IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

John Doe,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 19 L 2457
	)	
Isaac Vega and Board of Education of the City of Chicago,	)	
	)	
	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

A motion to reconsider should be granted if a court misapplied the law. Neither party correctly identified the statute of limitations applicable to the complaint's factual allegations or supplied facts with which this court could make a dispositive ruling. As a result, this court erred, and the missing facts mean a question still exists as to the timeliness of the plaintiff's complaint. For these reasons, the motion to reconsider is granted and the prior order vacated.

Facts

On May 19, 2020, this court issued a memorandum opinion and order granting the Board of Education's motion to dismiss based on an expired statute of limitations. *See* 735 ILCS 5/2-619(a)(5) & 745 ILCS 10/8-101. Neither party in its most recent briefs presented any new facts that were previously unavailable. The facts contained in the May 19, 2020 memorandum opinion and order are, therefore, incorporated by reference.

On June 11, 2020, Doe filed a motion to reconsider, arguing that this court failed to consider *Doe A. v. Diocese of Dallas*, 234 Ill. 2d 393 (2009), an opinion Doe considers controlling. On July

13, 2020, the Board filed a response brief. Although this court does not accept reply briefs on motions to reconsider, Doe filed one anyway, which, as will be apparent below, was unnecessary.

To clear up any previous misunderstanding and provide a complete foundation for this reconsideration, this court provides in full text each iteration of the Code of Civil Procedure's childhood sexual abuse statute of limitations from origination through the 2014 amendment. So the statutes may be compared more easily, each is presented on a separate page. Stricken text is indicated by a line; added text is indicated in bold.

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1990 Ill. P.A. 86-1346; effective date: Jan. 1, 1991

Sec. 13-202.2. Childhood Sexual Abuse.
(a) In this Section:
"Childhood sexual abuse" means an act of sexual abuse that occurs when the person abused is under 18 years of age.
"Sexual abuse" includes but is not limited to sexual conduct and sexual penetration as defined in section 12-12 of the criminal code of 1961.
(b) An action for damages for personal injury based on childhood sexual abuse must be commenced within 2 years of the date the person abused discovers or through the use of reasonable diligence should discover that the act of childhood sexual abuse occurred and that the injury was caused by the childhood sexual abuse, but in no event may an action for personal injury based on childhood sexual abuse be commenced more than 12 years after the date on which the person abused attains the age of 18 years.
(c) If the injury is caused by 2 or more acts of childhood sexual abuse that are part of a continuing series of acts of childhood sexual abuse by the same abuser, then the discovery period under subsection (b) shall be computed from the date the person abused discovers or through the use of reasonable diligence should discover (i) that the last act of childhood sexual abuse in the continuing series occurred and (ii) that the injury was caused by any act of childhood sexual abuse in the continuing series.
(d) The limitation periods under subsection (b) do not begin to run before the person abused attains the age of 18 years; and, if at the time the person abused attains the age of 18 years he or she is under other legal disability, the limitation periods under subsection (b) do not begin to run until the removal of the disability.
(e) This section applies to actions pending on the effective date of this amendatory act of 1990 as well as to actions commenced on or after that date.

