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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A08-0729**

Jane Doe 43C, et al.,  
Appellants,

vs.

Diocese of New Ulm, et al.,  
Respondents.

**Filed March 10, 2009  
Affirmed in part, reversed in part, and remanded  
Larkin, Judge**

Brown County District Court  
File No. 08-CV-05-839

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Considered and decided by Minge, Presiding Judge; Larkin, Judge; and Stauber,  
Judge.

**UNPUBLISHED OPINION**

**LARKIN**, Judge

Appellants challenge the district court's grant of summary judgment in  
respondents' favor. Appellants claim that the district court erred by determining that

appellants' claims were time-barred under the delayed-discovery statute of limitations, Minn. Stat. § 541.073 (2004), and by failing to apply the fraud statute of limitations, Minn. Stat. § 541.05, subd. 1(6) (2004), to appellants' intentional-misrepresentation claim.<sup>1</sup> Because we conclude that the district court applied the incorrect statute of limitations to appellants' intentional-misrepresentation claim, we reverse summary judgment on that claim and remand for a determination of whether the claim is time-barred under the fraud statute of limitations. But because appellants' nonfraud claims are untimely under the delayed-discovery statute of limitations, we affirm summary judgment on those claims.

## **FACTS**

Appellants Jane Doe 43C, Jane Doe 43E, Jane Doe 43F, and Jane Doe 43G, allege that they were sexually abused by Father David Roney when he served as a priest for St. Francis parish in Benson and St. Mary's parish in Willmar, both within the diocese of New Ulm. In 2004, appellants commenced a joint action in district court against respondents diocese of New Ulm, St. Francis Parish, and St. Mary's Parish, asserting claims of vicarious liability, breach of fiduciary duty, negligent supervision, negligent retention, negligence, and fiduciary fraud. Appellants claim that the sexual abuse occurred between 1965 and 1975.

Appellants assert that as early as 1970, the diocese knew that Fr. Roney was sexually abusing children and that it failed to take action to prevent further harm. Appellants claim that in 1970, a pastor who worked as the chaplain at Willmar State

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<sup>1</sup> Appellants' fraud claim was pleaded in a single count on behalf of all appellants.

Hospital, and who was allegedly connected to the diocese of New Ulm, was informed that a parent had reported that Fr. Roney had sexually abused his daughter. Appellants claim that this pastor represented that he would arrange treatment or psychological counseling in response to the abuse allegation. Additionally, appellants claim that in July 1993, the priest review board for the diocese of New Ulm expressed serious concerns regarding Fr. Roney's presence in Guatemala and his unsupervised access to children. Nonetheless, in March 1994, Fr. Roney received a diocesan distinguished service award for 50 years of priestly ministry, 40 years as a dedicated pastor in parishes of the diocese of New Ulm, and 20 years of dedicated mission service.

Respondents moved for summary judgment on all counts of the complaint, arguing that appellants' claims were untimely under the delayed-discovery statute of limitations, Minn. Stat. § 514.073, because each appellant knew that she had been sexually abused more than six years before bringing suit. Respondents also argued that appellants' fraud claim was untimely under the fraud statute of limitations, Minn. Stat. § 514.05, subd. 1(6). Appellants moved to amend their complaint, seeking to replace their fiduciary-fraud claim with an intentional-misrepresentation claim, and to add a claim for punitive damages. Due to the timing of the parties' concurrent motions, the parties' memoranda regarding summary judgment on the claims of Jane Does 43E and 43F address both the existing fiduciary-fraud claim and proposed intentional-misrepresentation claim. The memoranda regarding summary judgment on the claims of Jane Does 43C and 43G do not address the proposed intentional-misrepresentation claim.

