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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

CAROLINE MASON,

Plaintiff and Appellant,

v.

SYNOD OF THE PACIFIC et al.,

Defendants and Respondents.

A143620

(Alameda County  
Super. Ct. No. RG13705573)

Plaintiff Caroline Mason (appellant) appeals from the trial court’s judgment following its order sustaining, without leave to amend, demurrers filed by defendants Synod of the Pacific (Synod) and The Presbytery of San Francisco (the Presbytery) (jointly, respondents). We affirm on the ground that appellant’s claims are barred by the applicable statutes of limitations.

**BACKGROUND**

In 1996, appellant commenced the Presbytery’s process to become a minister. Appellant’s candidacy was terminated in March 2006. Subsequently, appellant requested that the Presbytery provide her with her candidacy file, but it refused. On August 2, 2010, the Presbytery refused in writing to provide appellant the file.

In May 2011, appellant filed a lawsuit against the Presbytery alleging a claim for breach of contract. Among other things, she alleged the Presbytery’s refusal to provide her candidacy file was a breach of contract. The Presbytery demurred to the complaint

and appellant filed a first amended complaint (2011 amended complaint) prior to the trial court's ruling on the demurrer. The 2011 amended complaint contained two causes of action for breach of contract, both related to her candidacy file.

The Presbytery again demurred, and the trial court sustained the demurrer without leave to amend. The court concluded appellant "failed to allege sufficient facts that clearly and specifically state a cognizable claim(s) against [the Presbytery] or a claim that is not barred by the 'ecclesiastical' rule." The court entered judgment in the Presbytery's favor, and appellant appealed to this court.

In June 2013, this court affirmed. (*Mason v. The Presbytery of San Francisco* (June, 25, 2013) [nonpub. opn.] (*Mason I*.) This court held appellant's contract claims were barred by the "'rule of deference to ecclesiastical decisions.'" (*Id.* at p. 2.) This court rejected appellant's request to further amend her 2011 amended complaint to add civil rights and tort claims, because she failed to identify those causes of action and set forth "what allegations could state a claim for relief without running afoul of the ecclesiastical deference rule." (*Id.* at p. 7.)

In December 2013, appellant filed the present lawsuit against respondents (2013 action) based on allegations that an official of the Presbytery "inappropriately touched" her, that she filed a confidential complaint with Synod, that Synod shared the accusation with the Presbytery, and that the Presbytery terminated appellant from the ministry program in retaliation. The 2013 complaint alleges a cause of action for intentional infliction of emotional distress, based on Synod's communication of the complaint of inappropriate touching to the Presbytery and based on the Presbytery's alleged retaliatory termination of appellant from the program; a cause of action for negligence based on Synod's failure to investigate the complaint and the Presbytery's failure to discuss the complaint with appellant before her termination from the program; causes of action for intentional misrepresentation, fraud, and breach of confidence, based on Synod's false representation that the complaint would be kept confidential and the Presbytery's misrepresentation of the basis for appellant's termination; a cause of action for defamation, based on allegations that respondents told others that appellant made a false

accusation of sexual misconduct; and a cause of action for invasion of privacy, based on Synod's sharing of appellant's complaint with the Presbytery and the Presbytery's sharing of the complaint with others.

In January 2014, the Presbytery and Synod demurred to the 2013 complaint. The trial court sustained the demurrers, concluding appellant's 2013 action is barred by the doctrine of res judicata, by the ecclesiastical deference rule, and by the applicable statutes of limitations. The court entered judgment on July 14, 2014 dismissing the case in its entirety. The court granted Synod costs in the amount of \$1,985.14 and granted the Presbytery costs in the amount of \$435. This appeal followed.

## DISCUSSION

Appellant contends the trial court erred in granting respondents' demurrers without leave to amend. We affirm.

### I. *Standard of Review*

"We independently review the ruling on a demurrer and determine de novo whether the complaint alleges facts sufficient to state a cause of action. [Citation.] We assume the truth of the properly pleaded factual allegations, facts that reasonably can be inferred from those expressly pleaded, and matters of which judicial notice has been taken. [Citation.] We construe the pleading in a reasonable manner and read the allegations in context. [Citation.] We affirm the judgment if it is correct on any ground stated in the demurrer, regardless of the trial court's stated reasons. [Citation.]" (*Fremont Indemnity Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 111.)

