NO. 4-10-0361 Filed 6/23/11

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE BOARD OF EDUCATION OF THE URBANA SCHOOL DISTRICT NO. 116, Plaintiff-Appellant, v. THE BOARD OF EDUCATION OF THE McLEAN COUNTY UNIT DISTRICT NO. 5, Defendant-Appellee.	)	Appeal from Circuit Court of McLean County No. 09L145 Honorable Scott Drazewski, Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Steigmann and McCullough concurred in the judgment.

ORDER

Held: Where plaintiff filed its complaint more than one year after cause of action accrued, the applicable statute of limitations had run and the trial court properly dismissed the action with prejudice. Plaintiff possessed sufficient information concerning its injury by, at the latest, August 2008. Therefore, the complaint, which was not filed until September 2009, was time barred.

In September 2009, plaintiff, the Board of Education of the Urbana School District No. 116 (Urbana), filed a complaint containing allegations of fraudulent misrepresentation and fraudulent concealment against defendant, the Board of Education of the McLean County Unit District No. 5 (McLean County). In April 2010, the trial court dismissed Urbana's complaint after concluding (1) the complaint was not filed within the one-year statute of limitations provided by section 8-101(a) of the Local Governmental and Governmental Employees Tort Immunity Act (Tort Immunity Act) (745 ILCS 10/8-101(a) (West 2008)) and (2) McLean County was immune from Urbana's claims under various sections of the Tort Immunity Act. Because Urbana's complaint was

filed after the statute of limitations expired, we affirm.

I. BACKGROUND

On September 18, 2009, Urbana filed a three-count complaint against McLean County for fraudulent misrepresentation (count I), fraudulent concealment (count II), and contribution (count III). Urbana later voluntarily dismissed count III.

In its complaint, Urbana alleged the following facts that were common to all counts of its complaint. McLean County employed Jon White as an elementary school teacher for the 2002-03, 2003-04, and 2004-05 school years, first at Brigham Elementary School and then at Colene Hoose Elementary School. McLean County received complaints from the parents of several of White's female students and a teachers' aide that White had engaged in inappropriate sexual conduct toward his female students during the 2003-04 and 2004-05 school years, while he was teaching first grade at Colene Hoose Elementary School. Parents complained that White directed female students to massage his legs under his pants, wrap their legs around his body, give him backrubs under his shirt, and sit on his feet and in his lap. One parent also complained that White gave her daughter nude pictures of a movie star and told the student that she looked like the movie star. The parent also complained that White physically pursued the same student around the grounds of the elementary school and rubbed her back when he caught her. McLean County did not investigate these complaints. A teachers' aide assigned to White's classroom complained that White had female students sit in his lap. McLean County did not investigate the teachers' aide's complaint. Instead, Assistant Principal Dale Heidbreder asked the aide to keep an eye on White.

Urbana further alleged that by failing to investigate and document the complaints about White, McLean County concealed and failed to record in White's personnel file the complaints

of sexual harassment, sexual grooming, and sexual abuse of his female students. In 2005, as a result of one or more of the complaints about White's inappropriate conduct, McLean County entered into a severance agreement with White. As part of this agreement, White's employment with McLean County ended in April 2005, before the end of that school year.

In August 2005, White applied for, and interviewed for, an elementary school teacher position at Thomas Paine Elementary School in the Urbana School District. In connection with this process and pursuant to the Illinois State Board of Education's rules and regulations, Urbana sent a verification-of-experience form to McLean County, seeking information about the duration of White's employment with McLean County. McLean County completed the form and indicated White worked the entire 2004-05 school year. Urbana received the form completed by McLean County, reviewed it, and placed it in White's personnel file.

Urbana relied on the information in the completed form that falsely communicated White completed the 2004-05 academic year as a teacher for McLean County. Specifically, Urbana did not investigate the reasons White's employment with McLean County was terminated and, as a result, Urbana hired or continued to employ White as a first grade teacher at Thomas Paine Elementary School.

