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For Whom the Church Bells Toll: The Supreme Court of Georgia Resolves the Issue of Whether Fraud Can Toll the Statute of Limitations for Sexual Abuse Claims

Sydney Thompson*

I. INTRODUCTION

In January of 2002, the Boston Globe published an article detailing widespread allegations of child sexual abuse by serial pedophiles and a sophisticated coverup that implicated high ranking clergy members.¹ In the aftermath of the article, thousands of men and women from across the United States came forward with their own allegations, which revealed patterns of abuse and deception in dioceses around the country.² The wave of litigation that followed raised compelling questions about

*I owe my endless gratitude to my mother, Brooke Clinkscales, for inspiring me to pursue my dreams, and to my grandparents, Donald and Sally Thompson, for teaching me the value of hard work and for their unconditional love and support. I would also like to extend my sincerest thanks to Dean Pamela Wilkins for her encouragement and invaluable guidance throughout this process. Finally, to all survivors of childhood sexual abuse, I admire your strength and resilience, and while nothing can truly rectify all that you have endured, a promising new path to justice has finally been recognized.

1. Michael Rezendes, *Church Allowed Abuse by Priest for Years*, BOSTON GLOBE (Jan. 6, 2002), <https://www.bostonglobe.com/news/special-reports/2002/01/06/church-allowed-abuse-priest-for-years/cSHfGkTTrAT25qKGvBuDNM/story.html> [https://perma.cc/3UYL-MP77].

2. Marci A. Hamilton, *Legal Commentary: The Pieces of the Puzzle are Falling into Place: Catholic Officials, a Global Web of Childhood Sexual Abuse, and the Judgment of History*, FINDLAW (Feb 18, 2010), <https://supreme.findlaw.com/legal-commentary/the-pieces-of-the-puzzle-are-falling-into-place-catholic-officials-a-global-web-of-childhood-sexual-abuse-and-the-judgment-of-history.html> [https://perma.cc/YE92-QMZK].

statutes of limitations, discovery rules, and the long term effects of childhood sexual abuse.

Twenty years after the *Globe's* article, the Supreme Court of Georgia decided its first case³ involving sexual abuse allegations against the Catholic Church in *Doe v. Saint Joseph's Catholic Church*.⁴ As has been true nationally, the Church raised a statute of limitations defense to combat the plaintiff's appalling allegations. In an unexpected turn of events, the supreme court agreed with the plaintiff's tolling argument, which was based on his assertion that the Church engaged in fraud, preventing him from discovering his legal claims decades earlier. The court's decision to apply Georgia's fraud statute to the plaintiff's allegations more broadly signals significant changes in the legal treatment of childhood sexual abuse survivors in Georgia.

II. FACTUAL BACKGROUND

In 2018, a former altar boy, using the pseudonym "Philip Doe," filed a lawsuit against the Catholic Church, specifically the Archdiocese of Atlanta; the acting Archbishop, Wilton Gregory; and Saint Joseph's Catholic Church in Cobb County Superior Court.⁵ Doe alleged that he was sexually molested and abused by Father J. Douglas Edwards when Doe was a minor between the ages of twelve and fifteen and was serving as an altar boy at Saint Joseph's in the late 1970s. Father Edwards was employed by the Church to oversee the daily operations of Saint Joseph's from 1976 to 1981. He was also tasked with training and supervising altar boys during Mass, regular meetings, and practices. In this role, Edwards often took groups of boys on overnight trips to his home on Lake Allatoona in Acworth, Georgia.⁶ Doe alleged that Father Edwards sexually molested him approximately eight-to-ten times and that, as a result, he suffered a loss of spirituality and "shame, anger, and depression" that followed him into adulthood.⁷

3. The only other sexual abuse case to come before Georgia courts was reviewed only for procedural error. The Georgia Court of Appeals reversed the dismissal of the plaintiff's complaint, holding that the complaint was not a legal nullity because the plaintiff used a pseudonym in the filing. The case was remanded with direction to discern whether the plaintiff would be required to publicly reveal her identity or could continue using the pseudonym. *Doe v. Archdiocese of Atlanta*, 328 Ga. App. 324, 761 S.E.2d 864 (2014).

4. 313 Ga. 558, 870 S.E.2d 365 (2022).

5. The identity of Phillip Doe was not revealed in the complaint to protect his identity because he was the victim of sex crimes as a minor. Complaint at 2, *Doe v. Saint Joseph's Catholic Church*, 313 Ga. 558, 870 S.E.2d 365 (2022).

6. *Doe*, 313 Ga. at 558–60, 870 S.E.2d at 369–70.

7. *Doe v. Saint Joseph's Catholic Church*, 357 Ga. App. 710, 710–11, 850 S.E.2d 267, 269–70 (2020).

