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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

Dale Van E. Van Slambrook, Presiding Judge

Case No. 2018-CP-10-03929

Appellate Case No. 2025-001689

John Doe …….. Appellant.

v.

Bishop of Charleston, a Corporation Sole, and the
Bishop of Charleston, in his official capacity…… Respondents.

FINAL BRIEF OF APPELLANT

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STATEMENT OF THE CASE

Plaintiff-Appellant John Doe (Doe) filed an Amended Complaint in the Charleston County Circuit Court on August 29, 2018. R. 14. As alleged in his Amended Complaint, Doe was born in 1957. As a child around the ages of 12 to 14 (*i.e.*, around 1969 to 1971) he was sexually molested by Chris Hartnett and Hal Brooks, two teachers at Sacred Heart Catholic School, a parochial school operated by the Defendants-Respondents (Diocese). Doe further alleged that the Diocese had encouraged him to trust, revere, obey, and confide in his teacher Hartnett and another Sacred Heart School teacher Brooks, both abusers of Doe, and that the Diocese not only knew or should have known of the sexual abuse but also tried to conceal it. Doe alleged further that his memory of these events had been repressed and he learned of the abuse and of the causal relationship between his injuries and the sexual abuse, the Diocese's knowledge of the abuse, and the Diocese's concealment of the abuse only within the two years before filing. Based on these and other facts, Doe asserted claims for relief based on sexual abuse, and claimed outrage, negligence/gross negligence, breach of fiduciary duty, intentional infliction of emotional distress, fraudulent concealment, civil conspiracy, negligent retention or supervision, breach of contract, and breach of contract accompanied by a fraudulent act.

In response to the Amended Complaint, the Diocese filed a series of motions, several of which resulted in orders adverse to the Diocese, and from which the Diocese attempted to pursue interlocutory appeals. Among the motions filed by the Diocese are a motion to dismiss; a motion to strike portions of the Amended Complaint; a motion to stay discovery; a motion for protective order concerning discovery; a motion for partial summary judgment as to "The Bishop of the Diocese of Charleston, in his official capacity"; a motion to disqualify Doe's counsel; a motion for summary judgment as to all claims based upon the common law doctrine of charitable immunity;

a motion for summary judgment as to all claims based upon the statute of limitations/lack of admissible evidence of repressed memory (R. at 81); a motion for summary judgment based upon *res judicata* effect of a 2007 class action settlement; a motion for summary judgment regarding Doe's negligence, negligent retention, negligent supervision and outrage/intentional infliction of emotion distress claims; a motion for summary judgment regarding Doe's claim of conspiracy; a motion for summary judgment regarding Doe's fraud-based and contract claims; and a motion for summary judgment as to Doe's claim for breach of fiduciary duty.

After hearing three of the Church's summary judgment motions on December 12, 2019, the trial Court required counsel for both sides to submit proposed orders, which was done. On January 9, 2020, the hearing judge issued the order proposed by the Diocese granting them summary judgment based solely upon the doctrine of charitable immunity.

The Diocese filed no Rule 59(e) motion seeking additional rulings on its other motions for summary judgment based on the statute of limitations/lack of admissible evidence of repressed memory syndrome and on the *res judicata* effect of a 2007 class action settlement.

Doe appealed the grant of summary judgment on charitable immunity, the second appeal in this matter.[1] In that appeal, the Diocese made all of the same arguments it makes here not only on charitable immunity, but also the statute of limitations. The Court of Appeals affirmed the circuit court's grant of summary judgment. *Doe v. Bishop of Charleston*, 440 S.C. 640, 891 S.E.2d 522 (Ct. App. 2023). The Supreme Court accepted certiorari and subsequently reversed both the Court of Appeals and the circuit court and remanded the case. *Doe v. Bishop of Charleston*, 445 S.C. 319, 11 S.E.2d 323 (2025). The Supreme Court specifically rejected that Diocese's attempts to assert the statute of limitation as a defense. R. at 276.

[1] The Diocese filed a frivolous appeal concerning a discovery matter and then sought certiorari on the loss of that appeal. Appellate Case No. 2020-000318.

