IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS

ALEX WALKER, Plaintiff, v. THREE ANGELS BROADCASTING NETWORK, INC., and TOMMY SHELTON, Defendants.	)	No. 12-114-DRH/SCW Chief Judge David R. Herndon Magistrate Stephen C. Williams

3ABN'S REPLY TO PLAINTIFF'S RESPONSE TO ITS MOTION TO DISMISS

Defendant Three Angels Broadcasting Network, Inc. ("3ABN") submits this reply in support of its motion to dismiss plaintiff Alex Walker's Complaint pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6).[1] This brief addresses plaintiff's novel argument that the Court should graft a discovery accrual rule onto the Mann Act's[2] civil remedy limitations period. The discovery rule – a "bad wine of recent vintage"[3] – does not apply here as a matter of law. Further, plaintiff has alleged his abuse created "fear of imminent peril and sexual assault" which precludes application of the discovery rule on the facts of this case.

STATEMENT OF EXCEPTIONAL CIRCUMSTANCES

Pursuant to SDIL-LR 7.1(c) (requiring party filing a reply brief to demonstrate exceptional circumstances), 3ABN states as follows. Plaintiff's position that the Court should

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[1] This motion was previously briefed in the U.S. District Court for the Northern District of Illinois, including a reply brief responding to all of plaintiff's current arguments in opposition to the motion to dismiss. See Doc.18. The Court denied the motion to dismiss *without prejudice* because it granted 3ABN's motion to transfer venue to the Southern District. Doc.20.

[2] Plaintiff disputes 3ABN's labeling of Count IV as a "Mann Act" claim. But "Section 2423 evolved from the same legislative initiative as the Mann Act, and both are components of the same general legislative framework." United States v. Garcia-Lopez, 234 F.3d 217, 220 n.3 (5th Cir. 2000)). 3ABN adopts the nomenclature of the courts. See, e.g., United States v. Cole, 262 F.3d 704, 706 (8th Cir. 2001).

[3] TRW Inc. v. Andrews, 534 U.S. 19, 37 (2001) (Scalia, J., concurring).

recognize a "discovery rule" is an important and novel question upon which the Court should hear full briefing. Thus, exceptional circumstances justify this reply brief. Cf. Akins-Brakefield v. Philip Environmental Servs. Corp., 2010 WL 1963415, at *1 n.1 (S.D. Ill. May 17, 2010) (Herndon, C.J.) (permitting reply brief, in part, to address novel questions of law).

I. Count IV Is Time-Barred as a Matter of Law.

Plaintiff argues that his civil Mann Act claim is timely by invoking the "discovery rule," and does not attempt to argue that it is otherwise within the limitations period. (Pl.'s Opp'n 8.). 3ABN responds, first, that as a matter of statutory construction the civil Mann Act remedy's statute of limitations is not subject to a discovery rule. Second, 3ABN contends that a discovery rule does not apply because plaintiff has pleaded facts which preclude him from asserting it.

A. The Statute of Limitations for Count IV is Not Subject to a Discovery Rule.

1. Federal Claims Are Not Generally Subject to a Discovery Rule.

Plaintiff's argument that a discovery rule should apply to the Mann Act civil remedy limitations period begins with a sweeping statement that "the 'discovery rule' applies to federal causes of action." Plaintiff's primary authority is a 1980 decision of the Seventh Circuit arising under the Federal Tort Claims Act, holding that a discovery rule should apply to a suit against the government arising out of a latent workplace injury. See Stoleson v. United States, 629 F.2d 1265 (7th Cir. 1980). Plaintiff construes Stoleson to impose a general rule that the discovery rule applies in *all* federal law causes of action – a suggestion not found in the case itself.

The general rule is the opposite. The Supreme Court has stated: "We have repeatedly recognized that Congress legislates against the 'standard rule that the limitations period commences when the plaintiff has a complete and present cause of action.'" Graham County Soil & Water Conservation Dist. v. U.S. ex rel. Wilson, 545 U.S. 409, 418 (2005). See also TRW

Inc. v. Andrews, 534 U.S. 19, 28 (2001) (holding 9th Circuit erred by assuming "a general federal rule … that a federal statute of limitations begins to run when a party knows or has reason to know that she was injured."). Thus, "[t]his is unquestionably the traditional rule: Absent other indication, a statute of limitations begins to run at the time the plaintiff 'has the right to apply to the court for relief ....' ***"That a person entitled to an action has no knowledge of his right to sue, or of the facts out of which his right arises, does not postpone the period of limitation."" TRW Inc., 534 U.S. at 37 (Scalia, J., concurring) (citations omitted).

In view of this general rule, Congress's failure to include an express discovery rule in § 2255(b) means that it did not intend for such a rule to apply. Congress is presumed to know the relevant judicial precedents when it enacts statutes. Merck & Co., Inc. v. Reynolds, 130 S. Ct. 1784, 1795 (2010). The statute of limitations here, 18 U.S.C. § 2255(b) (2010), was enacted in 1986.[4] Pub.L. 99-500, Title I, § 101(b) [Title VII, § 703(a)], Oct. 18, 1986, 100 Stat. 1783-75. In 1986, there were just two federal causes of action with judicially-created discovery accrual rules: Fraud actions and actions for latent injury under the Federal Tort Claims Act. TRW, 534 U.S. at 37 (Scalia, J., concurring). Thus, Congress enacted § 2255(b) against a judicial background in which it knew a discovery rule would *not* be implied by the courts.

