

IN THE SUPREME COURT OF MISSOURI

STATE OF MISSOURI EX REL.)	
CONCEPTION ABBEY, INC.,)	
)	Supreme Court Case No. SC92423
Relator,)	
)	(Court of Appeals Case No.: WD74789)
v.)	
)	(Circuit Court of Nodaway County,
HON. ABE SHAFER)	Case No. 11ND-CV00336)
(Judge, Circuit Court of)	
Platte County, MO; sitting by)	
Assignment))	
)	
Respondent.)	

SUGGESTIONS IN OPPOSITION TO DEFENDANT’S

PETITION FOR WRIT OF PROHIBITION

John Doe 181 is the Plaintiff in the underlying matter that is the subject of a Petition for Writ of Prohibition (“Petition for Writ”) filed in this Court by Defendant/Relator Conception Abbey. John Doe 181 submits this Opposition to Conception Abbey’s Petition for Writ to address the issue of whether Doe sufficiently pleads fraudulent concealment in his Petition filed in the Circuit Court of Nodaway County. Even though a case involving fraudulent concealment is rare, when a legitimate case, like the current case, presents itself, Missouri courts must continue have the ability to mete out justice for those victimized by the fraud.

When claiming fraudulent concealment of a cause of action, Missouri law requires that a petition contain factual statements establishing that the cause of action was concealed from a party by affirmative conduct of the opposing party. Mere silence is not sufficient to establish fraudulent concealment. In the current matter, John Doe 181

specifically pled in his Petition that Conception Abbey, as Fr. Parry's employer, through affirmative statements to Doe, claiming that the sexual abuse of Doe was an isolated incident, misled Doe about the Abbey's role in the sexual abuse by Fr. Parry, concealing the cause of action of intentional failure to supervise clergy from John Doe 181 and his family.

Missouri law favors extending the statute of limitations when one party, through affirmative act or representation, conceals a cause of action from another party. The cause of action of intentional failure to supervise clergy requires proof that a supervisor knew that a subordinate posed a known risk and that harm was certain or substantially certain to result if the supervisor disregarded that known risk. Here, Conception Abbey affirmatively misled John Doe 181 into believing that the Abbey was unaware of any risk posed by Fr. Parry when, in fact, the Abbey was aware that Fr. Parry was a major risk because he had sexually abused students on three prior occasions. This is exactly the type of affirmative misrepresentation contemplated by the Missouri Legislature and this Court when developing the jurisprudence of fraudulent concealment.

If Conception Abbey's position is adopted by this Court, it would eviscerate decades of this Court's rulings involving fraudulent concealment of a cause of action. Parties who are dishonest and who fabricate information will be confident that as long as their dishonesty and fabrication stays secret for the statute of limitations period, they will evade liability altogether. This would be in stark contrast to the statute adopted by the Missouri Legislature and decades of this Court's rulings. Denying Conception Abbey's Petition for Writ will maintain the balance between pleading standards required for

fraudulent concealment and the need for a remedy in those rare cases where there is an affirmative misrepresentation that conceals a cause of action.

FACTS

Defendant Conception Abbey (“Abbey”) is a religious institution affiliated with the Order of St. Benedict, an order of the Roman Catholic Church. Def.’s Ex. A, ¶ 6. Plaintiff’s Petition concerns his sexual abuse by Father Bede Parry, a Roman Catholic Priest, and the subsequent lies by Abbot Jerome Hanus, head of Conception Abbey. *Id.* ¶¶ 16, 18-20. Plaintiff’s sole count against Defendant Conception Abbey is for the Intentional Failure to Supervise Clergy, Fr. Bede Parry, which resulted in Plaintiff’s abuse. *Id.* at 8.

Fr. Parry was a well-known sexual abuser prior to the time he came into contact with John Doe 181. Fr. Parry joined the monastic community at the Abbey in 1973 and resided there until 1979. Def.’s Ex. A, ¶ 9. During that time, Fr. Parry was involved in three inappropriate sexual relationships, of which he informed Abbot Hanus. *Id.* ¶ 20. In 1979, Fr. Parry left the Abbey to attend St. John’s University School of Theology in Collegeville, Minnesota. *Id.* ¶ 11. While there, Fr. Parry admitted sexual contact with a St. John’s student to both St. John’s Abbot Jerome Thiesen and Abbot Hanus. Def.’s Ex. A, ¶ 20. Despite these prior incidents of sexual misconduct, Fr. Parry was officially ordained a priest in 1983. *Id.* ¶¶ 13, 20.

