

CASE NO. A10-374

STATE OF MINNESOTA
IN COURT OF APPEALS

Jane Doe 43C, Jane Doe 43D,
Jane Doe 43E, Jane Doe 43F,
and Jane Doe 43G,

Appellants,

vs.

Diocese of New Ulm, St. Francis Parish,
and St. Mary's Parish,

Respondents

RESPONDENTS' BRIEF

JEFF ANDERSON & ASSOCIATES
Jeffrey R. Anderson, #2057
Kathleen O'Connor, #184834
366 Jackson Street, Suite 100
St Paul, MN 55101
(651) 227-9990

Counsel for Appellants

MEIER, KENNEDY & QUINN, CHTD.
Thomas B. Wieser, #122841
Jennifer R. Larimore, #0386663
2200 Bremer Tower
445 Minnesota Street
St. Paul, MN 55101
(651) 228-1911

Counsel for Respondents

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

STATEMENT OF THE ISSUES..... 1

STATEMENT OF THE CASE..... 3

STATEMENT OF FACTS 5

 A. Respondents..... 5

 B. Father David Roney..... 5

 C. Appellants..... 6

 1. Jane Doe 43F..... 6

 2. Jane Doe 43C 7

 3. Jane Doe 43E..... 7

 4. Jane Doe 43G 7

 D. Father Francis Garvey 8

 1. Fr. Garvey’s work history 8

 2. Reports to Fr. Garvey 9

 E. Sister Virginia McCall..... 9

ARGUMENT 10

I. Applicable Standard of Review on Appeal from Summary Judgment..... 10

II. The District Court Properly Granted Summary Judgment in Favor of Respondent St. Francis Because There is No Evidence that St. Francis Made a False Representation about Roney to Appellants or that Any Appellant Relied on Any Misrepresentation. 12

III. The District Court Properly Granted Summary Judgment in Favor of Respondent St. Mary Because There Is No Evidence that St. Mary Made a False Representation about Roney to Appellants or that Any Appellant Relied on Any Misrepresentation. 13

 A. There is no evidence of a misrepresentation by St. Mary. 13

 B. There is no evidence that appellants’ relied on a misrepresentation made by St. Mary. 15

 C. There is no evidence that Sr. McCall’s “nondisclosure” was intended to induce appellants’ reliance..... 15

IV. The District Court Properly Granted Summary Judgment in Favor of Respondent Diocese Because There is No Evidence That the Diocese Made a False Representation about Roney to Appellants or that Any Appellant Relied on Any Misrepresentation.....	16
A. There is no evidence that the Diocese made a misrepresentation about Roney to appellants or that appellants relied on any misrepresentation.	16
B. The Diocese of New Ulm did not know about any complaints against Fr. Roney until 1987.	17
1. The Diocese had no knowledge.	17
2. Any knowledge possessed by Fr. Garvey is irrelevant because Fr. Garvey was not the Diocese’s agent.	18
3. Fr. Garvey was not acting within the scope of any alleged agency when he learned of the allegations against Roney.....	20
C. Respondent the Diocese is a civil corporation, with no authority to appoint or remove a priest.	22
D. The First Amendment bars inquiry into the Bishop’s decision to appoint Roney.....	24
E. Appellants have not produced evidence of damages attributable to the Diocese’s purported misrepresentations.	27
V. The District Court Properly Granted Summary Judgment Because Appellants’ Intentional-Misrepresentation Claim Is Untimely under Minn. Stat. § 541.05, subd. 1(6).....	27
A. Appellants had enough information to commence their intentional-misrepresentation claim more than six years before 2004.....	29
B. Appellants ought to have discovered, with reasonable diligence, the facts constituting the fraud more than six years before starting this action.	31
C. The district court did not apply Minn. Stat. § 541.073 to the intentional-misrepresentation claim.	36
D. There is no confidential relationship excusing appellants’ failure to timely commence their claim.	37
E. There is no evidence of fraudulent concealment and respondents’ post-1987 conduct regarding Roney is irrelevant to determining whether appellants’ claim is timely.....	39
CONCLUSION.....	41

TABLE OF AUTHORITIES

Federal Cases

<i>Goellner v. Butler</i> , 836 F.2d 426 (8th Cir. 1988).....	40
<i>Helloid v. Indep. Sch. Dist. No. 361</i> , 149 F.Supp.2d 863 (D. Minn. 2001).....	40, 41
<i>Hope v. Klabal</i> , 457 F.3d 784 (8th Cir. 2006).....	29
<i>Klehr v. A.O. Smith Corp.</i> , 87 F.3d 231 (8th Cir. 1996).....	29, 35
<i>Lemon v. Kurtzman</i> , 403 U.S. 602, 91 S. Ct. 2105 (1971).....	25
<i>Serbian E. Orthodox Diocese v. Milivojevich</i> , 426 U.S. 696, 96 S. Ct. 2372 (1976).....	25