While employed at Thomas Paine Elementary School, White engaged in inappropriate sexual conduct toward at least nine of his female students. In the fall of 2008, Urbana learned, after several of White's former students at Thomas Paine Elementary School filed suit against him and Urbana, that the information McLean County provided in the verification-of-experience form about the duration of White's employment was false. In April 2009, Urbana received a copy of documents produced by the Normal police department pursuant to a subpoena issued in the ongoing litigation

against McLean County by one of White's former students. It was from these documents that Urbana allegedly learned for the first time that McLean County had been on notice of White's inappropriate sexual conduct toward female students during White's employment with McLean County and yet McLean County provided the inaccurate completed verification-of-experience form to Urbana. The documents demonstrated that at the time McLean County provided the verification-of-experience form to Urbana, McLean County was fully aware White had been accused of inappropriate sexual conduct toward female students while employed as a teacher at Colene Hoose Elementary School. According to the complaint, prior to receiving these documents, Urbana was unaware and had no reason to suspect or believe that McLean County knew White had engaged in inappropriate sexual conduct toward female students while in McLean County's employ or at the time McLean County sent the verification-of-experience form containing false information about White to Urbana.

McLean County filed a request to admit certain alleged facts. In its response, Urbana admitted the following: (1) based on the online application, Urbana knew the employment relationship between McLean County and White had ended; (2) Urbana did not receive a recommendation letter from Ed Heineman, a principal at Colene Hoose Elementary School, prior to hiring White; (3) no employee of Urbana contacted McLean County for a reference on White; (4) prior to hiring White, no employee of Urbana asked McLean County why White's employment was not renewed; (5) after hiring White and prior to January 2007, no employee from Urbana asked McLean County why White's employment with McLean County was not renewed; (6) Urbana hired White before receiving the verification-of-teaching-experience form; (7) Urbana knew on or before April 15, 2008, that White had not taught the entire 2004-05 school year at McLean County; and (8) Urbana's law firm received a copy of Jane Doe 2's lawsuit (Doe complaint) against Jon White and

other defendants, including *both* Urbana and McLean County, on or before August 13, 2008.

The Doe complaint was filed on July 25, 2008, and contained numerous counts, including but not limited to allegations of negligent hiring, premises liability, and failure to report. The Doe complaint named as defendants White, the Urbana School District Board of Directors, Gene Amberg (superintendent of the Urbana School District), Janice Bradley (principal of Thomas Paine Elementary School), Kay Grabow (teacher in Urbana School District), Rhiannon Ross (after-school care supervisor in the Urbana School District), Carmelita Thomas (human resources manager in the Urbana School District), Lamar Walker (after-school care supervisor and lunchroom supervisor in the Urbana School District), the McLean County Unit District No. 5 Board of Directors, John Pye (assistant superintendent of operations and human resources of the Normal School District), Dale Heidbreder (assistant principal at Colene Hoose Elementary School), Heineman, Alan Chapman (superintendent of the Normal School District), and Jim Braksick (a principal at Colene Hoose Elementary School).

The Doe complaint contained 310 paragraphs of allegations. Those allegations potentially pertinent to issues in the case *sub judice* include the following: (1) Pye, Chapman, and Heineman (all employees of McLean County) created a falsely positive letter of reference for White, which concealed prior teacher-on-student sexual harassment, and/or sexual grooming, and/or sexual abuse (White's bad acts); (2) McLean County passed White onto Urbana while concealing White's bad acts; (3) in December 2005, Grabow learned of White's bad acts committed while White was employed by McLean County; (4) at all relative times, McLean County had actual notice of White's bad acts (paragraphs 239(a) through (i) gave examples) but passed White on to Urbana while concealing its actual knowledge; and (5) McLean County employees Pye, Chapman, Heineman,

Heidbreder, and Braksick made false statements and "concealments" in order to induce reliance and pass White on to Urbana.

On November 2, 2009, McLean County filed a combined motion to dismiss Urbana's complaint pursuant to section 2-619.1 (735 ILCS 5/2-619.1 (West 2008)). McLean County alleged dismissal with prejudice was warranted for several reasons, including the following: (1) sections 2-106 and 2-107 of the Tort Immunity Act (745 ILCS 10/2-106, 2-107 (West 2008)) and the common-law absolute immunity provide school districts immunity from claims premised on misrepresentation or the provision of information; (2) the Tort Immunity Act's one-year statute of limitations (745 ILCS 10/8-101(a) (West 2008)) bars Urbana's claims; (3) counts I and II fail to state a claim because our supreme court recently held that the tort of fraud does not apply to nonbusiness transactions; and (4) Urbana failed to plead that McLean County caused the damages Urbana sought to recover (we only discuss the reasons for dismissal of counts I and II since Urbana later voluntarily dismissed count III).

