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STATE OF MICHIGAN
IN THE SUPREME COURT

BRIAN McLAIN,

Plaintiff-Appellant,
v.

THE ROMAN CATHOLIC DIOCESE OF LANSING,

Defendant-Appellee,

and

THE ROMAN CATHOLIC ARCHDIOCESE OF BALTIMORE, and RICHARD LOBERT,

Defendants.

MSC No. 165741
COA No. 360163
Livingston Circuit Court Case No 21-31108-NO

Filed under AO 2019-6

Plaintiff-Appellant's Brief on Appeal in Docket No. 165741

BRIAN McLAIN,

Plaintiff-Appellant
v.

THE ROMAN CATHOLIC ARCHDIOCESE OF BALTIMORE,

Defendant-Appellee,
and

THE ROMAN CATHOLIC DIOCESE OF LANSING, and RICHARD LOBERT,

Defendants.

MSC No. 165742
COA No.: 360173
Livingston Circuit Court Case No 21-31108-NO

Filed under AO 2019-6

-Oral Argument Requested-

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Plaintiff-Appellant's Brief on Appeal in Docket No. 165741

-Oral Argument Requested-

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TABLE OF CONTENTS

Index of Authorities 4

Statement of Jurisdiction 6

Statement of the Questions Involved 7

Introduction 8

Statement of Facts 9

Standard of Review 12

Argument 13

I. Plaintiff's cause of action was timely filed pursuant to MCL 600.5851b(1)(b) where his complaint was filed within three years of the time in which he discovered the causal relationship between the sexual assault he was subjected to and the injuries that resulted 13

II. The amendment to MCL 600.5851b(1)(b) applies retroactively, pursuant to this Court's analysis in *Lafontaine Saline, Inc v Chrysler Group, LLC*, 496 Mich 26 (2014), thus rendering Plaintiff's complaint timely 17

Conclusion and Relief Requested 24

RECEIVED by MSC 11/22/2023 5:58:50 PM

INDEX OF AUTHORITIES

Bessmertnaja v Schwager,
191 Mich App 151 (1991) 21-22

Buhl v City of Oak Park,
507 Mich 236 (2021) 18-21

Davis v State Employees' Ret Bd,
272 Mich App 151 (2006) 19-20

DiBenedetto v West Shore Hosp,
461 Mich 394 (2000) 22

Eide v Kelsey-Hayes Co,
431 Mich 26 (1988) 22

Hiltz v Phil's Quality Market,
417 Mich 335 (1983) 14

Hughes v Judges' Retirement Bd,
407 Mich 75 (1979) 18

LaFontaine Saline Inc. v Chrysler Group LLC,
496 Mich 26 (2014) ..... passim

Lothian v City of Detroit,
414 Mich 160 (1982) 13-14

Maiden v Rozwood,
461 Mich 109 (1999) 12

Nation v WDE Electric Co,
454 Mich 489 (1997) 14

Patterson v Kleiman,
447 Mich 429 (1994) 12

Pohutski v City of Allen Park,
465 Mich 675 (2002) 22

Rouch World, LLC v Dep't of Civil Rights,
510 Mich 398 (2022) 22

Smith v Kowalski,
223 Mich App 610 (1997) 13

Thompson v Merritt,
192 Mich App 412 (1991) 20

White v Gen Motors Corp,
431 Mich 387 (1988).....23

RECEIVED by MSC 11/22/2023 5:58:50 PM

RECEIVED by MSC 11/22/2023 5:58:50 PM

STATEMENT OF JURISDICTION

The Michigan Court of Appeals issued its opinion reversing the denial of Defendants' motion for summary disposition on April 27, 2023. Thereafter, Plaintiff timely filed his application for leave to appeal with this Honorable Court on June 8, 2023. This Court granted Plaintiff's application by way of its order dated September 27, 2023. Consequently, this Court has jurisdiction over this matter pursuant to MCR 7.303(B)(1) and MCL 600.215.

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STATEMENT OF THE QUESTIONS INVOLVED

First Question:

Was Plaintiff's cause of action timely filed pursuant to MCL 600.5851b(1)(b) where his complaint was filed within three years of the time in which he discovered the causal relationship between the sexual assault he was subjected to and the injuries that resulted?