Doe did not take legal action against the Church until he was in his mid 50s in 2018.⁸ Doe filed suit after Archbishop Gregory made two announcements on behalf of the Church in August and November of that year.⁹ In August, Gregory issued public statements apologizing for “sexual abuse by Church leaders of children,” the failure of Church leaders to protect children from “damaging and deviant behavior,” and the Church’s disbelief and neglect of those who came forward about the abuse decades earlier.¹⁰ Then, in November, Gregory released a list of priests credibly accused of sexually abusing minors. The list included Father Edwards and showed that in the fourteen years prior to his transfer to Saint Joseph’s, he had served at nine different Catholic churches and had taken a year-long leave of absence. Father Edwards died in 1997.¹¹

At the heart of his complaint, Doe alleged that the Atlanta Archdiocese and other archdioceses across the country knew that Father Edwards and priests like him had histories of sexually abusing minors under their supervision.¹² He argued that despite this information the Church continued to encourage young parishioners like Doe to serve the Church as altar boys while it engaged in a methodical cover-up effort to conceal the danger posed by these priests.¹³

In his original complaint, Doe asserted two different categories of claims against the Church.¹⁴ First, he asserted claims for public nuisance based on the Defendants’ actions to “maintain and conceal the presence of child predators within their organizations” which endangered members of the general public, specifically children.¹⁵ Second, Doe asserted claims for negligent failure to train, supervise, and monitor; negligent retention; negligent failure to warn; negligent failure to provide security; *respondeat superior*; and breach of fiduciary duty, all arising from the Church’s failure to take any sort of action despite its knowledge of Edward’s dangerous behavior.¹⁶

Months after the original filing, Doe amended his complaint to include claims for fraudulent misrepresentation and concealment, arguing that

8. *Doe*, 313 Ga. at 560, 870 S.E.2d at 370.

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.* at 559, 870 S.E.2d at 370.

13. *Id.*

14. Complaint at 5, *Doe v. Saint Joseph’s Catholic Church*, 313 Ga. 558, 870 S.E.2d 365 (2022).

15. *Id.* at 7.

16. *Id.* at 12–16.

because the Church concealed the credible accusations against Edwards, his claims did not accrue until 2018.¹⁷ These claims were premised on Doe's special relationship with the Church and the duty that arose from this relationship—a duty that required the Church to disclose what it knew about Edwards to Doe and his parents.¹⁸ According to Doe, Edwards was presented to parishioners as a trustworthy leader and mentor while the Church made express commitments to “developing the spiritual and moral character” of the children entrusted to its care.¹⁹ Specifically, Doe alleged that the defendants made several misrepresentations regarding (1) the prevalence of sexual predators among the clergy, (2) the Church's knowledge of crimes previously committed by Edwards, and (3) the danger specifically posed by Edwards to children like Doe. Doe asserted that he and his parents relied on these misrepresentations, and that Doe was sexually abused as a result. Further, Doe argued that by allowing Edwards to remain in the clergy and failing to disclose his past crimes to law enforcement, victims, and parents, the defendants effectively concealed vital and material information that would have prevented his abuse. Most importantly, Doe claimed that the Church's omissions prevented him from protecting himself from Edwards and from discovering information necessary for many of his legal claims.²⁰

The Church moved to dismiss Doe's amended complaint, arguing that all his claims, including those for fraudulent misrepresentation and concealment, were barred by the statute of limitations.²¹ The superior court granted the Church's motion, rejecting Doe's argument that the limitations period was tolled until November 2018 when he discovered the depth of the Church's knowledge and concealment of Edwards' sexual predation.²² The court found that Doe's allegations of fraud did not toll the limitations period for his tort claims because he failed to adequately plead the elements of fraud.²³ In making this determination, the court first concluded that Doe discovered the alleged fraud in the 1970s and that Doe was on notice “that any of the alleged false representations about Edwards were not true once Edwards allegedly abused him.”²⁴ The

17. Amended Complaint at 1, *Doe v. Saint Joseph's Catholic Church*, 313 Ga. 558, 870 S.E.2d 365 (2022).

18. *Id.* at 20–21.

19. *Id.* at 20.

20. *Id.* at 20–21.

21. Order on Motion to Dismiss at 8–14, *Doe v. Saint Joseph's Catholic Church*, 313 Ga. 558, 870 S.E.2d 365 (2022).

22. *Id.*

23. *Id.* at 12–14.