During the March 2010 hearing on McLean County's combined motion to dismiss, Urbana's counsel stated Urbana was "trying to hold [McLean County] liable for the actions of [McLean County] in lying to Urbana on the verification-of-experience form." When asked how being given the correct information, *i.e.*, that White did not complete the full 2004-05 school year but instead had his employment terminated in April 2005, would have prevented the abuse that occurred when White taught at Thomas Paine Elementary School, Urbana's counsel stated the following:

> "Jon White was a late summer hire. That occurs when the school district has a need. As [McLean County] has observed, his

> hire process went rather quickly, they sent off a verification[-]of[-]experience form, we already knew he had been non-renewed by [McLean County], which was why he was available. There is--it is highly unusual for any type of teacher to leave their employment during the school year, and I think, frankly, that's one of the reasons why this information is required to be passed from one school district to another in connection with someone's hire.
>
> It rarely happens, there are only a few reasons that teachers leave his or her employment in the middle of the school year. Had that form come back with accurate information indicating that Jon White had left his employment in the midst of the school year, that is something that we definitely would have investigated, it would have been inconsistent with what he said, and it happens so rarely that it is always a red flag for something serious, so I believe, then, that it would have either prompted [Urbana] to contact [McLean County] or we would have turned around and said Jon White must have lied during his application process."

The trial court then asked if Urbana could have waited until it received the verification-of-experience form back from McLean County before hiring White, and Urbana's counsel stated the following:

> "They could, but it's so very rare that a teacher leaves during the school year that there was no reason to assume that in this case with Jon White that that was the issue. He had explained that he had

> been non-renewed. That happens all the time. The school district had met him, he seemed like he would be a good teacher, so he was hired, but had this form come back with this wholly unexpected information about him not finishing the school year, [Urbana] would have responded to that with further investigation."

At the conclusion of a March 2010 hearing on McLean County's combined motion to dismiss, the trial court orally ruled that (1) the immunity contained within sections 2-106 and 2-107 of the Tort Immunity Act (745 ILCS 10/2-106, 2-107 (West 2008)) applied, (2) the statute of limitation in section 8-101 of the Tort Immunity Act (745 ILCS 10/8-101 (West 2008)) barred Urbana's complaint, (3) absolute immunity applied, and (4) section 2-204 of the Tort Immunity Act (745 ILCS 10/2-204 (West 2008)) would "inure to the benefit, that being to [McLean County's] argument, in that White's actions occurred well after [McLean County] provided the information to Urbana, and the cause of the injury in this instance was not the failure to disclose so much as Mr. White's actions." The court indicated that because it was granting the motion to dismiss under section 2-619 grounds, *i.e.*, the immunity defenses and statute of limitations, it need not address the section 2-615 failure-to-state-a-cause-of-action issues in the motion. On April 14, 2010, the court entered a written order granting McLean County's section 2-619.1 motion to dismiss with prejudice. The order stated "[t]he [c]ourt makes no ruling on the [m]otion to [d]ismiss pursuant to 735 ILCS 5/2-615."

This appeal followed.

II. ANALYSIS

The trial court's decision to dismiss a complaint and its interpretation of a statute are

both subject to *de novo* review. *Griffin v. Willoughby*, 369 Ill. App. 3d 405, 410 (2006). Because we find Urbana's complaint was time barred, we need only analyze the statute-of-limitations issue.

"The legislative intent of the Tort Immunity Act is to narrow the statute of limitations for any tort action against local governmental entities and local governmental employees." *Greb v. Forest Preserve District of Cook County*, 323 Ill. App. 3d 461, 465 (2001). To accomplish this goal, section 8-101 of the Tort Immunity Act provides that "[n]o civil action other than an action described in subsection (b) may be commenced in any court against a local entity or any of its employees for any injury unless it is commenced within one year from the date that the injury was received or the cause of action accrued." 745 ILCS 10/8-101(a) (West 2008). Subsection (b) applies to injuries arising out of patient care (745 ILCS 10/8-101(b) (West 2008)) and is therefore not applicable to the case *sub judice*. Our supreme court has stated that the purpose of the limitations period in section 8-101 "is to encourage early investigation into a claim *** when the matter is still fresh, witnesses are available, and conditions have not materially changed. Such an investigation permits prompt settlement of meritorious claims and allows governmental entities to plan their budgets in light of potential liabilities." *Ferguson v. McKenzie*, 202 Ill. 2d 304, 313 (2001).

