing more than the teacher's improper and self-serving motivation without her having any reason to suspect that the school board or its administrators had been responsible in any way for the teacher's conduct.").

The court, however, held that Larissa's duty of inquiry arose at the time of the assault, because Mansor accusing Larissa of lying made Larissa "undoubtedly aware that the defendants were continuing to employ a known abuser." ORDER ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT at 11, *Addendum* at 54. The holding is error because, if anything, Mansor's accusing Larissa of lying would have made her believe the school did *not* know or have reason to think McEnany was a sex offender.

Larissa discovered the connection between her assault and her subsequent psychological and emotional problems when she was alerted that Bishop Guertin used her picture in their marketing. It upset her, and led her to a newspaper article and internet research where she learned of Bishop Guertin's role in her injuries by hiring McEnany and concealing his prior offenses.

Accordingly, this court should reverse, and remand for the parties to proceed to trial.

B. Larissa's Duty of Inquiry Arose, and was Discharged, in 2017

Plaintiffs invoking the discovery rule are "held to a duty of reasonable inquiry." *Portsmouth Country Club v. Town of Greenland*, 152 N.H. 617, 624 (2005).

> [T]he limitations period only begins to run when 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.

Perez v. Pike Industries, Inc., 153 N.H. 158, 160 (2005) (quotations omitted).

Generally an injury, knowledge of its existence, and some information indicating who or what caused it, happen concurrently at the time of the injury, and the connection is obvious. *Raymond v. Eli Lilly & Co.*, 117 N.H. 164, 168 (1977) ("In many tort cases [injury and awareness] occur simultaneously and the moment of accrual is clear. However, in some cases there may be a delay between the breach of duty and the injury, or between the injury and the plaintiff's discovery of the cause of his injury.").

In *Perez*, for example, the plaintiff broke his ankle when making a delivery at a State road construction site. While the plaintiff promptly sued the State, he later attempted to add as a defendant the State's contractor. This court denied the untimely addition, holding that "it is not unreasonable to expect a plaintiff … to anticipate that some investigation will be required to ascertain the identity of the person or entity that actually paved the road." *Perez*, 153 N.H. at 161. In *Pichowicz v. Watson Ins. Agency, Inc.*, 146 N.H. 166 (2001), the fact that the plaintiff did not have sufficient insurance was apparent as soon as coverage was denied.

In other cases, existence of injury and causation may not be immediately apparent, but a duty of inquiry arises, and discovery of causation may take some diligence. In *Singer Asset Finance Co., LLC v. Wyner*, 156 N.H. 468

(2007), for example, the plaintiff was bilked by a finance company into receiving a lower monthly annuity, but claimed to have not noticed it until prompted when watching a television documentary years later. This court held that the plaintiff "should have discovered the injury for which she now wishes to sue," and would have had she studied the company's first deficient disbursement.

When injury and causation are not obvious or easily discoverable, the duty of inquiry arises when some triggering notification apparent to the plaintiff would cause a reasonable person to inquire. In *Balzotti Global Group, LLC v. Shepherds Hill Proponents, LLC*, 173 N.H. 314 (2020), the plaintiff was put on notice about the termination of his development rights by an adverse court decision. In *Furbush v. McKittrick*, 149 N.H. 426, 431 (2003), the plaintiff was put on notice about potential legal malpractice by a letter the defendant sent to him. In *Beane v. Dana S. Beane & Co., P.C.*, 160 N.H. 708 (2010), the plaintiff was put on notice about potential accounting malpractice when he received a notice from the IRS indicating taxes owed.

If, as the defendants claim, Larissa's duty to inquire was triggered at the time of the assault, her report to the Dean of Students discharged it. From the response Larissa received – unqualified rejection – 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. *Wisniewski v. Diocese of Belleville*, 943 N.E.2d 43, 55 (Ill.App. 2011) (Plaintiff "had no reason to believe that the diocese had any knowledge relevant to [priest's] dangerous propensities."). Had Susan Mansor notified the police, as the mandatory-reporter law required, Larissa might have learned the school was involved and the statute of limitations may have then begun running.

Larissa's duty of inquiry was not triggered in 1995, but in 2017 when she received her brother-in-law's text. She diligently discharged it shortly

thereafter when she sought information about her abuser, and learned on the internet that Bishop Guertin knowingly concealed the prior conviction of the teacher who assaulted her. Larissa therefore timely sued Bishop Guertin in 2018.[5]

Several courts have determined whether media reports can trigger the duty of inquiry. If publicity is hyper-local and specifically tied to the plaintiff, the plaintiff's knowledge can be imputed. *Donahue v. United States*, 634 F.3d 615 (1st Cir. 2011) (Boston plaintiffs were families of murder victims in Whitey Bulger scandal). Likewise if media reports were actually assayed by the plaintiff. *Bowen v. Eli Lilly & Co.*, 557 N.E.2d 739, 743 (Mass. 1990) (plaintiff had stash of magazine articles, which she had read, regarding the connection between the medication she had taken and her condition). However, general news coverage of an issue of interest to the public, but which is unknown to the plaintiff and not personal to her, does not inaugurate the duty of inquiry. *Doe v. Roman Catholic Archbishop of Archdiocese of Detroit*, 692 N.W.2d 398, 407 (Mich.App. 2004) ("widespread" publicity is separate from what plaintiff knew or should have known regarding his own causes of action against defendant).

In the defective-drug cases, where there has been publicity about the bad medication, courts have held that the determination of whether the publicity is sufficient to put the plaintiff on notice, and trigger the statute of limitations, requires a fact-intensive inquiry into the pervasiveness and content of the publicity and the particular circumstances of the plaintiff's awareness. *See, e.g., In re Risperdal Litigation*, 223 A.3d 633, 651-52 (Pa. 2019); *Slater v. Biomet, Inc.*, 244 F. Supp. 3d 803, 807 (N.D. Ind. 2017); *In re Massachusetts Diet*

[5] A four-part test for when a plaintiff's duty of inquiry arises, which the trial court reported has been adopted by an "overwhelming majority of courts," ORDER ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT at 10, *Addendum* at 53, cannot be overwhelmingly discerned.

Drug Litigation, 338 F. Supp. 2d 198, 205 (D. Mass. 2004).

Larissa's case involves nothing like the conspicuous notifications by court decisions or official letters in *Balzotti*, *Furbish*, and *Beane*, the impossible-to-miss publicity about the plaintiffs' families in *Donahue*, or the actual notice of media publicity in *Bowen*.