Plaintiff-Appellant answers:	Yes.
Defendant-Appellee answers:	No.
The Court of Appeals answered:	No.
The trial court answered:	Yes.

Second Question:

Does the amendment to MCL 600.5851b(1)(b) apply retroactively, pursuant to this Court's analysis in *Lafontaine Saline, Inc v Chrysler Group, LLC*, 496 Mich 26 (2014), thus rendering Plaintiff's complaint timely?

Plaintiff-Appellant answers:	Yes.
Defendant-Appellee answers:	No.
The Court of Appeals answered:	No.
The trial court answered:	Yes.

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INTRODUCTION

This cause of action arises out of a Catholic priest's sexual assault of a minor in 1999 and involves a determination of whether the subsequent lawsuit, filed in 2021, was timely pursuant to MCL 600.5851b(1)(b). That statute, which was enacted in 2018 in the midst of the Larry Nasser sexual assault revelations, modified the statute of limitations and accrual date for, among others, individuals who were minors when they were victims of sexual assault. Specifically, the portion of the statute at issue in this case provides that:

> (1) Notwithstanding sections 5805 and 5851, an individual who, while a minor, is the victim of criminal sexual conduct may commence an action to recover damages sustained because of the criminal sexual conduct at any time before whichever of the following is later:
>
> (a) The individual reaches the age of 28 years.
>
> (b) Three years after the date the individual discovers, or through the exercise of reasonable diligence should have discovered, both the individual's injury and the causal relationship between the injury and the criminal sexual conduct.

In November 2020, Plaintiff first revealed the sexual assault, perpetrated by Fr. Richard Lobert, to a treating therapist. Subsequently, Plaintiff discovered that numerous conditions he had experienced in the years following the sexual assault, including anxiety, adjustment disorder and bipolar disorder, were caused by Lobert's criminal acts. Within six months of that discovery, Plaintiff filed this cause of action in April 2021 in Livingston Circuit Court. Thus, Plaintiff, being within the class of people the legislature was seeking to protect, brought his cause of action within the window of time prescribed by the law. Nonetheless, the Court of Appeals deemed his action to be untimely, essentially ruling that he has no remedy under the law regardless of the merits of his claims. As is set forth below, that ruling was in contravention of the unambiguous statutory text and must be reversed.

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STATEMENT OF FACTS

This cause of action arises out of Father Richard Lobert's sexual assault of Plaintiff Brian McLain, which occurred in March of 1999. At issue in this appeal is whether the circuit court properly denied Defendant Roman Catholic Archdiocese of Baltimore's motion for summary disposition, which was filed prior to any discovery occurring. As such, this statement of facts is based only on the allegations within Plaintiff's complaint, which must be accepted as true at this stage.

Brian was a troubled youth who resided, for a period of time, at the Maxey Boys School. In approximately March 1999, when Brian was 16 years old, Richard Lobert, a priest ordained by the Archdiocese of Baltimore, and working as a priest at the Maxey Boys School for the Archdiocese of Detroit and Diocese of Lansing, sexually assaulted Brian by forcing him to perform masturbatory acts upon him. Brian was a minor at the time this sexual assault occurred. (App, pp 002a-003a.)

Brian developed numerous mental health conditions, including an anxiety disorder, adjustment disorder and bipolar disorder. In November 2020, Brian revealed that Fr. Lobert sexually assaulted him to his therapist. It was not until that revelation that Brian was able to connect the occurrence of that sexual abuse to the emotional and mental damages that the abuse caused, as well as to his need for psychotropic medications.[1] (App, p 003a.)

After Plaintiff made the causal connection between the sexual assaults and his injuries, Plaintiff filed this cause of action, which asserts claims against Fr. Lobert, as well as the Roman Catholic Diocese of Lansing and the Roman Catholic Archdiocese of Baltimore. Specifically, Plaintiff alleged that Defendant Lobert was liable for his acts of sexual assault and that the Diocese of Lansing and Archdiocese

[1] Nowhere within Plaintiff's complaint or any of his papers has he ever asserted that the memory of Fr. Lobert assaulting him had been repressed. Why Defendant continues to assert that this is a repressed memory case when 1.) Plaintiff's pleadings must be accepted as true and 2.) no discovery has yet occurred to cast doubt on those pleadings, is unclear.