### II. *The Statutes of Limitations*

The trial court concluded all of appellant's claims are barred by the applicable statutes of limitations. Appellant does not dispute respondents' assertions that her defamation claim is governed by a one-year statute of limitations; her claims for the intentional infliction of emotional distress, intentional misrepresentation, negligence, invasion of privacy, and breach of confidence are governed by a two-year statute of

limitations; and her fraud claim is governed by a three-year statute of limitations. (See §§ 335.1; 338, subd. (d); & 340, subd. (c).)<sup>1</sup>

“Where a demurrer raises the bar of the applicable statute of limitations, the courts assess whether ‘ “the complaint shows on its face that the statute bars the action.” ’ [Citation.] Such a defect ‘ “must clearly and affirmatively appear on the face of the complaint; it is not enough that the complaint shows merely that the action may be barred.” ’ ” (*Czajkowski v. Haskell & White, LLP* (2012) 208 Cal.App.4th 166, 174 (*Czajkowski*)). Synod asserts, “[a]ll of [appellant’s] claims arose when her process to become a minister was terminated in 2006 and the time to challenge that termination has long since come and gone.” The Presbytery makes the same assertion. We agree the claims—largely based on Synod sharing her complaint of sexual misconduct with the Presbytery, and the Presbytery terminating her from the ministry program in retaliation for the complaint—arose at that time and, therefore, appellant’s claims are barred by the applicable statutes of limitations on the face of the complaint.

Appellant contends her action is timely under the discovery rule. “Generally speaking, a cause of action accrues at ‘the time when the cause of action is complete with all of its elements.’ [Citations.] An important exception to the general rule of accrual is the ‘discovery rule,’ which postpones accrual of a cause of action until the plaintiff discovers, or has reason to discover, the cause of action.” (*Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 806–807 (*Fox*)). “[W]hen a plaintiff relies on the discovery rule or allegations of fraudulent concealment, as excuses for an apparently belated filing of a complaint, ‘the burden of pleading and proving belated discovery of a cause of action falls on the plaintiff.’ ” (*Czajkowski, supra*, 208 Cal.App.4th at p. 174; see also *April Enterprises, Inc. v. KTTV* (1983) 147 Cal.App.3d 805, 833 [“ ‘It is plaintiff’s burden to establish “facts showing that he was not negligent in failing to make the discovery sooner and that he had no actual or presumptive knowledge of facts sufficient to put him on

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<sup>1</sup> All undesignated section references are to the Code of Civil Procedure. To the extent appellant’s claim for intentional misrepresentation is equivalent to a cause of action for fraud, the three year statute of limitations applies. (§ 338, subd. (d).)

inquiry.” ’ ’’].) “[T]he plaintiff claiming delayed discovery of the facts constituting the cause of action has the burden of setting forth pleaded facts to show ‘ ‘(1) the time and manner of discovery and (2) the inability to have made earlier discovery despite reasonable diligence. The burden is on the plaintiff to show diligence, and conclusory allegations will not withstand demurrer.” ’ ’’ (Czajkowski, at p. 175; see also Fox, at p. 808.)

No such allegations appear in appellant’s 2013 complaint and appellant does not suggest on appeal how her complaint could be amended to satisfy her pleading obligation. It is clear appellant knew about the grounds underlying her present claims at the time of the filing of the 2011 amended complaint, dated October 14, 2011. The 2011 amended complaint alleges Synod shared the misconduct complaint with the Presbytery and the Presbytery terminated appellant in retaliation. The 2011 amended complaint alleged, “During the ministerial process, [appellant] was touched inappropriately by one of [the Presbytery’s] representatives. [Appellant] immediately reported this to her pastor and to a chaplain. However, they discouraged [appellant] from pursuing the charge suggesting that [appellant’s] ministerial process might be threatened. At first [appellant] heeded their word but in time [appellant] gained courage and contacted [the Presbytery’s] higher governing body, [Synod], who advised [appellant] to put the complaint into writing. When [appellant] emailed the complaint to the Synod office the highest executive told her that the Synod office could do nothing and that [appellant] first had to pursue it with [the Presbytery]. [Appellant] then informed her pastor and others of her wish to pursue the matter. However, no action went forward.”

The 2011 amended complaint then proceeded to connect her complaint of sexual misconduct to her termination. Appellant alleged, “Now appellant has been made aware that constitutionally speaking [Synod] was mandated to send this complaint to [the Presbytery] . . . when [appellant] submitted her charges in writing to [Synod] the charges should have been sent to [the Presbytery] and [Synod] should have commenced an investigation. . . . It is [appellant’s] belief that without informing [appellant], [Synod] did indeed send the charges to [the Presbytery] who in turn hid the fact of receiving those

charges and instead of proceeding with an investigation of [appellant's] charges, terminated [appellant] instead.”<sup>2</sup> Appellant further alleged, “Shortly after [appellant] submitted these charges to [Synod], [the Presbytery] moved quickly to terminate [appellant]. It is [appellant's] belief that [the Presbytery] terminated her candidacy to avoid investigation into this matter as a way of protecting an officer of their church.”

