IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2006

BRIAN SOFTCHECK, JOHN DOE 1, JOHN DOE 2 and JOHN DOE 3, Plaintiffs-Appellants, v. BISHOP JOSEPH L. IMESCH, as Trustee for the DIOCESE OF JOLIET TRUST, and LAWRENCE MULLINS, Defendants-Appellees, and JAMES F. FONCK, Plaintiff-Appellant/ Cross-Appellee, v. BISHOP JOSEPH L. IMESCH, as Trustee for the DIOCESE OF JOLIET TRUST, and MICHAEL L. GIBBNEY, Defendants-Appellees, and MICHAEL L. GIBBNEY, Cross-Appellant,	Appeal from the Circuit Court of the Twelfth Judicial Circuit, Will County, Illinois, No. 02-L-494 The Honorable James E. Garrison, Judge, Presiding.

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BRIAN SOFTCHECK, et al.,)
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Appellants/Cross-Appellees,)
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v.)
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BISHOP JOSEPH L. IMESCH, et al.,)
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Appellees/Cross-Appellants,)
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and)
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JAMES F. FONCK,)
)
Appellant/Cross-Appellee,)
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v.)
)
BISHOP JOSEPH L. IMESCH, et al.,)
)
Appellees/Cross-Appellants.)

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JUSTICE McDADE, delivered the opinion of the court:

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Plaintiffs, Brian Softcheck, John Does I, II, and III, and James Fonck, appeal the order of the circuit court of Will County granting motions to dismiss plaintiffs' third amended complaint. Plaintiffs' complaints alleged sexual abuse by defendants Lawrence Mullins and Michael Gibbney, plaintiffs' respective priests. Defendants, Mullins, Gibbney, and Bishop Joseph L. Imesch, as trustee of the Diocese of Joliet Trust

(Diocese), filed motions to dismiss based on the alleged expiration of the statute of limitations. Defendants cross-appeal, arguing that amendments to section 13-202.2 of the Code of Civil Procedure (735 ILCS 5/13-202.2 (West 2004)), the statute of limitations applicable to childhood sexual abuse cases, effective in 2003 cannot apply retroactively to this case, and, alternatively, that the court's exercise of jurisdiction violated the first amendment to the United States Constitution. For the reasons that follow, we affirm in part, reverse in part, and remand.

BACKGROUND

In September 2002, plaintiffs Softcheck and Does I, II, and III filed their first complaint against defendants Mullins and Imesch alleging Mullins sexually abused them while they were students and altar boys at St. Raymond Nonnatus parish in Joliet. In October 2002, plaintiff Fonck filed suit against defendants Gibbney and the Diocese, alleging Gibbney sexually abused him in 1978 at Mary Queen of Heaven parish in Elmhurst. The cases proceeded in the trial court on identical briefing and hearing schedules and have been consolidated in this court for appeal. Defendants filed motions to dismiss based on the expiration of the statute of limitations. Plaintiffs withdrew their complaints before hearings on the motions and subsequently filed their first amended complaints. The court construed the pending motions to dismiss as directed against the first amended complaints and later granted the motions with leave to file second amended complaints. Plaintiffs did file second amended complaints and defendants again filed motions to dismiss premised on the statute of limitations. In April 2003, the court granted defendants' motions to dismiss as to plaintiffs' second amended complaints, again without prejudice.

Plaintiffs filed a motion to extend time to file their third amended complaints to await the Governor's signature on a bill amending section 13-202.2 of the Code of Civil Procedure (735 ILCS 5/13-202.2 (West 2002)). The amendment to section 13-202.2 became effective July 24, 2003. The statute, as amended, reads, in pertinent part, as follows:

"(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 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." 735 ILCS 5/13-202.2(b) (West 2004).