1993 Ill. P.A. 88-127; effective date: July 27, 1993

Sec. 13-202.2. Childhood sexual abuse.
(a) In this Section:
"Childhood sexual abuse" means an act of sexual abuse that occurs when the person abused is under 18 years of age.
"Sexual abuse" includes but is not limited to sexual conduct and sexual penetration as defined in Section 12-12 of the Criminal Code of 1961.
(b) An action for damages for personal injury based on childhood sexual abuse must be commenced within 2 years of the date the person abused discovers or through the use of reasonable diligence should discover that the act of childhood sexual abuse occurred and that the injury was caused by the childhood sexual abuse~~, but in no event may an action for personal injury based on childhood sexual abuse be commenced more than 12 years after the date on which the person abused attains the age of 18 years~~.
(c) If the injury is caused by 2 or more acts of childhood sexual abuse that are part of a continuing series of acts of childhood sexual abuse by the same abuser, then the discovery period under subsection (b) shall be computed from the date the person abused discovers or through the use of reasonable diligence should discover (i) that the last act of childhood sexual abuse in the continuing series occurred and (ii) that the injury was caused by any act of childhood sexual abuse in the continuing series.
(d) The limitation periods under subsection (b) do not begin to run before the person abused attains the age of 18 years; and, if at the time the person abused attains the age of 18 years he or she is under other legal disability, the limitation periods under subsection (b) do not begin to run until the removal of the disability.
(e) This Section applies to actions pending on the effective date of this amendatory Act of 1990 as well as to actions commenced on or after that date. **The changes made by this amendatory act of 1993 shall apply only to actions commenced on or after the effective date of this amendatory act of 1993.**

2003 Ill. P.A. 93-356; effective date July 24, 2003

Sec. 13-202.2. Childhood sexual abuse.
(a) In this Section:
"Childhood sexual abuse" means an act of sexual abuse that occurs when the person abused is under 18 years of age.
"Sexual abuse" includes but is not limited to sexual conduct and sexual penetration as defined in Section 12-12 of the Criminal Code of 1961.
(b) **Notwithstanding any other provision of law,** an action for damages for personal injury based on childhood sexual abuse must be commenced within **10 years of the date the limitation period begins to run under subsection (d) or within** **5** ~~2~~ years of the date the person abused discovers or through the use of reasonable diligence should discover **both (i)** that the act of childhood sexual abuse occurred and **(ii)** that the injury was caused by the childhood sexual abuse. **The fact that the person abused discovers or through the use of reasonable diligence should discover that the act of childhood sexual abuse occurred is not, by itself, sufficient to start the discovery period under this subsection (b). Knowledge of the abuse does not constitute discovery of the injury or the causal relationship between any later-discovered injury and the abuse.**
(c) If the injury is caused by 2 or more acts of childhood sexual abuse that are part of a continuing series of acts of childhood sexual abuse by the same abuser, then the discovery period under subsection (b) shall be computed from the date the person abused discovers or through the use of reasonable diligence should discover **both** (i) that the last act of childhood sexual abuse in the continuing series occurred and (ii) that the injury was caused by any act of childhood sexual abuse in the continuing series. **The fact that the person abused discovers or through the use of reasonable diligence should discover that the last act of childhood sexual abuse in the continuing series occurred is not, by itself, sufficient to start the discovery period under subsection (b). Knowledge of the abuse does not constitute discovery of the injury or the causal**

relationship between any later-discovered injury and the abuse.

(d) The limitation periods under subsection (b) do not begin to run before the person abused attains the age of 18 years; and, if at the time the person abused attains the age of 18 years he or she is under other legal disability, the limitation periods under subsection (b) do not begin to run until the removal of the disability.

(d-1) The limitation periods in subsection (b) do not run during a time period when the person abused is subject to threats, intimidation, manipulation, or fraud perpetrated by the abuser or by any person acting in the interest of the abuser.

(e) This Section applies to actions pending on the effective date of this amendatory Act of 1990 as well as to actions commenced on or after that date. The changes made by this amendatory Act of 1993 shall apply only to actions commenced on or after the effective date of this amendatory Act of 1993. **The changes made by this amendatory act of the 93rd General Assembly apply to actions pending on the effective date of this amendatory act of the 93rd General Assembly as well as actions commenced on or after that date.**