Minnesota State Cases

<i>A. Gay Jenson Farms Co. v. Cargill, Inc.</i> , 309 N.W.2d 285 (Minn. 1981).....	2, 18
<i>Berreman v. West Pub'g. Co.</i> , 615 N.W.2d 362 (Minn. App. 2000).....	15
<i>Black v. Snyder</i> , 471 N.W.2d 715 (Minn. App. 1991).....	25
<i>Blegen v. Monarch Life Ins. Co.</i> , 365 N.W.2d 356 (Minn. App. 1985).....	2, 28, 29
<i>Brooks Upholstering Co. v. Aetna Ins. Co.</i> , 276 Minn. 257, 149 N.W.2d 502 (1967).....	21
<i>Buller v. A.O. Smith Harvestore Prods., Inc.</i> , 518 N.W.2d 537 (Minn. 1994).....	29, 32
<i>Bustad v. Bustad</i> , 116 N.W.2d 552 (Minn. 1962).....	29
<i>C.B. v. Evangelical Lutheran Church in Am.</i> , 726 N.W.2d 127 (Minn. App. 2007).....	19
<i>Collins v. Johnson</i> , 374 N.W.2d 536 (Minn. App. 1985).....	2, 31, 32
<i>D A.B. v. Brown</i> , 570 N.W.2d 168 (Minn. App. 1997).....	38
<i>DLH, Inc. v. Russ</i> , 566 N.W.2d 60 (Minn. 1997).....	1, 10, 13
<i>Doe v. Lutheran High School of Greater Mpls.</i> , 702 N.W.2d 322 (Minn. App. 2005)....	25
<i>Dymit v. Indep. Sch. Dist. 717</i> , No. A04-471, 2004 WL 2857375 (Minn. App. Dec. 14, 2004).....	30, 39, 41
<i>Eller v. Diocese of St. Cloud</i> , No. A05-828, 2006 WL 163526 (Minn. App. Jan. 24, 2006)	22, 23, 24
<i>Entzion v. Illinois Farmers Ins.</i> , 675 N.W.2d 925 (Minn. App. 2004).....	28
<i>Florenzano v. Olson</i> , 387 N.W.2d 168 (Minn. 1986).....	1, 2, 12, 15, 27
<i>Flynn v. Am. Home Prods. Corp.</i> , 627 N.W.2d 342 (Minn. App. 2001).....	1, 13
<i>Haberle v. Buchwald</i> , 480 N.W.2d 351 (Minn. App. 1992).....	31, 40
<i>Hoyt Props., Inc. v. Prod. Res. Group, L.L.C.</i> , 736 N.W.2d 313 (Minn. 2007).....	10
<i>Hydra-Mac, Inc. v. Onan Corp.</i> , 450 N.W.2d 913 (Minn. 1990).....	32
<i>Ivers v. Church of St. Williams</i> , No. C2-98-519, 1998 WL 887536 (Minn. App. Dec. 22, 1988).....	38
<i>J.M. v. Minn. Dist. Council of the Assemblies of God</i> , 658 N.W.2d 589 (Minn. App. 2003).....	2, 25, 26
<i>Jane Doe 43C v. Diocese of New Ulm</i> , No. A08-0729, 2009 WL 605749 (Minn. App. Mar. 10, 2009).....	2, 3, 4, 6, 8, 9, 10, 27, 28, 29
<i>John Doe 76A v. Diocese of Winona</i> , No. A04-688, 2004 WL 2711650 (Minn. App. Nov. 30, 2004).....	35
<i>Johnson v. Winthrop Labs.</i> , 291 Minn. 145, 190 N.W.2d 77 (1971).....	28
<i>Jurek v. Thompson</i> , 308 Minn. 191, 241 N.W.2d 788 (1976).....	20

<i>Karels v. Am. Family Mut. Ins.</i> , 371 N.W.2d 617 (Minn. App. 1985)	28
<i>Kassan v. Kassan</i> , 400 N.W.2d 346 (Minn. App. 1987)	32
<i>Keough v. St. Paul Milk Co.</i> , 205 Minn. 96, 285 N.W.2d 809 (1939).....	39
<i>MacRae v. Group Health Plan, Inc.</i> , 753 N.W.2d 711 (Minn. 2008)	28
<i>Melina v. Chaplin</i> , 327 N.W.2d 19 (Minn. 1982).....	1, 12, 24
<i>Meyer v. Lindala</i> , 675 N.W.2d 635 (Minn. App. 2004).	37
<i>Midland Nat'l Bank v. Perranoski</i> , 299 N.W.2d 404 (Minn. 1980)	13
<i>Mulinix v. Mulinix</i> , No. C2-97-297, 1997 WL 585775 (Minn. App. Sept. 22, 1997)	26
<i>Nicollet Restoration, Inc. v. City of St. Paul</i> , 533 N.W.2d 845 (Minn. 1995).....	17
<i>Osborne v. Twin Town Bowl, Inc.</i> , 749 N.W.2d 367 (Minn. 2008).....	11
<i>Plate v. St. Mary's Help of Christians Church</i> , 520 N.W.2d 17 (Minn. App. 1994)	18
<i>Powell v. Trans Global Tours, Inc.</i> , 594 N.W.2d 252 (Minn. App. 1999).....	17
<i>Quenroe v. Order of St. Benedict</i> , No. A03-1212, 2004 WL 1381195 (Minn. App. June 15, 2004)	38
<i>Richfield Bank & Trust Co. v. Sjogren</i> , 309 Minn. 362, 244 N.W.2d 648 (1976)	13
<i>Schmuking v. Mayo</i> , 183 Minn. 37, 235 N.W. 633 (1931)	39
<i>Smith v. Woodwind Homes, Inc.</i> , 605 N.W.2d 418 (Minn. App. 2000)	18
<i>Thiele v. Stich</i> , 425 N.W.2d 580 (Minn. 1988).....	14
<i>Toombs v. Daniels</i> , 361 N.W.2d 801 (Minn. 1985).....	39
<i>Travelers Indem. Co. v. Bloomington Steel & Supply Co.</i> , 718 N.W.2d 888 (Minn. 2006)	2, 21, 22
<i>Trentor v. Pothan</i> , 46 Minn. 298, 49 N.W. 129, (1891)	20, 21
<i>Vieths v. Ripley</i> , 295 N.W.2d 659 (Minn. 1980).....	19
<i>Wild v. Rarig</i> , 302 Minn. 419, 234 N.W.2d 775 (1975)	40
<i>Williamson v. Prasciunas</i> , 661 N.W.2d 645 (Minn. App. 2003).....	40
Other State Cases	
<i>Colosimo v. Roman Catholic Bishop of Salt Lake City</i> , 156 P.3d 806 (Utah 2007).....	34
<i>John Doe 1 v. Archdiocese of Milwaukee</i> , 734 N.W.2d 827 (Wis. 2007)	33, 34
Statutes	
Minn. Stat. § 315.15 (2008)	5
Minn. Stat. § 315.16 (2008)	5, 23
Minn. Stat. § 480A.08(3) (2008).....	23
Minn. Stat. § 541.05, subd. 1(6) (2002).....	2, 4, 11, 27, 28, 36, 41
Minn. Stat. § 541.073 (2002)	3, 4, 27, 36
Rules	
Minn. R. Civ. P. 56.03	10
Other Authorities	
U.S. Const. amend. I	24