In summer 1987, Plaintiff John Doe 181 attended a residential choir camp at the Abbey. Def.’s Ex. A, ¶¶ 14-15. During the camp, Fr. Parry sexually abused the minor

Plaintiff. *Id.* ¶ 17. Plaintiff informed his parents about the abuse by Fr. Parry. *Id.* ¶ 17.

Plaintiff's parents promptly confronted Abbot Jerome Hanus. *Id.* ¶ 18.

During that meeting, Abbot Hanus fraudulently concealed the reason the abuse occurred - the Abbot's failure to supervise Fr. Parry and failure to protect the minor plaintiff. Def.'s Ex. A., ¶¶ 18-19. At that time, Abbot Hanus knew several important facts about Fr. Parry, relating to his proclivity for sexual abuse. *Id.* ¶ 20. First, Abbot Hanus knew that Fr. Parry was involved in three sexually inappropriate relationships with students at the Abbey between 1973 and 1979 and while a student at St. John's in 1981. *Id.* Second, Abbot Hanus knew that Fr. Parry had to receive psychological treatment as a condition of remaining at St. John's University. *Id.* ¶¶ 12-13, 20. Finally, Abbot Hanus knew that Fr. Parry was ordained a priest and employed at Conception Abbey despite his dangerous propensities for sexual misconduct. Def.'s Ex. A., ¶¶ 12, 13, 20.

Instead of sharing this information and, therefore, informing John Doe 181 and his family of facts forming the basis of an intentional failure to supervise clergy claim, Abbot Hanus misled John Doe 181 and his parents, affirmatively representing to Plaintiff and his family that the abuse was an isolated event, a manifestation of an unexpected "mental breakdown." *Id.* ¶ 18. In fact the abuse was a product of Abbot Hanus' and Conception Abbey's intentional failure to supervise Fr. Parry. *Id.* It is telling that immediately following John Doe 181's report to Abbot Hanus, Conception Abbey sent Fr. Parry to a sexual offender treatment facility in New Mexico and not to a psychiatric hospital where Fr. Parry could be treated for this supposed "mental breakdown." *Id.* ¶ 21.

Plaintiff filed his Petition against Defendant Conception Abbey on June 23, 2011. Def.'s Ex. A. Defendant filed a Motion to Dismiss Plaintiff's Petition on July 28, 2011. Def.'s Ex. B. Defendant argued that Missouri's statute of limitations barred Plaintiff's claims. *Id.* at 1. After full briefing and oral argument, the Circuit Court for Nodaway County denied Defendant's Motion to Dismiss. *See* Def.'s Exs. B, C, D, & E. The court issued the Judgment/Order on October 25, 2011. Def.'s Ex. F. On January 24, 2012, Defendant filed its Petition for Writ of Prohibition asking the Missouri Court of Appeals for the Western District to review and overturn the Circuit Court's ruling. Def.'s Pet. for Writ of Prohibition, Jan. 24, 2012. On February 17, 2012, the Missouri Court of Appeals for the Western District denied the Conception Abbey's Writ of Prohibition. Def.'s Ex. G. On March 14, 2012, Conception Abbey filed its Petition for Writ of Prohibition with this Court. This Opposition to Conception Abbey's Petition for Writ of Prohibition is submitted in opposition.

ARGUMENT

I. THE TRIAL COURT PROPERLY RULED THAT PLAINTIFF ADEQUATELY PLED A CAUSE OF ACTION AND TOLLING OF THE APPLICABLE STATUTE OF LIMITATIONS.

The Circuit Court for Nodaway County, ruled that Plaintiff's Complaint adequately pled a cause of action and that the statute of limitations related to that cause of action was tolled by fraudulent concealment. As will be discussed below, Plaintiff sufficiently pleads that the statute of limitations in this matter was tolled due to the

fraudulent concealment by Defendant Conception Abbey. Consequently, the Circuit Court's ruling should not be disturbed.

a. PLAINTIFF'S PETITION PLEADS A CAUSE OF ACTION FOR INTENTIONAL FAILURE TO SUPERVISE CLERGY UNDER MISSOURI LAW.

The law regarding what is required for a petition to survive a motion to dismiss is fairly straight forward. Missouri Supreme Court Rule 55.05 requires a petition contain "a short and plain statement of the facts showing that the pleader is entitled to relief." In reviewing a petition following a motion to dismiss for failure to state a claim upon which relief can granted, the court's role is solely to test the "adequacy of plaintiff's petition." *State ex rel. Henley v. Bickel*, 285 S.W.3d 327, 329 (Mo. Banc 2009) (quoting *Bosch v. St. Louis Healthcare Network*, 41 S.W.3d 462, 464 (Mo. banc 2001)).