24. *Id.* at 13.

court then concluded that Doe failed to plead any facts showing that the defendants prevented him from filing a lawsuit because, again, Doe discovered the abuse when it occurred in the 1970s.²⁵ Finally, the court concluded that Doe failed to plead facts demonstrating his reasonable diligence in discovering his causes of action and that his alleged special relationship with the Church did not support his claim of fraud.²⁶

Before concluding its order, the court discussed Georgia's childhood sexual abuse statute and its inapplicability to Doe's claims.²⁷ The court found that the plain language of the statute, O.C.G.A. § 9-3-33.1,²⁸ did not apply to Doe's claims because it prescribes a period of repose—the plaintiff's twenty-third birthday—after which a plaintiff's claims are extinguished regardless of when the abuse occurred or when the plaintiff discovered the injury.²⁹ In sum, all of Doe's claims—including the Georgia Racketeer Influenced and Corrupt Organizations Act violations added in the amended complaint—were time-barred by the statute of limitations.³⁰

In its brief opinion, the Georgia Court of Appeals affirmed the dismissal, holding that Doe's claims were not subject to tolling under the fraud statute for the same reasons found by the superior court, namely because "Doe knew he had been injured, he knew the identity of the perpetrator, and he was aware of the Church's inaction" when he was abused.³¹ Without addressing the issue of whether a special relationship with the Church justified Doe's reliance on its representations of Edwards, the court of appeals determined that the fraudulent concealment and misrepresentation claims were also time-barred.³² Thus, the court held that Doe was not prevented from pursuing legal

25. *Id.* at 14.

26. *Id.* at 14–15.

27. The trial court also addressed Doe's public nuisance claims, particularly Doe's failure to allege that the nuisance damaged all persons who encountered it. Because of this omission, and because the claim was not for an injury inflicted on Doe as a member of the "public," the court determined that the public nuisance claims failed as a matter of law. *Id.* at 18–21.

28. O.C.G.A. § 9-3-33.1 (2023).

29. Order on Motion to Dismiss at 8–9, *Doe v. Saint Joseph's Catholic Church*, 313 Ga. 558, 870 S.E.2d 365 (2022).

30. *Id.* at 22.

31. *Doe v. Saint Joseph's Catholic Church*, 357 Ga. App. 710, 714, 850 S.E.2d 267, 272 (2020).

32. According to the court of appeals, the fraudulent concealment and misrepresentation claims were barred because Doe was aware, at the time of the abuse, that the Church had breached its duties to him by hiring Father Edwards, exposing Doe to him, and failing to protect Doe from the priest. *Id.* at 714, 850 S.E.2d at 272.

action when he reached the age of majority in the 1980s and affirmed the dismissal of the complaint.³³

The Supreme Court of Georgia granted a petition for certiorari to determine whether the court of appeals erred in affirming the superior court's ruling.³⁴ Applying a *de novo* standard of review, the court held that Doe sufficiently alleged the elements of fraud in his claims for fraudulent concealment and misrepresentation to toll the statute of limitations for the majority of his other claims.³⁵ The court determined that Doe's allegations sufficiently established the Church's alleged fraud and Doe's reasonable diligence in discovering the fraud.³⁶ Additionally, the court disagreed with the court of appeal's conclusion that because Doe knew he had been sexually abused by Edwards in the 1970s, he was not deterred from filing suit earlier.³⁷ The only claim the supreme court affirmed the dismissal of was Doe's *respondeat superior* claim against the Church. The court remanded the case back to the superior court for further proceedings.³⁸

III. LEGAL BACKGROUND

Discovery rules, a recent legal phenomenon, can be used in a variety of contexts to toll limitations periods for plaintiffs who do not discover the link between a defendant's actions and their own injuries until after the normal limitations period has ended.³⁹ However, discovery rules in some states either do not apply retroactively or limit the revival of claims to a very narrow or temporary window.⁴⁰ Thus, some childhood sexual abuse survivors, including those in Georgia, are limited to few legal remedies. Fortunately, the Supreme Court of Georgia's application of an existing theory of liability—fraudulent concealment—to the facts of *Doe* provides a potential solution to this problem.

33. *Id.* at 713–14, 850 S.E.2d at 272.

34. *Doe v. Saint Joseph's Catholic Church*, 313 Ga. 558, 870 S.E.2d 365 (2022).

35. *Id.* at 562, 870 S.E.2d at 372. The court reached this conclusion based on Doe's assertion that he shared a confidential relationship with the Church and the possibility that Doe could introduce evidence of this relationship and the accompanying duty imposed on the defendants. *Id.* at 563, 870 S.E.2d at 372.

36. *Id.* at 562, 870 S.E.2d at 372.

37. *Id.* at 568, 870 S.E.2d at 375.

38. *Id.* at 571, 870 S.E.2d at 377.

39. MARCI HAMILTON ET AL., DISCOVERY RULE REPORT: DISCOVERY TOLLING OF STATUTES OF LIMITATION FOR CHILD SEXUAL ABUSE CLAIMS 7 (2021).

40. *Id.* at 8.

