

DOCKET NO.: DBD-CV-21-6040305-S

JOSEPH P. CANN, SR., EXECUTOR FOR
ESTATE OF JOSEPH CANN, JR.

V.

JOHN STRONKOWSKI

SUPERIOR COURT
OFFICE OF THE CLERK
JUN 3 2024
JUDICIAL DISTRICT
STATE OF CONNECTICUT
AT DANBURY
JUNE 3, 2024

**MEMORANDUM OF DECISION
MOTION FOR SUMMARY JUDGMENT #159**

PROCEDURAL HISTORY AND FACTS

The plaintiff, Joseph Cann, Sr., executor of the estate of Joseph Cann, Jr., in a two-count complaint filed with the court on August 16, 2021, alleges the following facts. The plaintiff's decedent, Joseph Patrick Cann, Jr. (hereinafter "the plaintiff's decedent"), was born on January 28, 1988, and resided in Danbury, Connecticut. The plaintiff's decedent died in his parents' home on June 18, 2016, of a drug overdose. The defendant, John Stronkowski, was a Roman Catholic priest serving from 1994-2003 at St. Gregory the Great Parish and School (hereinafter "St. Gregory"), located in Danbury. The plaintiff's decedent was a student and a parishioner at St. Gregory until he was in the seventh grade and was an altar server for the defendant starting in the second grade. Beginning in the fifth grade, the plaintiff's decedent exhibited behavioral problems, such as moving around in his seat and disturbing other children. The principal arranged for the plaintiff's decedent to receive counseling with the defendant in the rectory during religion class several times each week. The defendant, however, was not a trained social worker nor a therapist. The plaintiff's decedent met with the defendant alone and unsupervised several times per week over the course of several months.

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In September 2015, the plaintiff's decedent reported to his family, the family's priest, the Danbury Police Department, and the Diocesan Director of Safe Environment that the defendant had sexually abused him during these unsupervised meetings. The plaintiff's decedent reported that the defendant would "show him how to masturbate and encouraged [the plaintiff's decedent] to try it on himself." Additionally, the plaintiff's decedent reported that when he disclosed to the defendant that he was angry because other children at the school teased him, the defendant asked him if he ever "touched himself when he got mad." The plaintiff's decedent denied doing this, but the defendant told him that it was permissible to do so, as it would "get all of [his] mad out." The defendant then would take a pornographic magazine out of his desk, unzip his pants, and fondle himself in front of the plaintiff's decedent. Eventually, the defendant no longer used magazines, and would instead watch the plaintiff's decedent masturbate and would physically touch him during these occurrences. These meetings went on several times each week for four or five months until the end of the school year. The plaintiff's decedent continued to act as an altar server for the defendant during this time.

The plaintiff's decedent became angrier and more disruptive during this timeframe, ultimately transferring to public school in seventh grade. He continuously suffered from night terrors, self-loathing, and used alcohol and substances to cope with his suffering. As a result of the report of the plaintiff's decedent, the Diocese proceeded with an investigation, and on June 16, 2016, informed the plaintiff's decedent and his family that the Sexual Misconduct Review Board found his allegations against the defendant to be credible. Two days later, on June 18, 2016, the plaintiff's decedent died from a drug overdose. On June 25, 2016, the defendant was removed from all clerical duties. Accordingly, on or about January 21, 2020, the Tribunal for the Diocese of Bridgeport issued a final judgment determining that the defendant should be removed from service

as a priest based on his alleged conduct, a judgment that is currently on appeal.

The first count alleges sexual assault by the defendant against the plaintiff's decedent. It alleges that the injuries, damages, and death sustained by the plaintiff's decedent were the result of the acts and intentions of the defendant in that he sexually abused and exploited the plaintiff's decedent when he was a minor. The estate of the plaintiff's decedent claims he suffered severe emotional distress, anxiety, frustration, dissociation, post-traumatic stress, and permanent psychological scarring, all of which were exacerbated by a lack of timely treatment, ultimately resulting in his death. The second count alleges intentional infliction of emotional distress and that the defendant knew or should have known that his conduct would likely result in emotional distress. It also alleges that the defendant's conduct was extreme and outrageous in that it constituted an intentional sexual assault upon a minor and resulted in the plaintiff's decedent suffering injuries of a serious and permanent nature.