STATEMENT OF THE ISSUES

I. Did the district court properly grant summary judgment in favor of respondent St. Francis Parish when there is no evidence that St. Francis made a false representation about Roney to appellants or that any appellant relied on any misrepresentation?

The parties filed cross-motions for summary judgment. Defs.' Renewed Mot. & Mem. for Sum. Jdgmt. (Aug. 7, 2009); Pls.' Mot. & Mem. for Sum. Jdgmt. (Aug. 11, 2009). The District Court granted summary judgment in favor of St. Francis on appellants' intentional-misrepresentation claim, concluding that there was no evidence that St. Francis had knowledge of any abuse by Roney, made any false representations about Roney, or concealed any facts about Roney. (A. 220–26.)

Most apposite authorities: *DLH, Inc. v. Russ*, 566 N.W.2d 60 (Minn. 1997); *Florenzano v. Olson*, 387 N.W.2d 168 (Minn. 1986); *Melina v. Chaplin*, 327 N.W.2d 19 (Minn. 1982).

II. Did the district court properly grant summary judgment in favor of respondent St. Mary's Parish when there is no evidence that St. Mary made a false representation about Roney to appellants or that any appellant relied on any misrepresentation?

The parties filed cross-motions for summary judgment. Defs.' Renewed Mot. & Mem. for Sum. Jdgmt. (Aug. 7, 2009); Pls.' Mot. & Mem. for Sum. Jdgmt. (Aug. 11, 2009). The District Court granted summary judgment in favor of St. Mary on appellants' intentional-misrepresentation claim, concluding that there was no evidence of an intentional misrepresentation by St. Mary's or its purported agent, Sr. McCall. (A. 220–226.)

Most apposite authorities: *Florenzano v. Olson*, 387 N.W.2d 168 (Minn. 1986); *Flynn v. Am. Home Prods. Corp.*, 627 N.W.2d 342 (Minn. App. 2001).

III. Did the district court properly grant summary judgment in favor of respondent Diocese of New Ulm when there is no evidence that the Diocese made a false representation about Roney to appellants or that any appellant relied on any misrepresentation?

The parties filed cross-motions for summary judgment. Defs.' Renewed Mot. & Mem. for Sum. Jdgmt. (Aug. 7, 2009); Pls.' Mot. & Mem. for Sum. Jdgmt. (Aug. 11, 2009). The District Court granted summary judgment in favor of the Diocese on appellants' intentional-misrepresentation claim, concluding that there was no evidence that the Diocese knowingly made a false representation about Roney, intentionally concealed facts about Roney, or made an actionable misrepresentation after learning of abuse allegations in 1987. (A. 220–26.)

Most apposite authorities: *Travelers Indem. Co. v. Bloomington Steel & Supply Co.*, 718 N.W.2d 888 (Minn. 2006); *Florenzano v. Olson*, 387 N.W.2d 168 (Minn. 1986); *A. Gay Jenson Farms Co. v. Cargill, Inc.*, 309 N.W.2d 285 (Minn. 1981); *J.M. v. Minn. Dist. Council of the Assemblies of God*, 658 N.W.2d 589 (Minn. App. 2003).

IV. Did the district court properly grant summary judgment in favor of respondents when appellants' intentional-misrepresentation claim was untimely, under Minn. Stat. § 541.05, subd. 1(6)?