The court's assertion that sex abuse in the Catholic church by priests was "common knowledge" – and therefore Larissa's duty of inquiry was triggered at some unspecified time when such knowledge became supposedly common – is error in several ways. First, it is inaccurate. Even if some portion of the population were aware of the general phenomenon of sexual abuse by priests in Catholic churches and schools, that is far short of the court's assertion that "by May 2015, it was common knowledge that Catholic institutions in New Hampshire and elsewhere had a practice of knowingly employing men who had previously sexually abused children." ORDER ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT at 12, *Addendum* at 55. The court's assertion would mean that it was common knowledge that there was a widespread practice in the Catholic Church in New Hampshire to intentionally hire priests who it positively knew had sexually abused children. The court's finding would mean that the public in New Hampshire (and elsewhere) knew the Catholic Church engaged in a continuing criminal conspiracy to sexually abuse children. As outrageous as the problem of sexual abuse amongst priests is, there is no suggestion in the record, or anywhere else, that Catholic institutions like Bishop Guertin regularly engaged in that level of criminality or negligence, or that if they did, knowledge about it is or was common.

Second, there is no evidence in the record regarding the commonness of such knowledge. *See Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001) ("A court may take judicial notice of 'matters of public record' … [b]ut a court may not take judicial notice of a fact that is subject to reasonable

dispute."); *In the Matter of Rokowski*, 168 N.H. 57 (2015) (error when court used its own internet research to establish value of marital home); N.H. R. EVID. 201(a) ("A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned."); *CPM Virginia, LLC v. MJM Golf, LLC*, 780 S.E.2d 282, 289 n.6 (Va. 2015) (judicial notice of "almanac facts"). The court's citation to a report by the New Hampshire Attorney General, even if it were recognized as evidence, does not prove common knowledge, and there is no indication that Larissa, or anyone else, ever read it.

Third, even if such knowledge were known by some, because the news did not reach Larissa, and no publicity prominently mentioned her, the purported common knowledge is not relevant. Thus, the court's tracing of the time that Larissa should have known of her cause of action to the fact of Catholic institutions covering up sexual abuse generally, or to the revelation of McEnany's convictions specifically, is error.

Finally, excessive enforcement of a duty of diligent inquiry is an inefficient alternative. The First Circuit wrote:

> [W]e decline to hold as a matter of law that a putative plaintiff must file a lawsuit and undertake civil discovery – a very expensive step – to satisfy the demands of due diligence.… Moreover, it might also encourage putative plaintiffs to file lawsuits that would effectively function as fishing expeditions.

Ouellette v. Beaupre, 977 F.3d 127, 144 (1st Cir. 2020).

Accordingly, this court should reverse, and remand for the parties to proceed to trial on Bishop Guertin's and Sacred Heart's negligence.

C. Larissa Acted Reasonably as a Teenage Survivor of Sexual Assault

In child and teen sex abuse cases, it is not uncommon for plaintiffs to discover the connection between their injury and its causation decades after the abuse. Such cases tend to follow a pattern: sexual abuse when the plaintiff is a minor; psychological and emotional issues that may begin at the time of abuse, but last well into adulthood and throughout the victim's life; emotional burial of these problems for years, with a tendency for victims to blame it on themselves; discovery of the connection arising from a triggering event, causing the victim to realize that their ongoing problems stem from the childhood abuse. *See, e.g. Conrad v. Hazen*, 140 N.H. at 251; *Doe 150 v. Archdiocese of Portland in Oregon*, 469 F. App'x 641 (9th Cir. 2012); *Lewis v. Bellows Falls Congregation of Jehovah's Witnesses*, 248 F. Supp. 3d 530 (D. Vt. 2017); *Doe v. Order of St. Benedict*, 836 F. Supp. 2d 872 (D. Minn. 2011); *Evans v. Eckelman*, 265 Cal. Rptr. 605 (Ct. App. 1990); *Wisniewski v. Diocese of Belleville*, 943 N.E.2d at 55 ("Although [plaintiff] never totally forgot about the abuse, he became successful in blocking it out of his mind."); *Kestel v. Kurzak*, 803 N.W.2d 870 (Iowa Ct.App. 2011); *Koe v. Mercer*, 876 N.E.2d 831 (Mass. 2007); *J.P. v. Smith*, 134 A.3d 977 (N.J. Super. Ct.App. Div. 2016); *Martinez-Sandoval v. Kirsch*, 884 P.2d 507 (N.M. Ct.App. 1994); *Syrstad v. Syrstad*, 968 N.W.2d 207 (S.D. 2021); *Iron Wing v. Catholic Diocese of Sioux Falls*, 807 N.W.2d 108 (S.D. 2011); *One Star v. Sisters of St. Francis*, 752 N.W.2d 668 (S.D. 2008); *Earle v. State*, 743 A.2d 1101 (Vt. 1999); *Hollmann v. Corcoran*, 949 P.2d 386 (Wash. Ct.App. 1997); *Oostra v. Holstine*, 937 P.2d 195 (Wash. Ct.App. 1997); *Cloud ex rel. Cloud v. Summers*, 991 P.2d 1169 (Wash. Ct.App. 1999); *B.R. v. Horsley*, 345 P.3d 836 (Wash. Ct.App. 2015); *Hammer v. Hammer*, 418 N.W.2d 23, 26-27 (Wis. Ct.App. 1987) (due to sex abuse, plaintiff's "own guilt, depression and disassociation, she had no information to a reasonable

probability of the nature of her injuries or the facts with respect to their cause … and was also misinformed and misled by the authority figures on whom she reasonably relied.").

While some cases involve repressed memories, *see, e.g., McCollum v. D'Arcy*, 138 N.H. at 285, familial incest, *see, e.g., Hammer*, 418 N.W.2d at 23, or abuse during church activities, *see, e.g., Martinez-Sandoval v. Kirsch*, 884 P.2d at 507, many, like Larissa's, stem from sexual abuse in secular or religious schools. *See, e.g., Doe v. Hononegah Community High School*, 833 F. Supp. 1366 (N.D. Ill. 1993); *One Star v. Sisters of St. Francis*, 752 N.W.2d at 668.

As noted, the discovery rule employs an objective standard; it applies when the plaintiff did not discover, and could not reasonably have discovered, the causal connection between the injury and the defendant's acts. *Lamprey v. Britton Construction, Inc*., 163 N.H. at 257.

However, courts have recognized that the statutory reasonable person is not merely a hypothetical reasonable person, but a reasonable person in the circumstances of the plaintiff. *See Raymond v. Eli Lilly*, 117 N.H. at 171 ("[T]he statute of limitations did not begin to run until the plaintiff knew or, as a *reasonable person under the circumstances*, should have known that there was a causal nexus.") (emphasis added). In a malpractice case, the Massachusetts court held:

> The reasonable person who serves as the standard in this evaluation … is not a detached, outside observer assessing the situation without being affected by it. Rather, it is a reasonable person who has been subjected to the conduct which forms the basis for the plaintiff's complaint.… [W]e look at a reasonable person *in the position of the plaintiff*. If such an initially reasonable person would, by reason of the experience forming the basis for the plaintiff's complaint, have his or her judgment altered in some way, such altered

> judgment then becomes the standard. The cause of action will not accrue until such an individual would have discovered the damage.

Riley v. Presnell, 565 N.E.2d 780, 786 (Mass. 1991) (emphasis in original, quotations and citations omitted).