2009 Ill. P.A. 96-1093; effective date January 1, 2011

Sec. 13-202.2. Childhood sexual abuse.
(a) In this Section:
"Childhood sexual abuse" means an act of sexual abuse that occurs when the person abused is under 18 years of age.
"Sexual abuse" includes but is not limited to sexual conduct and sexual penetration as defined in Section 12-12 of the Criminal Code of 1961.
(b) Notwithstanding any other provision of law, an action for damages for personal injury based on childhood sexual abuse must be commenced within **20** ~~10~~ years of the date the limitation period begins to run under subsection (d) or within **20** ~~5~~ years of the date the person abused discovers or through the use of reasonable diligence should discover both (i) that the act of childhood sexual abuse occurred and (ii) that the injury was caused by the childhood sexual abuse. The fact that the person abused discovers or through the use of reasonable diligence should discover that the act of childhood sexual abuse occurred is not, by itself, sufficient to start the discovery period under this subsection (b). Knowledge of the abuse does not constitute discovery of the injury or the causal relationship between any later-discovered injury and the abuse.
(c) If the injury is caused by 2 or more acts of childhood sexual abuse that are part of a continuing series of acts of childhood sexual abuse by the same abuser, then the discovery period under subsection (b) shall be computed from the date the person abused discovers or through the use of reasonable diligence should discover both (i) that the last act of childhood sexual abuse in the continuing series occurred and (ii) that the injury was caused by any act of childhood sexual abuse in the continuing series. The fact that the person abused discovers or through the use of reasonable diligence should discover that the last act of childhood sexual abuse in the continuing series occurred is not, by itself, sufficient to start the discovery period under subsection (b). Knowledge of the abuse does not constitute discovery of the injury or the causal relationship between any later-discovered injury and the abuse.

(d) The limitation periods under subsection (b) do not begin to run before the person abused attains the age of 18 years; and, if at the time the person abused attains the age of 18 years he or she is under other legal disability, the limitation periods under subsection (b) do not begin to run until the removal of the disability.

(d-1) The limitation periods in subsection (b) do not run during a time period when the person abused is subject to threats, intimidation, manipulation, or fraud perpetrated by the abuser or by any person acting in the interest of the abuser.

(e) This Section applies to actions pending on the effective date of this amendatory Act of 1990 as well as to actions commenced on or after that date. The changes made by this amendatory Act of 1993 shall apply only to actions commenced on or after the effective date of this amendatory Act of 1993. The changes made by this amendatory Act of the 93rd General Assembly apply to actions pending on the effective date of this amendatory Act of the 93rd General Assembly as well as actions commenced on or after that date. **The changes made by this amendatory act of the 96th General Assembly apply to actions commenced on or after the effective date of this amendatory act of the 96th General Assembly if the action would not have been time barred under any statute of limitations or statute of repose prior to the effective date of this amendatory act of the 96th General Assembly.**

2013 Ill. P.A. 98-276; effective date January 1, 2014

Sec. 13-202.2. Childhood sexual abuse.
(a) In this Section:
"Childhood sexual abuse" means an act of sexual abuse that occurs when the person abused is under 18 years of age.
"Sexual abuse" includes but is not limited to sexual conduct and sexual penetration as defined in Section 11-0.1 of the Criminal Code of 2012.
(b) Notwithstanding any other provision of law, an action for damages for personal injury based on childhood sexual abuse must be commenced within 20 years of the date the limitation period begins to run under subsection (d) or within 20 years of the date the person abused discovers or through the use of reasonable diligence should discover both (i) that the act of childhood sexual abuse occurred and (ii) that the injury was caused by the childhood sexual abuse. The fact that the person abused discovers or through the use of reasonable diligence should discover that the act of childhood sexual abuse occurred is not, by itself, sufficient to start the discovery period under this subsection (b). Knowledge of the abuse does not constitute discovery of the injury or the causal relationship between any later-discovered injury and the abuse.
(c) If the injury is caused by 2 or more acts of childhood sexual abuse that are part of a continuing series of acts of childhood sexual abuse by the same abuser, then the discovery period under subsection (b) shall be computed from the date the person abused discovers or through the use of reasonable diligence should discover both (i) that the last act of childhood sexual abuse in the continuing series occurred and (ii) that the injury was caused by any act of childhood sexual abuse in the continuing series. The fact that the person abused discovers or through the use of reasonable diligence should discover that the last act of childhood sexual abuse in the continuing series occurred is not, by itself, sufficient to start the discovery period under subsection (b). Knowledge of the abuse does not constitute discovery of the injury or the causal relationship between any later-discovered injury and the abuse.