The parties filed cross-motions for summary judgment. Defs.' Renewed Mot. & Mem. for Sum. Jdgmt. (Aug. 7, 2009); Pls.' Mot. & Mem. for Sum. Jdgmt. (Aug. 11, 2009). The District Court applied the statute of limitations in Minn. Stat. § 541.05, subd. 1(6), concluded that appellants' intentional-misrepresentation claim was untimely, and granted summary judgment in favor of respondents. (A. 220–26.)

Most apposite authorities: Minn. Stat. § 541.05, subd. 1(6) (2002); *Collins v. Johnson*, 374 N.W.2d 536 (Minn. App. 1985), *review denied* (Minn. Nov. 26, 1985); *Blegen v. Monarch Life Ins. Co.*, 365 N.W.2d 356 (Minn. App. 1985); *Jane Doe 43C v. Diocese of New Ulm*, No. A08-0729, 2009 WL 605749 (Minn. App. Mar. 10, 2009).

STATEMENT OF THE CASE

Appellants Jane Doe 43C, Jane Doe 43E, Jane Doe 43F, and Jane Doe 43G, allege that they were sexually abused by Father David Roney when he served as a priest at respondent St. Francis Parish and respondent St. Mary's Parish, both within respondent Diocese of New Ulm. In January 2004, appellants commenced this joint action against respondents, asserting various claims of negligence, vicarious liability, fiduciary fraud, and breach of fiduciary duty. (A. 102–16.)¹

Appellants subsequently sought to amend their complaint, seeking to replace their fiduciary fraud claim with an intentional-misrepresentation claim and to add a claim for punitive damages. Respondents moved for summary judgment on all counts of the complaint, arguing that appellants' claims were barred by the statute of limitations.

After hearing oral argument, the district court granted appellants' motion to amend the complaint. (R. 1–4; R. 5–20.)² It then granted respondents' motion for summary judgment on all of appellants' claims, including the intentional-misrepresentation claim,³ concluding that the claims were untimely under Minn. Stat. § 541.073 (2002), the delayed-discovery statute of limitations. (R. 21–32; R. 33–34.)

Appellants appealed, challenging the statute-of-limitations ruling. In *Jane Doe 43C v. Diocese of New Ulm*, the court of appeals affirmed the district court's ruling on the nonfraud claims, holding that those claims were untimely because each appellant

¹ "A. ____" refers to appellants' appendix.

² "R. ____" refers to respondents' appendix.

³ Appellants' fraud claim was pleaded in a single court on behalf of all appellants. (R. 5–20.)

knew that she had been sexually abused more than six years before bringing suit. No. A08-0729, 2009 WL 605749, at *7–*11 (Minn. App. Mar. 10, 2009) (attached as R. 128–37). The court reversed the district court’s ruling on the intentional-misrepresentation claim, holding that appellants’ intentional-misrepresentation claim was governed by the fraud statute of limitations in Minn. Stat. § 541.05, subd. 1(6) (2002)—not the statute of limitations in Minn. Stat. § 541.073. *Id.* at *5. The court remanded the matter to the district court with instructions to apply the fraud statute of limitations to appellants’ intentional-misrepresentation claim and, if appropriate, determine whether summary judgment was proper on the merits. *Id.*

Thereafter, on remand, the parties filed cross-motions for summary judgment. On November 30, 2009, the district court, The Honorable Allison L. Krehbiel presiding, denied appellants’ motion for summary judgment and granted respondents’ motions for summary judgment, ruling that appellants’ intentional-misrepresentation claim was untimely under Minn. Stat. § 541.05, subd. 1(6), and failed on the merits. (A. 220–26.) Judgment was entered on December 30, 2009. (A. 228.) This appeal followed.

STATEMENT OF FACTS

A. Respondents

Respondent Diocese of New Ulm is a diocesan corporation organized under Minn. Stat. § 315.16 (2008). As such it is separate from the ecclesiastical Diocese of New Ulm, which is not a legal entity under civil law. (R. 39–40, at ¶¶ 24–26.) Similarly, respondents St. Francis and St. Mary are separate parish corporations organized under Minn. Stat. § 315.15 (2008). As civil corporations, they are separate and distinct from the ecclesiastical parishes. (R. 39, at ¶ 19.)

B. Father David Roney

Appellants allege that they were abused by Father David Roney, now deceased, in the 1960s and 1970s. (R. 5–20; A. 99.) Roney was ordained in 1945. (A. 99.) He held various assignments, before being assigned by Bishop Alphonse Schladweiler to St. Francis Catholic Church in Benson, Minnesota, where he served as pastor from 1963 to 1967. (A. 100–01; R. 41, at ¶ 2.) In 1967, Bishop Schladweiler assigned Roney to St. Mary’s Catholic Church in Willmar, Minnesota, where Roney remained until 1980. (A. 100–01.)

The Diocese first learned of sexual-misconduct allegations against Roney in 1987. (A. 100.) After the Diocese learned of these allegations, Roney was required to obtain psychiatric treatment. (*Id.*) Roney retired from active ministry in 1993, and in 1994, began residing at the Diocese of New Ulm’s mission in San Lucas, Guatemala. (A. 99, A. 101.)

In 1994, Roney received a diocesan award for his many years of service in the Diocese. (A. 82.) A similar celebration of Roney's 50 years in the priesthood occurred in Guatemala in 1995. (A. 83.)

In 2002, a review board recommended that Roney's pastoral duties be terminated. (A. 100.) Based on that recommendation, Roney was removed from active ministry in April 2002. (*Id.*) He died in January 2003. (A. 101.)