Plaintiffs filed a motion for leave to file their third amended complaints to invoke section 13-202.2 as amended. In October 2003 plaintiffs filed their third amended complaints. The allegations of plaintiffs' third amended complaints relevant to invoking section 13-202.2 are, in part, as follows (in regard to section 13-202.2 plaintiffs individually made identical allegations):

"[Defendant priests] encouraged and strengthened plaintiff[s'] faith, trust and reliance upon [defendant priests] by repeatedly assuring plaintiff[s] that [defendant priests'] directions, instruction and conduct were

morally, socially and religiously beneficial and would cause and enable plaintiff[s] to experience optimal mental, moral, emotional and psychological growth and development. [Defendant priests] further exploited plaintiff[s'] suggestibility be [sic] assuring plaintiff[s] that adherence to [defendant priests'] instructions and directions was necessary to plaintiff[s'] proper growth and development, even though doing so might at times seem to conflict with plaintiff[s'] innate but inferior and inadequately informed sense of propriety or rectitude. [Defendant priests] repeatedly assured and instructed plaintiff[s] that the teachings and instructions of the Church, as given through [defendant priests], were perfect and infallible and superior to imperfect human laws; that adherence to [defendant priests'] teachings and compliance with [their] directions and conduct were in all respects good and beneficial and could cause no harm.

* * *

The conduct alleged in the preceding paragraph [(sexual abuse by defendant priests)] was initiated by [defendant priests] and uninvited by plaintiff[s]. Although the conduct alleged was uninvited, plaintiff[s] did not perceive or sustain any physical injury or damage and lacked sophistication (as more fully alleged hereinafter) to perceive psychological or emotional harm or injury proximately resulting therefrom.

* * *

Plaintiff[s] did not, in fact, begin to perceive the wrongfulness of the

conduct of defendant[s] until 2002 when [they] heard of pedophile priest litigation involving other priests and dioceses and began to realize that [their] own experiences may have been victimization possibly having a causal relation to [their] emotional and psychological disturbances."

In November 2003 defendants again filed motions to dismiss arguing that (1) section 13-202.2, as amended, cannot revive a time-barred cause of action, and (2) assuming, *arguendo*, that the amended statute did apply, a reasonably diligent person would have discovered the acts of abuse and their causal relationship to plaintiffs' emotional problems earlier than plaintiffs in this case. Defendant Gibbney also argued that the trial court lacked subject matter jurisdiction because it would be required to examine the teachings and doctrines of the Catholic Church.

In January 2004 the court granted defendants' motions to dismiss plaintiffs' third amended complaints. In February 2004, plaintiff Fonck filed a motion for an extension of time to file a posttrial motion. Fonck attached to his motion a newsletter published by the Diocese containing statistics on allegations of sexual abuse by priests. The court granted Fonck's motion for an extension of time. In March 2004 Fonck filed a motion to reconsider, for vacatur, and for reinstatement. Fonck attached to the motion for reconsideration the newsletter, dated February 2004, issued by the Diocese. That newsletter included a chart showing that nearly one-third (20 of 61) of credible victims of sexual abuse by diocesan priests who had come forward since 2000 involved claims that were at least 20 years old. The court denied the motion to reconsider. This appeal followed.

ANALYSIS

"Whether a cause of action was properly dismissed under section 2-619 a 5 of the Code of Civil Procedure based on the statute of limitations is a matter we review *de novo*." *Ferguson v. City of Chicago*, 213 Ill. 2d 94, 99, 820 N.E.2d 455, 459 (2004). To determine whether plaintiffs' complaints are time barred, we must first determine the appropriate statute of limitations applicable to plaintiffs' claims and whether that statute was tolled. As previously noted, plaintiffs attempted to invoke the amended version of section 13-202.2 of the Code of Civil Procedure (735 ILCS 5/13-202.2(b) (West 2004)).

1. Whether Section 13-202.2, as Amended, Applies to Plaintiffs' Causes of Action

> *Under the Landgraf test, if the legislature has clearly indicated what the temporal reach of an amended statute should be, then, absent a constitutional prohibition, that expression of legislative intent must be given effect. However, when the legislature has not indicated what the reach of a statute should be, then the court must determine whether applying the statute would have a retroactive impact, i.e., 'whether it would impair rights a party possessed when he acted, increase a party s liability for past conduct, or impose new duties with respect to transactions already completed.' Landgraf, 511 U.S. at 280, 128 L. Ed. 2d at 261-62, 114 S. Ct. at 1505. If there would be no retroactive impact, as that term is defined by the court, then the amended law may be applied. Landgraf, 511 U.S. at 273-74, 275, 128 L. Ed. 2d at 257, 258, 114 S. Ct. at 1501, 1502. If, however, applying the amended version of the law would have a retroactive impact, then the court must presume that the legislature did not intend that it be so applied. Landgraf, 511 U.S. at 280, 128 L. Ed. 2d at 261-62, 114 S. Ct. at 1505. Commonwealth Edison Co. v. Will County Collector, 196 Ill. 2d 27, 38, 749 N.E.2d 964, 971 (2001).*

