

IN THE COURT OF APPEALS OF IOWA

No. 6-324 / 95-1323

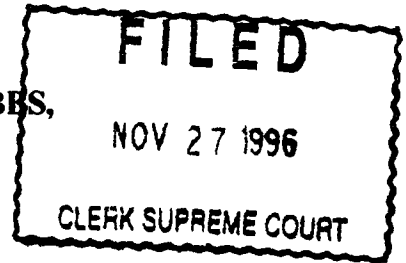
ROBERT HOBBS, WILLIAM HOBBS and JANE HOBBS,

Plaintiffs-Appellants,

vs.

GARY JENSEN, Individually and As An Agent for the Roland-Story Community School District, ROLAND-STORY COMMUNITY SCHOOL DISTRICT, and DAVID HEMPHILL, Individually and As An Agent for the Roland-Story Community School District,

Defendants-Appellees.



Appeal from the Iowa District Court for Story County, Darrell J. Goodhue,
Judge.

The Hobbs appeal summary judgment for defendants that all claims based on Gary Jensen's sexual abuse of Robert Hobbs were barred by the two year statute of limitations under Iowa Code section 614.1. **AFFIRMED.**

Barry J. Nadler of Newbrough, Johnston, Brewer, Maddux & Nadler, Ames, for
appellants.

Brad McCall, Newton, for appellee Jensen.

Heard by Cady, P.J., and Huitink and Streit, JJ.

STREIT, J.

Plaintiffs appeal summary judgment entered by the district court. The court concluded all of plaintiffs' claims were barred by the two-year statute of limitations under Iowa Code section 614.1. Plaintiff's claim the district court erred because there is a genuine issue of material fact whether Plaintiffs knew or should have known that defendant's conduct constituted abuse.

Gary Jensen sexually abused Robert Hobbs since Robert was fourteen years old. Gary Jensen was a teacher at Roland-Story Community School District beginning in 1968. As early as 1975, Jensen committed acts of sexual abuse upon minor boys. In the spring of 1987, Robert Hobbs was a student in Jensen's class. Jensen started giving Robert rubdowns after wrestling practice and eventually began a sexual relationship with Robert. In 1989 Robert told his brother about the relationship with Jensen. This relationship continued until January 1992, when Robert was nineteen. In March 1992, Robert disclosed to police what Jensen had done to him. After this disclosure, Robert began to receive psychological therapy. Jensen was convicted of four counts of lascivious conduct with a minor.

On March 8, 1994, Robert Hobbs and his parents William and Jane Hobbs (Hobbs) filed a petition against Jensen, Roland-Story Community School District, and David Hemphill, the principal of the middle school. Division I of the petition contained Robert's claims of sexual abuse, intentional infliction of emotional distress, and

negligence by Jensen; negligence of Hemphill, as principal; and respondeat superior, negligence, and premises liability of the school district. Division II contained the parents' claims of intentional infliction of emotional distress by Jensen, Hemphill and the school district; and gross negligence of the school district and Hemphill.

The defendants moved for summary judgment, contending the claims were barred by the applicable statute of limitations. The school district and Hemphill argued that the statute of limitations found in section 670.5 (formerly section 613A.5) under the municipal tort law governed the claims against them. Hobbs resisted the motions for summary judgment, arguing that Robert did not realize he was a victim of sexual abuse until late March 1992 and thus these claims were filed within two years of his discovery of his claim. The district court ruled the matters were governed by the statute of limitations under chapter 614 of the Iowa Code. The court found Robert knew or should have discovered he had a basis for an actionable claim and put him on inquiry to investigate about his cause of action prior to March 1992. Since the action was not brought within two years after its cause accrued, summary judgment was granted.

Hobbs appeals contending: (1) there are genuine issues of material fact precluding summary judgment including, when Robert knew or should have known that Jensen's conduct with him constituted abuse; (2) Robert's parents should be allowed to recover for intentional infliction of emotional distress; (3) the district court abused its discretion in refusing to compel Jensen to answer interrogatories about other sexual

abuse victims; and (4) the district court abused its discretion in refusing to allow the Hobbs access to the child abuse registry and Department of Human Services reports.

I. Standard of Review. Summary judgment is reviewed on error. Iowa R. Civ. P. 237(c) (1995). The court upholds summary judgment when the moving party shows no genuine issues of material fact exist and it is entitled to judgment as a matter of law. *C-Thru Container Corp. V. Midland Mfg. Co.*, 533 N.W.2d 542, 544 (Iowa 1995). The record is reviewed in the light most favorable to the nonmoving party. *Hoffnagle v. McDonald's Corp.*, 522 N.W.2d 808, 811 (Iowa 1994).

II. Discovery Rule. The district court ruled the matters in this case were governed by the statute of limitations under chapter 614. It then concluded:

This is an unusual set of facts. The abuse started when Hobbs was 14, and continued past the time of his consent, as well as majority. Although the discovery question may be a question of fact, the facts are not in dispute. Hobbs knew the abuse occurred, knew what occurred, knew who did it, knew it was wrong, all sufficiently to where he did discover or should have discovered that he had a basis for an actionable claim and to put him on inquiry to investigate about his cause of action. This occurred prior to March 1992.