C. Appellants

Appellants claim that they were sexually abused as minors by Roney in the 1960s and 1970s. It was previously determined that appellants did not repress memories of the abuse and that there was no other legal disability (once they attained the age of majority) that would toll the statute of limitations on their abuse claims. *Jane Doe 43C*, 2009 WL 605749, at *7–*11. Nonetheless, none of appellants reported the abuse to respondents until 2003 or 2004—decades after the abuse allegedly occurred.⁴ Appellants commenced this joint action in 2004. (A. 102–16.)

1. Jane Doe 43F

Jane Doe 43F attended St. Francis Elementary School in Benson, where she claims that she was abused on two occasions by Roney in 1964. (R. 45, 57.) She knew at the time that that the abuse “was not right” and “didn't like it.” (R. 47.) She felt that Roney had “invaded [her] space,” and she “didn't like” him. (R. 47, 49.) Jane Doe 43F has not

⁴ Appellants refer to the religious beliefs and practices of appellants' parents but that information is irrelevant. Appellants' parents, like respondents, had no information about the abuse when it occurred. Arguments based on their parents' trust and respect for priests and bishops have no bearing on appellants' claims.

been a member of the Catholic Church or practicing Catholic since 1971, when she was about 18 years old. (R. 50, 57.)

2. Jane Doe 43C

Jane Doe 43C was a member of St. Mary's Catholic Church in Willmar beginning in 1969 until leaving the area in 1980, and she attended St. Mary's Elementary School from 1970 to 1972. (R. 75.) She alleges that she was abused by Roney between 1969 and 1972. (R. 71.) In 1980, when she was about 21 years old, Jane Doe 43C told her mother and her boyfriend that she had been abused by Roney. (R. 73.) She admits that the abuse made her feel "uncomfortable," and that she told her boyfriend "there was something wrong with" Roney. (R. 90.)

3. Jane Doe 43E

Jane Doe 43E attended St. Mary's Catholic Church from 1971 to 1980. (R. 97.) She claims that she was abused by Roney in the summer of 1975 following a Sunday School class. (R. 92-93, 112-13.) She stated that she "didn't like" the abuse, it made her "uncomfortable," and she knew it was inappropriate. (R. 112-13.) Because of Roney's conduct, Jane Doe 43E stopped her Sunday School volunteer activities. (R. 113.) In 1997, when she was about 35 years old, both she and her husband left the Catholic Church. (R. 114.)

4. Jane Doe 43G

Jane Doe 43G was a member of St. Mary's Catholic Church from 1962 to 1985. (A. 7.) She alleges that Roney abused her during the summers of 1968 through 1975. (R. 12.) Jane Doe 43G testified that she resisted the abuse, because it was "gross." (R. 124.)

She says that the abuse made her feel “very uncomfortable,” and that she “didn’t like it,” “didn’t want to do it,” and “didn’t want it to happen.” (R. 124, 126, 151.) She also says that she would try to avoid Roney. (R. 125.)

In 1985, Jane Doe 43G stopped attending St. Mary’s Church. (A. 7.) She moved to Montana in 1986. (A. 19.)

In 1993, at the approximate age of 31, Jane Doe 43G attended a retreat where she listened to a speaker talk about clergy sexual abuse. (R. 118, 120.) When she got home from the retreat, Jane Doe 43G told her husband she had been “abused by a priest” when she “was a kid.” (R. 121.) In 1994, she also told a friend that she had been sexually abused by Roney. (R. 123.)

D. Father Francis Garvey

1. Fr. Garvey’s work history

Father Francis Garvey served as Chaplain at Willmar State Hospital from 1962 to 2001. (A. 56.) At the state hospital, Fr. Garvey participated in providing individual and group therapy to patients. (*Id.*)

In addition to serving as chaplain at the state hospital, Fr. Garvey was pastor at St. Patrick Catholic Church in Kandiyohi, Minnesota from 1964 to 1996. (*Id.*) Fr. Garvey also served on a priest personnel board from 1969 to 1984 and from 1987 to 1990. (A. 57.) The personnel board advised the Bishop (not the Diocese) on pastoral appointments and mediating disputes between priests and congregations. (*Id.*)

2. Reports to Fr. Garvey

Fr. Garvey testified that he was approached by a man, identified only as "Rudy," who raised concerns about Roney in 1970. (A. 59.) According to Fr. Garvey, Rudy told Fr. Garvey that parents at St. Mary's School were concerned about Roney engaging in "inappropriate hugging behavior" with children. (*Id.*) Fr. Garvey states that Rudy contacted him "simply as another priest in the area" and spoke with him at his hospital office. (*Id.*)

Also in 1970, Allen Iverson, a coworker of Fr. Garvey's at the state hospital, spoke to Fr. Garvey about his concerns about Roney at Fr. Gavey's office at the state hospital. (A. 29.) According to Mr. Iverson, he spoke to Fr. Garvey about Roney because Iverson "worked at the State Hospital, and Father Garvey's office was right across the hall from mine." (*Id.*) Mr. Iverson claims that Fr. Garvey told him he would arrange for Roney to get treatment. (A. 30.) No appellant claims that she ever had a conversation with Mr. Iverson or Fr. Garvey about Roney.

