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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-259

Filed 12 September 2023

Wake County, No. 20 CVS 13487

MICHAEL TAYLOR, Plaintiff,

v.

THE PINEY GROVE VOLUNTEER FIRE AND RESCUE DEPARTMENT, INC., et al., Defendants.

Appeal by Plaintiff and Intervenor State of North Carolina from an order entered 20 December 2021 by Judges R. Gregory Horne and Imelda J. Pate, with Judge Martin B. McGee concurring in part and dissenting in part, in Wake County Superior Court. Heard in the Court of Appeals 6 June 2023.

Lanier Law Group, P.A., by Donald S. Higley, II, and Robert O. Jenkins, for Plaintiff-Appellant.

Attorney General Joshua H. Stein, by Solicitor General Ryan Y. Park, Deputy Solicitor General Nicholas S. Brod, Solicitor General Fellow Zachary W. Ezor, and Special Deputy Attorney General Orlando L. Rodriguez, for Intervenor-Appellant State of North Carolina.

Hall Booth Smith, P.C., by Christian Ferlan and Scott D. MacLatchie, for Defendant-Appellee Piney Grove Volunteer Fire And Rescue Department, Inc.

No brief filed by Defendant-Appellee Michael Todd Pegram.

Troutman Pepper Hamilton Sanders LLP, by Joshua D. Davey and Mary K. Grob, for Amicus Curiae Roman Catholic Diocese of Charlotte, North Carolina.

RIGGS, Judge.

This appeal arises under the same procedural posture and raises the same legal issues addressed in *McKinney v. Goins*, COA22-261, ___ N.C. App. ___, ___ S.E.2d ___ (2023), filed concurrently with this opinion. Here, as in *McKinney*, a divided three-judge panel in Wake County dismissed Plaintiff Michael Taylor’s civil complaint for torts arising out of child sexual abuse based on a view that the Sexual Assault Fast reporting and Enforcement Act (the “SAFE Child Act”)—which revived Plaintiff’s civil claims after expiration of the statute of limitations—was facially unconstitutional. A majority of the trial court held that the SAFE Child Act violated due process rights protected by the “Law of the Land” clause in Article I, Section 19 of the North Carolina Constitution. *See* 2019 N.C. Sess. Laws 1231, 1234, ch. 245, sec. 4.2.(b) (“Effective from January 1, 2020, until December 31, 2021, this section revives any civil action for child sexual abuse otherwise time-barred under G.S. 1-52 as it existed immediately before the enactment of this act.”); N.C. Const. art. I, § 19 (“No person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land.”). Plaintiff and Intervenor State of North Carolina appeal that ruling on the same fundamental arguments presented in

McKinney.¹ Because we agree with Appellants that the North Carolina Constitution does not prohibit the General Assembly from reviving Plaintiff's civil claims under the SAFE Child Act as set forth in *McKinney*, we reverse and remand the trial court's order for further proceedings not inconsistent with this opinion.

I. FACTUAL AND PROCEDURAL HISTORY

A. Underlying Abuse of Plaintiff

The allegations of the complaint, taken as true for purposes of review at the 12(b)(6) stage, establish the following:

Plaintiff met Defendant Michael Todd Pegram, a firefighter with Defendant Piney Grove Volunteer Fire and Rescue Department, Inc. ("PGFD"), when Plaintiff was a child enrolled in afterschool and summer camp programs with the Kernersville Family YMCA. Mr. Pegram used his position to manipulate Plaintiff and his family to gain their trust. Mr. Pegram then took Plaintiff to PGFD buildings to watch pornography together and, on at least two occasions, sexually assaulted Plaintiff.

Mr. Pegram's abuse caused Plaintiff to develop behavioral and psychological issues, resulting in a psychiatrist's recommendation that he be admitted to Charter Behavioral Health Hospital. Plaintiff suffered from substance abuse and posttraumatic stress disorder as a result of Mr. Pegram's unlawful acts. The illegality of Mr. Pegram's conduct was firmly established when he pleaded guilty on 26 June

¹ Appellate counsel for the plaintiffs and the State in *McKinney* are the same here.

2019 to five counts of first-degree sex offense, one count of attempted first-degree sex offense, one count of statutory sex offense with a child, and 21 counts of taking indecent liberties with a child.

B. Plaintiff's Claims and the SAFE Child Act

Plaintiff turned 18 in April of 2000; thus, under the applicable statute of limitations, N.C. Gen. Stat. § 1-52 (2003), Plaintiff had until April 2003 to bring suit for any personal injury and related tort claims accrued during his childhood. *See* N.C. Gen. Stat. § 1-17 (2003) (providing that persons under the age of eighteen may generally pursue claims “within the time limited in this Subchapter” upon reaching the age of majority). Plaintiff did not file suit against Mr. Pegram or PGFD before April 2003.

