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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

TERRY QUARRY et al.,

Plaintiffs and Appellants,

v.

DOE 1,

Defendant and Respondent.

A120048

(Alameda County
Super. Ct. No. HG07313640)

This matter comes to us on remand from the California Supreme Court with directions to take further action consistent with that court’s opinion in *Quarry v. Doe 1* (2012) 53 Cal.4th 945 (*Quarry*). In our earlier opinion, we concluded that plaintiffs’ causes of action against Doe 1 (the Bishop),¹ alleging that plaintiffs suffered psychological injuries caused by childhood sexual abuse by a Catholic priest, were not barred by the limitations period of Code of Civil Procedure,² section 340.1, subdivision (a) because they did not discover the cause of their injuries until 2006. The Supreme

¹ We recognize that subdivision (m) of Code of Civil Procedure section 340.1 prohibits the naming of a defendant in an action, such as this one, which is subject to subdivision (g), until a court so orders, pursuant to subdivisions (n) and (o). In this case, however, the defendant Bishop, as a corporation sole, has filed pleadings in the public record identifying himself as the defendant sued as Doe 1. Because the identity of Doe 1 is now public, and because our discussion would make little sense if we did not provide some means of identifying the *type* of defendant being sued, we refer to defendant Doe 1 as “the Bishop.”

² Unless otherwise indicated, all further statutory references are to the Code of Civil Procedure.

Court reversed, holding that plaintiffs' claims were barred because they did not bring their action within the one-year revival period prescribed by the 2002 amendment to section 340.1. (*Quarry, supra*, 53 Cal.4th at p. 952.) "When, in 2002, the Legislature made a narrow exception to the age 26 cutoff for a subcategory of third party defendants, it carefully specified what should happen to any claim that had lapsed when the plaintiff reached the age of 26; namely, such claims could be brought, but only during the one-year revival period [in 2003]." (*Id.* at p. 983; § 340.1, subd. (c).) The Supreme Court also rejected plaintiffs' claim that common law delayed discovery principles survive section 340.1. (*Id.* at pp. 983-984.) The Supreme Court, however, did not decide whether plaintiffs should be permitted to proceed against the Bishop on a vicarious liability theory. (*Id.* at p. 990, fn. 23.) We, therefore, must decide whether the longer statute of limitations applicable to the perpetrator can be applied to the employer by virtue of respondeat superior. After considering the supplemental briefs filed by the parties, and having reconsidered the cause in light of *Quarry*, we affirm the judgment.

DISCUSSION

The controlling law is found in section 340.1, subdivisions (a) and (b) which provide: "In an action for recovery of damages suffered as a result of childhood sexual abuse, the time for commencement of the action shall be within eight years of the date the plaintiff attains the age of majority or within three years of the date the plaintiff discovers or reasonably should have discovered that psychological injury or illness occurring after the age of majority was caused by the sexual abuse, whichever period expires later, for any of the following actions: [¶] (1) An action against any person for committing an act of childhood sexual abuse. [¶] (2) An action for liability against any person or entity who owed a duty of care to the plaintiff, where a wrongful or negligent act by that person or entity was a legal cause of the childhood sexual abuse which resulted in the injury to the plaintiff. [¶] (3) An action for liability against any person or entity where an intentional act by that person or entity was a legal cause of the childhood sexual abuse which resulted in the injury to the plaintiff. [¶] (b) (1) No action described in paragraph (2) or (3) of subdivision (a) may be commenced on or after the plaintiff's 26th birthday."

Plaintiffs contend that the Bishop can be held liable for the sexual abuse they suffered under a vicarious liability theory based on the language in section 340.1, subdivision (a)(1), permitting an action against any *person* for committing childhood sexual abuse. They argue that the Bishop is a corporation, and hence, a “person,” as defined by the code, citing section 17, subdivision (a) (“ . . . the word ‘person’ [used in this code] includes a corporation as well as a natural person. . . .”). We disagree.