Fr. Garvey met with Roney about the allegations. (A. 59.) He also discussed the allegations with the school's principal, Sister Virginia McCall. (*Id.*; A. 34.) Fr. Garvey asked Sr. McCall "to keep an eye out or watch to see if this behavior continued." (A. 59.) Fr. Garvey did not tell anyone at the Diocese about the allegations. (A. 60.)

E. Sister Virginia McCall

Sister Virginia McCall was principal at St. Mary's Elementary School from 1968 to 1971. (A. 34.) St. Mary's Elementary School closed in 1971. (A. 35.)

Sr. McCall stated that Fr. Garvey spoke to her in 1970 about some parents who believed that Roney was acting inappropriately with children. (A. 34.) Sr. McCall also stated that Larry Dolce, the school's band director, told her about an incident involving inappropriate contact between his daughter and Roney. (A. 34–35.)

Sr. McCall stated that Fr. Garvey told her that he would arrange for Roney to get psychological treatment. (A. 35.) No appellant claims that she ever had a conversation with Sr. McCall about Roney. After hearing of the allegations, Sr. McCall told Roney not to go to the school during the lunch hour or to the playground. (*Id.*)

ARGUMENT

I. Applicable Standard of Review on Appeal from Summary Judgment

A motion for summary judgment shall be granted when there is no genuine issue of material fact and either party is entitled to judgment as a matter of law. Minn. R. Civ. P. 56.03. On appeal from a district court's grant of summary judgment, the reviewing court asks "(1) whether there are any genuine issues of material fact for trial; and (2) whether the trial court erred in its application of the law." *Hoyt Props., Inc. v. Prod. Res. Group, L.L.C.*, 736 N.W.2d 313 (Minn. 2007) (quotation omitted). No genuine issue of material fact exists "when the nonmoving party presents evidence which merely creates a metaphysical doubt as to a factual issue and which is not sufficiently probative with respect to an essential element of the nonmoving party's case to permit reasonable persons to draw different conclusions." *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997). There are no genuine issues of material fact if "the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party." *Id.* at 69 (quotation

omitted). This court applies a do novo standard of review to the district court's decision to grant summary judgment, reviewing the evidence in the light most favorable to the nonmoving party. *Osborne v. Twin Town Bowl, Inc.*, 749 N.W.2d 367, 371 (Minn. 2008).

The district court dismissed the intentional-misrepresentation claim on two separate grounds, concluding that 1) the evidence, even when viewed in a light most favorable to appellants, does not create a question of fact as to the elements of the intentional-misrepresentation claim, and 2) the claim was untimely under the fraud statute of limitations, Minn. Stat. § 541.05, subd. 1(6). Appellants' brief does not address all required elements of their intentional-misrepresentation claim and fails to differentiate the claims against each respondent. This brief will first address the district court's ruling on the merits of the intentional-misrepresentation claim as relating to each respondent. The brief then turns to the district court's statute-of-limitations ruling. The district court correctly concluded that appellants' intentional-misrepresentation claim was untimely under the fraud statute of limitations, Minn. Stat. §541.05, subd. 1(6). In particular, appellants had enough information to commence their intentional-misrepresentation claim before 1998, more than six years before beginning this action in 2004. Furthermore, as the district court concluded, appellants cannot meet their burden of showing that the facts constituting the purported fraud could not have been discovered earlier with the exercise of reasonable diligence.

II. The District Court Properly Granted Summary Judgment in Favor of Respondent St. Francis Because There is No Evidence that St. Francis Made a False Representation about Roney to Appellants or that Any Appellant Relied on Any Misrepresentation.

To assert a cause of action for intentional misrepresentation, a plaintiff must produce evidence that the defendant (1) made a representation (2) that was false (3) having to do with a past or present fact (4) that is material (5) and susceptible of knowledge (6) that the defendant knew to be false or asserted without knowing whether the fact is true or false (7) with the intent to induce the other person to act (8) and the person is in fact induced to act (9) in reliance on the representation, and (10) that the plaintiff suffered damages (11) attributable to the misrepresentation. *Florenzano v. Olson*, 387 N.W.2d 168, 174 n.4 (Minn. 1986).

The district court found that appellants' intentional-misrepresentation claim against St. Francis failed because there was no evidence that St. Francis had knowledge of any abuse by Roney, that it made a false representation, or that it concealed facts about Roney. (A. 225.) Appellants have not explained how the district court erred in this regard. *See Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982) (providing that issues not briefed on appeal are waived).

Jane Doe 43F claims that she was abused in 1964. But it is undisputed that no respondent had any knowledge of any abuse by Roney at that time. Because St. Francis was not aware of any inappropriate conduct on the part of Roney, it could not have made a representation about Roney that it knew to be false. Furthermore, no appellant has identified any way in which she relied on a misrepresentation by St. Francis. The district

court properly dismissed the claims against St. Francis. *See DLH*, 566 N.W.2d at 71 (“[A] moving party is entitled to summary judgment when there are no facts in the record giving rise to a genuine issue for trial as to the existence of an essential element of the nonmoving party’s case.” (quotation omitted)).

III. The District Court Properly Granted Summary Judgment in Favor of Respondent St. Mary Because There Is No Evidence that St. Mary Made a False Representation about Roney to Appellants or that Any Appellant Relied on Any Misrepresentation.