Victims of sexual abuse essentially form a subgroup of the population, with unique sensibilities and difficulties. They often blame themselves, "struggle with a complex array of reactions such as deepseated rage, shame, and spiritual distress," and avoid the topic. This results in a variety of lifelong mental health symptoms, including post-traumatic stress disorder. Berliner & Conte, *The Process of Victimization: the Victim's Perspective*, 14 CHILD ABUSE & NEGLECT 29, 34 (1990) at 34; Easton, *Disclosure of Child Sexual Abuse Among Adult Male Survivors*, 41 CLINICAL SOCIAL WORK J. 344, 345-46 (2013). Delayed recognition among victims is not uncommon, CHARUVASTRA RPT. at 14, and delayed disclosure is common, Easton, *supra* at 345, "with some children delaying disclosure for years or indefinitely." Sivagurunathan, Orchard, MacDermid, & Evans, *Barriers and Facilitators Affecting Self-Disclosure Among Male Survivors of Child Sexual Abuse: The Service Providers' Perspective*, J. CHILD ABUSE & NEGLECT 2 (2018). Disclosure near the time of the abuse, if disbelieved, tends to exacerbate symptoms of sexual abuse, while negative effects of abuse can be sometimes mitigated when contemporaneous reports are taken seriously. Easton, *supra* at 346. In many cases of delayed disclosure, there is often an event or interaction that triggers the memory of abuse in a form that allows the victim to speak of it, and therapy helps in realizing the connections. Feldman-Summers & Pope, *Experience of Forgetting Childhood Abuse: A National Survey of Psychologists*, 62 J. OF CONSULTING & CLINICAL PSYCHOLOGY 636, 637-38 (1994).

Thus, a "reasonable person under the circumstances," *Raymond v. Eli*

Lilly, 117 N.H. at 171, in this case is a reasonable person who has been a victim of teenage sexual abuse. *Ross v. Garabedian*, 742 N.E.2d 1046 (Mass. 2001) (*Riley v. Presnell* applied to sex abuse cases); *see also Doe v. Creighton*, 786 N.E.2d 1211 (Mass. 2003); *Koe v. Mercer*, 876 N.E.2d 831 (Mass. 2007).

Among sexual abuse survivors, discovery of the causal connection years later is reasonable. *Ross v. Garabedian*, 742 N.E.2d at 1050-51 ("[I]t is not sufficient to claim that the plaintiff should have linked the emotional difficulties in his life with the defendant's misconduct decades ago."); *Martinez-Sandoval v. Kirsch*, 884 P.2d at 512; *Hollmann v. Corcoran*, 949 P.2d at 390-91 (Plaintiff's "'circumstances' must include the perspective of a reasonable victim of childhood sexual abuse."). *See also Raymond v. Eli Lilly*, 117 N.H. at 173-74 (recognizing in defective medications cases that pharmaceutical "companies know or at least should expect that some time may pass before the harmful effects of their products manifest themselves in drug users and that there may be another lapse of time before the injured person is able to discover the causal connection between his injury and the drug he consumed.").

In *Ouellette v. Beaupre*, 977 F.3d 127 (1st Cir. 2020), the First Circuit emphatically recognized that the reasonable person standard must be applied from the perspective of a survivor of sexual abuse. In *Ouellette,* the plaintiff, then a teenager, was sexually abused by an officer of a municipal police department in Maine. The victim had reported the abuse to a police detective, who referred the matter to the state attorney general, but no disciplinary action was taken. Unbeknownst to the plaintiff and the public, the department knew the abuser had prior offenses, but had tacitly condoned the conduct. Years later, the plaintiff learned on social media that others had suffered similarly, prompting him to file suit against the department. The Maine federal district court held that, because the plaintiff was aware at the time of the abuse of the officer's affiliation with the department, he was on inquiry notice, and the suit

was barred by the statute of limitations.

The First Circuit reversed, holding that "knowledge of a … tortfeasor's employer and supervisor does not necessarily equate to knowledge of a causal connection between the tort and the employer and supervisor." *Ouellette*, 977 F.3d at 141-42. It wrote:

> Our analysis of whether a plaintiff has a duty to inquire employs an objective "reasonable person" standard but, at the same time, it requires us to consider the circumstances of the plaintiff and the context in which the alleged injury occurred. In other words, *the hypothetical reasonable person must be similarly situated to the specific plaintiff* invoking the discovery rule and must have access to the same information that was available to the plaintiff during the timeframe relevant to the accrual analysis.

Ouellette, 977 F.3d at 137 (quotations omitted, emphasis added).

In Larissa's case, she was sexually abused by McEnany, and then firmly repudiated and overtly threatened when she reported it to the Dean of Students. As a teenage victim of sexual abuse, she acted reasonably by burying her feelings and trying to move on with her life. Triggered by learning of her likeness in Bishop Guertin's marketing, she diligently researched, and realized for the first time the connection between the abuse, the school's role, and her lifelong dysfunctions. In these circumstances, the statute of limitations is tolled, and this court should reverse and remand for a trial on the merits.

II. Equitable Exceptions to Statute of Limitations

A. School's Concealment of Teacher's Offenses Requires Tolling of Statute of Limitations

Two equitable doctrines address the situation where "fact[s] may be unknown or unknowable until the injury manifests itself; and the facts about causation may be in the control of the putative defendant, unavailable to the plaintiff or at least very difficult to obtain." *Kubrick*, 444 U.S. at 122. "[D]efendants should not be allowed to knowingly profit from their injuree's ignorance," *Evans v. Eckelman*, 265 Cal. Rptr. at 608, nor "take advantage of [their] own wrong." *Redwing v. Catholic Bishop for Diocese of Memphis*, 363 S.W.3d 436, 460 (Tenn. 2012).

Thus, New Hampshire has two equitable tolling doctrines. First, the statute of limitations may be

> tolled by fraudulent concealment of facts essential to the cause of action until such time as the injured person has discovered them or could have done so in the exercise of reasonable diligence at which time the statutory period of limitation will start to run.

Lakeman v. LaFrance, 102 N.H. 300, 303-04 (1959). The second, albeit more stringent, doctrine of equitable estoppel requires that "the plaintiff is actively misled by the defendant about the cause of action," or "was prevented in some extraordinary way from exercising his or her rights." *Portsmouth Country Club v. Greenland*, 152 N.H. at 623.

While a defendant's silence about its misdeeds alone is insufficient for the plaintiff to invoke equitable tolling, *Doe v. Roman Catholic Archbishop of Archdiocese of Detroit*, 692 N.W.2d at 406-07; *Zumpano v. Quinn*, 6 N.Y.3d 666, 674 (2006), a defendant's inaction in the face of duties owed to the plaintiff tolls the limitations period.