The defendant filed an appearance on October 26, 2021. On February 7, 2024, the defendant filed a motion for summary judgment, accompanied by a memorandum and supporting documents, on the ground that General Statutes § 52-555 provides the controlling statute of limitations, which is two years from the date of death. Docket Entry No. 159. The plaintiff filed an objection to the defendant's motion, arguing that the allegations are governed by General Statutes § 52-577d, which provides that the statute of limitations for claims of emotional distress caused by sexual abuse/exploitation is thirty years from the date the injured person attains the age of twenty-one. Docket Entry No. 163. The defendant filed a reply to the plaintiff's objection. Docket Entry No. 165. Oral argument was heard by the court on April 29, 2024.

STANDARD OF REVIEW

“Practice Book § [17-49] provides that summary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted 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. . . . In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party. . . . The party seeking summary judgment has the burden of showing the absence of any genuine issue [of] material facts which, under applicable principles of substantive law, entitle him to a judgment as a matter of law . . . and the party opposing such a motion must provide an evidentiary foundation to demonstrate the existence of a genuine issue of material fact. . . . [I]ssue-finding, rather than issue-determination, is the key to the procedure. . . . [T]he trial court does not sit as the trier of fact when ruling on a motion for summary judgment. . . . [Its] function is not to decide issues of material fact, but rather to determine whether any such issues exist.” (Citations omitted; internal quotation marks omitted.) *Himmelstein v. Windsor*, 116 Conn. App. 28, 42–43, 974 A.2d 820 (2009), *aff’d*, 304 Conn. 298, 39 A.3d 1065 (2012). “Summary judgment may be granted where the claim is barred by the statute of limitations. . . . Summary judgment is appropriate on statute of limitations grounds when the material facts concerning the statute of limitations [are] not in dispute” (Citation omitted; internal quotation marks omitted.) *Rompney v. Safeco Ins. Co. of America*, 310 Conn. 304, 313, 77 A.3d 726 (2013).

ANALYSIS

A

General Statutes § 52-555

The defendant argues that the plaintiff’s complaint has alleged facts consistent with an action for wrongful death, which is governed by § 52-555, and carries a statute of limitations of

two years from the date of death. Section 52-555 (a) states: “In any action surviving to or brought by an executor or administrator for injuries resulting in death, whether instantaneous or otherwise, such executor or administrator may recover from the party legally at fault for such injuries just damages together with the cost of reasonably necessary medical, hospital and nursing services, and including funeral expenses, provided no action shall be brought to recover such damages and disbursements but within two years from the date of death, and except that no such action may be brought more than five years from the date of the act or omission complained of.” The defendant further argues that the time limitation delineated in § 52-555 serves as a limitation on liability itself. Docket Entry No. 159, p. 10; see also *Ecker v. West Hartford*, 205 Conn. 219, 231, 530 A.2d 1056 (1987) (the court agreed with the defendants’ argument that the time limitation pursuant to § 52-555 was a substantive element of the right of action and the jurisdictional issue could not be waived). The defendant, therefore, argues that this court does not have subject matter jurisdiction over the plaintiff’s action because it is time barred, as there is no common law claim for wrongful death in Connecticut, or it is substantively barred by the statute of limitations for a wrongful death action.

In the case of *Pellecchia v. Connecticut Light & Power Co.*, 52 Conn. Supp. 435, 444-45, 54 A.3d 1080 (August 4, 2011, *Shapiro, J.*), *aff’d in part*, appeal dismissed in part sub nom. *Pellecchia ex rel. Pellecchia v. Connecticut Light & Power Co.*, 139 Conn. App. 88, 54 A.3d 658 (2012), the court stated: “[T]he [time] limitation contained within § 52–555 is a jurisdictional prerequisite which cannot be waived and which must be met in order to maintain an action under § 52–555. . . . Thus, § 52–555 is not to be treated as an ordinary statute of limitation[s]. . . . Rather, it is a limitation on the liability itself, and not of the remedy alone. . . . Accordingly, the right to bring a wrongful death claim pursuant to § 52–555 exists only during the statutorily prescribed

time period, and expires thereafter. . . . Because the limitation period of § 52–555 is jurisdictional in nature, [a plaintiff] shoulder[s] a heavy burden of establishing that § 52–555 is preempted by another statute of limitations.” (Internal quotation marks omitted.) Here, the complaint was served on August 5, 2021, which is more than five years after the death of the plaintiff’s decedent on June 18, 2016, and more than twenty years after the alleged conduct of the defendant. Docket Entry No. 100.31.