A. There is no evidence of a misrepresentation by St. Mary.

On appeal, appellants claim that the district court erred when it found that there was no evidence that St. Mary made a false representation about Roney to appellants. In support of their claim, appellants argue that Sr. McCall, the former principal of St. Mary’s Elementary School, misrepresented Roney when she did not disclose to *all* parishioners at St. Mary, in 1970, that she had learned of the abuse allegations against Roney. (AB 35.)⁵ Appellants have not identified any promise or representation made by Sr. McCall or St. Mary directly to them or to anyone else. Instead, appellants rely solely on Sr. McCall’s “nondisclosure.”

Generally, nondisclosure does not constitute fraud. *Richfield Bank & Trust Co. v. Sjogren*, 309 Minn. 362, 365, 244 N.W.2d 648, 650 (1976). “[O]ne party to a transaction has no duty to disclose material facts to the other,” absent a fiduciary relationship. *Flynn v. Am. Home Prods. Corp.*, 627 N.W.2d 342, 350 (Minn. App. 2001) (quoting *Midland Nat’l Bank v. Perranoski*, 299 N.W.2d 404, 413 (Minn. 1980)). Appellants have not

⁵ “AB ___” refers to appellants’ brief.

identified any legal or equitable obligation establishing that Sr. McCall had a duty to disclose her knowledge about Roney to parishioners at St. Mary in 1970. Appellants have not alleged that they had a fiduciary relationship with St. Mary or Sr. McCall. Indeed, appellants forfeited the claim that any respondent, including St. Mary, had a fiduciary relationship with parishioners, because they removed the allegations of the existence and breach of a fiduciary duty when they amended their complaint. Appellants have similarly waived any claim that Sr. McCall stood in some kind of “confidential” relationship with them because they have expressly disavowed any such relationship in their summary-judgment pleadings.⁶ See *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that appellate courts do not consider matters not argued to and considered by the district court).

Appellants identify absolutely no legal authority establishing that Sr. McCall’s “nondisclosure” can be the basis for a fraud claim here. Appellants’ claim is unprecedented and goes beyond any prior holding concerning required disclosures. Adoption of appellants’ theory would greatly expand the scope of potential liability for fraud claims. Appellants’ theory requires employers to inform all employees, and even customers, of the results of internal harassment investigations or suspected theft or embezzlement by an employee.

⁶ Appellants vehemently argued that their “fraud claim is not based on an alleged confidential relationship,” rather, “the confidential relationship is only relevant to whether or not [appellants] knew or should have known the facts constituting the fraud for statute of limitations purposes.” Pls.’ Mem. in Reply to Defs.’ Mot. for Sum. Jdgmt., at p. 11 (Sept. 4, 2009).

Appellants also contend that Sr. McCall made a misrepresentation about Roney when she did not ask the Diocese to remove Roney. (AB 35.) But appellants have not identified any basis for the conclusion that Sr. McCall had a duty to so act or that her failure to take such action constituted a misrepresentation.

Because Sr. McCall had no duty to make any disclosure about Roney to appellants, appellants have no basis for claiming that St. Mary made any misrepresentation about Roney to them. Accordingly, the district court correctly granted summary judgment. *See Berreman v. West Pub'g. Co.*, 615 N.W.2d 362, 375 (Minn. App. 2000) (holding that summary judgment was proper where fraud was based on nondisclosure but there was no duty to speak).

B. There is no evidence that appellants' relied on a misrepresentation made by St. Mary.

As noted above, appellants have not identified any misrepresentation about Roney made by Sr. McCall or St. Mary to appellants. They, therefore, have no basis for claiming that they relied on such a misrepresentation.

C. There is no evidence that Sr. McCall's "nondisclosure" was intended to induce appellants' reliance.

Even if appellants could establish that Sr. McCall made a false representation when she did not disclose her knowledge about Roney to St. Mary's parishioners or the Diocese of New Ulm, appellants have not produced any evidence showing that Sr. McCall's nondisclosure was intended to induce reliance from appellants. *See Florenzano*, 387 N.W.2d at 174 n.4 (stating elements of an intentional-misrepresentation claim). If anything, the evidence in the record supports the opposite conclusion.

As the district court recognized, there is no evidence that Sr. McCall intended to deceive or induce reliance by not disclosing her knowledge about Roney. (A. 225.) The undisputed evidence shows that Sr. McCall took various steps to protect children at the school from Roney, including instructing Roney not to go onto the playground or come into the school during the lunch hour. Nothing in the record suggests that she made a false representation about Roney with the intent to deceive or induce appellants' reliance.

IV. The District Court Properly Granted Summary Judgment in Favor of Respondent Diocese Because There is No Evidence That the Diocese Made a False Representation about Roney to Appellants or that Any Appellant Relied on Any Misrepresentation.

A. There is no evidence that the Diocese made a misrepresentation about Roney to appellants or that appellants relied on any misrepresentation.

Appellants have not identified any express misrepresentations about Roney made to appellants—either by the Diocese or its purported agent, Fr. Garvey. Although Fr. Garvey purportedly spoke with Mr. Iverson and Sr. McCall about Roney, appellants do not claim that they had any discussions about Roney with Fr. Garvey, that they were aware of Fr. Garvey's conversations with Mr. Iverson or Sr. McCall, or that they took any action in reliance on them. Appellants further admit that the Diocese had no discussions about Roney with them. (A. 197, 200, 207, 209.)

