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REVIVAL OF CHILDHOOD SEXUAL ABUSE CLAIMS

by Monique L. Fierro

Public entities have numerous protections from liability, including the requirement that claims for monetary damages be presented within six months of the accrual of a cause of action. (Gov. Code, § 910.) Failure to do so can be an absolute bar to pursuing those claims in a court of law. Suing a public entity whose wrongful conduct caused a sexual assault against a minor used to be no exception.

Until recently, a child was required to file a government tort claim within six months of being sexually abused to preserve his or her right to file a lawsuit. In June 2008, the legislature eliminated the tort claim requirement for actions based on child sexual abuse if the act(s) occurred on or after Jan. 1, 2009. (Gov. Code, § 905, former subd. (m), added by Stats. 2008, ch. 383, § 1, p. 2479.)

Unfortunately for survivors abused as children before 2009, this meant that any claims against a public entity were barred under the Government Claims Act, unless that minor had assistance in submitting a timely claim. Public entities avoided liability on this technical bar, despite the failures of staff to report known and suspected child abuse and failures to supervise and keep minors safe from sexual abuse.

One such case involved student V.I. (*V.I. v. Moorpark Unified School District*, Ventura County Case No. 56-2018-00515757-CU-PO-VTA.) When V.I. was 15 years old she was repeatedly sexually abused by the 33-year-old janitor at her high school. The high school principal and other staff were aware of the abuse, triggering school district liability for their negligence in failing to report. When V.I. became pregnant shortly thereafter, there was no question that the janitor, who stopped working for the district in the same time period, was the abuser. It took years before V.I. came to terms with the abuse she suffered and decided to seek legal assistance.

In 2018, our office filed V.I.'s case against the janitor, individual employees, and the school district. Her claims against the school district included breach of the mandatory duty to report known and suspected child abuse (Penal Code, § 11166), and breach of the school district's duty to supervise and protect students. (See *C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal.4th 861, 865-866.)

In 2019, the court sustained the school district's demurrer for failing to submit a government tort claim to the school district within six months of the last date of sexual abuse. V.I. was sexually abused in 2008. And at the time of the dismissal, Government Code section 905(m) stated that the exemption of childhood sexual abuse from the Government Claims Act only applied to "claims arising out of conduct occurring on or after January 1, 2009."

Effective Jan. 1, the legislature amended both Government Code section 905(m) (Senate Bill No. 218 (2019–2020 Reg. Sess.), and Code of Civil Procedure section 340.1 (Stats. 2019, ch. 861, § 1, pp. 7093-7094.), eliminating the time restriction that barred V.I.'s claims. The legislature recognized that public entities should not be shielded from liability when the entity engaged in negligent or intentional conduct that allowed others to sexually abuse children – even if no tort claim was presented. (Code Civ. Proc., § 340.1, subds. (a)(2)-(3).) Before 2020, survivors like V.I. were out of luck.

The rare exceptions were in cases where plaintiffs successfully asserted the delayed discovery doctrine or equitable estoppel. (See, e.g., *Curtis T. v. County of Los Angeles* (2004) 123 Cal.App.4th 1405 (applying the delayed discovery doctrine); see also *Christopher P. v. Mojave Unified School Dist.* (1993) 19 Cal.App.4th 165 (applying the equitable estoppel doctrine, to prevent the district from asserting noncompliance with the Tort Claims Act where its agents deterred filing of a timely claim by an affirmative act).)

A six-month deadline to file a claim based on sexual abuse is difficult for any claimant, but as applied to a child who may lack awareness that they have been abused, it is absurd and unjust.

Finally, survivors like V.I. have until the age of 40 or five years from the date of discovery of the injury, whichever is later, to pursue their claims. The deadline applies to claims against a private individual or public entity, and there is no government claim requirement. (Code Civ. Proc., § 340.1; Gov. Code, § 905, subd. (m).) Survivors can bring their claims against both the person who committed the assault and against any person or entity "who owed a duty of care to the plaintiff, if a wrongful or negligent act by that person or entity was

a legal cause of the childhood sexual assault that resulted in the injury to the plaintiff." (Code Civ. Proc., § 340.1, subd. (a).)

More importantly for V.I., the legislature also provided an avenue for claims to be revived against the school district. Code of Civil Procedure section 340.1(q) states that any claim for damages "that has not been litigated to finality and that would otherwise be barred as of January 1, 2020, because the applicable statute of limitations, claims presentation deadline, or any other time limit had expired, *is revived*, and these claims may be commenced within three years of January 1, 2020." (*Ibid*)

The question for V.I. will be whether the court will allow revival of her claims against the school district, as the court sustained the district's demurrer for failure to submit a tort claim. The phrase "has not been litigated to finality" suggests finality on the merits, not merely dismissal on demurrer because of the claims presentation deadline that is now explicitly eliminated by the Jan. 1 amendment.

Courts have already begun to address this question. In *Safchuck v. MJJ Productions, Inc.* (2020) 43 Cal.App.5th 1094, 1100, plaintiff Robson appealed the grant of summary judgment and plaintiff Safchuck appealed judgment after the sustaining of a demurrer both based on the statute of limitations prior to the Jan. 1 extension in Code of Civil Procedure section 340.1(a). The court concluded that both plaintiffs' claims are revived under the enactment of Code of Civil Procedure section 340.1(q).

The amendments to Government Code section 905(m) and Code of Civil Procedure section 340.1 guarantee survivors that their cases will be heard on the merits.



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