In *Doe v. Saint Joseph's Catholic Church*, 870 S.E.2d 365 (Ga. 2022), an

alter boy was sexually abused by a priest, even though the church knew the priest had a history of sexually abusing children. Years later, the church formally acknowledged its role, prompting the plaintiff to sue. The trial court enforced the statute of limitations on the grounds that the plaintiff knew the priest worked for the church. The Georgia Supreme Court reversed. It held that because the church owed a duty of protection to its alter boys, the church's effective misrepresentation that the priest was a safe supervisor was sufficient concealment to toll the statute of limitations. *Id.* at 372.[6]

In Larissa's case, Bishop Guertin was more than merely silent. Provincial Labbe knew about McEnany's conviction for sexual abuse, but concealed it by not telling anyone – not parents, students, the public, or Larissa – until a media report forced him to.

Bishop Guertin had an affirmative duty of protection toward Larissa. *Marquay v. Eno*, 139 N.H. 708, 720 (1995) ("[A] school … has a duty not to hire or retain employees that it knows or should know have a propensity for sexually abusing students."). It objectively failed its duty – first by the Provincial hiring McEnany, and second by the Dean of Students not reporting the incident to police.

These inactions concealed from Larissa any knowledge about the school's role in her having been sexually assaulted, and reasonably delayed her recognition that the school was chargeable. 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 caused.

Accordingly, this court should reverse, and remand for a jury to determine Bishop Guertin's and Sacred Heart's negligence.

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[6]The superior court relied on a lower court order in *Doe v. St. Joseph's*, which the Georgia Supreme Court subsequently reversed. The precedential opinion is reported here.

B. Balance of Equities Favors Tolling the Statute of Limitations

In New Hampshire, application of the discovery rule is equitable. *Keshishian v. CMC Radiologists*, 142 N.H. 168, 179 (1997) (applicability of discovery rule not a jury issue); *Balzotti Global Group, LLC v. Shepherds Hill Proponents*, 173 N.H. at 314 ("whether to apply the discovery rule is an issue that is equitable in nature"). As such, equity "require[s] that the interests of the opposing parties be identified, evaluated and weighed in arriving at a proper application of the statute." *Rowe v. John Deere*, 130 N.H. 18, 23 (1987).

Larissa was abused in 1995. Bishop Guertin was made aware of the abuse the day it happened, and has therefore been aware of the potential for Larissa's suit since that day. Even if Bishop Guertin did not think of Larissa specifically, it was aware that McEnany's victims were likely to eventually come forward.

The purpose of the limitations period – "to insure that defendants receive timely notice of actions against them" – has thus been fulfilled. *Dupuis v. Smith Properties*, 114 N.H. at 629. By contrast, the purpose of exceptions to the limitations period – to "facilitate the vindication of tort victims' rights," *Heath v. Sears, Roebuck*, 123 N.H. at 523, "in situations where the plaintiff is unaware … that the injury was caused by a wrongful act," *Glines v. Bruk*, 140 N.H. at 182 – has not.

Precedent by this court has already struck the balance in Larissa's favor. In sexual abuse cases:

> The plaintiff's interest in being compensated for injuries caused by the defendants' acts, especially where the abuse and its causal connection to the plaintiff's injuries were discovered decades after the abuse took place, outweighs any interest the defendants have alleged in putting such claims to rest.

McCollum v. D'Arcy, 138 N.H. at 288. Accordingly, this court should reverse.

III. Larissa Acted Reasonably in 1995, and Realized the Connection Between the Sexual Assault and Her Injury in 2017, Precluding Summary Judgment

The superior court granted Bishop Guertin summary judgment, holding that the statute of limitations barred Larissa's suit.

> In reviewing a trial court's summary judgment ruling, we consider the affidavits and other evidence, and all inferences properly drawn from them, in the light most favorable to the non-moving party. Summary judgment may be granted only where no genuine issue of material fact is present, and the moving party is entitled to judgment as a matter of law.

Furbush v. McKittrick, 149 N.H. at 429; *see also* RSA 491:8-a. Summary judgment "is not intended that deserving litigants be cut off from their day in court." *Coburn v. First Equity Associates, Inc.*, 116 N.H. 522, 524 (1976).

When the facts are uncontested, this court "review[s] the trial court's application of the law to the facts *de novo*." *D'Amour v. Amica Mut. Ins. Co.*, 153 N.H. 170, 171 (2005). If the facts are disputed, "[a]n issue of fact is material if it affects the outcome of the litigation." *Weeks v. Co-Operative Ins. Companies*, 149 N.H. 174, 176 (2003).

Here the material facts are uncontested. Larissa was sexually assaulted in 1995, was finally able to realize the connection between her injury and the defendants' negligence in 2017, and sued the defendants in 2018. The court was thus in error in granting summary judgment, and this court should reverse.

To the extent material facts are in dispute, and they involve whether Larissa exercised reasonable diligence, she fulfilled her duty of inquiry in 1995 when the Dean of Students assured her the school was not involved. Material also may be that Larissa did not realize the connection between Bishop Guertin's role and her dysfunctions until 2017.

> The claim raised here is not that the plaintiff was unaware of its injury at the time it occurred, but, rather, that it was unaware of the causal relation between its damages and the allegedly negligent acts of the defendants.… Viewing the evidence in the light most favorable to the plaintiff, we conclude that there is a material factual dispute as to when the plaintiff knew or reasonably should have known that its injury was proximately caused by conduct of the defendants. We thus reverse the trial court's grant of summary judgment and remand for further proceedings.

Big League Entertainment, Inc. v. Brox Industries, Inc., 149 N.H. 480, 485 (2003). Accordingly, this court should reverse, and allow a jury to determine the defendants' culpability.

CONCLUSION

Larissa Troy was twice sexually assaulted when she was in high school by Brother Shawn McEnany, her trusted teacher and religious advisor. Years later – typical of sexual abuse survivors – Larissa realized that her lifelong dysfunctions were related to the assaults.

The superior court found that the statute of limitations began to run at the time of the assaults. However, Larissa fulfilled her duty of inquiry the day she was sexually assaulted, when the total rejection of her report to the Dean of Students reasonably indicated to her that the school would not countenance a known sexual offender on its staff. She did not learn until 2017, when, after her curiosity was piqued by a marketing photo of her at Bishop Guertin, she investigated and learned that Bishop Guertin and Sacred Heart employed McEnany, even though they knew he was a convicted sexual offender.

Application of the discovery rule is equitable. In these circumstances, it would contravene the purpose of both the statute of limitations and the discovery rule to allow Bishop Guertin and Sacred Heart to avoid liability for violating their duty to protect students from sexual assault on campus.

Accordingly, this court should reverse.

Respectfully submitted,

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Dated: November 22, 2022

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CERTIFICATIONS & REQUEST FOR ORAL ARGUMENT

I hereby certify that the decision being appealed is addended to this brief.

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

I further certify that on November 22, 2022, copies of the foregoing will be forwarded to the parties registered on this court's e-filing system.

Full oral argument is requested.

Dated: November 22, 2022

Joshua L. Gordon, Esq.