On remand, the Diocese asserted all of the same defenses and again sought dismissal of the action based on the statute of limitations despite that defense having been rejected by the Supreme Court. On July 7, 2025, in the face of that rejection, the trial court granted the Diocese summary judgment on the grounds that Doe's claims violated the three-years statute of limitations. This appeal ensued.

STATEMENT OF THE FACTS

The gravamen of Doe's claim is that as a young grammar school student at Sacred Heart School, of the Diocese of Charleston, he was molested by teachers in the fall of 1970.[2] R. at 299. Doe was visited at his home by his teacher Chris Hartnett who spoke with Doe and Doe's parents and received their parental permission to take Doe to an event in the Columbia area. Hartnett subsequently transported Doe alone in his vehicle, not to any learning related event[3], but rather to a private residence where a party was being conducted and where a second teacher from Sacred Heart School was present. Doe was the only child at the gathering and was given alcohol and marijuana and was subsequently sodomized by the two teachers. Depo. of Doe, p. 118, ln. 15-19; R. at 335.

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[2] **Transcript of John Doe's deposition (R. pp. 325 passim)**
P108, L13 – P109, L9 (R. p. 451, line 13-p. 452, line 9)
BY MR. DUKES: Chris Hartnett was your homeroom teacher when you were in the seventh grade, right?
DOE: Sixth. Pretty sure it's the sixth. Or at least the last half – the latter of the sixth. I don't have a vivid knowledge of been going there a whole year, whether it had been one year or the next year or for a year and then part of the next year. I can't remember that. You'd have to get school records for that one.
DUKES: Yes, I've got them, and I'll show you.
DOE: Okay.
DUKES: It jumps around on you but in 1969 and 1970 you had a lady who taught you in the sixth grade.
DOE: Okay.
DUKES: And then 1970, 1971, Chris Hartnett was your seventh grade teacher.
P118, L7-10 (R. p. 461, lines 7-10)(R. at 335)
DUKES: What time of year did this party take place?
DOE: Somewhere in the fall. I'm sure of that.

[3] **Transcript of John Doe's deposition**
P115, L3 – 7 (R. at 322)
DUKES: How did this trip to Columbia come about?
DOE: Well, he said we were going up there to see a museum or something and ended up at a friend of his house and Brooks was there.

Doe had been taught to revere, respect, trust, confide in, and adhere to the directives of his teachers and clergy, priests, and also nuns of the Roman Catholic Diocese of Charleston. He was taught that persons of authority were to be obeyed, and their directives complied with.

Doe described the location of the party as being off Gervais Street in a private residence. After that event, Doe was taken by Hartnett and Brooks to what seems to have been a bar where he was given to a bar patron who displayed a desire for sexual favor by embracing and kissing young Doe.

Doe's seventh grade report card, academic year September 1970 – May 1971, was relied upon by the Diocese as establishing the fact of him being Hartnett's student and also the general time of the molestation. R. at 299. Ultimately, Doe was abandoned at the bar in Columbia, got away from it, and finally hitchhiked back to Charleston and his home. Depo. of Doe, p. 119, ln. 3-12; R. at 336.

Doe's is a case of repressed memory or dissociative amnesia, which doctrine is recognized in South Carolina. See *Moriarty v. Garden Sanctuary Church of God,* 334 S.C. 150, 511 S.E.2d 699 (Ct.App.1999) and *Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 534 S.E.2d 672 (2000).

STANDARD OF REVIEW

The Court is well-aware of the standard for the drastic remedy of summary judgment. "Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Rule 56(c), SCRCP. "In determining whether any triable issue of fact exists, the evidence and all inferences that can reasonably be drawn therefrom must be viewed in the light most favorable to the

nonmoving party." *Catawba Indian Tribe of South Carolina v. State,* 372 S.C. 519, 642 S.E.2d 751 (2007). *Schmidt v. Courtney,* 357 S.C. 310, 592 S.E.2d 326 (Ct.App.2003) (stating that all ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party). Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. *Gadson v. Hembree,* 364 S.C. 316, 613 S.E.2d 533 (2005); *Montgomery v. CSX Transp., Inc.,* 362 S.C. 529, 608 S.E.2d 440 (Ct.App.2004). "Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied." *Montgomery v. CSX Transp., Inc.,* 376 S.C. 37, 656 S.E.2d 20 (2007) "The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact." *Bradley v. Doe,* 374 S.C. 622, 649 S.E.2d 153 (Ct.App.2007). "Summary judgment is a drastic remedy and should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial on disputed factual issues." *Helena Chem. Co. v. Allianz Underwriters Ins. Co.,* 357 S.C. 631, 594 S.E.2d 455 (2004).