RECEIVED by MSC 11/22/2023 5:58:50 PM

of Baltimore were both vicariously liable for those tortious acts of their agent and that they committed their own independent acts of negligence relative to their hiring, training and supervision of Fr. Lobert. (App, pp 001a-007a.)

All Defendants ultimately moved for summary disposition on the basis of MCR 2.116(C)(7), arguing that Plaintiff's cause of action was barred by the applicable statute of limitations. Defendant asserted that Plaintiff's cause of action accrued in 1999 and that he had until 2002 to commence this action. Defendant further argued that Plaintiff was trying to rely on the newly enacted statute located at MCL 600.5851b (which set forth the applicable statute of limitations for certain claims arising out of sexual misconduct) but that the statute could not be used retroactively. (App, pp 015a-028a, 046a-066a.)

In contrast, Plaintiff responded in opposition to the motions and explained that pursuant to the newly enacted provision at MCL 600.5851b, Plaintiff had three years to bring this action from the time he discovered that his injuries were caused by the sexual assault. Thus, because that discovery occurred in November 2020, he had until November 2023 to commence this action, which rendered the complaint timely. Plaintiff explained that he was not seeking to have that statute applied retroactively, because he did not discover the connection between the assault and the claimed injuries until *after* that statute was enacted. Regarding Defendant's assertion that the Court lacked jurisdiction, Plaintiff produced documentary evidence (despite no discovery having yet occurred) which reflected that the Archdiocese issued a statement as recently as 2021 stating that Fr. Lobert was a "priest of the Archdiocese of Baltimore." Plaintiff contended that at this early stage, he had met his jurisdictional burden and that further discovery was proper on that issue. (App, pp 029a-045a, 067a-086a.)

The trial court held a brief hearing on the motion for summary disposition on December 9, 2021. At the hearing, the parties each stated that they had no arguments beyond those that were contained within their briefs. The Court then stated that it would be issuing a written opinion, which it did on January 13, 2022. In that opinion, the Court denied each motion for summary disposition, finding that Plaintiff's cause of action was timely filed. The Court reasoned that pursuant to

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MCL 600.5851b, the Plaintiff had three years from the date that he connected his sexual abuse to his injuries in order to bring this cause of action. Because that connection was not made until November 2020, Plaintiff's cause of action was not untimely when it was filed in April 2021. The Court rejected the argument that Plaintiff was trying to have that newly enacted statute retroactively applied, as the statute was enacted in 2018, which was *before* Plaintiff discovered the connection between the sexual assault and his injuries. Regarding the jurisdictional argument, the Court noted that while Defendant had produced an affidavit in support of its position, Plaintiff made a prima facie showing of jurisdiction at this early stage by producing his own evidence demonstrating that Fr. Lobert continued to be affiliated with the Archdiocese of Baltimore long after these events occurred. As a result, the Court held that it was proper to proceed to discovery regarding that issue. (App, pp 106a-116a.)

Following the denial of its motion for summary disposition, the Archdiocese of Baltimore filed its Application for Leave to Appeal, which the Court of Appeals subsequently granted by way of its June 7, 2022, order. The Court of Appeals issued a published opinion reversing the denial of summary disposition on April 27, 2023. The Court concluded that Plaintiff's complaint could only be deemed timely if the Court decided it was proper to retroactively apply MCL 600.5851b. Upon discussing the *LaFontaine* factors, the Court held that retroactive application was improper. The Court likewise rejected Plaintiff's argument regarding accrual, holding that nothing in the statutory text supported the notion that the legislature modified the date on which a claim arising out of sexual assault begins to accrue. (App, pp 126a-134a.)

Following the decision of the Court of Appeals, Plaintiff filed his application for leave to appeal in this Court on June 8, 2023. This Court granted Plaintiff's application by way of its order dated September 27, 2023.[2] That order provided

[2] After Plaintiff filed his application, this Court assigned two docket numbers to the case. Docket No. 165741 was assigned relative to the

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> The parties shall address whether: (1) the three-year period to commence an action set forth in MCL 600.5851b(1)(b) renders the plaintiff's lawsuit timely due to his alleged recent discovery of the causal relationship between his purported injuries and the alleged criminal sexual conduct, and if not, (2) under an analysis of the factors set forth in LaFontaine Saline, Inc v Chrysler Group, LLC, 496 Mich 26, 38-39 (2014), MCL 600.5851b(1)(b) applies retroactively to the time of the wrong such that the plaintiff's claims were timely filed.