(d) The limitation periods under subsection (b) do not begin to run before the person abused attains the age of 18 years; and, if at the time the person abused attains the age of 18 years he or she is under other legal disability, the limitation periods under subsection (b) do not begin to run until the removal of the disability.

(d-1) The limitation periods in subsection (b) do not run during a time period when the person abused is subject to threats, intimidation, manipulation, or fraud perpetrated by the abuser or by any person acting in the interest of the abuser.

(e) This Section applies to actions pending on the effective date of this amendatory Act of 1990 as well as to actions commenced on or after that date. The changes made by this amendatory Act of 1993 shall apply only to actions commenced on or after the effective date of this amendatory Act of 1993. The changes made by this amendatory Act of the 93rd General Assembly apply to actions pending on the effective date of this amendatory Act of the 93rd General Assembly as well as actions commenced on or after that date. The changes made by this amendatory Act of the 96th General Assembly apply to actions commenced on or after the effective date of this amendatory Act of the 96th General Assembly if the action would not have been time barred under any statute of limitations or statute of repose prior to the effective date of this amendatory Act of the 96th General Assembly.

(f) Notwithstanding any other provision of law, an action for damages based on childhood sexual abuse may be commenced at any time; provided, however, that the changes made by this amendatory Act of the 98th General Assembly apply to actions commenced on or after the effective date of this amendatory Act of the 98th General Assembly if the action would not have been time barred under any statute of limitations or statute of repose prior to the effective date of this amendatory Act of the 98th General Assembly.

Analysis

The purpose of a motion to reconsider is to bring to the trial court's attention newly discovered evidence unavailable at the time of the prior hearing or decision, a change in the law, or an error in the trial court's previous application of existing law. *See Horlacher v. Cohen*, 2017 IL App (1st) 162712, ¶ 79 (citing *Hachem v. Chicago Title Ins. Co.*, 2015 IL App (1st) 143188, ¶ 34; *Emrikson v. Morfin*, 2012 IL App (1st) 111687, ¶ 29 and others). Most motions to reconsider are based on a court's alleged misapplication of existing law, and so it is in this instance. Here, Doe argues that, had *Doe A.* been analyzed by this court, it would not have erred by applying: (1) the 1994 amendment's statute of limitations, 735 ILCS 5/13-202.2(b); or (2) the one-year statute of limitations in the Local Governmental and Governmental Employees Tort Immunity Act (TIA), 745 ILCS 10/8-101.

This court begins by admonishing both sides. It is not up to a court to dig through decades of statutory amendments to determine the applicable statute of limitations and to flesh out every argument not clearly made. *See Williams v. Dieball*, 724 F.3d 957, 963 (7th Cir. 2013). It should have been patent to the Board of Education that the July 24, 2003 version applied because 1994 statute of limitations had not started to run. The Board, however, only made passing reference to the 2003 amendment. It should also have been patent to Doe that, regardless of which statute of limitations applied, he needed to supply facts indicating when he learned he had been sexually abused and when he knew the abuse caused his injuries. Doe failed to do so.

The two key facts that form the basis of this court's reconsideration are: (1) the date of Doe's eighteenth birthday – August 19, 2003; and (2) the effective date of the 2003 amendment to the statute of limitations. *See* 735 ILCS 5/13-202.2(b). As to the first point, and as this court previously acknowledged, *Ferguson v. McKenzie* made plain that the one-year statute of limitations imposed by TIA section 8-101 begins to run when a person turns 18 years old. 202 Ill. 2d 304, 312 (2001). The 1994

version of section 13-202.2(b) did not contain the phrase, "notwithstanding any other provision of law." The absence of such language meant the one-year statute of limitations in TIA section 8-101 gave Doe until August 19, 2004 to file suit. Since he did not file his complaint until 2019, his cause of action was stale under the 1994 version.