After hearing oral argument on both motions, the district court granted appellants' motion to amend the complaint on November 27, 2007. The district court then granted respondents' motion for summary judgment on January 18, 2008. By letter dated February 7, 2008, appellants requested that the district court set a trial date on appellants' intentional-misrepresentation claim, arguing that respondents had not moved for summary judgment on the intentional-misrepresentation claim and that the district court's order for summary judgment did not apply to that claim. In response, the district court issued an amended order and memorandum of law on February 26, 2008, stating that its award of summary judgment applied to appellants' intentional-misrepresentation claim. In its memorandum of law, the court noted that the parties' memoranda concerning the claims of Jane Does 43E and 43F addressed the intentional-misrepresentation claim. The district court concluded that respondent's request for summary judgment on the intentional-misrepresentation claim was therefore before the court, and the district court stated that it issued its original decision "with the [i]ntentional [m]isrepresentation claim in mind." This appeal follows.

## **D E C I S I O N**

On review of summary judgment, we determine whether there are any genuine issues of material fact and whether the district court correctly applied the law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). We view the evidence in the light most favorable to the party against whom judgment was granted. *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). The moving party has the burden of showing the absence of a genuine issue of material fact. *Anderson v. State, Dep't of Natural Res.*, 693

N.W.2d 181, 191 (Minn. 2005). No genuine issue of material fact exists when “the nonmoving party presents evidence which merely creates a metaphysical doubt as to a factual issue and which is not sufficiently probative with respect to an essential element of the nonmoving party’s case to permit reasonable persons to draw different conclusions.” *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1978). There are no genuine issues of material fact if the “record taken as a whole could not lead a rational trier of fact to find for the nonmoving party.” *Id.* at 69 (quotation omitted).

“Determination of whether summary judgment was properly granted on statute of limitations grounds depends in part on construction of the implicated statutes. Statutory construction is a question of law subject to de novo review.” *D.M.S. v. Barber*, 645 N.W.2d 383, 386 (Minn. 2002) (citations omitted). “One asserting the statute of limitations [ ] has the burden of proving all the elements of that affirmative defense.” *Thiele v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988). “[W]hen the moving party makes out a prima facie case, the burden of producing facts that raise a genuine issue shifts to the opposing party.” *Id.*

## I.

We begin our analysis with a review of the district court’s grant of summary judgment on appellants’ intentional-misrepresentation claim. Appellants argue that the district court applied the wrong statute of limitations to their intentional-misrepresentation claim. Specifically, appellants argue that the fraud statute of limitations, Minn. Stat. § 514.05, subd. 1(6), applies to their intentional-misrepresentation claim, not the delayed-discovery statute of limitations, Minn. Stat. § 541.073. Appellants

advanced a consistent argument in the summary judgment proceedings below. Respondents contend that there is no merit to appellants' argument. But in the proceedings below, respondents conceded that the fraud statute of limitations applies to appellants' fraud claim. And respondents' memorandum in opposition to appellants' motion to amend the complaint asserts that the motion should be denied because the proposed intentional-misrepresentation claim would be untimely under the fraud statute of limitations.

When the district court granted appellants' motion to amend the complaint, the district court noted that the intentional-misrepresentation claim was intended to replace the fiduciary-fraud claim. The district court concluded that the amendment would not prejudice respondents because the amended complaint involved substantially the same allegations as the original complaint, "except that the fiduciary element is missing," and reasoned that "[t]he requested amendment simply removes the fiduciary element required in the earlier [fiduciary fraud] claim."

Even though (1) the district court recognized that the intentional-misrepresentation and fiduciary-fraud claims were substantially similar and (2) both parties asserted that the fraud statute of limitations applied to the fiduciary-fraud claim, the district court did not apply the fraud statute of limitations to the intentional-misrepresentation claim. Instead, the district court based its grant of summary judgment on expiration of the delayed-discovery statute of limitations.

The district court's order, amended order, and memoranda do not reference the fraud statute of limitations. It is not clear whether the district court sua sponte considered

and determined that the delayed-discovery statute of limitations applies to appellants' intentional-misrepresentation claim or merely failed to recognize that both parties recommended application of the fraud statute of limitations. And appellants did not ask the district court to clarify or reconsider its decision. We therefore question whether appellants' argument that the district court applied the wrong statute of limitations is properly before us for review.