Following the Supreme Court’s decision in this case, the Sixth District decided the case of *Boy Scouts of America National Foundation v. Superior Court* (2012) 206 Cal.App.4th 428 (*Boy Scouts*) which expressly rejected plaintiffs’ contention. There, the court considered whether the plaintiffs’ cause of action alleging vicarious liability for intentional infliction of emotional distress based on the Boy Scouts’ criminal child procurement proscribed by Penal Code section 266j was within the limitations period of section 340.1, subdivision (a)(1). (*Id.* at pp. 435-436, 438-439.) Construing the language of section 340.1, the court concluded that the Legislature would not have used the terms, “person” or “entity” in subdivisions (a)(2) and (a)(3) and only the word, “person,” in subdivision (a)(1) if it intended to include both persons and entities within section 340.1, subdivision (a)(1). (*Id.* at p. 445.) “[P]laintiffs’ interpretation would require us to insert the word ‘entity’ in section 340.1, subdivision (a)(1)” in violation of the “ ‘ ‘cardinal rule of statutory construction that . . . a court must not ‘insert what has been omitted’ from a statute.” [Citation.]’ ” (*Id.* at p. 446.) Thus, “when the Legislature omitted the word ‘entity’ from subdivision (a)(1) of section 340.1, and provided the 26th birthday cutoff in subdivision (b)(1) for an action against an entity for negligent and intentional wrongdoing, the Legislature intended that *no claim brought against an entity defendant* under section 340.1 (other than a claim under subd. (b)(2)) may be commenced after the plaintiff’s 26th birthday.” (*Id.* at p. 445, italics added.)

The *Boy Scouts* court further concluded that its holding was supported by the legislative history of section 340.1: “The separate references to an ‘entity’ and a ‘person’ in the legislative history show that in 1998 the Legislature intended to distinguish an entity from a person, and to apply the 26th birthday cutoff to an action against a third

party defendant such as the Boy Scouts, when it added subdivision (a)(1)-(3) and former subdivision (b) (now (b)(1)) to section 340.1. . . . ‘The Legislature made an obvious choice to use language for claims against third party defendants that differed markedly from the language it still used for claims against direct perpetrators. [Citation.]’ ” (*Id.* at p. 448.) The court found no indication that the Legislature intended the word, “person” to mean any perpetrator other than a natural person. (*Ibid.*) We agree with the reasoning of *Boy Scouts* and therefore follow it. Accordingly, plaintiffs’ claims against the Bishop under a vicarious liability theory fail, and are time-barred.

Plaintiffs challenge the court’s conclusion in *Boy Scouts* as impermissibly limiting the term “person” to human beings. They argue that section 16 “prohibits courts from altering the meaning of terms defined in section 17” because section 16 provides, “[w]ords . . . are construed according to the context and the approved usage of the language; but technical words . . . and such others as . . . are defined in [section 17], are to be construed according to such . . . definition.” Section 17 defines “person” to include “a corporation.” Therefore, plaintiffs argue, the court had no authority to limit the term “person” in section 340.1(a)(1) to human beings.

Plaintiffs’ contention is at odds with *Diamond View Limited v. Herz* (1986) 180 Cal.App.3d 612 (*Diamond View*). There, the court addressed this very question in a slightly different, but entirely analogous context. The court was asked to decide whether a limited partnership could be a “person” within the meaning of section 527.6, which authorizes a “ ‘person who has suffered harassment’ to obtain a temporary restraining order and injunction against the harassing conduct.” (*Id.* at pp. 614, 616.) Noting that the “notoriously ambiguous term ‘person’ has long plagued the law,” resulting in numerous statutory definitions of the term (including § 17), the court concluded that the plain meaning of a substantive statute overrides a general definition. (*Id.* at pp. 616-619.) “In construing a statute we are enjoined by that same code to ascertain the Legislature’s intent. ‘In the construction of a statute the intention of the [L]egislature . . . is to be pursued, if possible; . . .’ (§ 1859.) Consistent with this injunction, the Supreme Court has repeatedly held that the ‘ ‘fundamental rule of statutory construction is that the court

should ascertain the intent of the Legislature so as to effectuate the purposes of the law.” In determining such intent, the court must first look to the words of the statute.’

[Citation.] The words of a statute must be read in context, bearing in mind the nature and obvious purpose of the statute. [Citation.] Implicit in this overriding requirement that the words of a statute are to be read in context is that the preliminary definition contained in section 17 is superseded when it obviously conflicts with the Legislature’s subsequent use of the term in a different statute.” (*Diamond View, supra*, 180 Cal.App.3d at pp. 617-618, fns. omitted.) Here, we have concluded that the Legislature intended to exclude *all entities* from the definition of “person” in subdivision (a)(1) of section 340.1, and accordingly, sections 16 and 17 do not control.

