

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

FILED
6/26/2019 8:45 PM
DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL
2019L001957

5570778

Heather Williams

Plaintiff,

Case No. 2019 L 001957

v.

Robert Sylvester Kelly,

Defendant.

DEFENDANT'S 2-619(a)(5) MOTION TO DISMISS

Now Comes the Defendant, Robert Sylvester Kelly (hereinafter Defendant), through his Attorneys, Abdallah Law and Raed Shalabi, seeking to Dismiss Plaintiff's Complaint pursuant to 735 ILCS 5/2-619(a)(5). In support thereof, the Defendant states as follows:

INTRODUCTION

The Plaintiff, Heather Williams (hereinafter Plaintiff) filed a Complaint against the Defendant alleging childhood sexual abuse. A copy of the Complaint is attached as Exhibit A. The acts Plaintiff alleges in the Complaint occurred between June of 1998 until May 26, 2000. Ex. A ¶ 8. The applicable statute of limitations was then 2 years. Accordingly, the Plaintiff's claims are time barred.

FACTS

Plaintiff filed a Complaint against the Defendant alleging childhood sexual abuse. Plaintiff filed her Complaint on February 21st, 2019. See Exhibit A. The Complaint alleges acts occurring between June of 1998 until May of 2000. Ex A ¶ 8. The Plaintiff was born May 26,

1982 and she was between 16 years old and 17 years old when the alleged acts occurred. Ex. A ¶ 3 and ¶4.

ARGUMENT

The acts alleged occurred between June of 1998 and May of 2000. The applicable statute of limitations governing Plaintiff's allegations is 735 ILC 5/13-202.2 (b), stating in relevant part that an action for damages based on childhood sex abuse must be commenced within two years of the date the person abused discovers or through the use of reasonable diligence should discover that the act of childhood sexual abuse occurred and that the injury was caused by the childhood sexual abuse. *Id.* 1993. Subsection (d) of the same statute states the limitation period under subsection (b) does not begin to run before the person abused attains the age of 18 years. In this case, the Plaintiff claims the Defendant sexually abused her from June 1998 through May of 2000. The Plaintiff turned 18 on May 26, 2000, and did not file her Complaint against the Defendant until 2019. Since the acts allegedly took place between 1998 and 2000, the above-referenced law is the applicable statute of limitations which governs the Plaintiff's claim against Defendant. Therefore, the Plaintiff had to file her Complaint against Defendant by May 26, 2002. Since she did not file her claim by May 26, 2002, her claim against the Defendant should be barred.

The Plaintiff is time barred from filing said claim since the claim was not filed by May 26, 2002. The Plaintiff turned 18 years of age in 2000. According to the version of 735 ILC 5/13-202.2 at the time of the alleged actions, the statute of limitations would run in favor of the Defendant in 2002. The Plaintiff admits that she knew she was injured by the action prior to her 18th birthday. See Ex. A ¶10. The Plaintiff is barred from waiting 19 years after the alleged abuse to file a complaint against the Defendant. The Plaintiff had 2 years after reaching 18 years

of age to file this complaint, and that time lapsed. Once a statute of limitations has expired, the defendant has a vested right to invoke the bar of the limitations period as a defense to a cause of action. *Doe v. Diocese of Dallas*, 234 Ill. 2d 393, 409, 917 N.E.2d 475, 484 (2009). That right cannot be taken away by the legislature without offending the due process protections of our state's constitution. *Id.* The statute of limitations under 735 ILCS 5/13-202.2 was not amended until July 2003 to extend the statute of limitations. Since the applicable statute of limitations ran prior to the Plaintiff filing this suit, the Plaintiff's action must be considered untimely and dismissed.

WHEREFORE, Defendant Robert Kelly, respectfully request that this Honorable Court dismiss this matter with prejudice.

Respectfully Submitted,

/s/ Zaid Abdallah

/s/ Shady Yassin

Abdallah Law and Raed Shalabi
Atty No. 60158
Attorneys for Defendant
16345 Harlem Ave Suite 250
Tinley Park Illinois 60477
312.229.0008