ARGUMENT

I. THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT ON THE BASIS OF THE STAUTUE OF LIMITATIONS WHERE THREE EXPERTS OFFERED OPINIONS ON DOE'S REPRESSED MEMORIES, WHERE THE LAW OF CORROBORATING EVIDENCE IS NOT FULLY DEVELOPED AND WHERE GENUINE ISSUES OF MATERIAL FACT EXIST REGARDING THE CHAIN OF EVENTS OF DOE'S ABUSE.

In the case of *Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 534 S.E.2d 672 (2000)[4], the Supreme Court allowed for the statute of limitations to be stayed for those who suffer from repressed memories until the memory, established by expert testimony of the repression and

[4] The Defendants, which routinely degrade the victims of its acknowledged pattern of enabling sexual abuse, calls repressed memories, "junk science." In actuality, the Defendants are attempting to argue that *Moriarity* should be overturned. The law as it currently stands clearly allows the evidence of repressed memories to proceed.

"corroborating evidence" of the abuse. The trial court found there was no evidence in the record on either point, a determination that fails to consider the record as a whole.

A. Genuine issues of material fact existed on the expert testimony of Doe's repressed memory.

The trial court held, "Plaintiff presented no admissible expert testimony regarding repressed memory syndrome." R. at 5. This finding is a blind eye by the court to the record before it. Here, ***three*** doctors testified that Doe suffered from repressed memory of his abuse. See Depo. of Jason Flassing, R. at 426-431; Depo. of Sally Duffy, R. at 433-467; Expert Report of Sally Duffy, R. at 468-476; Depo. of Dorothy Whalen, R. at 478-498. "[Doe] does clearly appear to have non-volitionally repressed memorials of the abuse by schoolteacher to the point of not remembering that he actually was in the 7th grade." R. at 474. Sally Duffy is a licensed psychologist with more than 40 years experience in treating patience and who has previously been admitted as an expert on repressed memory. Depo of Duffy, p. 17, ln 1-8; R. at 437. The Diocese may not like the science, but the evidence of Doe's repression is substantial and complies with the law. Regardless, there was evidence in the records of Doe's abuse and repressed memory. Accordingly, granting summary judgment was in error.

B. Genuine issues of material facts exist as to the corroborating evidence of Doe's abuse.

Corroborating evidence, which may be either direct or circumstantial, includes:

> "(1) an admission by the abuser; (2) a criminal conviction; (3) documented medical history of childhood sexual abuse; (4) contemporaneous records or written statements of the abuser, such as diaries or letters; (5) photographs or recordings of the abuse; (6) an objective eyewitness's account; (7) evidence the abuser had sexually abused others; or (8) proof of a chain of facts and circumstances having sufficient probative force to produce a reasonable and probable conclusion that sexual abuse occurred."

Moriarty, at 336, 680.

Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. *Gadson v. Hembree,* 364 S.C. 316, 613 S.E.2d 533 (2005). To the best of the appellant's knowledge, no case, either in South Carolina or outside of the state-- has ever done a deep analysis on what the level of proof needed to make these elements. The closest appears to be an unpublished opinion from 2014 and even it simply held the record contained no corroborating evidence. *Doe v. Smith*, 2014 WL 2968925 (Ct. App 2014). As an initial ground for remand, this matter would be better tried so the record could be fully developed before a jury.

Nevertheless, the record includes multiple pieces of evidence of the abuse. Specifically, there exists a, "proof of a chain of facts and circumstances having sufficient probative force to produce a reasonable and probable conclusion that sexual abuse occurred." *Moriarty*, at 336, 680. Admittedly, this case is a classical circumstantial evidence case. However, as the Supreme Court noted, circumstantial evidence carries the same weight of as direct evidence. *Moriarty,* at 337, 680. While the Diocese may argue that *Moriarty* represents an enigma of evidentiary law, the Supreme Court has already rejected that analysis and made clear the same rules of the weight of evidence exist for repressed memory claims as for all other claims.