A. Using Fraud to Toll Statute of Limitations

Fraudulent concealment is a theory of liability that survivors of childhood sexual abuse can rely upon to pursue older claims of abuse. The concept of fraudulent concealment is deeply rooted in Georgia case law. In 1882, the Supreme Court of Georgia first recognized fraud as a mechanism for tolling a statute of limitations.⁴¹ The court interpreted Georgia law to hold that when a defendant is guilty of fraud that debarred or deterred the plaintiff from bringing their cause of action, the period of limitation begins running when the plaintiff discovers the fraud.⁴² In the last 150 years, the Georgia General Assembly has continued to adopt the language of that same statute in succeeding official Codes.⁴³ Today, a plaintiff must prove the three elements of fraud to succeed in tolling a statute of limitation under O.C.G.A. § 9-3-96⁴⁴: (1) that “the defendant committed actual fraud”; (2) that “the fraud concealed the cause of action” from the plaintiff; and (3) that the plaintiff “exercised reasonable diligence to discover his cause of action despite his failure to do so within the statute of limitation.”⁴⁵

The Georgia Supreme Court outlined two methods for showing the first element of this statute in *Shipman v. Horizon Corporation*⁴⁶ when it clarified circumstances constituting actual fraud.⁴⁷ In *Shipman*, a purchaser sued a vendor alleging that the vendor had fraudulently induced him to enter into a contract for the purchase of land.⁴⁸ The court held that (1) where the actual fraud is the gravamen, or essence, of the action or (2) where actual fraud is not the gravamen of the action but involves moral turpitude, the statute of limitations may be tolled.⁴⁹ A plaintiff might also show actual fraud through the existence of a special relationship between the plaintiff and defendant.⁵⁰ A confidential relationship exists where “one party is so situated as to exercise a controlling influence over the will, conduct, and interest of another or where, from a similar relationship of mutual confidence, the law requires

41. *Printup v. Alexander*, 69 Ga. 553 (1882).

42. *Id.* at 555–56.

43. *Tr. Co. Bank v. Union Circulation Co., Inc.*, 241 Ga. 343, 344, 245 S.E.2d 297, 298 (1978).

44. O.C.G.A. § 9-3-96 (2023).

45. *Daniel v. Amicalola Elec. Membership Corp.*, 289 Ga. 437, 445, 711 S.E.2d 709, 716 (2011).

46. 245 Ga. 808, 267 S.E.2d 244 (1980).

47. *Id.* at 808, 267 S.E.2d at 246.

48. *Shipman v. Horizon Corp.*, 151 Ga. App. 242, 259, S.E.2d 221, 223 (1979).

49. *Shipman*, 245 Ga. at 809, 267 S.E.2d at 246.

50. *Id.*

the utmost good faith.”⁵¹ When such a relationship exists, a duty to disclose is imposed on the defendant, and a breach of that duty constitutes actual fraud for the purposes of tolling.⁵²

Second, Georgia courts have made it clear that actual fraud is, by itself, not enough to toll the limitations period. Georgia caselaw requires that the fraud concealed the cause of action from the plaintiff and prevented him from filing suit within the limitations period.⁵³ Not only must the fraud “conceal the cause of action and cut [the] plaintiff off from suing,”⁵⁴ there must also be “some trick or artifice . . . employed to prevent inquiry, elude investigation, or mislead and hinder the plaintiff from obtaining information necessary to reveal the existence of a cause of action.”⁵⁵

Finally, the plaintiff must show that he tried to discover the cause of action even though he failed to do so within the limitations period.⁵⁶ The plaintiff must have used reasonable diligence in investigating the bases for his claim, a standard the Georgia Supreme Court has said is an objective one based on the common “prudent man” standard.⁵⁷ However, a lesser standard of diligence may apply in some circumstances.⁵⁸ The court introduced the lesser standard in *McClure v. Raper*⁵⁹ and held that a plaintiff may be excused from the reasonable diligence standard when a relationship of trust and confidence deters their discovery of fraudulent behavior.⁶⁰ This means that a plaintiff is not required to exercise the degree of care that would otherwise be required, and that a defendant is under a heightened duty to reveal any fraud they may be aware of.⁶¹

51. O.C.G.A. § 23-2-58 (2023).

52. Hunter, Maclean, Exley & Dunn, P.C. v. Frame, 269 Ga. 844, 846, 507 S.E.2d 411, 411 (1998).

53. Charter Peachford Behav. Health Sys. v. Kohout, 233 Ga. App. 452, 457, 504 S.E.2d 514, 522 (1998).

54. *Id.* at 458, 504 S.E.2d at 522 (citing Haynesworth v. Hall Constr. Co., 44 Ga. App. 807, 816, 163 S.E. 273, 277 (1932)).

55. *Charter Peachford Behav. Health Sys.*, 233 Ga. App. at 458, 504 S.E.2d at 522 (citing Blalock v. Anneewakee, Inc., 206 Ga. App. 676, 679, 426 S.E.2d 165, 167 (1992)).

56. Jim Walter Corp. v. Ward, 245 Ga. 355, 357, 265 S.E.2d 7, 9 (1980).

57. *Id.* The “prudent man” standard involves an analysis of the degree of care that an ordinary person would take to avoid injury under similar circumstances. *See also* Davies v. West Lumber Co., 32 Ga. App. 460, 123 S.E. 757 (1924).

58. *Shipman*, 245 Ga. at 809, 267 S.E.2d at 246.

59. 266 Ga. 60, 463 S.E.2d 125 (1995).