In accordance with the *Landgraf* test, defendant Diocese first argues that section 13-202.2, as amended, contains no express legislative intent that it be applied retroactively to revive previously time-barred causes of action. The Diocese notes that the relevant language of section 13-202.2 reads as follows

> e 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 Public Act 93-356 as well as actions commenced on or after that date. 735 ILCS 5 13-202.2 3 West 2004 .

The Diocese argues that even if the language referring to pending cases is interpreted as implying some intent that the amendment be applied retroactively, the extent to which the statute should be applied retroactively is nonetheless unclear because, by pending cases, the legislature may have meant those past cases where the limitations period has expired, or those where it has not. Moreover, the Diocese cites *D.P. v. M.J.O.*, 266 Ill. App. 3d 1029, 1036, 640 N.E.2d 1323, 1328 1994 , wherein the court held that the language of section 13-202 3 as it related to an amendatory act of 1990 but employing nearly identical language used to describe the scope of the amendment at issue here did *not* indicate a legislative intent to give retroactive application to the provisions of the amendatory act in face of the constitutional infirmities which Illinois has recognized in attempting to revive a time-barred action.

Alternatively, defendants Gibbney and the Diocese argue that to apply section 13-202.2 retroactively would deprive them of their right to due process, in that defendants had a settled expectation citing *Henrich v. Libertyville High School*, 186 Ill. 2d 381, 712 N.E.2d 298 1998 or a vested right citing *Board of Education of Normal School District v. Blodgett*, 155 Ill. 441, 447, 40 N.E. 1025, 1026 1895 in the expiration of the statute of limitations as a

defense. A defendant's right to assert a statutory time bar as a defense to a cause of action, 'after the statute has run, is a vested right.' M.E.H. v. L.H., 283 Ill. App. 3d 241, 247, 669 N.E.2d 1228, 1232 (1996), quoting Blodgett, 155 Ill. at 447, 40 N.E. at 1026. In attempting to invoke that rule, Gibbney states as follows:

> Before 1991, the common law discovery rule applied to causes of action for personal injury resulting from childhood sexual abuse, and application of the discovery rule meant that a cause of action accrued on the date the plaintiff discovered the tortious conduct had occurred, or, if the plaintiff was a minor, on the date the plaintiff reached the age of majority.

This is an incorrect statement of the law by Gibbney.

Gibbney's understanding of the law is apparently premised on section 13-211 of the Code of Civil Procedure (735 ILCS 5/13-211 (West 1994)), which, according to Gibbney, provides that persons who are minors at the time a cause of action for personal injury accrues are permitted an additional two years to bring an action after they reach the age of majority. Gibbney concludes, therefore, that plaintiffs had only two years after their eighteenth birthdays to bring suit. Section 13-211 reads, in pertinent part, as follows:

> Minors and persons under legal disability. If the person entitled to bring an action, specified in Sections 13-201 through 13-210 of this Act (735 ILCS 5/13-201 through 13-210), at the time the cause of action accrued, is under the age of 18 years, or is under a legal disability, then he or she may bring the action within 2 years after the person attains the age of 18 years, or the disability is removed. (735 ILCS 5/13-211 (West 1994).

It is clear from the plain language of section 13-211 that it does not apply if the cause of action

has not accrued when the plaintiff reaches the age of majority. Under the discovery rule a cause of action does not accrue until the party knows or reasonably should know of an injury and that the injury was wrongfully caused. *Clay v. Kuhl*, 189 Ill. 2d 603, 608, 727 N.E.2d 217, 220 (2000). Plaintiffs here assert they did not know, and, by implication, reasonably should not have known, that their injuries were wrongfully caused. Accordingly, if the discovery rule is applicable to the facts of this case, and if plaintiffs sufficiently pled facts to invoke the discovery rule, then the statute of limitations had not yet run when plaintiffs filed suit and defendants had acquired no "vested right" or "substantial interest" in the statute of limitations as a defense.