Thus, there is no factual dispute that no later than October 14, 2011, appellant believed Synod had shared her accusation of sexual misconduct with the Presbytery and believed the Presbytery had terminated her from the ministry program in retaliation.<sup>3</sup> Further, in order to justify application of the discovery rule, appellant bears the burden of pleading facts showing she could not have “made earlier discovery despite reasonable diligence.” (*Czajkowski, supra*, 208 Cal.App.4th at p. 174.) She fails to do so. In particular, appellant does not allege when she discovered the governing document referenced in the 2011 amended complaint or that she could not have discovered that document shortly after her termination in 2006. She asserts broadly that she “placed many telephone calls to members of Respondents’ organization, but she received these response[s]: ‘I don’t want to get involved’ or ‘I don’t want to incur the Presbytery’s wrath. You see how they treated you.’ Still others would simply shun Appellant.” Such “conclusory allegations” are inadequate to satisfy appellant’s pleading obligation. (*Czajkowski*, at p. 174.) Appellant does not identify who she contacted at the Presbytery or at Synod, and she does not set forth the questions she asked the individuals. Among other things, she does not even suggest she could amend her complaint to allege she

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<sup>2</sup> The allegations in the October 2011 complaint are based on what is alleged to be a governing document of Synod providing, “When a member is accused of an offense by a written statement presented to a governing body other than the one having jurisdiction over the member, it shall be the duty of the clerk . . . to submit the written statement to the clerk of the session or the stated clerk of the presbytery having jurisdiction over the member.”

<sup>3</sup> The trial court could properly take judicial notice of appellant’s 2011 amended complaint. (Evid. Code § 452, subd. (d).) We reject appellant’s suggestion that consideration of her allegations in that complaint constituted resolution of a disputed factual issue.

asked an appropriate representative of Synod whether her complaint of misconduct had been shared with the Presbytery. Neither does appellant allege any specific conduct by respondents that prevented her from discovering that Synod shared her misconduct complaint.

Appellant admits she had “a belief (suspicion) that Synod may have given her sexual assault complaint to Presbytery” but no tangible proof. She alleges in her 2013 complaint she was provided “no real reason” for her termination and she “had her suspicions” it was related to her accusation of sexual misconduct. Appellant’s suspicions put her on “inquiry notice” of her causes of action against respondents. (*Fox, supra*, 35 Cal.4th at pp. 807–808; cf. *E-Fab, Inc. v. Accountants, Inc. Services*. (2007) 153 Cal.App.4th 1308, 1325 [emphasizing “lack of any basis for suspicion”].) As the California Supreme Court explained, “in order to employ the discovery rule to delay accrual of a cause of action, a potential plaintiff who suspects that an injury has been wrongfully caused must conduct a reasonable investigation of all potential causes of that injury. If such an investigation would have disclosed a factual basis for a cause of action, the statute of limitations begins to run on that cause of action when the investigation would have brought such information to light. In order to adequately allege facts supporting a theory of delayed discovery, the plaintiff must plead that, despite diligent investigation of the circumstances of the injury, he or she could not have reasonably discovered facts supporting the cause of action within the applicable statute of limitations period.” (*Fox*, at pp. 808–809.) Appellant provides no basis to conclude an inquiry into the possibility the Presbytery had been informed of her accusation would not have disclosed the communication to the Presbytery, either through discovery of the governing document referenced in the 2011 amended complaint or through some other source.

Because appellant failed to plead facts showing a basis for application of the discovery rule, and because appellant has not shown she can amend her complaint to comply with that pleading obligation, the trial court did not abuse its discretion in granting respondents’ demurrers and dismissing the 2013 complaint without leave to

amend.<sup>4</sup> (*Westamerica Bank v. City of Berkeley* (2011) 201 Cal.App.4th 598, 613–614 [“[The plaintiff] bears the burden of demonstrating that the trial court’s ruling—sustaining the demurrer without leave to amend—was an abuse of discretion. [Citation.] If the plaintiff does not proffer a proposed amendment, and does not advance on appeal any proposed allegations that will cure the defect or otherwise state a claim, the burden of proof has not been satisfied.”].)

### III. *The Trial Court Did Not Err in Denying Appellant’s Motion to Tax Costs*

Synod filed a memorandum of costs on July 9, 2014, and the trial court granted costs in the amount of \$1,985.14. The Presbytery filed a memorandum of costs on July 16, 2014, and the trial court granted costs in the amount of \$435. Appellant contends the trial court erred in denying her motion to tax costs because respondents’ memoranda of costs were untimely. Appellant has not shown error.