In the 2000s, 2010s, and early 2020s—and largely after Plaintiff's tort claims had expired—scientific research into childhood sexual trauma solidified around two key facts: (1) victims of childhood sexual abuse frequently delayed disclosure of their trauma well into adulthood; and (2) the abuse frequently resulted in lifelong injury. *See McKinney*, ___ N.C. App. at ___, ___ S.E.2d at ___, slip op. at 6-7 (detailing scientific research from the late 1990s to 2021 in the area of childhood sexual trauma). Legislatures across the country responded to these scientific developments by, among other actions, enacting statutes reviving stale civil claims for child sexual abuse that had previously expired under the applicable statutes of limitation. *Id.* at ___ n.1, ___ S.E.2d at ___ n.1, slip op. at 6 n.1.

North Carolina was no different and, in 2019, our General Assembly unanimously passed—with the Governor promptly signing—the SAFE Child Act. 2019 N.C. Sess. Laws 1231, 1238, ch. 245, sec. 9.(c). Among its provisions was a “Revival Window,” which states, “[e]ffective from January 1, 2020, until December 31, 2021, this section revives any civil action for child sexual abuse otherwise time-barred under G.S. 1-52 as it existed immediately before the enactment of this act.” *Id.*, 1234, ch. 245, sec. 4.2.(b). The SAFE Child Act also amended the relevant statute of limitations to provide a “Criminal Conviction Window,” stating that “a plaintiff may file a civil action within two years of the date of a criminal conviction for a related felony sexual offense against a defendant for claims related to sexual abuse suffered while the plaintiff was under 18 years of age.” N.C. Gen. Stat. § 1-17(e) (2019).

C. Plaintiff’s Suit and PGFD’s Facial Constitutional Challenge

In reliance on the Revival Window and Criminal Conviction Window in the SAFE Child Act, Plaintiff filed suit against Mr. Pegram² and PGFD on 4 March 2020 in Forsyth County Superior Court for: (1) assault/battery; (2) negligent hiring, retention and supervision; (3) negligent infliction of emotional distress; (4) intentional infliction of emotional distress; and (5) punitive damages. PGFD subsequently moved to dismiss Plaintiff’s complaint under Rule 12(b)(6), asserting that the relevant provisions of the SAFE Child Act were unconstitutional. The trial

² Mr. Pegram never appeared in the action and was subsequently voluntarily dismissed without prejudice. We therefore omit him from further discussion in this opinion.

court responded to PGFD's motion to dismiss by transferring its constitutional challenges to a three-judge panel in Wake County under N.C. Gen. Stat. § 1-267.1 (2019) and Rule 42(b)(4) of the North Carolina Rules of Civil Procedure.

Chief Justice Paul Newby of the Supreme Court of North Carolina appointed Superior Court Judges Martin B. McGee, R. Gregory Horne, and Imelda J. Pate to hear PGFD's constitutional challenges pursuant to N.C. Gen. Stat. § 1-267.1.³ Shortly after the panel's appointment, the State filed a motion to intervene in defense of the SAFE Child Act under N.C. Gen. Stat. §§ 1-260, 114-2(1) (2021), and Rule 24(a)(1) of the North Carolina Rules of Civil Procedure. The panel unanimously granted the State's motion.

The three-judge panel heard PGFD's motion to dismiss on 21 October 2021, the same date as the hearing held in *McKinney*. ___ N.C. App. at ___, ___ S.E.2d at ___, slip op. at 8. After taking the matter under advisement, the panel issued a divided order dismissing Plaintiff's complaint alongside its order in *McKinney*. The majority first addressed the Criminal Conviction Window, ultimately concluding that, because the Criminal Conviction Window is not unconstitutional in all circumstances, PGFD's facial challenge to the statute failed. *See, e.g., State v. Thompson*, 349 N.C. 483, 491, 508 S.E.2d 277, 282 (1998) ("An individual challenging the facial constitutionality of

³ Chief Justice Newby appointed this same panel to hear arguments in *McKinney*. ___ N.C. App. at ___, ___ S.E.2d at ___, slip op. at 8.

a legislative act must establish that no set of circumstances exists under which the act would be valid.” (cleaned up)).