While the defendant argues that the plaintiff’s complaint seeks damages for the wrongful death of the plaintiff’s decedent, a reading of the plaintiff’s complaint in a light most favorable to the nonmovant does not support this argument. Nowhere in the plaintiff’s complaint does he allege a cause of action for wrongful death, nor does he cite to § 52-555. The language of the plaintiff’s complaint alleges only sexual abuse and intentional infliction of emotional distress. In comparison, in the case of *Greco v. United Technologies Corp.*, 277 Conn. 337, 348, 890 A.2d 1269 (2006), the court noted that the plaintiffs’ action was one for wrongful death, alleging that the defendants intentionally had exposed the decedents to toxic chemicals or radiation or both by polluting the air, soil, surface water and groundwater surrounding various Pratt and Whitney facilities in the state. The court, however, stated: “statutory wrongful death actions and common-law personal injury actions historically have been treated as *separate and distinct actions*.” The defendant argues that § 52-555 “is the *sole* basis upon which an action that includes as an element of damages a person’s death or its consequences can be brought. . . . Death and its consequences can constitute recoverable damages only if, and to the extent they are made so by statute.” (Emphasis in original; internal quotation marks omitted.) *Lynn v. Haybuster Manufacturing, Inc.*, 226 Conn. 282, 295, 627 A.2d 1288 (1993).

Numerous jurisdictions have held that emotional distress or mental anguish is a type of

personal injury. See *Eng ex rel. Estate of Eng v. Sheehy*, Superior Court, judicial district of Fairfield, Docket No CV-00-037098428-S (February 15, 2001, *Melville, J.*) (28 Conn. L. Rptr. 720); *Kilduff v. Adams, Inc.*, 219 Conn. 314, 337, 593 A.2d 478 (1991) (holding that emotional distress is considered a “personal injury” for the purposes of General Statutes § 52-174). For example, in the case of *Chance v. Leno’s Lawn Service, LLC*, Superior Court, judicial district of Litchfield, Docket No. CV-06-5001435-S (October 16, 2009, *Pickard, J.*) (48 Conn. L. Rptr. 648), the court held: “the plaintiff alleges, as part of her constructive wrongful discharge claim, that she has suffered emotional distress as the result of sexual abuse that she endured while in the employ of the defendant. Accordingly, because such emotional distress constitutes a ‘personal injury’ under § 52-577d, the court finds that the extended time-period in which she may bring an action therein applies, and that therefore, the plaintiff’s suit is timely.” (Internal quotation marks omitted.)

It is important to note that the language of the plaintiff’s complaint references the death of the plaintiff’s decedent, but the death is mentioned as a byproduct of the sexual abuse which caused the plaintiff’s decedent immense emotional injury.¹ Complaint, count one, paragraph 22, count two, paragraphs 24-26. Specifically, the plaintiff alleges that the plaintiff’s decedent “suffered severe *emotional injuries* including emotional distress, anxiety, anger, feelings of exploitation and painful memories, exacerbated and intensified by a lack of timely treatment, *ultimately resulting* in his death due to an overdose.” (Emphasis added.) *Id.*, paragraph 25. This case may be compared to *Greco v. United Technologies Corp.*, *supra*, 277 Conn. 345, in which “[t]he court noted that in their complaint, the plaintiffs *specifically pleaded that they were proceeding under the wrongful*

¹ During oral argument, the plaintiff stated that he would be waiving all post-mortem claims. Waiving these claims does not affect the outcome of this decision as it is based on the status of the pleadings as they are.