60. *Id.* (citing Morris v. Johnstone, 172 Ga. 598, 158 S.E. 308 (1931)).

61. Hunter, Maclean, Exley & Dunn, P.C. v. Frame, 269 Ga. 844, 848, 507 S.E.2d 411, 414 (1998).

1. Fraudulent Concealment and Claims for Childhood Sexual Abuse

Historically, survivors pursuing a remedy for childhood sexual abuse in Georgia have not been able to use this fraudulent concealment strategy, likely due to the complexities of pleading fraud under O.C.G.A. § 9-3-96. Prior to *Doe v. Saint Joseph's Catholic Church*, only one case featured childhood sexual abuse survivors bringing an action under O.C.G.A. § 9-3-96. In *McArthur v. Beech Haven Baptist Church of Athens*,⁶² former Boy Scouts alleged they were sexually abused by two scoutmasters from the Boy Scouts of America and sued the three churches where their troop meetings were held.⁶³ They alleged similar claims to those in *Doe*, including public nuisance, RICO violations, fraudulent concealment, misrepresentation, and *respondeat superior*. The plaintiffs claimed the churches knew about the abuse at the time but concealed this knowledge from the plaintiffs and their parents until years later.⁶⁴ Relying on its recent decision in *Doe*, the Georgia Court of Appeals held that the limitations periods for fraudulent concealment, misrepresentation, and *respondeat superior* were not tolled because, like Philip Doe, the plaintiffs were aware at the time of their abuse that the churches had breached the duty owed to them, and thus, the alleged concealment did not prevent the plaintiffs from bringing their claims within the statutory period.⁶⁵ The court of appeals decision has since been vacated and the supreme court has granted certiorari to review the case in the future.

B. Discovery Rules

In recent decades, state courts and legislatures across the country have enacted discovery rules to aid childhood sexual abuse survivors in suing after the usual limitations period has run. A discovery rule can be used by plaintiffs in a variety of contexts because they prevent a cause of action from accruing at the time of the negligent conduct. Essentially, the plaintiff's claim does not accrue until the time when they have or should have knowledge of all elements necessary for the cause of action. Originally, these rules only applied to plaintiffs in the context of toxic torts and medical malpractice, but over time states slowly began expanding their applicability to other types of personal injury claims like

62. 361 Ga. App. 877, 864 S.E.2d 189 (2021), *reconsideration denied* (Nov. 15, 2021), *cert. granted, opinion vacated* (Aug. 23, 2022).

63. *Id.* at 877, 864 S.E.2d at 191.

64. *Id.*

65. *Id.* at 879–80, 864 S.E.2d at 192.

childhood sexual abuse.⁶⁶ Beginning in the 1980s and 1990s, courts in some states implemented common law discovery rules, while legislatures in others codified statutory rules that applied specifically to childhood sexual abuse claims.⁶⁷

This expansion of the application of delayed discovery rules coincided with scientific developments in the study of repressed memory, delayed disclosure, and the neurobiological effects of sexual assault on child victims.⁶⁸ Interdisciplinary research showed how factors like PTSD, memory deficits, and dissociation, all stemming from trauma, commonly manifested as coping mechanisms in children.⁶⁹ It is now accepted that these factors and other barriers⁷⁰, prevent children from disclosing their abuse until many years later, if they even disclose at all.⁷¹

Considering these research findings and developments in the law, discovery rules have become crucial in supporting survivors who were abused in childhood but were unable process the abuse or recognize their injuries until decades later. In other instances, discovery rules can be helpful for a survivor who becomes aware of information important to their legal claims decades after the abuse.⁷²

1. Georgia's Discovery Provision

Until recently, Georgia did not recognize either a common law or a statutory discovery rule for survivors of childhood sexual abuse. In 1999, the United States Court of Appeals for the Eleventh Circuit interpreted

66. HAMILTON, *supra* note 39, at 7–8.

67. *Id.* at 8. For example, in 1987, the Wisconsin Court of Appeals became one of the first courts to apply a discovery rule in a case of childhood sexual abuse. The case involved incestuous sexual abuse of the plaintiff by her father between the ages of five to fifteen. After the trial court declined to extend the common law delayed discovery rule to the plaintiff's claims, the court of appeals reversed and held that a cause of action for incestuous sexual abuse of a minor was tolled until the victim discovered the "fact and cause of the injury." *Hammer v. Hammer*, 418 N.W.2d 23, 24-26 (1987).

68. HAMILTON, *supra* note 39, at 8.

69. *Id.* at 6; Jacobs-Kayam, A. and Lev-Weisel, R., *In Limbo: Time Perspective and Memory Deficit Among Female Survivors of Sexual Abuse*, 10 FRONTIERS IN PSYCH. (2019), available at <https://www.frontiersin.org/articles/10.3389/fpsyg.2019.00912/full> [<https://perma.cc/YE69-9QEP>].