“A reviewing court must generally consider only those issues that the record shows were presented and considered by the trial court in deciding the matter before it.” *Thiele*, 425 N.W.2d at 582 (quotation omitted). But, this is not an ironclad rule. The Minnesota Supreme Court has recognized an exception to this rule when the issue “is plainly decisive of the entire controversy on its merits, and where, as in a case involving undisputed facts, there is no possible advantage or disadvantage to either party in not having had a prior ruling by the trial court on the question.” *Watson v. United Servs. Auto. Ass'n*, 566 N.W.2d 683, 687 (Minn. 1997) (quotation omitted).

Here, both parties presented arguments on appeal regarding whether the delayed-discovery statute of limitations applies to appellants' intentional-misrepresentation claim. And there are no disputes of fact that affect this purely legal question. Given that we review a district court's decision regarding the proper statute of limitation to be applied *de novo*, *Manteuffel v. City of N. St. Paul*, 570 N.W.2d 807, 809 (Minn. App. 1997), there is no possible advantage or disadvantage to either party by not having a prior lower court ruling on the issue. Because the issue may be decisive of the entire case on the merits, and given the unusual procedural history of this case, we will review the issue. *See*

Minn. R. Civ. App. P. 103.04 (stating appellate court may “review any other matter as the interest of justice may require”).

The delayed-discovery statute of limitations applies to actions for damages due to sexual abuse and establishes a six-year statute of limitations from the time the plaintiff knew or had reason to know the abuse caused injury. Minn. Stat. § 541.073. The fraud statute of limitations also establishes a six-year statute of limitations. Minn. Stat. § 541.05, subd. 1. The fraud statute of limitations begins to run when the aggrieved party discovers facts constituting the fraud. *Id.*, subd. 1(6). Courts apply a reasonable-diligence standard to determine when a plaintiff could or ought to have discovered facts constituting fraud. *Bustad v. Bustad*, 263 Minn. 238, 242, 116 N.W.2d 552, 555 (1962). “The mere fact that the aggrieved party did not actually discover the fraud will not extend the statutory limitation, if it appears that the failure sooner to discover it was the result of negligence, and inconsistent with reasonable diligence.” *Id.* (quoting *First Nat’l Bank of Shakopee v. Strait*, 71 Minn. 69, 72, 73 N.W. 645, 646 (1898)).

Appellants focus on the plain language of Minn. Stat. § 541.073, subd. 3, in support of their argument that the delayed-discovery statute of limitations does not apply to their intentional-misrepresentation claim. Subdivision 3 provides: “[t]his section applies to an action for damages commenced against a person who caused the plaintiff’s personal injury either by (1) committing sexual abuse against the plaintiff, or (2) negligently permitting sexual abuse against the plaintiff to occur.” Minn. Stat. § 541.073, subd. 3.

“Where the legislature’s intent is clearly discernable from plain and unambiguous language, statutory construction is neither necessary nor permitted and we apply the statute’s plain meaning.” *Hans Hagen Homes, Inc. v. City of Minnetrista*, 728 N.W.2d 536, 539 (Minn. 2007); *see also* Minn. Stat. § 645.16 (2004) (providing that when the language of a statute is “clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit”). By its plain terms, section 541.073, subdivision 3, applies to only two types of actions: (1) actions against those who committed sexual abuse, and (2) actions against those who negligently permitted sexual abuse to occur. Subdivision 3 applies to appellants’ intentional-misrepresentation claim only if the claim falls within the parameters of the second negligence category.