ADDENDUM

1. Order on Motion for Summary Judgment (Feb. 22, 2022) 44
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THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.
SOUTHERN DISTRICT

SUPERIOR COURT
No. 2018-CV-00249

Larissa Troy

v.

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

ORDER ON DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

The plaintiff, Larissa Troy, has brought this action against the defendants, Bishop Guertin High School ("BGHS") and Brothers of the Sacred Heart of New England, Inc. ("BSHNE"), seeking damages arising from sexual abuse she endured while in high school. The defendants now move for summary judgment on the plaintiff's claims, arguing that they are barred by the statute of limitations. The plaintiff objects. The Court held a hearing on this motion on January 7, 2022. For the reasons that follow, the defendants' motion for summary judgment is GRANTED.

Standard of Review Governing Motions for Summary Judgment

The Court decides summary judgment motions by considering "the affidavits and other evidence, and all inferences properly drawn from them, in the light most favorable to the non-moving party." Zannini v. Phenix Mut. Fire Ins. Co., 172 N.H. 730, 733–34 (2019). If the Court's "review of that evidence reveals no genuine dispute of material fact, and if the moving party is entitled to judgment as a matter of law," then summary judgment is proper. Id. at 734; see also RSA 491:8-a, III.

Factual Background

Consistent with the standard of review, the Court draws the following facts from the parties' statement of material facts ("SMF") and from the record. BGHS is a private

Catholic school owned and operated by BSHNE. In 1990, BSHNE hired Brother Shawn McEnany to be a teacher at BGHS. Mr. McEnany had previously been convicted of having unlawful sexual conduct with a female student in 1988 while teaching at St. Dominic High School in Maine, a school also owned and operated by BSHNE. Despite knowledge of this conviction, the official in charge of the personnel management of the two schools, Leo Labbe, decided to hire Mr. McEnany to teach at BGHS once Mr. McEnany's probation in Maine ended. Mr. Labbe believed "that it was safe to have [Mr. McEnany] work [at BGHS] because it was, at the time, an all-boys school." (SMF ¶ 42.)

BGHS became co-ed in 1992. However, Mr. McEnany continued to work there and Mr. Labbe made no attempt to alert parents or students of his prior conviction. The plaintiff attended BGHS from 1992 through 1996. In November 1995, the plaintiff was 17 years old and a senior. During that month, Mr. McEnany had two very disturbing and inappropriate encounters with the plaintiff at BGHS. In the first encounter, the plaintiff was sitting on a radiator when Mr. McEnany "positioned his body between her legs and then [began] pressing himself so forcefully into her that she could feel his groin and his private area pushing up against her genitals through her underwear." (Id. ¶ 9.) In the second encounter, Mr. McEnany again pushed himself up against the plaintiff's legs and began masturbating under his robe for several minutes. The plaintiff felt Mr. McEnany "ejaculate on her leg and knee," after which he "removed his hand from under his robe[]" and "wiped a finger across [the] plaintiff's lips so she could smell the semen." (Id. ¶ 20.)

The plaintiff thereafter reported this assault to BGHS's Dean of Students, Susan Mansor. Ms. Mansor accused the plaintiff of "making the story up," and insisted that "it couldn't be true." (Troy Depo. at 135.) Ms. Mansor warned the plaintiff that she "would

be in a lot of trouble at home and at school" if she continued to repeat the "story." (Id. at 136.) The plaintiff "begged" Ms. Mansor to believe her, but Ms. Mansor "absolutely, emphatically, said that [the plaintiff] was lying and that [she] would be in trouble." (Id.) The plaintiff also reported the assault to her mother. It does not appear that anything came of the plaintiff's reports, as Mr. McEnany continued to teach at BGHS.

The plaintiff graduated from BGHS the following spring and then moved to Rhode Island for college. In November 1997, while the plaintiff was at college, Mr. McEnany was arrested and charged "with teaching as a convicted sex offender and failing to register as a sex offender." (SMF ¶ 58.) Mr. McEnany's arrest understandably caused a stir at BGHS. There were "[t]elevision trucks and cameras as well as print reporters" "camped out at the doorstep" of BGHS. (Id. ¶ 100.) It soon became apparent that Mr. Labbe had hired Mr. McEnany to teach at BGHS with full knowledge of his prior conviction in Maine. Indeed, Mr. Labbe, who was then BGHS's headmaster, sent a letter to parents to answer the question "Why did you decide to place [Mr. McEnany] at Bishop Guertin, knowing of his conviction?" (Edwards Aff. Ex. 14 at 1.) At the time, two of the plaintiff's sisters were enrolled at BGHS, and thus her parents presumably would have received a copy of this letter. Despite the media attention, the plaintiff asserts that she was unaware of Mr. McEnany's arrest, Mr. Labbe's knowledge of his prior criminal history, or the contents of the letter at the time. She also maintains that her sisters, who were attending BGHS in 1997, never discussed Mr. McEnany's arrest with her.

While the plaintiff was in college, she became "preoccupied" with "bad feelings and memories of the assault." (SMF ¶ 105.) She began having "panic attacks" and "these were often followed by days of traumatic memories related to [Mr. McEnany]."

(Id.) The plaintiff asserts that "[a]s a result of the sexual abuse, [she] suffers from an inability to sleep and constantly feels nervous, tense, and fearful." (Id. ¶ 80.) She "also has flashbacks and nightmares and has trouble concentrating, and suffers from overwhelming shame as a result of the abuse." (Id. ¶ 81.)

In May 2017, the plaintiff "read an article in the New York Times concerning the sexual abuse scandal at a private school," which caused her to start "thinking about [Mr.] McEnany's abuse" and motivated her "to Google search his name." (Id. ¶¶ 66–67.) At that point, the plaintiff learned of Mr. McEnany's history of abuse and that BGHS "had previously been sued by other students relative to sexual abuse they had endured at the hands of [BGHS's] faculty members." (Id. ¶ 73.) The plaintiff claims that she "did not make any connection in her mind between the sexual abuse by [Mr.] McEnany and the psychological problems she was experiencing" until that day in 2017. (Id. ¶ 75.)

The plaintiff filed this action on May 18, 2018, which was over 22 years from the dates of the assaults. She has brought two common law claims against the defendants. In Count I, she alleges that the defendants were negligent in hiring, retaining, and supervising Mr. McEnany. In Count II, she alleges that the defendants were negligent in that they failed to protect her while she was a student at BGHS. The defendants now move for summary judgment on her claims, arguing that they are barred by the applicable statute of limitations. In response, the plaintiff maintains that her claims are timely under the statutory discovery rule.