Plaintiffs assert the statute of limitations did not begin to run until 2002, when plaintiffs discovered their injuries after hearing of "pedophile priest litigation involving other priests." Plaintiffs assert they do not seek to take advantage of any extended time periods afforded by the 2003 amendments to section 13-202.2, but merely to invoke "the clarifying language added concerning whether 'discovery' has occurred." To that end, plaintiffs argue section 13-202.2, as amended, replaced the common law discovery rule. We find that it did not.

The basis for plaintiffs' argument that the 2003 amendment to section 13-202.2 superseded the common law discovery rule is their belief that *Clay* stands for the proposition that "the discovery rule cannot be invoked to toll the statute of limitations where the complaint alleges injury contemporaneous with the wrongful conduct." On the contrary, the *Clay* court clearly stated that "under the common law discovery rule, a party's cause of action accrues when the party knows or reasonably should know of an injury and that the injury was wrongfully caused." *Clay*, 189 Ill. 2d at 608, 727 N.E.2d at 220. The court found, based on the allegations in the complaint, that the plaintiff in *Clay* knew the abuse occurred and that it was harmful. *Clay*, 189 Ill. 2d at 613, 727 N.E.2d at 223. The plaintiff sought to invoke the discovery rule because she did not discover, until years later, the

full extent of the injuries she allegedly sustained. Emphasis added. *Clay*, 189 Ill. 2d at 613, 727 N.E.2d at 223. The court declined to apply the discovery rule because t here is no requirement that a plaintiff must know the full extent of his or her injuries before suit must be brought under the applicable statute of limitations. *Clay*, 189 Ill. 2d at 611, 727 N.E.2d at 222.

Moreover, as defendants Mullins and the Diocese argue, there is no essential difference between the common law discovery rule and the language in section 13-202.2. Each requires a person to act reasonably compare reasonably should know, and through the use of reasonable diligence should discover to discover the cause of their injuries compare the injury was wrongfully **caused** and the injury was **caused** by the childhood sexual abuse . The statement in section 13-202.2 as amended that k nowledge of the abuse does not constitute discovery of the injury or the causal relationship between any later-discovered injury and the abuse does not change the basic inquiry set forth above. Accordingly, we hold that, while we agree that section 13-202.2, as amended, does not apply to the plaintiffs' complaints, the trial court properly could have applied the discovery rule if plaintiffs pled sufficient facts to invoke it.

2. Whether Plaintiffs Pled Sufficient Facts to Invoke the "Discovery Rule"

The Diocese argues that plaintiffs reasonably should have known or should have discovered their injuries and the cause of those injuries no later than age 28. The Diocese argues that the facts of this case are almost identical to the facts of *Clay* notably, that it was not until years later that the plaintiff realized the sexual encounters had caused her injuries and that at the time of the abuse she did not know it was abnormal behavior and the *Clay* court found that the plaintiff had sufficient information about her injury and its cause to require her to bring suit long before the date of discovery alleged in the complaint. *Clay*, 189 Ill. 2d at 610, 727 N.E.2d at 221. Plaintiffs claimed they did not realize the wrongfulness of defendants' actions until hearing of other cases of sexual abuse against minors involving priests. The Diocese asserts that it is a universal truth that a reasonably prudent person knows, no later than age 28,

that adults do not have sex with children because it harms the child and is a crime, or, in the alternative, that the extensive media coverage of the issue would have caused a reasonably prudent person to know the wrongfulness of what happened to plaintiffs sooner. Defendant Mullins similarly argues that, absent a claim of legal disability after the age of majority was reached or repressed memory, as a matter of law, using the reasonable person standard, these claims had to be dismissed. Mullins's argument is also premised on the proposition that reasonable people know that such abuse is wrong and that, as reasonable people, plaintiffs had a duty to investigate their conditions. Defendant Gibbney states that plaintiffs never alleged any facts showing that they used reasonable diligence to discover whether they had a cause of action or were prevented from using reasonable diligence by any legally recognized disability.