As to the second fact, the parties and this court failed to address the effective date of the 2003 amendment to section 13-202.2(b) – July 24, 2003. In other words, 26 days before Doe turned 18 on August 19, 2003, the 2003 version of the statute became effective. Since Doe was still a minor on the effective date, the one-year statute of limitations in TIA section 8-101 had not started to run. Further, the legislature's inclusion of the "notwithstanding any other provision of law" phrase in the 2003 version makes plain the intent for section 13-202.2(b) to control over any other statute of limitation. *See Doe v. Hinsdale Twp. H.S. Dist. 86*, 388 Ill. App. 3d 995, 1002 (2d Dist. 2009). In effect, as of July 24, 2003, the Board could not rely on the one-year statute of limitations in TIA section 8-101 because the 2003 amendment to section 13-202.2(b) applied.

The 2003 version of section 13-202.2(b) provides two limitations periods. First, a plaintiff has 10 years to file suit after their eighteenth birthday. *See* 735 ILCS 5/13-202.2(b) & (d). Since August 19, 2003 was Doe's eighteenth birthday, he had until August 19, 2013 to file suit. Doe did not file suit, however, until March 7, 2019, so his claims under that alternative are stale.

Second, section 13-202.2(b) gives a plaintiff five years to file suit based on the date when the plaintiff "discovers or through the use of reasonable diligence should discover both (i) that the act of childhood sexual abuse occurred and (ii) that the injury was caused by the childhood sexual abuse." This language effectively defeats the Board's motion to dismiss. The reason is that the complaint contains no allegations as to when Doe discovered either his sexual abuse had occurred or his injuries had been

caused by the Vega's sexual abuse. Those are essential facts that will determine whether Doe's claims are timely or stale.

This court's reconsideration does not alter its previous finding that the 2014 version of section 13-202.2 does not apply to this case. Doe relies on the language of section 13-202.2(f) that "an action for damages based on childhood sexual abuse may be commenced at any time. . . ." Doe omits, however, the phrase directly following in the same sentence:

> provided, however, that the changes made by this amendatory Act of the 98th General Assembly apply to actions commenced on or after the effective date of this amendatory Act of the 98th General Assembly if the action would not have been time barred under any statute of limitations or statute of repose prior to the effective date of this amendatory Act of the 98th General Assembly.

735 ILCS 5/13-202.2(f). In other words, if Doe learned within five years before filing his complaint that his sexual abuse had occurred and his injuries resulted from the abuse, then his cause of action is timely.

Doe argues that this court erred for not considering *Doe A.* It is true this court's May 19, 2020 memorandum opinion and order did not directly address *Doe A.* The reason is that *Doe A.* is not persuasive authority on the issues raised by the Board's motion. Yet if Doe believes the case is relevant, the following discussion will explain why he is wrong.

In 1984, Kenneth Roberts, a Catholic priest, molested Doe A., who was then a 14-year-old eighth grader. *See* 234 Ill. 2d at 397. Doe A. did not report Roberts' sexual abuse for 14 years when, in 1998, he sought treatment at a St. Louis hospital emergency room for acute psychological problems. *Id.* at 398. In November 2003, Doe A. filed his lawsuit against various

defendants, two of which filed motions to dismiss based on an expired statute of limitations. *Id.* at 399-400.

The defendants argued the governing statute of limitations was the 1994 version requiring Doe A. to file suit "within 2 years of the date the person abused discovers or though the use of reasonable diligence should discovery that the act of childhood sexual abuse occurred and that the injury was cause by the childhood sexual abuse." 735 ILCS 5/13-202.2(b). According to the defendants, the triggering event was Doe A's 1998 hospitalization, meaning the statute of limitations expired in December 2000. 234 Ill. 2d at 400. Since Doe A. filed suit in 2003, his claims were stale. *Id.* at 400-01.