In determining whether appellants’ intentional-misrepresentation claim falls within the parameters of subdivision 3(2), it is useful to examine the general nature of misrepresentation claims. Common law causes of action for misrepresentation typically fall into two subtypes: (1) fraudulent misrepresentation and (2) negligent misrepresentation. *Florenzano v. Olson*, 387 N.W.2d 168, 173 (Minn. 1986) (explaining that “an actionable misrepresentation requires proof either that the misrepresenter acted dishonestly or in bad faith, i.e., with fraudulent intent, or, alternatively, that the misrepresenter was negligent”). Fraudulent misrepresentation and negligent misrepresentation have distinctive elements and require different types of proof. *Id.* at 172-74. “Fraud is distinguished from negligence by the element of scienter required. Fraud is an intentional tort and scienter is an essential element.” *Id.* at 173. Conversely, proof of the subjective state of the misrepresenter’s mind is not necessary to prove

negligence. *Id.* at 174. “Negligence is proved by measuring one’s conduct against an objective standard of reasonable care or competence.” *Id.* An essential element of negligent misrepresentation is that the alleged misrepresenter owes a duty of care to the person to whom they are providing information. *Safeco Ins. Co. of Am. v. Dain Bosworth Inc.*, 531 N.W.2d 867, 870-71 (Minn. App. 1995), *review denied* (Minn. July 20, 1995).

The Minnesota Supreme Court has specifically defined the elements of intentional misrepresentation in accord with the elements of fraudulent misrepresentation. *M.H. v. Caritas Family Servs.*, 488 N.W.2d 282, 289 (Minn. 1992) (citing *Florenzano*, 387 N.W.2d at 174 n.4)). Because the elements of intentional misrepresentation are identical to the elements of fraudulent misrepresentation, and because a claim of fraudulent misrepresentation is not based on a negligence theory, we conclude that appellants’ intentional-misrepresentation claim does not fall within the parameters of the negligence category in section 541.073, subdivision 3(2). Appellants’ intentional-misrepresentation claim, by definition, is based on an allegation of intentional fraud, not on an allegation of negligence.

We further conclude that the proper statute of limitations to be applied to appellant’s intentional-misrepresentation claim is the fraud statute of limitations contained in Minn. Stat. § 541.05, subd. 1(6). *See Florenzano*, 387 N.W.2d at 172-73 (recognizing misrepresentation as a form of fraud). We note that the elements of intentional or fraudulent misrepresentation and the elements of fraud are identical. *Compare Caritas Family Servs.*, 488 N.W.2d at 289 (citing *Florenzano*, 387 N.W.2d at 174 n.4) (listing the elements of intentional misrepresentation)) and *In re Disciplinary*

*Action Against Strid*, 487 N.W.2d 891, 893-94 (Minn. 1992) (listing the elements of fraud).

The district court erred when it granted summary judgment on appellants' intentional-misrepresentation claim based on the delayed-discovery statute of limitations. We therefore reverse and remand the summary judgment on appellants' intentional-misrepresentation claim. On remand, the district court shall consider and decide respondents' motion for summary judgment on appellants' intentional-misrepresentation claim, applying the fraud statute of limitations contained in Minn. Stat. § 541.05, subd. 1(6). To the extent the district court declined to determine whether summary judgment was appropriate based on the merits of the intentional-misrepresentation claim, the district court may consider and determine that issue as well.

Finally, appellants argue that the district court erred by granting summary judgment on their intentional-misrepresentation claim because (1) respondents did not move for dismissal of that claim so the issue of summary judgment was not properly before the court, and (2) the district court did not specifically address the viability of the intentional-misrepresentation claim. Because we reverse the district court's award of summary judgment on appellants' intentional-misrepresentation claim on other grounds, we do not address these claims.