> The issue whether an action was brought within the time allowed by the discovery rule is generally resolved as a question of fact. *County of Du Page v. Graham, Anderson, Probst White, Inc.*, 109 Ill. 2d 143, 153-54 (1985). *Nolan*, 85 Ill. 2d at 171. The question may be determined as a matter of law, however, when the answer is clear from the pleadings. *Clay*, 189 Ill. 2d at 609-10, 727 N.E.2d at 221.

If there is a disputed question of fact about when an injured party knows or reasonably should have known of his injury and that it was wrongfully caused, it is to be resolved by the finder of fact. *Holladay v. Boyd*, 285 Ill. App. 3d 1006, 1013, 675 N.E.2d 262, 266 (1996), citing *Lipsey v. Michael Reese Hospital*, 46 Ill. 2d 32, 262 N.E.2d 450 (1970). Here, a question of fact remains as to when plaintiffs discovered, or reasonably should have discovered, that their injuries were caused by the alleged abuse. We find that, unlike in *Clay*, the answer is *not* clear from the pleadings. See *Clay*, 189 Ill. 2d at 609-10, 727 N.E.2d at 221.

The *Clay* court relied heavily on the fact that there, the plaintiff did not contend that she

was not aware that the alleged abuser's misconduct was harmful. *Clay*, 189 Ill. 2d at 613, 727 N.E.2d at 223. Despite that court's statement that the plaintiff alleged that at the time the abuse occurred, she did not know it was abnormal behavior. *Clay*, 189 Ill. 2d at 609, 727 N.E.2d at 221. Here, plaintiffs clearly alleged that they lacked sophistication to perceive psychological or emotional harm or injury proximately resulting from defendants' behavior. Plaintiffs also alleged they did not, in fact, begin to perceive the wrongfulness of the conduct of defendants until 2002. While defendants dispute the reasonableness of that assertion, in resolving a motion to dismiss, a court must assume that all well-pleaded facts are true and may consider all reasonable inferences that can be drawn from those facts. *Salisbury v. Majesky*, 352 Ill. App. 3d 1188, 1190, 817 N.E.2d 1219, 1221 (2004). A reasonable inference to be drawn from plaintiffs' complaints, read in their entirety, is that they, unlike the plaintiff in *Clay*, were not aware the misconduct was harmful to them.

Clay does not make plain, as the partial dissent states, that the assertion by the plaintiffs that they did not perceive the wrongfulness of sex between an adult and a minor is unreasonable as a matter of law. Slip op. at 16. Rather, the *Clay* court's holding is explicitly limited to the allegations of the complaint filed in that case. See *Clay*, 189 Ill. 2d at 610, 727 N.E.2d at 221 ("We believe that the circumstances *alleged in this case* allow this issue to be resolved as a matter of law" (emphasis added)). The partial dissent would have us ignore this language to expand *Clay*'s holding. As noted above, the allegations in the instant case are different, and we find no basis for extrapolating the *Clay* court's narrow holding to other cases. Here, plaintiffs' factual allegations directly contradict the conclusion they were aware that their psychological injuries were caused by the alleged abuse.

Further, to say, as defendants suggest, that plaintiffs' allegations are *per se* unreasonable simply because they, at some point, became adults and that, by that age a reasonably prudent person should have been aware that sex between an adult and a child is wrongful and therefore harmful, and thereby such a person

is put on notice to inquire, would obliterate the discovery rule for adult plaintiffs in cases such as these. It also ignores plaintiffs' allegations, taken now as true, that they were repeatedly assured that sex between a priest and a child is not wrongful but is, indeed, beneficial to the child's growth. The argument also fails to recognize the potentially long-term effects of childhood psychological trauma.