Analysis

"Statutes of limitation place a limit on the time in which a plaintiff may bring suit after a cause of action accrues." Beane v. Dana S. Beane & Co., 160 N.H. 708, 712

(2010). In this case, the parties agree that the applicable statute of limitations is RSA 508:4-g as it stood when this action was filed. For the purposes of this order, the Court will assume the parties' position is legally accurate and will limit its analysis accordingly. The 2018 version of RSA 508:4-g provided:

> A person, alleging to have been subjected to any offense under RSA 632-A or an offense under RSA 639:2, who was under 18 years of age when the alleged offense occurred, may commence a personal action based on the incident within the later of:
>
> I. Twelve years of the person's eighteenth birthday; or
>
> II. Three 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.

Here, it is undisputed that this action is based on a violation of RSA chapter 632-A, and that the plaintiff did not file suit by her thirtieth birthday. Thus, the pertinent issue is whether the plaintiff brought this action within "three years of the time she discovered, or in the exercise of reasonable diligence should have discovered, the injury and its causal relationship to the act or omission complained of." RSA 508:4-g, II (2018). This language provides the so-called "discovery rule" exception to the statute of limitations.

"The purpose of the discovery rule is to provide injured parties an avenue of relief when they did not and reasonably could not know of the harm or its causal link to a wrongful act or omission by another party." Petition of N.H. Div. for Children, Youth & Families, 173 N.H. 613, 618 (2020). "The discovery rule is two-pronged, and both prongs must be satisfied before the statute of limitations begins to run." Lamprey v. Britton Constr., 163 N.H. 252, 257 (2012). "First, a plaintiff must know or reasonably should have known that she has been injured; second, a plaintiff must know or reasonably should have known that her injury was proximately caused by conduct of the

defendant." Id. Because the plaintiff filed this action in May 2018, the issue is whether both of these prongs were satisfied at any point prior to May 2015. The Court will address each prong in turn.

I. Injury

The Court must first determine when the plaintiff knew or should have known that she had been "injured." Id. Generally, a plaintiff suffers an "injury" when there has been an "invasion of any legally protected interest," Smith v. Cote, 128 N.H. 231, 248 (1986) (cleaned up), that is "sufficiently serious to apprise [her] that a possible violation of [her] rights has taken place," Dobe v. Comm'r, 147 N.H. 458, 461 (2002); see also Taylor v. Litteer, 925 F. Supp. 898, 902 (D.N.H. 1996) (explaining that "in the context of suits based on . . . sexual abuse, the application of the discovery rule depends . . . upon the seriousness of the harms experienced at or near the time of the abuse"). Moreover, 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, as "the discovery rule is not intended to toll the statute of limitations until the full extent of the plaintiff's injury has manifested itself." Furbush v. McKittrick, 149 N.H. 426, 431 (2003).

Here, the Court finds that the plaintiff suffered an "injury" within the meaning of RSA 508:4-g, II (2018) at the time of the assaults. As the supreme court has observed, sexual assaults are "inherently injurious" and "they [cannot] be performed upon a [girl] without appalling effects on [her] mind as well as forbidden contacts with [her] body." Vt. Mut. Ins. Co. v. Malcolm, 128 N.H. 521, 524 (1986). "Accordingly, concepts of sexual abuse and injury within the meaning of [the statute of limitations] are essentially

one and the same, not separable—as a matter of law one is 'injured' if one is sexually abused." Blackowiak v. Kemp, 546 N.W.2d 1, 3 (Minn. 1996).[1]

The next issue is when the plaintiff knew or should have known she had been injured. After reviewing the summary judgment record, the Court concludes that there is no genuine dispute of material fact that the plaintiff knew or should have known that she had been injured at or near the time that the assaults occurred. First, the plaintiff was seventeen years old at the time, an age at which any reasonable person would know that Mr. McEnany's behavior was highly inappropriate. Second, the plaintiff was conscious during the assaults and knew that she did not consent to Mr. McEnany's advances. Third, following the assaults, the plaintiff reported Mr. McEnany's behavior to BGHS's Dean of Students and her mother, and also warned her younger sister to avoid Mr. McEnany. This demonstrates that she knew "that something was very wrong with the situation in which [s]he found [her]self." E.J.M. v. Archdiocese of Phila., 622 A.2d 1388, 1394 (Pa. Super. Ct. 1993); see also Parks v. Kownacki, 737 N.E.2d 287, 294–95 (Ill. 2000) (fact that plaintiff reported priest's sexual abuse to her parents and bishop showed that she "knew that [priest] had wronged her" for purposes of statute of limitations). Finally, the plaintiff does not contend that she repressed the sexual abuse.[2]

[1] See also DeRose v. Carswell, 242 Cal. Rptr. 368, 371 (Ct. App. 1987) ("An assault, . . . which by definition is perceived as unconsented to and offensive, causes harm as a matter of law."); Doe v. Archdiocese of Wash., 689 A.2d 634, 640 (Md. Ct. Spec. App. 1997) (holding that plaintiff "suffered 'an invasion of a legally protected interest' immediately when the batteries actually occurred, even if his problems worsened over time").

[2] See Conrad v. Hazen, 140 N.H. 249, 253 (1995) (suggesting that discovery rule would not apply to where plaintiff did not claim that she repressed memories of abuse and admitted that following the assault 'she felt dirty, sick and scared'"); E.W. v. D.C.H., 754 P.2d 817, 820 (Mont. 1988) (discovery rule did not apply because plaintiff "always knew" she had been molested as a child); O'Neal v. Div. of Family Servs., 821 P.2d 1139, 1144 (Utah 1991) (discovery rule did not apply where plaintiff "was aware of the abuse" as it "occurred when he was a teenager, and he does not claim he was unable to recall it"); cf. McCollum v. D'Arcy, 138 N.H. 285, 288 (1994) (discovery rule could apply to claims arising from childhood sexual abuse where plaintiff claimed she had repressed all memory of abuse).

To the contrary, the plaintiff's deposition testimony demonstrates that she frequently thought about the assaults in the days, months, and years after they occurred and knew that they were causing her psychological harm. See ABC v. Archdiocese of St. Paul and Minneapolis, 513 N.W.2d 482, 486 (Minn. Ct. App. 1994) (holding that plaintiff knew of injury where she "vividly retained every detail of [priest's] conduct and its effect on her: her anxiety, her depression, and her troubled mind over her relationship with a Catholic priest").

Simply put, the plaintiff "admittedly ha[s] been aware at all times that [she was] sexually abused and that [Mr. McEnany] was the abuser. The plaintiff[] knew, or should have known . . . that [Mr. McEnany's] sexual conduct toward [her] as [a] minor[ ] caused personal injury, even if [she] did not know the extent of such injuries." Nolde v. Frankie, 964 P.2d 477, 484 (Ariz. 1998). On these facts, the Court concludes that the summary judgment record conclusively establishes that the plaintiff knew or should have known that she had been injured at or near the time of the assaults in November 1995. See Cooksey v. Portland Pub. Sch. Dist. No. 1, 923 P.2d 1328, 1332 (Or. Ct. App. 1996) (holding that plaintiff was injured on date of "inappropriate touching" as that was "an invasion of a legally protected interest"); Rice v. Diocese of Altoona-Johnstown, 255 A.3d 237, 251 (Pa. 2021) (holding that plaintiff "knew of her injury at the time of each alleged assault"); Doe v. Archdiocese of Milwaukee, 565 N.W.2d 94, 105 (Wis. 1997) (concluding "as a matter of law, that because the acts complained of were conducted intentionally, and without the consent of the minor victims, that [the] plaintiffs discovered or, in the exercise of reasonable diligence, should have discovered that he or she was injured at the time of the assaults").