## **II.**

We now direct our analysis to appellants' remaining, nonfraud claims. The district court granted summary judgment based on respondents' affirmative defense that the delayed-discovery statute of limitations, Minn. Stat. § 541.073, had run on each of

appellants' claims. Under the delayed-discovery statute, “[a]n action for damages based on personal injury caused by sexual abuse must be commenced within six years of the time the plaintiff knew or had reason to know that the injury was caused by the sexual abuse.” Minn. Stat. § 541.073, subd. 2(a). Minnesota courts have equated knowledge of injury with knowledge of abuse such that the question is now phrased as whether the victim knew or had reason to know of the abuse. *Blackowiak v. Kemp*, 546 N.W.2d 1, 3 (Minn. 1996) (observing that “as a matter of law one is ‘injured’ if one is sexually abused”). “This question is answered through the application of the objective, reasonable-person standard.” *Barber*, 645 N.W.2d at 387.

Under limited circumstances, the law adjusts this objective, reasonable-person standard and tolls the statute of limitations.

[T]he statute of limitations begins to run once a victim is abused unless there is some legal disability, such as the victim’s age, or mental disability, such as repressed memory of the abuse, which would make a reasonable person incapable of recognizing or understanding that he or she had been sexually abused.

*Id.* at 389 (quotation omitted). Accordingly, the reasonable-person standard is adjusted for children and “the six-year period of limitation under the delayed discovery statute begins to run when the victim reaches the age of majority.” *Id.* at 390. In the “mental disability” category, caselaw has recognized repressed memory as a specific example of a mental disability that would toll the statute of limitations but has not extended the exception to include memory suppression, or other coping mechanisms such as shame or guilt. *See, e.g., W.J.L. v. Bugge*, 573 N.W.2d 677, 681 (Minn. 1998) (citing *Blackowiak*,

546 N.W.2d at 3 and noting that where Blackowiak was aware that he had been abused but did not discuss it with counselors due to shame, there were no legal or mental disabilities that prevented Blackowiak from recognizing or understanding that he had been sexually abused).

Generally, the date on which a plaintiff knows or has reason to know that he or she was sexually abused involves a factual determination and it is, therefore, a question for the trier of fact. *See Scheffler v. Archdiocese of St. Paul & Minneapolis*, 563 N.W.2d 767, 769 (Minn. App. 1997), *review denied* (Minn. July 28, 1997). Summary judgment is proper, however, when there are no genuine issues of material fact and any party is entitled to a judgment as a matter of law. Minn. R. Civ. P. 56.03. For the reasons that follow, we conclude that the district court did not err by granting summary judgment on appellants' nonfraud claims.

***Jane Doe 43C's nonfraud claims are untimely.***

Jane Doe 43C alleges that Fr. Roney sexually abused her between 1969 and 1972, at St. Mary's Church in Willmar. At the time, Jane Doe 43C did not report the abuse to anyone. Jane Doe 43C reached the age of majority in 1977. Three years later, at age 21, she disclosed the abuse by Fr. Roney to her mother and boyfriend. Appellant alleges that it was only after Fr. Roney's death in 2003 that she realized it was important to "address the ill effects" Fr. Roney's actions had on her life. That same year, Jane Doe 43C was diagnosed with chronic post-traumatic stress disorder. Jane Doe 43C initiated this action in 2003, 26 years after she attained the age of majority.

Jane Doe 43C argues that there is a genuine issue of material fact as to whether she suffered from a mental disability that precluded her from commencing legal action earlier. She asserts that although she was aware of the abuse that she suffered at the hands of Fr. Roney, she was unaware that the abuse psychologically injured her. Jane Doe 43C urges the court to accept the principal that psychological injury is a mental disability, which rendered her incapable of understanding that she had been abused. Specifically, Jane Doe 43C urges us to find that she “is still blaming herself, still feeling ‘worthless’ and ‘dirty’ . . . . [and] has not to this date come to a realization that she was sexually abused.” Jane Doe 43C contends that the statute of limitations had not run for her claims because she worked hard to suppress memories of the abuse by directing her attention away from her thoughts and feelings, and that due to these psychological coping mechanisms, she still does not understand that she was wronged.