Further facts necessary to the resolution of the appeal may be included in the discussion section below.

LEGAL STANDARD

Defendants briought a Motion for Summary Disposition pursuant to MCR 2.116(C)(7). A party may support a motion under MCR 2.116(C)(7) by affidavits, depositions, admissions, or other documentary evidence; if such material is submitted and the substance or content of the supporting proofs are admissible in evidence, then it must be considered. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817, 823 (1999). However, unlike a motion under subsection (C)(10), neither movant nor the responding party is required to file supportive material, and the opposing party need not reply with supportive material. Rather, the contents of the Complaint are accepted as true unless contradicted by documentation submitted by the movant. *Id*, citing *Patterson v Kleiman*, 447 Mich 429, 434, n 6; 526 NW2d 879 (1994). As such, "All well-pleaded allegations are accepted as true and construed in favor of

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application as to the Diocese of Lansing. Docket No. 165742 was assigned to the application as to the Archdiocese of Baltimore. After the application for leave to appeal was granted, the Archdiocese of Baltimore filed for bankruptcy. As a result, this Court administratively closed the appeal in Docket No. 165742 by way if its order dated November 3, 2023. That order specified that the appeal would proceed forward with briefing and arguments in Docket No. 165741.

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the nonmoving party." *Smith v Kowalski*, 223 Mich App 610, 616; 567 NW2d 463 (1997).

ARGUMENT

I. Plaintiff's cause of action was timely filed pursuant to MCL 600.5851b(1)(b) where his complaint was filed within three years of the time in which he discovered the causal relationship between the sexual assault he was subjected to and the injuries that resulted

The Court of Appeals concluded that the trial court erred in denying Defendant's motion for summary disposition and concluding that Plaintiff's cause of action was filed before the applicable statute of limitations expired. In *Lothian v City of Detroit*, 414 Mich 160, 164-167; 324 NW2d (1982), this Court summarized some of the policies supporting the application of the statute of limitations as follows:

> A statutory limitations period represents a legislative determination of that reasonable period of time that a claimant will be given in which to file an action. A statute of limitations is a statute of presumption. The fact of 'delay extending to the limit prescribed', without further proof, 'is itself a conclusive bar' to suit . . .
>
> ***
>
> Limitations periods created by statute are grounded in a number of worthy policy considerations. They encourage the prompt recovery of damages . . . ; they penalize plaintiffs who have not been industrious in pursuing their claims . . . ; they "afford security against stale demand when the circumstances would be unfavorable to a just examination and decision" . . . ; they relieve defendants of the prolonged fear of litigation . . . ; they prevent fraudulent claims from being asserted . . . ; and they "'remedy *** the general inconvenience resulting from delay in the assertion of a legal right which it is practicable to assert'" . . . . (citations omitted).

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As stated in *Lothian*, the policy consideration for statute of limitations represents a "reasonable period of time that a claimant will be given in which to file an action." It also encourages "prompt recovery of damages . . . security against stale demand . . . [and] remedy the general inconvenience resulting from delay in the assertion of a legal right."

The dispute here starts with ascertaining which statute of limitations covers these allegations. Defendants assert that, pursuant to MCL 600.5805(2), Plaintiff was required to bring this cause of action within three years of the sexual assaults that occurred in 1999. That argument, however, requires this Court to disregard the statutory provision located at MCL 600.5851b(1), which states:

> (1) Notwithstanding sections 5805 and 5851, an individual who, while a minor, is the victim of criminal sexual conduct may commence an action to recover damages sustained because of the criminal sexual conduct at any time before whichever of the following is later:
>
> (a) The individual reaches the age of 28 years.
>
> (b) Three years after the date the individual discovers, or through the exercise of reasonable diligence should have discovered, both the individual's injury and the causal relationship between the injury and the criminal sexual conduct.

As the Supreme Court explained in *Nation v WDE Electric Co*, 454 Mich 489, 494; 563 NW2d 233 (1997) (citing *Hiltz v Phil's Quality Market,* 417 Mich 335, 343; 337 NW2d 237 (1983), "[i]n resolving disputed interpretations of statutory language, it is the function of a reviewing court to effectuate the legislative intent. If the language used is clear, then the Legislature must have intended the meaning it has plainly expressed, and the statute must be enforced as written."