Doe A. argued the statute of limitations was the 2003 version because it applied to all actions pending as of July 24, 2003 and all actions commenced on or after that date. *Id.* at 401. The 2003 version provided, in part, a five-year statutory period. *Id.* Based on the 1998 hospitalization, Doe A's 2003 filing was timely. *Id.*

The circuit court found the 1994 version applied and dismissed the entire case. *Id.* at 402. The appellate court reversed, finding the legislature intended the 2003 amendment to apply both retroactively and prospectively. *Id.* at 403. The Supreme Court granted the defendants' petition for leave to appeal. *Id.* at 404.

The *Doe A.* court acknowledged that the United States Supreme Court's decision in *Landgraf v. USI Film Products*, 511 U.S. 244 (1994), framed any retroactivity analysis. *See* 234 Ill. 2d at 405. While "prospectivity is the appropriate default rule," *id.*, pursuant to *Landgraf*, "the expression of legislative intent must be given effect absent a constitutional prohibition." *Id.* at 407. The 2003 amendment's express language applies to, "actions pending when the changes took effect on July 24, 2003, as well as to 'actions commenced on or after that date' . . . the version of section 13-202.2 as amended in 2003 therefore governs plaintiff's

cause of action unless application of the amendment would violate the constitution." *Id.* at 407.

The *Doe A.* court then looked back to its decision in *M.E.H. v. L.H.* in which the defendant correctly relied on the pre-1994 amended version of section 13-202.2 as the applicable statute of limitations. 177 Ill. 2d 207, 213-14 (1997). The reason, as the *Doe A.* court repeated, is that:

> once a statute of limitation has expired, the defendant has a vested right to invoke the bar of the limitations period as a defense to a cause of action. That right cannot be taken away by the legislature without offending the due process protection of our state's constitution.

Doe A., 234 Ill. 2d at 409 (quoting *M.E.H.*, 177 Ill. 2d at 214-15). Thus, "if the claims were time-barred under the old law, they remained time-barred even after the repose period was abolished by the legislature." 234 Ill. 2d at 409 (quoting *M.E.H.* 177 Ill. 2d at 215). Such is the reach of substantive due process rights under the Illinois constitution. *Id.* (quoting Ill. Const. art. I, § 2). The court in *Doe A.*, reversed the appellate court's erroneous decision and affirmed the circuit court's dismissal of Doe A's claims as stale. *Id.* at 414.

Doe A. does not help Doe's argument here. It is Doe's position that since he filed suit after the effective date of the 2014 amendment to section 13-202.2, the 2014 version must apply. That argument overlooks the plain language of *Doe A.* and reads out of existence the statute's prior versions. Most important, it is transparent that the legislature specifically included the new subsection 13-202.2(f) in the 2014 amendment because of the holdings in *Landgraf* and *Doe A.* Doe's response to the Board's motion to dismiss and Doe's motion to reconsider each fails to address that obvious linkage. Indeed, Doe misses altogether the temporal fact that *Doe A.* cannot support his interpretation of the 2014 amendment since the court decided the case five years before the 2014 amendment became effective.

In sum, the key to resolving the question of whether Doe's claims are timely under the 2003 version of section 13-202.2 are facts establishing that Doe knew within five years before he filed suit that he had been sexually abused and the abuse caused his injuries. As noted above, the complaint contains no facts shedding any light on those essential elements. This case must, therefore, continue until the parties discover those facts.

Conclusion

For the reasons presented above,

It is ordered that:

1. The plaintiff's motion to reconsider is granted; and
2. This court's May 19, 2020 order is vacated.

John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

AUG 04 2020

Circuit Court 2075