In essence, Jane Doe 43C asks this court to apply a subjective standard in place of the objective, reasonable-person standard. The Minnesota Supreme Court has expressly rejected this argument, noting that the objective standard set out in the delayed-discovery statute is not a “subjective inquiry into an individual’s unique circumstances, *e.g.*, when did the victim ‘acknowledge’ or ‘appreciate’ the nature and extent of the harm resulting from the abuse.” *Blackowiak*, 546 N.W.2d at 3. Section 541.073 utilizes an objective inquiry: would a reasonable person in plaintiff’s position have known that he was sexually abused. *See, e.g., id.*; *ABC v. Archdiocese of St. Paul & Minneapolis*, 513 N.W.2d 482, 486 (Minn. App. 1994) (“[A plaintiff’s] inability to comprehend that her situation had been abusive does not toll the statute of limitations.”). The subjective

standard proposed by appellant has no basis in the law. *Blackowiak*, 546 N.W.2d at 3 (examining and rejecting an argument that the court should apply a subjective standard that considers an individual's unique circumstances such as when the victim acknowledged or appreciated the nature and extent of the harm resulting from the abuse). "While the manifestation and form of the injury is significant to the victim, it is simply not relevant to the ultimate question of the time at which the [plaintiff] knew or should have known that he/she was sexually abused." *Id.*

Jane Doe 43C's coping mechanisms do not qualify as a mental disability that tolls the statute of limitations. The fact that Jane Doe 43C told others about the abuse in 1980 demonstrates that, as of that date, she knew that she had been abused. Under Minnesota law, Jane Doe 43C knew of her injury when she knew of the abuse. The form of injury is irrelevant. *Id.*

Accordingly, Jane Doe 43C's nonfraud claims are barred by the statute of limitations set forth in Minn. Stat. § 541.073, subd. 2(a) because the six-year statute of limitations expired in either 1983 (six years after she reached the age of majority), or, at the latest, in 1986 (six years after she told her mother and boyfriend that she had been abused). No genuine issue of material fact exists regarding the expiration of the delayed-discovery statute of limitations on Jane Doe 43C's nonfraud claims. We affirm the district court's summary judgment against Jane Doe 43C on her nonfraud claims.

***Jane Doe 43E's nonfraud claims are untimely.***

Jane Doe 43E asserts that Fr. Roney sexually abused her during the summer of 1975 while she attended St. Mary's Catholic Church in Willmar. Jane Doe 43E reached the age of majority in 1980.

Jane Doe 43E was evaluated by a psychologist in 2004, but the psychologist did not diagnose her with any mental disorders. According to the psychologist, Jane Doe 43E minimized the abuse inflicted upon her and consciously suppressed what had occurred, although she never forgot it. Jane Doe 43E did not discuss the sexual abuse with anyone until after Fr. Roney's death. Appellant Jane Doe 43E argues that she developed psychological coping mechanisms consisting of repression, guilt, self-blame, dissociation, and denial, which prevented her from having true awareness that she had been sexually abused, and she alleges that she did not realize Fr. Roney's actions constituted sexual abuse. Jane Doe 43E acknowledged that she always felt uncomfortable about the abuse and that it played a part in her decision to leave the Catholic Church. Jane Doe 43E argues that her psychological coping mechanisms prevented her from understanding that she had been sexually abused until at least 2003, and therefore, she was unable to come forward until that time.

We again note that the law does not recognize a victim's confusion, shame, or decision to consciously suppress memories of abuse as a mental disability that tolls the statute of limitations. *Bugge*, 573 N.W.2d at 676. "Merely not thinking about the abuse is not enough to delay the running of the statute of limitations." *Id.* at 682. Precedent limits the tolling of the statute of limitations to mental disabilities such as repressed

memory, and does not extend it to purposeful suppression. *Id.* (citing *Blackowiak*, 546 N.W.2d at 3); *see ABC*, 513 N.W.2d at 486.