As for PGFD’s facial challenge to the Revival Window, and consistent with its ruling in *McKinney*, ___ N.C. App. at ___, ___ S.E.2d at ___, slip op. at 8-9, the majority concluded that provision of the SAFE Child Act was unconstitutional. Repeating verbatim its analysis from *McKinney*, the majority concluded, based on *Wilkes County v. Forester*, 204 N.C. 163, 167 S.E. 691 (1933), and related caselaw, that expiration of a statute of limitations creates a vested right of the defendant that may not be disturbed under the Law of the Land Clause in Article I, Section 19 of the North Carolina Constitution. As a result, the majority declared the Revival Window void as facially unconstitutional and dismissed Plaintiff’s complaint as falling outside the applicable statute of limitations.

Judge McGee wrote separately, concurring in the majority’s rejection of the facial challenge to the Criminal Conviction Window but respectfully dissenting from the majority’s conclusion that the Revival Window was facially unconstitutional. Judge McGee would have rejected that challenge by PGFD for the same reasons discussed in his dissent in *McKinney*: (1) the text and history of the North Carolina Constitution, along with historical precedents interpreting it, did not establish the Revival Window’s unconstitutionality beyond a reasonable doubt; and (2) the Revival Window passed both rational basis review and strict scrutiny. *See id.* at ___, ___ S.E.2d at ___, slip op. at 9-11 (discussing Judge McGee’s dissent in detail).

Plaintiff and the State subsequently timely appealed from the majority's order.⁴

II. ANALYSIS

Plaintiff's and the State's appeal presents the same dispositive constitutional and legal issues raised and reviewed in *McKinney*. Our rationale and holding in *McKinney* are thus controlling here:

[A] party challenging the facial constitutionality of a statute is faced with a particularly heavy burden: "a claim that a law is unconstitutional must surmount the high bar imposed by the presumption of constitutionality and meet the highest quantum of proof, a showing that a statute is unconstitutional beyond a reasonable doubt." *Harper*, ___ N.C. at ___, 886 S.E.2d at 414-15 (citation omitted). On review of the text of the North Carolina Constitution, its history, and our jurisprudence interpreting it, we hold that [PGFD] has failed to show beyond a reasonable doubt that an express provision of that supreme document prohibits revivals of statutes of limitation. Similarly, we hold that, under even the highest level of scrutiny, the SAFE Child Act's Revival Window passes constitutional muster. The divided order of the three-judge panel reaching the contrary conclusion is reversed, and this matter is remanded for further proceedings not inconsistent with this opinion.

McKinney, ___ N.C. App. at ___, ___ S.E.2d at ___, slip op. at 45-46.

Notwithstanding the constitutionality of the Revival Window, PGFD also asks us to decide the constitutionality of the Criminal Conviction Window as applied to

⁴ Unlike in *McKinney*, this action is on direct appeal to this Court without any intervening appellate history.

PGFD “to the extent the Conviction Window purports to revive Plaintiff’s claims against Defendant[.]” That argument was not presented to or resolved by the panel below, and PGFD has not cross-appealed the unanimous portion of the order rejecting a facial challenge to the Criminal Conviction Window. In any event, our resolution of this appeal under *McKinney* obviates the issue as a practical matter; Plaintiff’s right of action is revived under the Revival Window without running afoul of the North Carolina Constitution, is thus not barred by the applicable statute of limitations, and Plaintiff need not rely on the Criminal Conviction Window to bring suit. Because the question of the constitutionality of the Criminal Conviction Window as applied to PGFD is of no practical import, we do not address this moot issue. *See Roberts v. Madison County Realtors Assn.*, 344 N.C. 394, 398-99, 474 S.E.2d 783, 787 (1996) (“A case is ‘moot’ when a determination is sought on a matter which, when rendered, cannot have any practical effect on the existing controversy.” (citation omitted)).

III. CONCLUSION

For the foregoing reasons, the trial court’s order dismissing Plaintiff’s suit on the basis of the Revival Window’s unconstitutionality is reversed and the matter remand for further proceedings not inconsistent with this opinion.

REVERSED AND REMANDED.

Judge GORE concurs in result only.

Judge CARPENTER dissents by separate opinion.

TAYLOR V. PINEY GROVE VOL. FIRE AND RESCUE DEPT.

Opinion of the Court

Report per Rule 30(e).

No. COA22-259 – *Taylor v. Piney Grove Vol. Fire and Rescue Dept.*

CARPENTER, Judge, dissenting.

I respectfully dissent from the Majority's opinion. For the same reasons I detailed in my dissent in *McKinney v. Goins*, COA22-261, ___ N.C. App. ___, ___ S.E.2d ___ (2023), filed concurrently with this opinion, I believe the Revival Window is unconstitutional. In short, like the majority of the panel below, I believe *Wilkes County v. Forester* controls this case. 204 N.C. 163, 170, 167 S.E. 691, 695 (1933). Therefore, I would affirm the majority of the panel below, and I respectfully dissent.