Here, under the plain language of the above statute, Plaintiff's cause of action was timely filed. As is explained above, Fr. Lobert sexually assaulted Plaintiff, a minor, in 1999. However, it was not until

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November 2020 that Plaintiff revealed that sexual assault to his therapist. Then, following that disclosure and as a direct result of his continued work with that therapist, Plaintiff discovered that his abuse at the hands of Fr. Lobert was the cause of Plaintiff's adjustment disorder, anxiety, bipolar disorder and his need for psychotropic medication. Plaintiff's complaint thus explicitly states at ¶20 that "[u]ntil receiving the insights provided through counseling in November 2020 to the present, Plaintiff did not discover, nor through the exercise of reasonable diligence should he have discovered, both the psychological injuries he suffered and the causal relationship between his psychological injuries and the criminal sexual conduct of Defendant Fr. Richard Lobert."

MCL 600.5851b states that it applies "notwithstanding section[] 5805," which is the section upon which Defendant has relied throughout this case. Defendant asserts that despite that clear and unambiguous statutory language, MCL 600.5851b cannot apply to the case at bar because that would amount to a retroactive application of the statute. The trial court, however, properly saw through that argument. This statute was enacted in 2018 and provides at subpart (b) that the time for filing an action does not begin to run until an injured party discovers his injury and the causal connection between that injury and the sexual misconduct. Here, that occurred in 2020, *after* the statute was enacted. If this were an instance where Plaintiff made those connections at some point *prior* to the statute's enactment and then tried to utilize the statute after the fact, Defendant would be correct in characterizing this as a request to retroactively apply a statute. That is not, however, what occurred. Instead, Plaintiff brought suit within three years of the accrual of this action.

In rejecting Plaintiff's accrual argument, the Court of Appeals stated as follows:

> According to plaintiff, MCL 600.5851b(1)(b) changed the accrual date for claims to recover damages sustained by an individual who, while a minor, was the victim of criminal sexual conduct from when the criminal sexual conduct occurred to "when the connection between the injury and sexual assault as a minor was made." We

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> disagree because nothing in MCL 600.5851b supports plaintiff's argument. First, MCL 600.5851b never explicitly states that it changes the general rule for when a claim accrues. Second, while MCL 600.5851b(1) clearly indicates that it is an exception to the general statute of limitation in MCL 600.5805 and any tolling of that statute as provided in MCL 600.5851, nothing in MCL 600.5851b(1) suggests that it is an exception to the statute governing the general accrual of claims—MCL 600.5827. We therefore conclude that MCL 600.5851b does not change the date of accrual for a claim to recover damages sustained by an individual who, while a minor, was the victim of criminal sexual conduct. Rather, MCL 600.5851b(1)(b) simply extends the time that an individual has to bring such a claim, i.e., it extends the statute of limitations.

The Court's conclusion that MCL 600.5851b(1)(b) did not alter the accrual date in cases arising out of acts of criminal sexual assault cannot be reconciled with the actual statutory text.

Beginning with the general accrual statute, MCL 600.5827 provides that

> Except as otherwise expressly provided, the period of limitations runs from the time the claim accrues. The claim accrues at the time provided in sections 5829 to 5838, and in cases not covered by these sections the claim accrues at the time the wrong upon which the claim is based was done regardless of the time when damage results.

Defendant and the Court of Appeals each concluded that this provision continues to apply to cases of this type because MCL 600.5851b never explicitly stated that it was amending MCL 600.5827. Respectfully, MCL 600.5851b did not have to specifically identify MCL 600.5827 in order to demonstrate that it was setting forth a distinct accrual standard.

By stating that an individual has until "[t]hree years after the date the individual discovers, or through the exercise of reasonable

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diligence should have discovered, both the individual's injury and the causal relationship between the injury and the criminal sexual conduct" to bring a cause of action, the legislature unequivocally rejected the idea that a cause of action arising from criminal sexual assault would begin to accrue at the moment the wrong was committed. In other words, it unequivocally rejected that this case is governed by MCL 600.5827.