Plaintiffs assail the reasoning of *Diamond View* as violating the mandates of sections 16 and 17. But nothing in the language of sections 16 and 17 suggests any immutable requirement that the terms defined in section 17 must *always* be applied—even where the statutory context dictates a different meaning—and plaintiffs have proffered no authority for this proposition. Plaintiffs also seek to distinguish *Diamond View*, contending the court “merely declined to expand the definition of person [in section 527.6] to include a limited partnership,” but it did not “contract[] the definition of the term person by excluding a corporation.” In fact, the court’s holding was quite broad: “The principal question in this case is whether *a business entity* is a person within the meaning of [section 527.6]. We hold that it is not.” (*Diamond View, supra*, 180 Cal.App.3d at p. 614.) (Italics added.) In any event, the scope of a holding does not limit the application of a decision’s reasoning. The *Diamond View* court reasoned that “[t]he words of a statute must be read in context, bearing in mind the nature and obvious purpose of the statute,” and that “[i]mplicit in this overriding requirement . . . is that the preliminary definition contained in section 17 is superseded when it obviously conflicts with the Legislature’s subsequent use of the term. . . .” (*Diamond View, supra*, 180 Cal.App.3d at pp. 617-618, fn. omitted.) We think this conclusion is correct, and embrace its ratio decidendi.

Plaintiffs also attempt to distinguish the decision in *Boy Scouts* from this case. They argue that, in *Boy Scouts*, the plaintiffs alleged the Boy Scouts entity was the actual perpetrator of the abuse because they engaged in criminal child procurement under Penal Code section 266j, whereas here, plaintiffs are alleging the Bishop is merely vicariously liable for its employee's abuse. This distinction is important, plaintiffs argue, because the statute provides for a specific period within which suit can be brought against entities that act negligently or intentionally, but if an entity is not alleged to have engaged in an intentional or negligent act, those provisions do not apply. On this basis, plaintiffs assert that the only available statute of limitations for suing an entity under a vicarious liability theory must therefore be the same as the statute of limitations for suing its employee, a "person." According to plaintiffs, "[i]f *Boy Scouts* was blindly followed . . . the result would be to vitiate common law theories of liability based on respondeat superior and ratification by ensuring that there is no possible period of time within which to timely commence such a claim."

Stripped to its essence, plaintiffs' argument is that an innocent employer, sued solely under respondeat superior principles, should be subjected to the same delayed discovery statute of limitations as the perpetrator, while employers whose negligent or intentional acts were a legal cause of the abuse are protected by the more restrictive 26-years of age limitation. This result would be irrational. Moreover, it ignores the larger point that a third party is not subject to any of the extended statutes of limitations if liability is premised solely on respondeat superior principles. As explained in the Assembly Bill Analysis, "[i]n an attempt to apply the extended statute of limitations to employers and other third parties, while maintaining the purpose behind the statute of limitations, the bill has been amended *to require at least a minimum relationship between the third party's action or inaction and the abuse.*" (Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of Assem. Bill No. 1651 (1997-1998 Reg. Sess.) as amended Aug. 19, 1998, p. 2, italics added.) The Legislature thus expressed its intent that the extended statute of limitations would not apply to third parties, such as

employers, under a purely vicarious liability theory.³ Some “wrongful,” “negligent,” or “intentional” action or inaction that “was a legal cause of the childhood sexual abuse” must be alleged for the extended limitations period to apply. (§ 340.1, subs. (a)(2) & (3).)

Finally, plaintiffs request leave to amend their complaint to assert a cause of action alleging sexual harassment. Relying on *C.R. v. Tenet Healthcare Corp.* (2009) 169 Cal.App.4th 1094, they argue that a corporation, under vicarious liability principles, can be held liable for the sexual abuse under a theory of sexual harassment pursuant to Civil Code section 51.9. We decline plaintiffs’ request. Civil Code section 51.9 was not enacted until 1994, after the alleged acts of sexual abuse in this case occurred. (See Civ. Code, § 3 [code sections are not retroactive unless expressly so declared].)

DISPOSITION

The judgment is affirmed.

³ This does not preclude an action against an employer of the perpetrator of a sexual assault committed in the course and scope of employment within the otherwise applicable limitations periods. (Cf. *Lisa M. v. Henry Mayo Newhall Memorial Hospital* (1995) 12 Cal.4th 291.)

RIVERA, J.

We concur:

RUVOLO, P.J.

SEPULVEDA, J.*

* Retired Associate Justice of the Court of Appeal, First Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.