This discovery rule is at issue in this case and not whether Robert Hobbs' action survives under the extension allowed for personal injuries involving minors. Under Iowa Code section 614.8, an additional extension to the regular statute of limitations is prescribed in the case of minors. *See Iowa Code § 614.8 (1995)*. Under this section, Robert was given until his nineteenth birthday to bring a cause of action for personal

injury sustained by him as a minor. *Id.* Robert Hobbs' nineteenth birthday was October 25, 1991, nearly two and one-half years prior to the date on which he filed his Petition in this case.

A. Gary Jensen. The Supreme Court of Iowa has recently filed two opinions discussing the discovery rule in cases involving sexual abuse allegations. *See Frideres v. Schiltz*, 540 N.W.2d 261, 269 (Iowa 1995); *Woodroffe v. Hasenclever*, 540 N.W.2d 45, 47 (Iowa 1995).

The common law discovery rule requires that the plaintiff know or in the exercise of reasonable care should have known both the fact of the injury and its cause. Consequently, a person who has always remembered some specific act or acts of sexual abuse may rely on the discovery rule in those instances where the nexus between those specific acts and the claimed injuries is not discovered until a time less than two years prior to commencement of the action. *See Doe v Cherwitz*, 518 N.W.2d 362, 364 (Iowa 1994).

Frideres, 540 N.W.2d at 269. [T]he statute of limitations begins to run when a plaintiff first becomes aware of facts that would prompt a reasonably prudent person to begin seeking information as to the problem and its cause. *Woodroffe*, 540 N.W.2d at 48 (quoting *Estate of Montag v. T. H. Agriculture & Nutrition Co.*, 509 N.W.2d 469, 470 (Iowa 1993)).

We find a reasonable person in Robert's situation would know or should have known what was occurring between Jensen and him was wrong and that Robert was being injured by this relationship. Robert's actions depict that he knew or should have known that Jensen was harming him as early as his sophomore year in high school

when Robert began to retreat and avoid Jensen. In the summer of 1989, Robert told his older brother that he was having sexual relations with Jensen, but kept the relationship otherwise a secret. He was apprehensive towards telling his family about his relationship with Jensen and their reactions.

When the injured party discovers that he may have a basis for an actionable claim, the party has a duty to investigate and make further inquiry. *Sparks v. Metalcraft*, 408 N.W.2d 347, 351 (Iowa 1987). Robert did not choose to tell anyone about the abuse until he was approached by police in 1992 regarding an alleged touching of Jensen's daughter. The fact that Jensen was in a position of authority does not excuse Robert from objectively perceiving the situation as a reasonable person would and recognizing a causal relationship between the abuse and the injuries suffered. *See Callahan v. State*, 464 N.W.2d 268, 272 (1990). We find the district court did not err on granting summary judgment for the defendants, and we affirm.

B. Roland-Story Community School District. The school district contends the discovery rule is not applicable to the claims against it. *See Callahan*, 464 N.W.2d at 270. In *Callahan*, the Iowa Supreme Court noted its decision in *Montgomery v. Polk County*, 278 N.W.2d 911, 914-16 (Iowa 1979), that the discovery rule does not apply to the statute of limitations of the municipal tort claims act, Iowa Code section 613A.5, because the time limitation of that section commences not on "accrual" of the claim,

but when injury occurs. The Hobbs respond that this court has since unambiguously stated:

In *Miller v. Boone County Hospital*, 394 N.W.2d 776, 780 (Iowa 1986), we found section 613A.5 unconstitutional. We held Iowa Code chapter 614 is the applicable statute of limitations for all actions arising under chapter 613A.

Clark v. Miller, 503 N.W.2d 422, 423 (Iowa 1993). The discovery rule applies to chapter 614 which is the applicable statute of limitations for all actions arising under chapter 613A, therefore, the school district is subject to the discovery rule. *See Iowa Code* § 614.1 (“Actions may be brought within the times herein limited . . . after their causes *accrue* . . .”) (emphasis added). We find Robert failed to file his action against the school district within the statute of limitations under section 614.1; therefore, the claims against the school district are barred.

III. Emotional Distress. The district court concluded the parents of Robert do not have a cause of action as a matter of law because they did not observe the abuse of their son, nor did they have a contract with the school district. *See Barnhill v. Davis*, 300 N.W.2d 104, 107 (Iowa 1981) (elements of a bystander’s claim in Iowa for emotional distress); *H.L.O. v. Hossle*, 381 N.W.2d 641, 644-45 (Iowa 1986) (liability for severe emotional distress did not arise because parents were not present when child was sexually abused). We affirm the district court. There is no genuine issue of material fact on whether a reasonable person would believe Robert Hobbs would be injured by Jensen. His parents did not witness any act between their son Robert and

Jensen, nor did they know about the relationship until after Robert was the age of majority.

IV. Motion to Compel. The district court denied Hobbs' motion to compel Jensen to answer interrogatories asking for names, periods of time, and locations relating to other minors and adults with whom Jensen had sexual relations. The court concluded that if any sexual conduct occurred between Jensen and minors on school property during the years Robert attended the middle school, the occurrence, but not the child's name, was relevant and discoverable. Any other information was either irrelevant, protected by the individual's privacy rights or might implicate Jensen's Fifth Amendment rights. We deem this issue moot since plaintiff's claim is barred by the statute of limitations.

V. Motion for Access. The court also concluded that even though Hobbs' motion for access to the child abuse registry and department of human services' records was now essentially moot because of the summary judgment ruling, it denied the motion on the merits. The court relied upon the same grounds as it had to deny their motion to compel. There is a continued need for confidentiality to protect victims from embarrassment. We affirm the district court.

AFFIRMED.