Plaintiffs' causes of action are not barred by the statute of limitations because plaintiffs have pled adequate facts to invoke the discovery rule. We also note that the issue of whether plaintiffs were reasonable in failing to discover either their injuries or the causal relationship between those injuries and the alleged abuse is not finally resolved, but is an issue to be resolved by the trier of fact. The partial dissent accuses us of 'improperly creating a subjective standard by which accrual of a cause of action would have to be measured.' Slip op. at 17, quoting Clay, 189 Ill. 2d at 613. However, we do not, by this ruling, determine that plaintiffs' allegations are reasonable. We merely accept those allegations as true, as we must at this stage of the proceedings, and find that, here, the allegations are sufficiently distinct from those in Clay that we are not constrained to the same outcome, and that the issue cannot be resolved as a matter of law. See Clay, 189 Ill. 2d at 610, 727 N.E.2d at 221. The final determination of the objective reasonableness of plaintiffs' allegations will be made by the trier of fact. We therefore reverse the dismissal of plaintiffs' causes of action.

3. Whether the Trial Court's Exercise of Jurisdiction Violated the First Amendment to the United States Constitution

Gibbney argues the complaint asks the court to pass judgment on the beliefs and practices of the Catholic Church, specifically those requiring acceptance of hierarchical authority and adherence to church doctrines. The trier of fact, he contends, is asked to examine not only whether Gibbney knew that Fonck's religious beliefs made him susceptible to severe emotional distress, but also will be asked to judge the validity and acceptability of church doctrine as to papal and hierarchical infallibility. The first amendment's free

exercise clause prohibits courts from considering claims requiring the interpretation of religious doctrine.

Nonetheless, when doctrinal controversy is not involved in a dispute between a claimant and a church, the first amendment does not require judicial deference to religious authority. Citation. For instance, 'in disputes over church property, Illinois courts have applied a neutral principles of law approach, objectively examining pertinent church characteristics, constitutions and bylaws, deeds, State statutes, and other evidence to resolve the matter the same as it would a secular dispute. Citation. Using such an approach, the dispute must be resolved applying neutral legal principles, using purely secular analyses without relying on religious precepts.' Citation. Greenquist, 287 Ill. App. 3d at 926, 679 N.E.2d at 450, quoting Bivin v. Wright, 275 Ill. App. 3d 899, 903, 656 N.E.2d 1121 1995 .

Gibbney's claims are without merit. Nowhere in plaintiffs' complaints is the court asked to pass judgment on church doctrine. Plaintiffs would be required to establish their allegations as to church teachings as facts. The trier of fact would determine, however, only whether the church in fact teaches what plaintiffs allege it teaches. The trier of fact would not have to determine, for example, whether the pronouncements of the church, as articulated by the individual defendants, are, in fact, infallible or for that matter even true. The trier of fact may accept the allegations of plaintiffs' complaints as facts and find that, in fact, plaintiffs believed them without making a judgment as to whether those beliefs are valid or acceptable. Just as courts have objectively examined church characteristics in disputes over property, the trier of fact can objectively examine those church characteristics plaintiffs allege were asserted by the clerical defendants and are relevant to their claims. The trial court did not err in exercising subject matter jurisdiction over plaintiffs' claims.

For the foregoing reasons, the judgment of the circuit court of Will County is affirmed in part and reversed in part.

Affirmed in part and reversed in part; cause remanded.

McDADE, J., with LYTTON, J., concurring and SCHMIDT, P.J., concurring in part and dissenting in part.

PRESIDING JUSTICE SCHMIDT, concurring in part and dissenting in part:

I concur in the majority's finding that the trial court's exercise of jurisdiction did not violate the first amendment. I also concur with that portion of the order which holds that section 13--202.2, as amended, does not apply to the plaintiffs' complaints.

However, because I would affirm the trial court on the remaining issue, I dissent. *Clay v. Kuhl* controls.

The majority finds it significant that the plaintiffs allege that "they 'did not, in fact, begin to perceive the wrongfulness of the conduct of defendant[s] *** until 2002.'" Slip op. at 12. The majority then states that "'[i]n resolving a motion to dismiss, a court must assume that all well-pleaded facts are true and may consider all reasonable inferences that can be drawn from those facts.'" (Emphasis added.) Slip op. at 12, quoting *Salisbury v. Majesky*, 352 Ill. App. 3d 1188, 1190, 817 N.E.2d 1219, 1221 (2004). The operative word is "reasonable." The standard under the discovery rule is an objective one. *Clay v. Kuhl* makes it plain that the assertion by the plaintiffs that they did not perceive the wrongfulness of sex between an adult and a minor until they were in their thirties is unreasonable as a matter of law. *Clay v. Kuhl*, 189 Ill. 2d at 610. There is no

allegation in plaintiffs' complaints that defendants or anyone tried to convince the plaintiffs, after they reached their majority, that sex between a priest and a child is not wrongful but, rather, beneficial to the child's growth. See *Clay v. Kuhl*, 189 Ill. 2d at 614.