70. A study found that many children often lack the knowledge needed to recognize sexual abuse, and similarly, they lack the ability to articulate that they have been abused. In other instances, children do not have opportunities to disclose abuse or do not have a trusted adult to confide in. The study found that even when children do come forward, their accusations are often dismissed or not believed. N. Spröber et. al., *Child Sexual Abuse in Religiously Affiliated and Secular Institutions*, 14 BMC PUB. HEALTH 282 (2014).

71. HAMILTON, *supra* note 39, at 6.

72. *Id.* at 7.

previous Supreme Court of Georgia decisions as excluding childhood sexual abuse claims from application of a discovery rule used by litigants in other civil contexts.⁷³ The Eleventh Circuit held that this discovery rule did not apply in a case brought against Westminster schools by a student who was allegedly sexually abused by a teacher. The state supreme court had explicitly limited the rule's application to "cases of bodily injury which develop over an extended period of time."⁷⁴ Thus, for the next sixteen years, Georgia courts only applied the discovery rule in cases involving "continuing torts."⁷⁵

In 2015, the Georgia legislature amended its childhood sexual abuse statute to add a two year discovery period for abuse committed on or after July 1, 2015.⁷⁶ Prior to this amendment, victims were required to commence an action for childhood sexual abuse within five years of attaining the age of majority.⁷⁷ The two year period in the 2015 amendment begins on "the date that the plaintiff knew or had reason to know of such abuse and that such abuse resulted in injury to the plaintiff."⁷⁸ Thus, the statute functions like a typical discovery rule.

However, many adult survivors of childhood sexual abuse are unable to benefit from the new provision due to Georgia's delayed recognition of the need for a discovery rule in such cases. The statute only applies to abuse that occurs on or after July 1, 2015,⁷⁹ so victims who are now adults and did not recognize their injuries—or the link between their injuries and the abuse—soon after reaching adulthood are unable to use the discovery rule in pursuing legal action against their abusers or other parties responsible for the abuse. In essence, the statute limits the potential class of litigants to future abuse survivors and excludes existing adult survivors who are unable to show the complex elements of fraudulent concealment. The supreme court's ruling in *Doe*, however, indicates a potential relaxation of those elements that may facilitate future litigants' attempts at arguing fraud for tolling purposes.

73. *M.H.D. v. Westminster Schools*, 172 F.3d 797 (11th Cir. 1999).

74. *Id.* at 804 (quoting *Corporation of Mercer Univ. v. National Gypsum Co.*, 258 Ga. 365, 368, S.E.2d 732, 733 (1988)).

75. "Continuing tort" was defined by the Supreme Court of Georgia in *Bitterman v. Emory University* as "one inflicted over a period of time." 175 Ga. App. 348, 348, 333 S.E.2d 378, 379 (1985).

76. O.C.G.A. § 9-3-33.1.

77. O.C.G.A. § 9-3-33.1(b).

78. O.C.G.A. § 9-3-33.1(b)(2)(A)(ii).

79. O.C.G.A. § 9-3-33.1(b)(2)(A).

IV. COURT'S RATIONALE

The Supreme Court of Georgia granted certiorari to determine whether Doe's allegations were sufficient to overcome the Church's motion to dismiss.⁸⁰ Writing for the court, Justice Verda Colvin examined Doe's allegations under the framework of the fraud statute and ultimately reversed key parts of the decision previously handed down by the Court of Appeals of Georgia.⁸¹

The court concluded that Doe sufficiently alleged two types of actual fraud to toll the limitations period under O.C.G.A. § 9-3-96.⁸² According to the opinion, Doe's allegations tracked the statutory elements of legal fraud under O.C.G.A. § 23-2-52, which requires the "misrepresentation of a material fact made willfully to deceive or recklessly."⁸³ Doe alleged that the Church knew or should have known that Father Edwards posed a danger to young parishioners and affirmatively misrepresented Father Edwards as a safe supervisor of altar boys. Doe claimed that the Church, "with reckless disregard for the truth," made this and other misrepresentations intending to induce Doe to rely on the supposed safety of Father's Edwards' supervision, to remain a member of Saint Joseph's, and to trust priests like Edwards.⁸⁴ The court concluded that these allegations met the requirements of legal fraud for purposes of tolling under the fraud statute, O.C.G.A. § 9-3-96.⁸⁵

Next, viewing the facts in a light most favorable to Doe,⁸⁶ the court concluded that Doe adequately pled facts proving a second type of actual fraud because he alleged that he shared a confidential relationship with the Church, and the Church breached its duty to disclose Edwards'

80. *Doe v Saint Joseph's Catholic Church*, 313 Ga. 558, 558–59, 870 S.E.2d 365, 369–70 (2022).

81. *Id.* at 559, 870 S.E.2d at 370.

82. *Id.* at 562, 870 S.E.2d at 371.

83. The text of O.C.G.A. § 23-2-52 says that "Misrepresentation of a material fact, made willfully to deceive or recklessly without knowledge and acted on by the opposite party or made innocently and mistakenly and acted on by the opposite party, constitutes legal fraud." O.C.G.A. § 23-2-52 (2023).