Moreover, MCL 600.5827, by beginning with the phrase "[e]xcept as otherwise expressly provided…", demonstrates that the legislature intended to retain flexibility and authority to modify the law of accrual where it saw fit. There has been no authority cited for the concept that a statute must contain a statement noting the inapplicability of MCL 600.5827 in order to impose a distinct manner for calculating the date of accrual. The statutory language here was clear and unambiguous and the Court of Appeals erred in disregarding it.

II. The amendment to MCL 600.5851b(1)(b) applies retroactively, pursuant to this Court's analysis in *Lafontaine Saline, Inc v Chrysler Group, LLC*, 496 Mich 26 (2014), thus rendering Plaintiff's complaint timely

For the reasons stated above, the Legislature manifested its intent to have MCL 600.5851b apply, and thus claims accrue, when the connection between the injury and sexual assault as a minor was made. It is not dependent on whether the sexual assault occurred before or after the passage of the statute. The Court of Appeals concluded differently, holding that there is no evidence that the legislature intended to modify the accrual dates of an action arising out of sexual assault. Yet, the plain language of the statute leaves no doubt that the legislature consciously incorporated a discovery element into the determination of when the time for filing an action would begin to run. The Court of Appeals erred in concluding otherwise and that error alone requires the reversal of the Court of Appeals.

While Plaintiff believes the Court of Appeals erred in its rejection of Plaintiff's accrual argument, it is further evident that the Court of

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Appeals erred in analysis of the retroactivity of MCL 600.5851b. As this Court has described, "[a] retrospective law is one which takes away or impairs vested rights acquired under existing laws, or creates a new obligation and imposes a new duty, or attaches a new disability with respect to transactions or considerations already past." *Hughes v Judges' Retirement Bd*, 407 Mich 75, 85; 282 NW2d 160 (1979). This law does none of those things. As will be set forth below, no vested right of Fr. Lobert's will be impaired by deeming Plaintiff's complaint timely, as there is no vested right to evade liability for sexually assaulting a minor. Likewise, this statute does not impose any new obligation or duty, as there has always been a duty to not engage in forcible sexual assault of anyone, including minors. Finally, this law does not attach any "new disability to a transaction or consideration already past," as nonconsensual sexual contact cannot be classified as a transaction or consideration. Thus, while there is a body of law that limits when a statute may be retroactively applied, there is no authority supporting the notion that such limitations are implicated when one is seeking to evade civil liability arising out of criminal conduct, as the Diocese of Lansing is attempting to do.

In *LaFontaine Saline Inc. v Chrysler Group LLC,* 496 Mich 26, 38; 852 NW2d 78 (2014), this Court decided that whether a statute should be applied "retroactively" depends on applying four factors (known in Michigan jurisprudence as the *LaFontaine* factors):

> First, we consider whether there is specific language providing for retroactive application. Second, in some situations, a statute is not regarded as operating retroactively merely because it relates to an antecedent event. Third, in determining retroactivity, we must keep in mind that retroactive laws impair vested rights acquired under existing laws or create new obligations or duties with respect to transactions or considerations already past. Finally, a remedial or procedural act not affecting vested rights may be given retroactive effect where the injury or claim is antecedent to the enactment of the statute.

The application of these factors was further reinforced by the decision in *Buhl v City of Oak Park*, 507 Mich 236 (2021) decision. Thus,

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the *LaFontaine* factors must be analyzed to determine whether MCL 600.5851b is to be applied "retroactively."

The first *LaFontaine* factor to be considered is "whether there is specific language providing for retroactive application." In this regard, there is indeed specific language that shows that MCL 600.5851b was meant to apply "retroactively" and prospectively. Namely, the statute states that:

> **Notwithstanding sections 5805 and 5851**, an individual who, while a minor, is the victim of criminal sexual conduct may commence an action to recover damages sustained because of the criminal sexual conduct **at any time** before whichever of the following is later:
>
> (a) the individual reaches the age of 28 years;
>
> (b) three years **after the date** the individual discovers, or through the exercise of reasonable diligence should have discovered, both the individual's injury and the causal relationship between the injury and the criminal sexual conduct." [emphasis added]

The words "at any time before whichever of the following is later" mean that the statute applies "***at any time***" either (a) or (b) is true, whichever is later. This is specific language showing an intent to have the statute apply both "retroactively" to sexual assaults that occurred before the effective date of the statute and prospectively to protect future minor victims of sexual abuse. Similarly, the legislature expressly stated that this provision was "notwithstanding" sections 5805 and 5851. In *LaFontaine*, this Court specifically identified the term "notwithstanding" as one that can be indicative of legislative intent for retroactive application. *LaFontaine*, 496 Mich at 39, n 30.