Plaintiffs' complaints were filed in 2002 at a time when the youngest plaintiff was 33 years of age and the oldest was 37. Plaintiff Softcheck reached his majority in 1984, approximately 18 years before filing suit. Plaintiff Fonck reached his majority in 1983, practically 19 years before filing suit. Plaintiff John Doe I reached his majority in 1987, approximately 15 years before filing suit. Twins John Doe II and John Doe III reached their majority in 1985, approximately 17 years before filing suit.

The sexual abuse alleged varied for each individual and ranged from the perpetrator(s) exposing the plaintiffs to pornography (heterosexual and homosexual) to manipulating plaintiffs' genitals, initially outside the clothing, then inside the clothing, and progressing to masturbation. There were no contemporaneous physical injuries. Plaintiffs deny that they were aware of any psychological injury at the time.

The majority holds that defendants' allegations that at least by age 28 "'a [reasonably prudent person] should have been aware that sex between an adult and a child is wrongful and therefore harmful, and thereby such person is put on notice to inquire,' would obliterate the discovery rule for adult plaintiffs in cases such as these." Slip op. at 13. This is simply wrong. It does not obliterate the discovery rule; it simply recognizes that the discovery rule utilizes an objective rather than a subjective standard. It seems absurd to argue that giving someone 10 years after reaching his majority to "discover" facts that are presumed under Illinois law would somehow obliterate the

discovery rule. In a tortured attempt to distinguish *Clay*, the majority states that "[a] reasonable inference to be drawn from plaintiffs' complaints, read in their entirety, is that they, unlike the plaintiff in *Clay*, were not aware the misconduct was harmful to them." Slip op. at 12. Our supreme court has already held that, as a matter of law, no reasonably prudent adult can be heard to say that he or she does not understand that sex between an adult and a child is both wrong and harmful. A resulting injury is presumed under Illinois law. *Clay v. Kuhl*, 189 Ill. 2d at 611. What if these very same plaintiffs, as adults, committed identical acts on minors? Could they then be heard to say that they did not know the acts were harmful?

Since there are no allegations of suppressed memory of the abuse, the syllogism goes like this: (1) I am an adult and therefore I know that sex between an adult and a child is both wrong and harmful; (2) when I was a child I was sexually molested by an adult; and therefore, (3) what was done to me was wrong, and I have been harmed.

Accepting the majority's position in this case in support of a delayed discovery of either the wrongfulness of the conduct or the injury would "improperly create a subjective standard by which accrual of a cause of action would have to be measured." *Clay v. Kuhl*, 189 Ill. 2d at 613. The majority correctly notes that section 13--202.2 as amended does not apply. The majority then applies it, finding the key allegation in the plaintiffs' complaints is that plaintiffs "lacked sophistication *** to perceive psychological or emotional harm or injury proximately resulting" from defendants' behavior. Slip op. at 12. My guess is that most people "lack sophistication" to diagnose or perceive an asymptomatic herniated disk proximately resulting from a minor trauma. Would the majority reach the same result if we were dealing with the late discovery of such an

injury and the plaintiff said "I knew I had an accident, but I did not think I was injured."?

Whether an action was timely brought under the discovery rule is generally a question of fact, but where, as here, the answer is clear from the pleading, it may be determined as a matter of law. *Clay v. Kuhl*, 189 Ill. 2d 603.

Statutes of limitations exist for very legitimate reasons. Memories fade; witnesses disappear; documents are lost or destroyed. The law recognizes the injustice of requiring one to defend against stale claims. This is no less true where the tort alleged, as here, is particularly loathsome.

Clay v. Kuhl is on point and controlling. Notwithstanding the majority's *sub silentio* agreement with the dissenting view in *Clay v. Kuhl*, it is the supreme court's majority opinion that controls what must be done here in the appellate court. I would affirm.