84. Amended Complaint at 22, *Doe v. Saint Joseph's Catholic Church*, 313 Ga. 558, 870 S.E.2d 365 (2022).

85. *Doe*, 313 Ga. at 561–62, 870 S.E.2d 365, 371–72.

86. The standard for which a judge must view the evidence when deciding a motion to dismiss for failure to state a claim is set out in O.C.G.A. § 9-11-12(b)(6). Pursuant to this rule, the judge must view all facts and resolve any doubts in a light most favorable to the non-moving party. In this case, the defendants filed the motion to dismiss making Doe the non-moving party. O.C.G.A. § 9-11-12(b)(6) (2023).

dangerous propensities.⁸⁷ The court cited O.C.G.A. § 23-2-58⁸⁸ and its previous decision in *Bryan v. Norton*⁸⁹ where it acknowledged that a confidential relationship can be found between a priest and a member of his congregation.⁹⁰ The court's conclusion was based on Doe's claims first, that "[the Church] exercised a controlling influence" over him because it invited and encouraged young boys to participate in church activities such as serving as altar boys.⁹¹ Second, the Church made an "express commitment to developing the spiritual and moral character and integrity of the children entrusted to its care."⁹² And finally, the Church had a responsibility to protect Doe and act as a parent would when he attended church events.⁹³ The court concluded that Doe could possibly introduce evidence of this relationship and the accompanying duty imposed on the defendants if given the opportunity.⁹⁴ Thus, Doe sufficiently alleged facts showing the first element of fraud.

The court then addressed Doe's allegations that the Church's acts of concealment prevented him from discovering his tort claims within the limitations period.⁹⁵ The court's conclusion turned on whether the Church knew or had reason to know that Father Edwards was a danger to Doe because knowledge of this sort is a central element of each of Doe's tort claims.⁹⁶ The court reasoned that just because Doe knew of his own abuse when it occurred did not mean that he had any knowledge of what the Church knew about Father Edwards at that time.⁹⁷ Thus, the court determined that the claims were improperly dismissed because Doe could introduce evidence at trial showing that the Church's fraudulent concealment "debarred or deterred" him from discovering almost all of his causes of action.⁹⁸

The court was not persuaded by the Church's argument that Doe could not introduce evidence of his reasonable diligence in investigating his claims merely because he waited decades before filing suit.⁹⁹ Doe's

87. *Doe*, 313 Ga. at 562–63, 870 S.E.2d 365, 372.

88. O.C.G.A. § 23-2-58 (2021).

89. 245 Ga. 347, 265 S.E.2d 282 (1980).

90. *Doe*, 313 Ga. at 563, 870 S.E.2d at 373 (citing *Bryan*, 245 Ga. at 348, 265 S.E.2d at 282).

91. *Doe*, 313 Ga. at 563, 870 S.E.2d at 373.

92. *Id.* at 563, 870 S.E.2d at 372.

93. *Id.*

94. *Id.* at 563, 870 S.E.2d at 372.

95. *Id.* at 564, 870 S.E.2d at 373.

96. *Id.* at 568, 870 S.E.2d at 375.

97. *Id.*

98. *Id.*

99. *Id.* at 568, 870 S.E.2d at 376.

alleged existence of a confidential relationship between himself and the Church, if proven, would mean a lesser standard of diligence would apply to him. The court referenced its earlier ruling in *McClure v. Raper* that introduced this lesser standard and its ability to excuse the ordinary diligence standard when an ongoing relationship of trust and confidence deters discovery of fraudulent behavior.¹⁰⁰ Doe did not elaborate on what, if any, relationship he maintained with the Church after the abuse ended, but this was not a dispositive omission in the court's eyes because Doe could introduce sufficient evidence of an ongoing relationship if given the opportunity at a trial. Further, Doe's allegation that the Church engaged in a "systematic cover up effort" and an "elaborate scheme" to hide Father Edwards' crimes was sufficient to show that, prior to Archbishop Gregory's 2018 statements, Doe had no way of discovering the depth of the Church's knowledge, even if he had exercised the highest degree of reasonable diligence.¹⁰¹

The court affirmed the dismissal of Doe's *respondeat superior* claim as time-barred because the information Doe alleged the Church fraudulently suppressed had no bearing on whether the Church might be vicariously liable for Edwards' conduct.¹⁰² This conclusion was based on the fact that the information pertaining to Edwards' dangerous propensities was not an essential fact that prevented Doe from bringing the claim before the limitations period ceased. Doe premised the *respondeat superior* claim on the allegation that Edwards was acting within the scope of his employment both as a member of the clergy and as a supervisor of Saint Joseph's altar boys when he sexually abused Doe. However, the court referenced its previous decision in *Piedmont Hospital, Inc. v. Palladino*¹⁰³ where it held that an employer cannot be exposed to liability "for an employee's sexual misconduct when the alleged acts were not taken in furtherance of the employer's business and were outside the scope of employment."¹⁰⁴ The plaintiffs in *Palladino* brought an action for negligent hiring and supervision after a hospital employee allegedly improperly touched the plaintiff's genitals while he was a patient at Piedmont.¹⁰⁵ Thus, because Doe actually did know the essential facts giving rise to the claim at the time of the alleged abuse, specifically that Edwards was employed by the Church and was the person that sexually

100. *Doe*, 313 Ga. at 569, 870 S.E.2d at 376; *McClure*, 266 Ga. 60, 60, 463 S.E.2d 125, 126 (1995).