Defendant relies on *Davis v State Employees' Ret Bd*, 272 Mich App 151, 155; 725 NW2d 56, 60 (2006) for the proposition that statutes are only to be applied prospectively unless the legislature manifests a clear intent for retroactive application. However, Defendant fails to acknowledge that "our Supreme Court in *Lynch*, *id.* at 583-584, stated:

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The Legislature's intent to apply an amended statute retroactively can be express ***or implied***." *Davis* at 156 (citing *Thompson v Merritt*, 192 Mich App 412, 417 (1991). Again, MCL 600.5851b's only temporal considerations for bringing suit are whether the person does so before he/she becomes 28 years old, or within three years of when he/she made the causal connection between his/her injury and the sexual assault. Had the Legislature intended the application of MCL 600.5851b to depend on when the sexual assault occurred, it would have expressed that.

Defendant also argues that because a separate portion of the statute, MCL 600.5851b(3), addresses retroactivity in the context of a sexual assault committed by a physician, the lack of language regarding retroactivity elsewhere in the statute implies no retractive application was intended. First, that argument fails because the statute *does* contain other language regarding retroactivity where it uses terms like "notwithstanding" and "at any time." Second, that the legislature directly discussed the applicability of the statute to physicians is logical, as the statute's passage was motivated, in part, by the horrific acts of Larry Nasser. Yet, to assume that the legislature intended victims of physicians to be afforded protection while also *excluding* victims of the clergy is to ascribe an intent to the legislature that borders on nefarious. Nothing in MCL 600.5851b(3) leads to the conclusion that our legislature was consciously barring victims of clergy abuse from obtaining a remedy for the injuries they suffered, particularly where those victims brought their cause of action within three years of connecting their injuries to the act of sexual abuse.

In his briefing below, Plaintiff asserted that the second *LaFontaine* factor, much like in *Buhl*, is not applicable to the current case because it does not pertain to a specific antecedent event. The Court of Appeals agreed with that assessment, noting that the undersigned counsel changed his argument during oral argument based on a misunderstanding regarding the meaning of the second factor. Counsel has not seen any authority that indicates that the second LaFontaine factor impacts the outcome of this dispute.

Regarding the third *LaFontaine* factor, whether the retroactivity would "impair vested rights acquired under existing laws or create new

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obligations or duties with respect to transactions or considerations already past," published Court of Appeals precedent establishes that no vested right of Defendant is involved in this case. In *Buhl*, the Court found that MCL 691.1402a(5) should not be read to retroactively apply to plaintiff's case because:

> the subsequent application of the open and obvious danger doctrine would result in the dismissal of plaintiff's lawsuit because retroactive application would relieve defendant of the legal duty it owed to plaintiff at the time the injury occurred. In other words, because plaintiff's claim had already accrued on the day she was injured, the retroactive application of MCL 691.1402a(5) would effectively rewrite history as to the duty defendant owed plaintiff by absolving defendant of its duty . . . ."

In Brian McLain's case, Defendants have no "vested right" that would be impaired by "retroactive" effect of MCL 600.5851b. Prior to MCL 600.5851b being enacted, it was still illegal to sexually assault a minor in Michigan. Thus, a defendant still had the duty to refrain from sexually assaulting a minor, and corporate/organizational defendants would still have the duty to supervise and monitor their employees/agents/representatives to prevent them from sexually assaulting minors. MCL 600.5851b does not change this duty. It merely prescribes an alternate time in which a claimant can make a claim due to the breach of duty, causation, and resulting damages committed or caused by offending defendants. Furthermore, there is no "duty with respect to transactions or considerations," as there was no contractual agreement between Lobert and McLain allowing for this sexual assault to occur. Defendants have previously argued that "each Defendant had the vested right to believe no negligence claim could be sustained regarding 1999 acts or omissions." Michigan law has expressly rejected that notion. "The right to defeat a claim by interposing a statute of limitations **is not a vested right**." *Bessmertnaja v Schwager*, 191 Mich App 151, 154 (1991). [emphasis added]. Defendants' claim that they had a right to rely upon the previous statute of limitations in this case is erroneous.