The court must assume that all of plaintiff's averments are true, and liberally grants to plaintiff all reasonable inferences related thereto. *Id.* No attempt may be made to weigh any facts alleged as to whether they are credible or persuasive. *Id.* Instead, the petition is reviewed in an almost academic manner, to determine if the facts alleged meet the elements of a recognized cause of action, or of a cause that might be adopted in that case. *Id.* In other words, the petition must invoke "substantive principles of law entitling plaintiff to relief and ultimate facts informing the defendant of that which plaintiff will attempt to establish at trial." *Id.* at 329-330. Importantly, if Defendant's motion to dismiss is predicated on the statute of limitations, the petition may only be dismissed if it

clearly establishes “on its face and without exception” that it is barred. *Sheehan v. Sheehan*, 901 S.W.2d 57, 59 (Mo. banc 1995) (citations omitted).

Initially, it must be noted that John Doe 181 pleads a single cause of action for intentional failure to supervise clergy. This cause of action has the following elements:

- (1) a supervisor (or supervisors) exists;
- (2) the supervisor (or supervisors) knew that harm was certain or substantially certain to result;
- (3) the supervisor (or supervisors) disregarded the known risk;
- (4) the supervisor’s inaction caused damage; and
- (5) the other requirements of the Restatement (Second) of Torts, Section 317 are met.

Gibson v. Brewer, 952 S.W.2d 239, 248 (Mo. banc 1997).

In his Petition, John Doe 181 pleads all of the required elements of a claim for intentional failure to supervise clergy: (1) Conception Abbey was Fr. Parry’s supervisor; (2) as Fr. Parry’s supervisor, Conception Abbey was aware of previous sexual misconduct by Fr. Parry and that future harm was certain or substantially certain to result without proper supervision; (3) Conception Abbey disregarded this known risk; (4) Conception Abbey’s inaction caused damage to John Doe 181; and (5) the sexual abuse occurred on the property owned and operated by Conception Abbey. Def.’s Ex. A, pp. 8-9; *Id.* Consequently, John Doe 181 sufficiently pleads a cause of action for intentional failure to supervise clergy.

It is the requirement that John Doe 181 discover that Conception Abbey was aware of previous sexual misconduct by Fr. Parry and despite the risk of future harm absent proper supervision, Conception Abbey disregarded that risk causing injury to John

Doe 181 that is the information that Conception Abbey concealed from Doe. As discussed below, Conception Abbey went beyond remaining silent about its knowledge of Fr. Parry's abusive past, Conception Abbey made an affirmative statement to John Doe 181 representing that Fr. Parry's abuse of him was an isolated incident that could not have been anticipated.

**b. PLAINTIFF ADEQUATELY PLEADS FRAUDULENT
CONCEALMENT IN HIS PETITION.**

Plaintiff meets his burden of pleading fraudulent concealment in his Petition. MO. ANN. STAT. § 516.280 provides that, “[i]f any person, by absconding, or concealing himself, or by any other improper act, prevent the commencement of an action, such action may be commenced within the time herein limited, after the commencement of such action shall be ceased to be prevented.” Fraudulent concealment occurs when a “defendant, by his or her...conduct, affirmatively intends to conceal from plaintiff the fact that the plaintiff has a claim against the defendant.” *Batek*, 920 S.W.2d at 900. This fraudulent conduct will avoid the running of the statute of limitations against a plaintiff's claim. *Id.*

Furthermore, this Court requires that the fraudulent concealment go beyond mere silence and there must be something actually done or said which is directly intended to prevent discovery. *See State ex rel. Bell v. Yates*, 132 S.W. 672, 676 (Mo. 1910). Plaintiffs must show “that some trick or artifice was used to prohibit the defrauded party from inquiring or making investigation regarding the fraud, or it must be shown that the

defrauded party was prevented from inquiring about the particular acts of concealment.”
Batek, 902 S.W.2d at 900.

In his Petition, John Doe 181 establishes fraudulent concealment. For example, John Doe 181 acknowledges that he told his parents about the sexual abuse by Fr. Parry the day after it occurred. Def.’s Ex. A, ¶ 17. Plaintiff and his family subsequently met with Abbot Hanus to notify him of the abuse. *Id.* ¶ 18. During that meeting, Abbot Hanus fraudulently concealed the reason the abuse occurred - the Abbot’s intentional failure to supervise Fr. Parry. *Id.* ¶¶ 18-19.