101. *Doe*, 313 Ga. at 569–70, 870 S.E.2d at 376.

102. *Id.* at 564–65, 870 S.E.2d at 373.

103. 276 Ga. 612, 580 S.E.2d 215 (2003).

104. *Id.* at 614, 580 S.E.2d at 217.

105. *Id.* at 612–13, 580 S.E.2d at 216.

abused him, he was not prevented from bringing the claim when he reached the age of majority.¹⁰⁶

The court also pointed out Doe's claim that, in the two years prior to filing suit, Doe discovered that he was not Father Edwards' only victim and that Edwards had abused "multiple children . . . over multiple years."¹⁰⁷ Although Doe did not detail what specific actions he took to discover this information, the court concluded that, for purposes of surviving a motion to dismiss, Doe sufficiently pled reasonable diligence to meet the requirements of the fraud statute.

The court emphasized that it was not deciding the merits of any of Doe's remaining claims or whether they might survive summary judgment or a trial.¹⁰⁸ However, the court's ruling guarantees that Doe will be able to proceed with his remaining claims and will have the opportunity to discover and introduce further evidence supporting those claims.

V. IMPLICATIONS

While the Supreme Court of Georgia's ruling in *Doe* was based on well-established principles of law and did not involve an issue of first impression, the implications of the decision signal significant changes in the legal treatment of childhood sexual abuse survivors. First, future litigants will likely benefit from a broad interpretation of the fraud statute, which will make it easier to plead fraud for tolling purposes and increase their odds of recovering from past abuse. Broad interpretation of the statute could also potentially lead to increased settlement negotiations between plaintiffs and responsible entities, higher settlement value, and hopefully, an increase in the disclosure of material information. Second, the childhood sexual abuse statute may be subject to the type of broad interpretation and application that the court used in *Doe* when and if a case eventually reaches the court. And finally, the decision highlights possible insufficiencies in the childhood sexual abuse statute that may hinder adult survivors seeking legal recourse.

In its application of the fraud statute to the facts of this case, the court seems to indicate that a more tempered approach should be taken in deciding childhood sexual abuse cases. Considering the limitations of Georgia's current discovery provision in O.C.G.A. § 9-3-33.1, the court's approach in *Doe* could give survivors more leeway in bringing claims for sexual abuse. For example, a plaintiff's knowledge of abuse, the identity

106. *Doe*, 313 Ga. at 565, 870 S.E.2d 365, 373–74.

107. *Id.* at 570, 870 S.E.2d at 376.

108. *Id.* at 559, 870 S.E.2d at 370.

of their abuser, and any inaction on the part of a responsible entity may no longer disqualify fraud claims. The proposition that elements of fraudulent concealment and misrepresentation claims should be interpreted generously also extends to findings of confidential relationships and reasonable diligence. The court took a more permissive reading of Doe's confidential relationship and reasonable diligence assertions, signaling to lower courts that, at the motion to dismiss phase, they should be applying O.C.G.A. § 9-3-96 more broadly.

Although the court did not directly interpret the childhood sexual abuse statute or its discovery provision, the *Doe* ruling could have important implications for future plaintiffs seeking to file claims under O.C.G.A. § 9-3-33.1. Based on the court's treatment of Doe's fraud claims, the court might interpret the sexual abuse statute and the discovery provision with a similar approach when a case eventually does arise.

The *Doe* decision indicates a step in the right direction for survivors, but it also highlights a potential deficiency in the discovery provision of O.C.G.A. § 9-3-33.1 when compared to other states' treatment of childhood sexual abuse claims. Comparatively, other states are considerably more progressive in their approach to providing means of recovery to sexual abuse survivors. Of the forty-one states that recognize some type of discovery rule, five states have laws that apply retroactively, allowing survivors who were abused decades ago but only recently connected the abuse to present injuries to pursue traditional legal remedies. Conversely, survivors in states like Georgia are hindered by narrow revival windows for older claims, age caps, laws that protect entities from liability, and laws that only apply in cases of repressed memory. The Georgia General Assembly can alleviate this problem while balancing the competing interests of litigants by widening the window of discovery beyond two years; amending the statute to apply retroactively either completely or partially; or removing the age cap for victims. Legislative measures like these would substantially increase the ability of survivors to obtain justice, accountability, and closure.