death statute, § 52-555, and made no mention of § 52-557c.” (Emphasis added.) *Doe v. Fields*, Superior Court, judicial district of Stamford-Norwalk, Docket No. CV-05-400655541-S (August 10, 2006, *Lewis, J.*) (41 Conn. L. Rptr. 801). The plaintiff does not mention the term “wrongful death,” nor does he specifically plead his claims pursuant to § 52-555, as he claims the emotional injuries which caused the drug use of the plaintiff’s decedent and ultimately his death were derived from the alleged sexual abuse. See Docket Entry No. 159, p. 8. The death of the plaintiff’s decedent is not the act the plaintiff’s complaint is seeking to remedy; it is the sexual abuse and the intentional infliction of emotional distress that was caused by the alleged actions of the defendant. Complaint, p. 5; see also *Milhomme v. Levola*, Superior Court, judicial district of Windham, Docket No. CV-94-0048326-S (July 14, 1995, *Foley, J.*) (14 Conn. L. Rptr. 518) (as a result of the sexual assaults, the child suffered severe personal injury). Therefore, the language in the plaintiff’s complaint is sufficient to sustain a cause of action for personal injury as opposed to wrongful death, and § 52-555 would not apply to these circumstances.

B

General Statutes § 52-577d

The plaintiff argues that the defendant has misconstrued his complaint, and that the proper governing statute is actually § 52-577d, as this is a claim for sexual abuse and intentional infliction of emotional distress, not wrongful death. “[T]he unambiguous language of the statute . . . [indicates] that the focus is on the particular type of harm that is the basis of the action rather than on the parties that are involved.” (Internal quotation marks omitted.) *Doe v. Boy Scouts of America*, Superior Court, judicial district of Stamford-Norwalk, Docket No. CV-94-0141153-S (January 29, 1999, *Tobin, J.*). Courts in this state have noted that causes of action for intentional infliction of emotional distress and sexual abuse are governed by § 52-577d. For example, in the case of *Doe*

v. *Rackliffe*, Superior Court, judicial district of New Britain, Docket Nos. CV-15-5016759-S, CV-15-5017021-S, CV-15-5017022-S, CV-15-5017333-S (March 29, 2017, *Young, J.*) (64 Conn. L. Rptr. 195), the court stated: “The plaintiffs are not precluded from prosecuting their claims of sexual abuse, which is asserted in the first count of all of the actions. They are also able to pursue the claims of intentional infliction of emotional distress in the second counts of the *Jane Doe*, *Jane Doe # 2* and *Jane Doe # 3* actions. *These are causes of action to which § 52-577d is clearly applicable.*” (Emphasis in original.)

The statute of limitations for causes of action brought pursuant to § 52-577d is thirty years from the date the injured individual attains the age of majority.² “The legislative history of § 52-577d reveals that the legislature plainly recognized that victims of abuse and exploitation may take an extended period of time to bring an action because such victims suppress memories of the abuse for long periods of time.” *Doe v. Shimkus*, Superior Court, judicial district of Hartford, Docket No. CV-03-0822147-S (March 19, 2004, *Wagner, J.T.R.*) (36 Conn. L. Rptr. 712); see also *Todd M. v.*

² General Statutes § 1-1d defines the “age of majority” as eighteen years old. “General Statutes § 52-577d was amended in 2019. The Public Act that amended § 52-577d, however, made clear that it was ‘[e]ffective October 1, 2019, and applicable to any cause of action arising from an incident committed on or after said date.’ Public Acts 2019, No. 19-16, § 13. Prior to 2019, § 52-577d was last amended in 2002. That Public Act, in contrast, indicated that it was ‘[e]ffective from passage [May 23, 2002] and applicable to any cause of action arising from an incident committed prior to, on or after said date.’ Public Acts 2002, No. 02-138, § 2. *Therefore, this action is governed by the version of § 52-577d [that] was in effect from 2002 to 2019.*” (Emphasis added; internal quotation marks omitted.) *Petrello v. Bemer*, Superior Court, judicial district of Waterbury, Complex Litigation Docket, Docket No. X06-CV-21-6067153-S (April 26, 2024, *Bellis, J.*) (footnote 7). It is clear from the pleadings that the alleged actions of the defendant occurred prior to 2002. This difference, however, does not affect this court’s decision, as it is evident from the pleadings that the alleged actions of the defendant occurred before the plaintiff’s decedent turned eighteen.

Richard L., 44 Conn. Sup. 527, 534, 696 A.2d 1063 (1995) (commenting on the legislative purpose behind the No. 91-240 amendment delineated in the 1991 Public Acts, which extended the § 52-577d statute of limitations from two years to seventeen years). The legislature intended to extend the statute of limitations of § 52-577d to allow plaintiffs sufficient time to recall the traumatic offenses. *Id.* In fact, § 52-577d was amended by No. 02-138 of the 2002 Public Acts, expanding the statute of limitations from seventeen years to the current limitation of thirty years. Public Acts 2002, No. 02-138, § 2.