Because McLean County is a "local public entity" (see 745 ILCS 10/1-206 (West 2008)), Urbana had one year to file its complaint from the date the statute of limitations began to run, *i.e.*, when Urbana received its injury or when the cause of action accrued. See 745 ILCS 10/8-101(a) (West 2008).

Here, the parties disagree on the date the statute of limitations began to run. McLean County maintains the statute of limitations began to run prior to September 2008 and therefore Urbana's complaint filed September 18, 2009, was filed outside the Tort Immunity Act's one-year

statute of limitations. Urbana contends the statute-of-limitations period did not begin to run until April 2009 when it received copies of McLean County police reports which put it on notice for the first time that McLean County had concealed its knowledge of White's conduct at the time McLean County filled out the verification-of-experience form that indicated White had completed the entire 2004-05 school year. We agree with McLean County.

"At some point the injured person becomes possessed of sufficient information concerning his injury and its cause to put a reasonable person on inquiry to determine whether actionable conduct is involved." *Knox College v. Celotex Corp.*, 88 Ill. 2d 407, 416 (1981). It is at this point from which the statute of limitations is calculated. *Knox College*, 88 Ill. 2d at 416. "[W]hile the question of when a plaintiff knew or should have known of his or her injury and that his or her injury was wrongfully caused is typically one for the jury, 'where there are undisputed facts from which only one conclusion may be drawn, the question will be one for the court.'" *Ericksen v. Village of Willow Springs*, 279 Ill App. 3d 210, 216 (1995) (quoting *Sille v. McCann Construction Specialties Co.*, 265 Ill. App. 3d 1051, 1055-56 (1994)).

Here, there are undisputed facts from which the only conclusion that can be drawn is that Urbana possessed sufficient information concerning its injury and its cause to put it on inquiry notice to determine whether actionable conduct was involved. The following facts are undisputed: (1) in early 2007, White was arrested and charged with aggravated criminal sexual abuse and predatory criminal sexual assault in both McLean and Champaign Counties; (2) White pleaded guilty to aggravated criminal sexual abuse in Champaign County in February 2008 and in McLean County in April 2008; (3) Urbana acknowledges that in April 2008, Urbana became aware that McLean County's representation in the verification-of-experience form that White finished the 2004-05

school year was false; (4) in July 2008, Jane Doe 2 filed a federal lawsuit, naming both Urbana and McLean County as defendants, in which she alleged, in part, that McLean County and its employees "passed" White on to Urbana while concealing their knowledge of White's bad acts while he was employed with McLean County; and (5) Urbana acknowledged having received the Doe complaint prior to August 13, 2008.

The above-described facts clearly show Urbana was aware of its injury prior to August 13, 2008, as Urbana acknowledged receiving the Doe complaint in which Urbana was a named defendant. Moreover, Urbana had already learned in April 2008 that the statements in the verification-of-experience form about White finishing the 2004-05 school year were untrue. Urbana cannot claim reliance on McLean County's statement after it became aware the representation was false. *McCraven v. City of Chicago*, 18 F. Supp. 2d 877, 884-85 (N.D. Ill. 1998) (finding fraudulent-misrepresentation claim barred by the Tort Immunity Act's one-year statute of limitations when the plaintiff became aware statement was false more than one year before filing complaint).

Urbana's own attorney stated that knowledge that White did not complete the 2004-05 school year would have raised a "red flag" that would have prompted Urbana to respond with further investigation because it happens so rarely that a teacher does not complete the full school year. However, Urbana had even more information that should have put it on inquiry notice to determine whether actionable conduct by McLean County was involved when Urbana received the Doe complaint. After receiving the complaint, Urbana knew McLean County was accused of concealing White's bad acts and "passing" him on to Urbana, the same conduct Urbana now accuses McLean County of. Certainly, prior to August 13, 2008, Urbana had knowledge that (1) McLean County's representation was false, (2) Jane Doe 2 had accused McLean County of concealing the facts about

White and "passing" White on to Urbana, and (3) Jane Doe had filed a lawsuit against Urbana. Therefore, Urbana's complaint filed on September 18, 2009, was filed more than one year after the cause of action accrued and is barred by the statute of limitations.

Although Urbana raises several other issues on appeal, we need not address them since the statute of limitations bars Urbana's claims. "A reviewing court will not consider questions or contentions which are not essential to the determination of the case before it." *Spunar v. Clark Oil & Refining Corp.*, 53 Ill. App. 3d 477, 480 (1977).

III. CONCLUSION

For the reasons stated, we affirm the trial court's judgment.

Affirmed.