The fact that Jane Doe 43E stated that she never forgot about the abuse means that, as a matter of law, she knew that she had been abused when she reached the age of majority in 1980. Because Jane Doe 43E knew that she was abused, she also knew that she was injured. *Blackowiak*, 546 N.W.2d at 3. Jane Doe 43E’s coping mechanisms, without more, are insufficient to toll the statute of limitations for her claims, and the statute of limitations expired in 1986, six years after she reached the age of majority. No genuine issue of material fact exists regarding the expiration of the delayed-discovery statute of limitations on Jane Doe 43E’s nonfraud claims. We affirm the district court’s summary judgment against Jane Doe 43E on her nonfraud claims.

***Jane Doe 43F’s nonfraud claims are untimely.***

Jane Doe 43F alleges that Fr. Roney sexually abused her in 1965 when she was a sixth grader at St. Francis Catholic School in Benson. She never told anyone about the abuse because her family members were devout Catholics and she feared they would not believe her. Jane Doe 43F had her 50th birthday in 2003, which indicates that she reached the age of majority in 1971. Jane Doe 43F asserts that she had no recollection of the abuse until 2003. While at work, her boss mentioned Fr. Roney by name and inquired whether she knew about alleged abuse at the Catholic school in Benson. Jane Doe 43F reported that hearing this information was like being “hit by a brick” and that until that moment, she had never recalled the abuse during her entire adult life. Jane Doe 43F was later diagnosed with post-traumatic stress disorder.

Jane Doe 43F argues that there is a genuine issue of material fact as to whether she repressed her memory of the abuse until she heard Fr. Roney's name in 2003, thus tolling the statute of limitations. Memory repression is recognized as a mental disability that may toll the statute of limitations. *See Barber*, 645 N.W.2d at 389. But Jane Doe 43F was evaluated by a psychologist around the time of this litigation, and she was not diagnosed with memory repression. She presented no psychological opinion indicating that she repressed her memory. Instead, Jane Doe 43F merely speculates that her statement that she did not remember the abuse until 2003 could mean that she repressed her memory. Mere speculation, without more, is insufficient to raise a genuine issue of material fact and defeat summary judgment. *Bob Useldinger & Sons, Inc. v. Hangsleben*, 505 N.W.2d 323, 328 (Minn. 1993) (concluding that “[m]ere speculation, without concrete evidence, is not enough to avoid summary judgment”); *but cf. Bertram v. Poole*, 597 N.W.2d 309, 312-13 (Minn. App. 1999) (concluding that there existed a genuine issue of material fact where expert psychologists for the parties disagreed about whether the appellants “suffered from repressed memory syndrome”), *review denied* (Minn. Sept. 28, 1999).

No genuine issue of material fact exists regarding the expiration of the delayed-discovery statute of limitations on Jane Doe 43F's nonfraud claims. The statute of limitations for Jane Doe 43F's nonfraud claims expired in 1977, six years after she reached the age of majority. We affirm the district court's summary judgment against Jane Doe 43F on her nonfraud claims.

***Jane Doe 43G's nonfraud claims are untimely.***

Jane Doe 43G alleges that Fr. Roney sexually abused her during the summers of 1968 through 1975. Jane Doe 43G claims to have repressed all memories of the abuse until 1993 when she was on a retreat and heard a speaker talk about clergy sexual abuse. On her way home from the retreat, Jane Doe 43G vomited several times. Jane Doe 43G told a friend and her husband about the abuse. Jane Doe 43G alleges that after briefly remembering the abuse in 1993, the memories became so painful that she re-repressed the memories, and she did not speak about them again until 2003. In 2003, Jane Doe 43G was diagnosed with post-traumatic stress disorder.