At that time, Abbot Hanus knew several important facts about Fr. Parry, relating to his risk to sexually abuse. Def.’s Ex. A., ¶ 20. First, Abbot Hanus knew that Fr. Parry was involved in three sexually inappropriate relationships at the Abbey between 1973 and 1979 and while a student at St. John’s in 1981. *Id.* Second, Abbot Hanus knew that Fr. Parry had to receive psychological treatment as a result. *Id.* ¶¶ 12-13, 20. Instead of sharing this information and, therefore, informing the Plaintiff and his family of facts forming the basis of an intentional failure to supervise clergy claim, Abbot Hanus affirmatively represented to Plaintiff and his family that the abuse was an isolated event which was a manifestation of an unexpected “mental breakdown” and not due to Conception Abbey’s failure to supervise a person who posed a known risk of sexual abuse. Def.’s Ex. A., ¶ 18.

Abbot Hanus’ affirmative misrepresentation that the abuse was the result of a singular “mental breakdown” went beyond “mere silence.” *Yates*, 132 S.W. at 676. The Abbot relied on the reverence and expectation of honesty that Plaintiff and his family

possessed for the Abbot and other authority figures in the Catholic Church. Def.'s Ex. A., ¶¶ 40-41. The Abbot knew if he told John Doe 181 that the Abbot was aware that Fr. Parry had abused students on three prior occasions, John Doe 181 would be able to take legal action against Conception Abbey. Blaming the sexual abuse of John Doe 181 on an isolated "mental breakdown" was not true and this explanation misled Doe 181 into believing that Conception Abbey had no liability. What is more, Conception Abbey was the only source for this information.

As discussed, in order to establish fraudulent concealment, a party must plead affirmative conduct, beyond mere silence. This is what distinguishes the cases cited by Conception Abbey from the immediate case – Conception Abbey made an affirmative misrepresentation to John Doe 181 that concealed a cause of action. In their Petition for Writ of Prohibition, Conception Abbey argues under cases such as *Doe v. O'Connell*, 146 S.W.3d 1, 4 (Mo. Ct. App. 2004), *Graham v. McGrath*, 243 S.W.3d 459 (Mo. Ct. App. 2007), and *Dempsey v. Johnston*, 299 S.W.3d 704 (Mo. Ct. App. 2009) that John Doe 181's claims were capable of ascertainment because he had knowledge of the sexual abuse at the time that it occurred.

Each of these cases are clearly distinguishable because, unlike *O'Connell*, *Graham* or *Dempsey*, in this case, Conception Abbey made an affirmative representation to John Doe 181 that prevented him from discovering and filing a claim for intentional failure to supervise clergy against Conception Abbey. Even though both *Graham* and *Dempsey* concerned a claim of intentional failure to supervise clergy, the statute of limitations argument turned on the point in time in which the plaintiff's knowledge of the acts

constituting sexual abuse evolved into knowledge that he was a victim of sex abuse. *Graham*, 243 S.W.3d at 463; *Dempsey*, 299 S.W.3d at 705-707. There was no evidence of any affirmative misrepresentation preventing either Herbert Graham or Timothy Dempsey from discovering or filing a claim. Additionally, even though the *O'Connell* case did not involve an intentional failure to supervise clergy claim, the Court of Appeals rejected Doe's claim of fraudulent concealment because "[P]laintiff has not pleaded any conduct or statement by Defendants that would justifiably cause a reasonable person to refrain from suit." *O'Connell*, 146 S.W.3d at 4. Thus, in all three of these cases, there was no evidence of the affirmative representation made by the defendant that is present here.

Further, to be successful in pleading fraudulent concealment, the party against whom a claim is made must conceal all of the claims available to the aggrieved party. In *Cullom v. Crittenton*, 959 S.W.2d 915 (Mo. Ct. App. 1998), the Missouri Court of Appeals concluded that where an aggrieved party is aware of a viable cause of action against another party, the aggrieved party must bring that claim, even if other possible claims are fraudulently concealed. Specifically, in *Cullom*, the Defendant adoption agency took Cullom's son from her immediately following his birth and without the permission of Cullom. *Id.* at 916. Years later, Cullom brought an action for fraud and other claims against the Defendant agency relating to the wrongful removal of her son. *Id.* at 917. When considering whether the statute of limitations had expired on Cullom's claims, the Court of Appeals noted that even though information regarding a forged birth certificate and adoption documents had been concealed and were not available to Cullom,

Cullom had notice of a claim against Crittenton at the time that Crittenton removed the baby from her. *Id.* at 919. It is this fact that distinguishes *Cullom* from the current matter.