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The fourth *LaFontaine* factor also favors Plaintiff: "finally, a remedial or procedural act not affecting vested rights may be given retroactive effect where the injury or claim is antecedent to the enactment of the statute." Defendants' assertions fail in two regards. Applying the plain language of MCL 600.5851b, the claim accrued when Brian McLain connected the causal relationship between his mental health illnesses and the sexual assault suffered by Father Lobert. This was **after** the enactment of MCL 600.5851b, and thus the claim "is [not] antecedent to the enactment of the statute." Therefore, the analysis of whether MCL 600.5851b should be applied retroactively is moot. However, even if one bases the accrual upon the date of the injury, the fourth *LaFontaine* factor nonetheless supports Brian McLain's claim, as the act does not affect the vested rights of the parties. The core duties that defendants owed Brian McLain are completely unchanged by MCL 600.5851b. Moreover, "the right to defeat a claim by interposing a statute of limitations is not a vested right." *Bessmertnaja v Schwager*, 191 Mich App 151, 154 (1991).

In support of its claim that the legislature did not intend this amendment to have retroactive effect, Defendant directs this Court to legislative history in the form of versions of the statute preceding its passage. "However, the legislative history of a statute is relevant to the statute's meaning only where the statute is ambiguous. When the statute's language is clear, as it is here, we rely on that plain language as the best evidence of its meaning." *Rouch World, LLC v Dep't of Civil Rights*, 510 Mich 398, 429; 987 NW2d 501 (2022). And, "[w]here the [statutory] language is unambiguous, 'we presume that the Legislature intended the meaning clearly expressed—no further judicial construction is required or permitted, and the statute must be enforced as written.'" *Pohutski v City of Allen Park*, 465 Mich 675, 683; 641 NW2d 219 (2002), quoting *DiBenedetto v West Shore Hosp*, 461 Mich 394, 402; 605 NW2d 300 (2000).

Similarly, there is a "well-established rule that remedial statutes are to be liberally construed to suppress the evil and advance the remedy." *Eide v Kelsey-Hayes Co*, 431 Mich 26, 34; 427 NW2d 488 (1988). "Generally, remedial statutes are those which provide a remedy . . . for the enforcement of rights and the redress of injuries. They also include

statutes intended for the correction of defects, mistakes and omissions in the civil institutions and the administration of the state." *White v Gen Motors Corp*, 431 Mich 387, 396-397; 429 NW2d 576 (1988), quoting 3 Sands, Sutherland Statutory Construction (4th ed), § 60.02, p 60. In this case, it is clear that the Legislature intended to suppress the evil of predators sexually abusing children by allowing those who suffered sexual abuse as children redress against their assaulters for the horrible injuries they suffered as children, without the predators being able to hide behind the general three-year statute of limitations that would apply if the individual were assaulted as an adult.

Finally, Plaintiff notes that Defendant makes a particularly unavailing argument when it contends that the existence of new legislation that seeks to clarify the rights of people like Plaintiff indicates that the currently operative statute does not apply retroactively. That portions of the legislature is attempting to clarify is not an indication that the current statute bars this cause of action. Instead, it is reflective of the reality that Defendants like the Diocese are continuing to try to evade liability even in the face of unambiguous statutory language.

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CONCLUSION AND RELIEF REQUESTED

For the reasons set forth above, Plaintiffs respectfully request that this Honorable Court reverse the decision of the Court of Appeals. This Court should reverse where the Court of Appeals failed to recognize that Mr. McLain's cause of action did not accrue until 2020 and was thus timely filed. Alternatively, even if this Court were to determine that the timeliness of Mr. McLain's action was dependent on a retroactive application of MCL 600.5851b, reversal is still required. Under the plain language of the statute and an application of the *LaFontaine* factors, it is evident that the legislature intended for this provision to apply retroactively, rendering Mr. McLain's action timely.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this document complies with the formatting rules in Administrative Order No. 2019-6. I certify that this document contains 5,424 countable words. The document is set in Century Schoolbook, and the text is in 12-point type with 17-point line spacing and 12 points of spacing between paragraphs.

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