Under Rule 3.1700(a)(1) of the California Rules of Court,<sup>5</sup> “A prevailing party who claims costs must serve and file a memorandum of costs within 15 days after the date of mailing of the notice of entry of judgment or dismissal by the clerk under . . . section 664.5 or the date of service of written notice of entry of judgment or dismissal, or within 180 days after entry of judgment, whichever is first.” Section 664.5 “ ‘presumes’ that notice of entry of judgment will be served by the party submitting the order or judgment for entry.” (*Van Beurden Ins. Services, Inc. v. Customized Worldwide Weather Ins. Agency, Inc.* (1997) 15 Cal.4th 51, 63 (*Van Beurden*).) Thus, section 664.5, subdivision (a) provides, “the party submitting an order or judgment for entry shall prepare and mail a copy of the notice of entry of judgment to all parties who have appeared in the action or proceeding and shall file with the court the original notice of

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<sup>4</sup> Because the trial court properly granted the demurrers on the basis of the statute of limitations, we need not and do not consider whether the ruling may also be sustained on the basis of claim preclusion or collateral estoppel, or under the rule of ecclesiastical deference. Neither is it necessary to consider appellant’s contentions regarding her motion to vacate the judgment, because she has not shown the trial court’s decision was legally erroneous (§ 663) or void (§ 473, subd. (d)).

<sup>5</sup> All rules references are to the California Rules of Court.

entry of judgment together with the proof of service by mail.” Section 664.5, subdivision (b) requires the clerk of the court to mail notice of entry of judgment where the prevailing party is not represented by counsel. Section 664.5, subdivision (d) contains a broader provision for notice, providing that “*Upon order of the court in any action or special proceeding, the clerk shall mail notice of entry of any judgment or ruling, whether or not appealable.*” (Italics added.)

Appellant contends the superior court clerk’s June 20, 2014 mailing of the trial court’s “Ruling on Demurrers” triggered the 15 day time period under Rule 3.1700(a)(1). However, the trial court properly rejected that contention under the California Supreme Court’s interpretation of Section 664.5 in *Van Beurden, supra*, 15 Cal.4th 51. There, the Supreme Court held that a notice of entry of a judgment mailed by a clerk must affirmatively state that it was given “ ‘upon order by the court’ ” or “ ‘under section 664.5’ ” in order to “qualify as a notice of entry of judgment under” section 664.5. (*Van Beurden*, at p. 64; accord *Palmer v. GTE California, Inc.* (2003) 30 Cal.4th 1265, 1274.) The purpose of the rule is to avoid confusion about the triggering date for time limits—in that case, the time limit for ruling on a motion for a new trial. (*Van Beurden*, at pp. 57-58, 64.) Appellant does not contend a different rule applies to the court clerk’s mailing of the ruling on demurrers, which dismissed respondents from the case. Neither does appellant contend the clerk’s mailing *stated* it was on order of the court or under section 664.5. Accordingly, the June 20 mailing was not a notice of dismissal by the clerk under section 664.5 that triggered the 15 day period specified in Rule 3.1700(a)(1).

In any event, “time limitations pertaining to a memorandum of costs are not jurisdictional.” (*Haley v. Casa Del Rey Homeowners Assn.* (2007) 153 Cal.App.4th 863, 880.) For that proposition, *Haley* cited the decision in *Gunlock Corp. v. Walk on Water, Inc.* (1993) 15 Cal.App.4th 1301, 1304, which stated in reference to the rule of court relating to requests for attorney fees that the time limit specified is “ ‘not jurisdictional in character’ ” and that the trial court “ ‘has broad discretion in allowing relief from a late filing where . . . there is an absence of a showing of prejudice to the opposing party.’ ” The non-jurisdictional character of the 15-day limit is apparent in Rule 3.1700(b)(3),

which provides that the parties may agree to extend the filing period and that the trial court may extend the period up to 30 days absent an agreement. (See *Gunlock*, at p. 1304 [suggesting that similar provision in predecessor to Rule 3.1702 indicates time limit is not jurisdictional].) Here, the trial court recognized that the time for filing a memorandum of costs arguably ran from the June 20, 2014 mailing of the ruling on the demurrers. But the court ultimately decided, “[i]n light of the confusion in the record as to the date of dismissal,” the time for filing a memorandum of costs should run from the clerk’s July 14 mailing of notice of dismissal of the case in its entirety. Even assuming the 15-day period was actually triggered on June 20, appellant has not demonstrated that the trial court abused its discretion in permitting respondents to file late memoranda of costs, or that appellant was prejudiced by the trial court’s ruling.<sup>6</sup>

#### DISPOSITION

The trial court’s judgment is affirmed. Respondents are awarded their costs on appeal.

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<sup>6</sup> We need not and do not address the parties’ contentions regarding the applicability of the section 1013 extension for service by mail.

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SIMONS, J.

We concur.

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JONES, P.J.

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NEEDHAM, J.

(A143620)