Section § 52-577d states: “Notwithstanding the provisions of section 52-577, no action to recover damages for personal injury to a person under twenty-one years of age, including emotional distress, caused by sexual abuse, sexual exploitation or sexual assault may be brought by such person later than thirty years from the date such person attains the age of twenty-one.”³ See *Horner v. Hartford Roman Catholic Diocesan Corp.*, Superior Court, judicial district of Waterbury, Complex Litigation Docket, Docket No. X10-CV-17-6034898-S (October 24, 2018, *Lager, J.*) (67 Conn. L. Rptr. 311) (discussing § 52-577d and the expansion of the three-year statute of limitations for tort liability for personal injury to minors caused by sexual abuse, exploitation, or assault to thirty years); see also *Doe v. Boy Scouts of America Corp.*, 323 Conn. 942, 944, 151 A.3d 841 (2016). In this case, the plaintiff argues that the statute of limitations for his claims would be thirty years from the twenty-first birthday of the plaintiff’s decedent, which would be January 28, 2039.⁴ Docket Entry No. 163; see also *Tara S. v. Charles J.*, 178 Conn. App. 547, 553, 176

³ General Statutes § 52-577 provides: “No action founded upon a tort shall be brought but within three years from the date of the act or omission complained of.”

⁴ This court notes that the plaintiff alleges in its complaint that the plaintiff’s decedent was sexually abused by the defendant between the years of 1998-1999, which is before the 2002 amendment of § 52-577d that stated the age of majority was eighteen instead of twenty-one. Public Acts 2002,

A.3d 602 (2017) (“[a]s our Supreme Court has recognized, the language of § 52–577d is clear and unambiguous in that it allows a victim of childhood sexual abuse to bring a claim for damages against the perpetrator of the abuse no later than thirty years from the date upon which the victim attains the age of majority”). It is clear from the procedural history of this case that it was filed substantially before the thirty-year statute of limitations expires, as the plaintiff’s complaint was filed on August 16, 2021, fifteen years before the statute of limitations would run.⁵

Here, the allegations in the plaintiff’s complaint clearly articulate that the defendant knew and interacted with the plaintiff’s decedent when he was a minor, and therefore, § 52-577d would apply, and the claim is not time barred.⁶ See *Doe v. Burns*, Superior Court, judicial district of Middlesex, Docket No. CV-03-0100254-S (July 19, 2005, *Aurigemma, J.*) (the plaintiff was thirty-seven years old when the action was brought, and accordingly, she reached the age of majority nineteen years prior to commencement of the action, therefore, properly bringing the action within the time limit set forth in § 52–577d); see also *Petrello v. Bemer*, Superior Court, judicial district of Waterbury, Complex Litigation Docket, Docket No. X06-CV-21-6067153-S (April 26, 2024, *Bellis, J.*) (the plaintiff alleged that he was sexually assaulted by the defendant between the years of 1996 and 1997, and the suit was commenced in March of 2021, therefore, it was timely pursuant

No. 02-138, § 2. Therefore, the correct date would be January 28, 2036, making this action timely regardless of the slight difference in dates.

⁵ The plaintiff’s complaint is dated July 15, 2021, but it was not served until August 5, 2021, and then it was filed with the court on August 16, 2021.

⁶ The plaintiff’s decedent turned twenty-one on January 28, 2009. The plaintiff’s complaint alleges that the plaintiff’s decedent was sexually abused by the defendant in 1998-99, well before he reached the age of majority. As stated above, because the 2002 amendment of § 52-577d would apply to this case, the eighteenth birthday of the plaintiff’s decedent would be the statute of limitations starting point, which was January 28, 2006.

to the 2002 amendment of § 52-577d). Accordingly, due to the fact that the plaintiff brings this complaint alleging sexual assault and intentional infliction of emotional distress, § 52-577d would govern the applicable statute of limitations.

CONCLUSION

General Statutes § 52-577d is the governing statute, which provides that the statute of limitations is thirty years from the date the injured person attains the age of eighteen. This action was filed within the statute of limitations, as the action would be time barred on January 28, 2036. Therefore, the defendant's motion for summary judgment is denied.



Shaban, J.