Further illustrating Congress's intention that § 2255(b) should *not* be subject to a discovery accrual rule is the fact that Congress frequently drafts limitations periods with express discovery rule features, but did not do so when enacting § 2255(b). E.g., 15 U.S.C. § 77m (domestic securities); 18 U.S.C. § 1030(g) (computer fraud); 28 U.S.C. § 1658(b) (generally applicable statute of limitations for federal law claims lacking an express limitations

[4] Congress enacted §2423 (criminalizing interstate travel for purposes of sex with minor) in 1994, Pub.L. 103-322, Title XVI, § 160001(g), 108 Stat. 2037, and granted a private enforcement action governed by § 2255(b) in 1998. Pub.L. 105-314, § 605.

period); 29 U.S.C. § 1451(f) (ERISA); 42 U.S.C. § 9612(d)(2) (CERCLA). Thus, if Congress enacts a statute of limitations without an express discovery accrual rule, it does not expect the courts to remedy the omission.

Plaintiff suggests that child sex abuse cases lend themselves to recognition of a discovery rule. As Justice Scalia said, "These cries, however, are properly directed not to us, but to Congress, whose job it is to decide how 'humane' legislation should be – or (to put the point less tendentiously) to strike the balance between remediation of all injuries and a policy of repose." 534 U.S. at 38. Section 2255(b) is not subject to an imputed discovery rule.

2. Section 2255(b) Should Not be Construed to Have a Discovery Rule.

In the absence of a judicial presumption in favor of the discovery rule, ordinary rules of statutory construction control. They compel the conclusion that the limitations period created by § 2255(b) does not commence upon plaintiff's subjective discovery of the causal connection between his alleged abuse and his alleged injuries. The limitations period is "six years after the right of action first accrues." 18 U.S.C. § 2255(b). In Rawlings v. Ray, 312 U.S. 96, 98 (1941), the Supreme Court construed the similar phrase "after the cause of action shall accrue." The court stated that the words "after the cause of action shall accrue" referred to "a complete and present cause of action," which was the phrase's "usual meaning." Id. Under this rule, "'[t]he cause of action accrues even though the full extent of the injury is not then known or predictable.'" Wallace v. Kato, 549 U.S. 384, 391 (2007) (quoting 1 C. Corman, Limitations of Actions, § 7.4.1, at 526-27 (1991)). The only reported decision analyzing the accrual of an action governed by §2255(b) concluded that "only if Plaintiff can show that Defendant violated any of the listed statutes within six years of the filing of this Complaint … is this matter within the statute of limitations." Smith v. Husband, 376 F.Supp.2d 603, 614 (E.D. Va. 2005); accord

Doe v. Schneider, 667 F.Supp.2d 524, 530 (E.D. Pa. 2009) (construing accrual date as equivalent to dates of abuse). Thus, the text of § 2255(b) does not support a discovery rule.

B. Plaintiff Has Pleaded Facts That Do Not Permit Application of a Discovery Rule.

Plaintiff's proposed discovery rule, presumably, is the one stated in Stoleson, in which the statute of limitations begins to run "after the patient discovers or in the exercise of reasonable diligence should discover his injury and its cause." 629 F.2d at 1268. Plaintiff not only fails to allege facts that invoke this discovery rule, he pleads facts that *preclude* its application. In Count II, he alleges that Tommy Shelton "inflicted harmful and offensive sexual contact" and "sexual assault and battery . . . [that was] offensive and harmful" in 2001. (Compl. ¶¶ 35-36.) And he alleges that Shelton created "a reasonable fear of imminent peril and sexual assault." (Compl. ¶ 34.)

Plaintiff need not know the full extent of his injuries, or know of a right to sue before the limitations period begins. See Wallace, 549 U.S. at 391; TRW, 534 U.S. at 37 (Scalia, J., concurring). Plaintiff's allegations of harmful and offensive touching that created fear of "imminent peril and sexual assault" constitute an invasion of a legally protected interest of which Plaintiff was immediately aware. The alleged "coping mechanisms" did not prevent plaintiff from understanding contemporaneously with the alleged abuse that he had been wronged, even if he did not yet understand the full extent of his injuries. Plaintiff had a complete cause of action no later than 2001 because he could have filed suit when the alleged abuse occurred.

CONCLUSION

For the reasons stated herein, 3ABN asks that the Court hold that the limitations period applicable to plaintiff's civil Mann Act claim is not subject to a discovery rule of accrual.

Respectfully submitted,

Dated: April 23, 2012

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CERTIFICATE OF SERVICE

I hereby certify that on April 23, 2012, I electronically filed the foregoing document with the clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day to all parties on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those parties who are not authorized to received electronically Notices of Electronic Filing.

s/ M. Gregory Simpson

SERVICE LIST

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