At summary judgment, it is the duty of a court to determine whether genuine issues of material facts exist for a jury to find for the plaintiff. It is not the duty of the court to determine whether such facts are true or the weight of the same—that duty rests exclusively with the jury. *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 463, 892 S.E.2d 297, 301 (2023). In a circumstantial case, the question becomes whether there is a chain of events to support the plaintiff's theory. The trial court failed to analyze this question and instead merely granted judgment.

The record before the court contains at least the following corroborating evidence: 1) Doe's testimony that he was forced to engage in fellatio with Hartnett and essentially kidnapped to Columbia for a sex party (R. at 330); 2) proof that Doe was a student at Sacred Heart (R. at 299); 3) proof that Hartnett as Doe's teacher (R. at 299); and 4) the Diocese's admissions that sexual abuse and rape of children routinely occurred by its priests and agents and those rapes were-- as a matter of Diocesan policy-- covered up (R. at 312-316). Such evidence, combined, is sufficient circumstantial evidence to meet the eighth prong for summary judgment purposes. It is for the jury to determine if the weight is sufficient to meet the elements of the law. The trial court erred in holding otherwise and the case should be remanded for trial.

II. THE DIOCESE'S MOTIONS FOR SUMMARY JUDGMENT WERE DENIED BY THE SUPREME COURT IN A PRIOR APPEAL AND THAT DENIAL IS THE LAW OF THE CASE.

In the prior appeal before the South Carolina Court of Appeals and Supreme Court on the Defendants' losing charitable immunity excuse for enabling the abuse of children, it asserted all of the motions they make now. R. at 230-271. The Supreme Court expressly declined to grant the Defendants judgment on those claims. R. at 276. "We decline to address any alternate sustaining ground for summary judgment, and we remand Petitioner's claims to the trial court." After the Supreme Court reviewed the Defendants' defenses, it only remanded the petitioner's claims; the Supreme Court could have entered judgment on the alternate grounds re-asserted here, but instead did not remand the Defendants' defenses. "The appellate court may review respondent's additional reasons and, if convinced it is proper and fair to do so, rely on them or any other reason appearing in the record to affirm the lower court's judgment." *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 420, 526 S.E.2d 716, 723 (2000).

Having had a full opportunity to argue and appeal these same motions, the denial of those motions is the law of the case. "Under the law-of-the-case doctrine, a party is precluded from relitigating, after an appeal, matters that were either not raised on appeal, but should have been, or raised on appeal, but expressly rejected by the appellate court." *Judy v. Martin*, 381 S.C. 455, 458, 674 S.E.2d 151, 153 (2009). Here, the Defendants made all of the same arguments, lost those arguments, and have now come back before this court for yet another bite at the apple.[5]

Doe brought this case in 2018. The Defendants have done everything possible to avoid being held accountable by a jury of their peers. The case has been on appeal twice. The first, a clearly frivolous attempt to avoid the Defendants' discovery obligations, was dismissed by the Court of Appeals as interlocutory. R. at 278. They then followed that dismissal with a meritless petition for certiorari on the same frivolous issue, causing more delay. Doe then had to proceed to vindicate his rights on a clearly erroneous decision of law on the charitable immunity issue, which he did, but not before four more years of stagnation.

The point is that Doe, having faced two appeals and won them both, is entitled to a trial, win or lose. No more motions that avoid the inevitable or create more appellate burden. While Doe believes these motions have been heard, denied and now invalid, the Defendants still retain the ability to make motions at the directed verdict portion of the trial. Hence, while to trying to quadruple dip, it does so without any prejudice to it. Please remand this case and allowed Doe to have his day in court.

[5] This is the Diocese's fourth bite of the apple, having argued these motions before Judge Price, the Court of Appeals, and the Supreme Court. No one other defendant gets to keep making the same pre-trial arguments.

CONCLUSION

For the foregoing reasons, Doe respectfully requests that the orders of the Circuit Court be reversed.

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CERTIFICATION OF COUNSEL

The undersigned certifies that the FINAL BRIEF OF APPELLANT complies with Rule 211(b), SCACR.

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