On appeal, Jane Doe 43G argues that the district court both misstated the evidence and erred in its application of law as to her claims. With regard to misstating the evidence, Jane Doe 43G contends that the district court incorrectly stated that in 1993, she “recalled many details” of the abuse when in fact, her memory was fragmented. She also asserts that the district court incorrectly stated that she vomited “while thinking about the abuse” when the record does not indicate that she vomited while thinking about the abuse. Jane Doe 43G further argues that it is uncertain whether she used the word “abuse” when she told her friend and husband about Fr. Roney’s actions. Any subtle discrepancies between the district court’s description of events and Jane Doe 43G’s evidence are insufficient to raise a genuine issue of material fact, because it is undisputed that Jane Doe 43G knew of the abuse when she told her friend and her husband about the abuse in 1993.

With regard to the district court's alleged misapplication of law, Jane Doe 43G argues that she had a partial return of memory in 1993 but that it was fragmented and nonnarrative in form, and that she re-repressed the memories soon afterwards. Jane Doe 43G argues that this partial return of memory in 1993 cannot reasonably be said to have triggered the running of the statute of limitations. We disagree. Jane Doe 43G's knowledge of the abuse triggered the running of the delayed-discovery statute of limitations in 1993, even if Jane Doe 43G subsequently pushed the abuse out of her mind. Memory suppression does not toll the statute of limitations where the victim knew or should have known of the abuse before the memory suppression occurred. *S.E. v. Shattuck-St. Mary's School*, 533 N.W.2d 628, 632 (Minn. App. 1995), *review denied* (Minn. Aug. 30, 1995).

The plain language of the statute delays the beginning of the limitations period until a person "knew or had reason to know that the injury was caused by the sexual abuse." Minn. Stat. § 541.073. The statute does not provide that the limitations period is tolled if an adult victim subsequently suppresses memories of sexual abuse. Further, we note that if the legislature intended to draft such a tolling statute, it could have done so. *See* Minn. Stat. § 541.15 (1992) (certain enumerated disabilities "shall suspend the running of the period of limitation until the same is removed").

*Roe v. Archdiocese of St. Paul & Minneapolis*, 518 N.W.2d 629, 632 (Minn. App. 1994), *review denied* (Minn. Aug. 24, 1994).

Lastly, Jane Doe 43G stresses that the reasonable-person standard should consider whether a person under similar circumstances would know that she had been abused. In other words, Jane Doe 43G argues that we should consider whether a reasonable person

standing in Jane Doe 43G’s shoes—a person who had experienced a partial, nonnarrative return of memory in 1993 and allegedly re-repressed the memory shortly thereafter—would have known she was sexually abused. In essence, Jane Doe 43G asks us to apply a subjective rather than an objective standard, which is not consistent with legal precedent. *Blackowiak*, 546 N.W.2d at 3. The reasonable-person standard considers “what a reasonable person of ordinary prudence would have done in the same or similar circumstances,” *see* 57A Am. Jur. 2d *Negligence* § 133, not what a person with Jane Doe 43G’s specific emotional problems and psychological coping mechanisms would have done.

Because Jane Doe 43G knew in 1993 that the abuse occurred, under the objective, reasonable-person standard, she is deemed to have known of her injury, and she was required to bring suit within six years. Jane Doe 43G’s claims are barred by the delayed-discovery statute of limitations, which expired, at the latest, in 1999, six years after she recalled the abuse and told her friend and husband about the abuse. No genuine issue of material fact exists regarding the expiration of the delayed-discovery statute of limitations on Jane Doe 43G’s nonfraud claims. We affirm the district court’s summary judgment against Jane Doe 43G on her nonfraud claims.

Finally, respondents complain that appellants submitted evidence that is not part of the record on appeal. But respondents did not bring a motion to strike. *See* Minn. R. Civ. App. P. 127 (any request for an order or other relief shall be made by motion, with appropriate copies and proof of service). Appellants agree, in part, with respondents’ assertion. We have limited our review to evidence that is properly in the record on

appeal. *See* Minn. R. Civ. P. 110.01 (defining record on appeal as documents filed in district court).

**Affirmed in part, reversed in part, and remanded.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
The Honorable Michelle A. Larkin  
Minnesota Court of Appeals