In contrast to *Cullom*, Conception Abbey fraudulently concealed the only claim available against the Abbey from John Doe 181. Even though John Doe 181 was aware that the sexual abuse occurred on the property that was owned and operated by the Abbey, Missouri law prohibits claims for negligence against religious institutions. *See Gibson v. Brewer*, 952 S.W.2d at 248. The same is true for claims based on vicarious liability/ respondeat superior against an employer of a priest. *Id.* at 246. As a result, when Conception Abbey concealed the intentional failure to supervise clergy claims from John Doe 181, they concealed the only claim against Conception Abbey, leaving John Doe 181 in the position of believing that his only possible claim was against Fr. Parry for sexual abuse. This distinction distinguishes *Cullom* from the current matter.

All of the above information is contained in Plaintiff's Petition and was argued in Plaintiff's Opposition to Defendant's Motion to Dismiss. The Circuit Court, presented with all these arguments, determined that Plaintiff's Petition satisfied the statute of limitations. The same is true with the Court of Appeals. This Court should, therefore, deny Defendant's Petition for Writ of Prohibition.

II. WRIT OF PROHIBITION IN THIS CASE IS INAPPROPRIATE BECAUSE JOHN DOE 181'S CLAIM IS NOT CLEARLY BARRED BY THE APPLICABLE STATUTE OF LIMITATIONS AND BECAUSE DOE PROPERLY PLEADS HIS CLAIM AND THE TOLLING OF THE STAUTE OF LIMITATIONS.

This Court has jurisdiction to issue a writ of prohibition under Article V, section 4 of the Missouri Constitution. According to this Court's recent jurisprudence, a writ of prohibition is available: (1) to prevent a usurpation of judicial power when the circuit court lacks authority or jurisdiction; (2) to remedy an excess of authority, jurisdiction or abuse of discretion where the lower court lacks the power to act as intended; or (3) where a party may suffer irreparable harm if relief is not granted. *State ex rel. McKeage v. Cordonnier*, 357 S.W.3d 597, 599 (Mo. banc 2012). In addition, this Court has held that issuance of a writ of prohibition is proper when an action is clearly barred by the statute of limitations. *State ex rel. Holzum*, 342 S.W.3d 313, 315 (Mo. banc 2011). This is true even at the motion to dismiss stage of a case if the petition does not meet the most minimal level of fact pleading. *State ex rel. Henley v. Bickel*, 285 S.W.3d at 330.

In the current case, John Doe 181's claim for intentional failure to supervise clergy is not clearly barred by the statute of limitations and this claim as well as the fact that it was fraudulently concealed from Doe is properly pled in the Petition in this matter. See section I above. In fact, Conception Abbey concealed the fact that Conception Abbey was aware of previous sexual misconduct by Fr. Parry and despite the risk of future harm absent proper supervision, Conception Abbey disregarded that risk and failed to supervise

Fr. Parry, causing injury to John Doe 181. Conception Abbey went well beyond remaining silent about its knowledge of Fr. Parry's abusive past, Conception Abbey made an affirmative statement to John Doe 181 stating that Fr. Parry's abuse of him was an isolated incident that could not have been anticipated.

Consequently, the facts of this case are distinguished from *State ex rel. Holzum* and *State ex rel. Henley v. Bickel* because unlike those cases, John Doe 181 sufficiently pleads a legal cause of action for intentional failure to supervise clergy and fraudulent concealment tolling the statute of limitations for that claim. See *State ex rel. Holzum*, 342 S.W.3d at 315; *State ex rel. Henley v. Bickel*, 285 S.W.3d at 330. Thus, a writ of prohibition is not proper in this case.

CONCLUSION

The Circuit Court of Nodaway County denied Defendant's Motion to Dismiss because Plaintiff sufficiently pleads fraudulent concealment of his intentional failure to supervise claim in his Petition. As Plaintiff meets the clear pleading requirements of a claim for intentional failure to supervise clergy and the related tolling of the statute of limitations for fraudulent concealment, a writ of prohibition is inappropriate. For the reasons stated herein, Plaintiff respectfully requests that this Court deny Defendant Conception Abbey's Petition for a Writ of Prohibition.

Respectfully Submitted,

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(Judge, Circuit Court of)	
Platte County, MO; sitting by)	
Assignment))	
)	
Respondent.)	

CERTIFICATE OF SERVICE

I hereby certify that true copies of Suggestions in Opposition to Defendant's Petition for Writ of Prohibition, together with a copy of this Certificate of Service, were served, via United States mail, postage pre-paid, on the following individuals:

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I hereby further certify that true copies of Suggestions in Opposition to Defendant's Petition for Writ of Prohibition, together with a copy of this Certificate of Service, were served, via the Missouri e-filing system, on the following individuals:

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