II. Causal Connection

As stated earlier, under the second prong of the discovery rule, the Court must determine when the plaintiff knew "or reasonably should have known that her injury was proximately caused by conduct of the defendant[s]." Lamprey, 163 N.H. at 257. This prong is satisfied "once the plaintiff could reasonably discern that . . . she suffered some harm caused by the defendant[s'] conduct." Id. "Further, the plaintiff need not be certain of the causal connection; the reasonable possibility that it existed will suffice to obviate the protections of the discovery rule." Id. Finally, "[a] party attempting to invoke [the discovery rule] will be held to a duty of reasonable inquiry." Portsmouth Country Club v. Town of Greenland, 152 N.H. 617, 624 (2005). Thus, a plaintiff can only benefit from the discovery rule where she "did not have, and could not have had with due diligence, the information essential to bring the suit." Id. Ordinarily, "[w]hether the plaintiff exercised reasonable diligence in discovering the causal connection between the injury and the defendant[s'] alleged act or omission is a question of fact." Balzotti Glob. Grp., LLC v. Shepherds Hill Proponents, LLC, 173 N.H. 314, 321 (2020).

Here, the defendants argue that the plaintiff knew or should have known of the causal connection between her injuries and their conduct immediately following the alleged assaults. According to the defendants, at that point, the plaintiff knew that Mr. McEnany had assaulted her and that he was employed by the defendants. Thus, they posit that she had sufficient knowledge to bring a claim against them at that time. In response, the plaintiff argues that she did not discover that the defendants were negligent until 2017 when she learned that they hired Mr. McEnany with full knowledge of his prior conviction in Maine. The plaintiff further contends that she "could not have

been expected to have discovered the possibility that [they] were negligent" at any point prior to that time, and therefore she has satisfied the second prong of the discovery rule. (Pl.'s Memo. at 16.) After careful consideration, the Court agrees with the defendants.

As the Tennessee Court of Appeals has observed, this is not an unusual issue and many other jurisdictions have addressed a similar fact pattern:

> [A] [child] is befriended by a trusted member of the clergy who uses his righteous position and proximity to the [child] to satisfy his own base desires. In shame, the [child] tells no one and suffers continuing emotional torment. Years after [the child] is grown, the victim discovers that the offending clergy member was a serial abuser, that the church was aware of his behavior, and yet the cleric was retained in positions that enabled him to continue his abuse. A lawsuit is finally filed many years after the victim attained majority, and the threshold issue for the court is whether the applicable statute of limitations was tolled in the interim.

Doe v. Catholic Bishop for Diocese of Memphis, 306 S.W.3d 712, 721–22 (Tenn. Ct. App. 2008). The overwhelming majority of courts that have considered this fact pattern have held that a plaintiff is on inquiry notice as a matter of law regarding a possible negligence claim against the abuser's employer as soon as the plaintiff knows or should know: (1) that she has been abused; (2) the identity of her abuser; (3) that the defendants employed the abuser; and (4) that the abuse occurred on the employer's property.[3] The Court agrees with these authorities.

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[3] See Kelly v. Marcantonio, 187 F.3d 192, 201 (1st Cir. 1999) ("[A]s soon as plaintiff-appellants became aware of the alleged abuse, they should also have been aware that the hierarchy defendants, as the priests' 'employers,' were potentially liable for that abuse."); Mark K. v. Roman Catholic Archbishop, 79 Cal. Rptr. 2d 73, 79 (Ct. App. 1998) (holding that knowledge that one was abused by a priest and the priest was an employee of the diocese was sufficient to put an alleged sexual abuse victim on inquiry notice of claims against the diocese); Cevenini v. Archbishop of Wash., 707 A.2d 768, 773 (D.C. 1998) (concluding that sexual abuse victims were on inquiry notice of claims against the diocese where they knew the alleged abuser was a priest, that the priest was a subordinate representative of diocese, and abuse occurred on church premises); Doe, 689 A.2d at 644 (finding that an alleged victim of sexual abuse by a priest is on inquiry notice of potential claims against diocese based upon knowing that the abuser is a priest); Doe v. Roman Catholic Archbishop of Archdiocese of Detroit, 692 N.W.2d 398, 406 (Mich. Ct. App. 2004) (holding that plaintiff's claims against institutional defendants were time barred because "plaintiff knew, at the time of his injury, that Burkholder was an active priest . . . in the Archdiocese of Detroit[,] knew that Burkholder was employed by and under the direction and supervision of defendant,"

Applying that analysis here, the summary judgment record demonstrates that all four of these criteria were met well before May 2015: 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. In addition, the plaintiff testified that she reported Mr. McEnany's abuse to BGHS's Dean of Students after it occurred. The plaintiff admitted that the dean took absolutely no action to protect her or other students at that point. Instead of opening an investigation or calling the police, the dean summarily dismissed the plaintiff's complaint and accused her of lying about the abuse. At 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.

Finally, the Court rejects the plaintiff's argument that her claim did not accrue until she actually learned in 2017 that the defendants knew of Mr. McEnany's criminal record when they hired him. As the Michigan Court of Appeals reasoned, the

> defendant[s'] failure to publicly disclose [Mr. McEnany's prior] actions or [their] knowledge of them did not in any way prevent plaintiff from knowing

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and "knew or should have known that the church property on which Burkholder abused him was owned by defendant."); Zumpano v. Quinn, 849 N.E.2d 926, 930 (N.Y. 2006) (sexual abuse victims were on inquiry notice of claims against diocese because they "knew the identity of their abusers and that the abusers were employed by the Diocese"); Doe v. Roman Catholic Diocese of Charlotte, N.C., 775 S.E.2d 918, 923 (N.C. Ct. App. 2015) ("As a number of other jurisdictions have acknowledged, when a plaintiff is abused by a priest affiliated with a particular diocese—as is the case here—that triggers the duty to investigate the diocese."); Doe v. Archdiocese of Cincinnati, 849 N.E.2d 268, 275–277 (Ohio 2006) (concluding that knowledge that one was abused by a priest and that the priest was employed by the diocese puts an alleged sexual abuse victim on inquiry notice of claims against the diocese, and further noting that other courts have "held that if the plaintiff is aware of the abuse and knows the identity of the perpetrator, the statute of limitations for claims against a church or school arising out of a claim of abuse begins to run when the plaintiff reaches the age of majority."); Rice, 255 A.3d at 251 ("Because her claims for damages against the Diocese are based on Bodziak's alleged conduct, she was on inquiry notice regarding other potentially liable actors, including the Diocese, as a matter of law."); Colosimo v. Roman Catholic Bishop of Salt Lake City, 156 P.3d 806, 819 (Utah 2007) (plaintiffs were "on inquiry notice of potential causes of action against the institutional defendants" and had "a duty to undertake reasonable inquiry as to the existence of their claims" where they knew their teacher had abused them and knew that defendants supervised their teacher).

that [s]he was abused by a [teacher at a Catholic school] who was under the supervision and control of [the] defendant[s], that the sexual abuse took place on [school] property, that [the] defendant[s] failed to prevent [Mr. McEnany's acts], or that [the] plaintiff was harmed. Taking into account all the information available to [the] plaintiff, [the Court] conclude[s] that [s]he knew, or through diligent inquiry should have known, of [the] possible causes of action against [the] defendant[s].

Doe, 692 N.W.2d at 407; see also Doe v. Saint Joseph's Catholic Church, 850 S.E.2d 267, 272 (Ga. Ct. App. 2020) (holding that plaintiff's "lack of knowledge of the defendants' alleged awareness of Edwards' misconduct did not render his tort claims inchoate or otherwise inactionable" where plaintiff "knew he had been injured, he knew the identity of the perpetrator, and he was aware of the church's inaction"). Moreover, by May 2015, it was common knowledge that Catholic institutions in New Hampshire and elsewhere had a practice of knowingly employing men who had previously sexually abused children, and that this practice existed at the time the plaintiff attended BGHS. See, e.g., N.H. Att'y Gen., Report on the Investigation of the Diocese of Manchester (Mar. 3, 2003). Because this fact was a matter of common knowledge before May 2015, the plaintiff knew or should have known that she had a possible claim against the defendants at some point prior that date.[4] See Moyers v. Roman Catholic Bishop of Louisville, No. 2004-CA-001886-MR, 2005 WL 3116116, at *5 (Ky. Ct. App. Nov. 23, 2005) ("Based upon the widespread publicity surrounding the abuse scandal and lawsuits, coupled with her claim to have been a victim of abuse, as a matter of law

[4] This is an important fact that distinguishes this case from Judge Groff's decision in Dandley v. Bishop Guertin High Sch., Inc., a case heavily relied on by the plaintiff. In that case, the court ruled that the discovery rule applied to the plaintiff's claims against the same defendants because the court could not "conceive in its wildest imagination how the plaintiff could have been expected to have" known or discovered that BGHS had knowledge of teacher's history of abuse prior to hiring him. Dandley v. Bishop Guertin High Sch., Inc., No. 226-2002-C-170, Order, at 9 (Sep. 25, 2003). When that case was brought in 2002, the abuse scandal was just beginning to come to light and receive widespread publicity. As such, the plaintiff in that case would not necessarily have known or suspected that the institutional defendants had knowledge of his teacher's past abuse. However, by 2015, the abuse scandal had been well-documented and was a matter of common public knowledge.

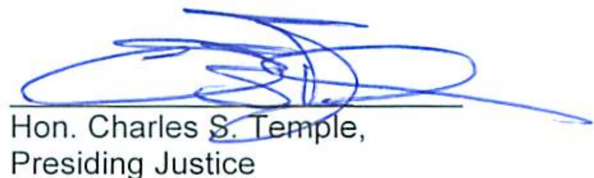
Moyers should reasonably have discovered the facts of [her claim] during mid- to late-April 2002"). For all of these reasons, the Court finds that the plaintiff knew or should have known that there was possible causal connection between her injury and the defendants' conduct at some point prior to May 2015. See Lamprey, 163 N.H. at 257 (explaining that a "reasonable possibility" that a causal connection "existed will suffice to obviate the protections of the discovery rule" (emphasis added)).

Conclusion

After carefully reviewing the summary judgment record, the Court finds that there is no dispute of material fact regarding the application of the statute of limitations. The record conclusively demonstrates that the plaintiff: (1) did not bring this action by her thirtieth birthday; (2) knew or should have known that she had been injured at or around the time of the assaults in 1995; and (3) knew or should have known of the causal connection between her injuries and the defendants' conduct at some point prior to May 2015. See RSA 508:4-g (2018). Because the plaintiff's claims are barred by the statute of limitations, the defendants' motion for summary judgment is GRANTED.

So ordered.

Date: February 22, 2022



Hon. Charles S. Temple,
Presiding Justice

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.
SOUTHERN DISTRICT

SUPERIOR COURT
No. 2018-CV-00249

Larissa Troy

v.

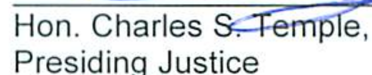
Bishop Guertin High School and Brothers of the Sacred Heart of New England, Inc.

ORDER

The plaintiff, Larissa Troy, has brought this action against the defendants, Bishop Guertin High School ("BGHS") and Brothers of the Sacred Heart of New England, Inc. ("BSHNE"), seeking damages arising from sexual abuse she endured while in high school. On February 22, 2022, the Court issued an order granting the defendants' motion for summary judgment as to the plaintiff's claims against them. In light of that order, the defendants' motion to dismiss (Court Index #18) and the plaintiff's motion for summary judgment (Court Index #24) are both MOOT. In addition, the Court did not consider any of the newspaper articles included in the summary judgment record in ruling on the defendants' motion for summary judgment. The plaintiff's motion to strike reference to those articles from the record (Count Index #40) is therefore also MOOT. Finally, because the Court's order on the defendants' motion for summary judgment finally resolves all claims in this matter, the trial management conference scheduled for February 25, 2022 and jury selection scheduled for March 7, 2022 are both canceled.

So ordered.

Date: February 22, 2022



Hon. Charles S. Temple,
Presiding Justice

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
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NOTICE OF DECISION

FILE COPY

Case Name: **Larissa Troy v Bishop Guertin High School, et al**
Case Number: **226-2018-CV-00249**

Please be advised that on April 28, 2022 Judge TEMPLE made the following order relative to:

#46. THE PLAINTIFF, LARISSA TROY'S, MOTION FOR RECONSIDERATION.

"DENIED - PURSUANT TO SUPERIOR COURT RULE 12 (E). THE COURT DID NOT OVERLOOK OR MISAPPREHEND ANY POINTS OF LAW OR FACT IN THE ORDER DATED February 22,2022."

#49. MOTION TO STRIKE NEW ARGUMENTS RAISED FOR THE FIRST TIME IN PLAINTIFF'S MOTION FOR RECONSIDERATION.

"MOOT – THE COURT HAS DENIED THE MOTION FOR RECONSIDERATION."

April 29, 2022

Amy M. Feliciano
Clerk of Court

(940)

C: Jonathan A. Barnes, ESQ; David Keith Pinsonneault, ESQ; John M. Edwards, ESQ; Paul Mones, ESQ; Roderick MacLeish, ESQ

NHJB-2501-S (07/01/2011)