Instead, appellants' intentional-misrepresentation claim is based solely on Roney's continued presence in the parishes. More particularly, appellants claim that the Diocese affirmatively misrepresented Roney when it assigned him to be a parish priest, despite its ostensible knowledge of the abuse allegations. (AB 32.) Appellants, however, cite no

authority supporting their contention that such conduct or nondisclosure can be the basis for imposing liability in a fraud action.

More importantly, appellants cannot dispute that they had knowledge of their own abuse. In light of their knowledge, appellants knew that Roney was not fit and competent to be a priest and could not reasonably rely on any implication to the contrary. See *Nicollet Restoration, Inc. v. City of St. Paul*, 533 N.W.2d 845, 848 (Minn. 1995) (“[E]stablishing the reasonableness of the reliance is essential to any cause of action in which detrimental reliance is an element.”). Because appellants did not produce evidence that the Diocese made a misrepresentation or that appellants relied on any such representation, summary judgment was appropriate. See *Powell v. Trans Global Tours, Inc.*, 594 N.W.2d 252, 256 (Minn. App. 1999) (holding that summary judgment was proper where respondents had committed no fraud).

B. The Diocese of New Ulm did not know about any complaints against Fr. Roney until 1987.

I. The Diocese had no knowledge.

The district court found that there was no evidence that the Diocese made a representation about Roney that it knew to be false. (A. 224–25.) It is undisputed that the Diocese of New Ulm had no direct knowledge of Roney’s sexual misconduct until 1987—more than 10 years after appellants’ abuse ended.⁷ (A. 225.) As a result, before 1987, the Diocese could not have knowingly made a false representation about Roney.

⁷ Even if this court disagrees with how the Diocese responded to the complaints against Roney once it learned of them in 1987, that issue has no bearing on the merits of

2. *Any knowledge possessed by Fr. Garvey is irrelevant because Fr. Garvey was not the Diocese's agent.*

Although appellants do not dispute that the Diocese lacked actual knowledge of Roney's misconduct until 1987, appellants argue that the Diocese had constructive knowledge because Fr. Garvey—who appellants contend is the Diocese's agent—learned of abuse allegations in 1970. Appellants' argument is baseless.

Appellants bear the burden of proving that an agency relationship existed between Fr. Garvey and the Diocese in 1970. *Plate v. St. Mary's Help of Christians Church*, 520 N.W.2d 17, 20 (Minn. App. 1994), *review denied* (Minn. Oct. 14, 1994). An agency relationship will only be found where (1) the principal and agent manifest mutual consent to have the agent act on the principal's behalf, and (2) the principal has the right of control over the agent. *A. Gay Jenson Farms Co. v. Cargill, Inc.*, 309 N.W.2d 285, 290 (Minn. 1981). Whether an agency relationship exists is a question of fact, unless the evidence is conclusive one way or the other. *Smith v. Woodwind Homes, Inc.*, 605 N.W.2d 418, 423 (Minn. App. 2000).

Here, there is no evidence that Fr. Garvey was an agent of the Diocese in 1970 when he learned about the allegations against Roney. Rather, Fr. Garvey testified that he worked at Willmar State Hospital. (A. 56.) As an employee of the state hospital, Fr. Garvey was not an employee of the Diocese. Appellants do not identify any evidence to the contrary. There is also no evidence that Fr. Garvey was the Diocese's agent at the hospital. Likewise, appellants have not identified any evidence showing that the Diocese

appellants' fraud claims. As the district court observed, the alleged sexual abuse of appellants occurred many years before the Diocese learned of the complaints. (A. 226.)

had the right to control Fr. Garvey at the hospital. Rather, that control would have been held by his employer—the state hospital. Because there is no evidence that the Diocese had any right to control Fr. Garvey’s conduct at the hospital, appellants cannot meet their burden of showing that an agency relationship existed between Fr. Garvey and the Diocese. *Vieths v. Ripley*, 295 N.W.2d 659, 664 (Minn. 1980) (“The law is clear that an agency relationship does not exist unless there are facts showing that the alleged principal had the right to control the agent’s conduct in performing the services.”).

Not to be deterred, appellants next argue that Fr. Garvey was the Diocese’s agent because he served on a priest personnel board. But mere membership on an advisory board alone does not create an employment or agency relationship between the board member and governing body. An attorney who serves as a member of any advisory committee to the Minnesota Supreme Court does not, for example, by making recommendations on rules of procedure, become an agent or employee of the supreme court. *Cf. C.B. v. Evangelical Lutheran Church in Am.*, 726 N.W.2d 127, 134 (Minn. App. 2007) (explaining that an attorney does not have an employment relationship with the supreme court, even though the court sets forth the rules and standards by which attorneys must adhere).

Furthermore, Fr. Garvey testified that the board was purely advisory to the Bishop, not the Diocese, on pastoral changes or congregational disputes. (A. 57.) According to Fr. Garvey, the board did not deal with priest sexual misconduct or discipline in 1970. (A. 57–58.) Fr. Garvey is the only fact witness on this issue; thus, his testimony is undisputed. Although appellants might argue that their canon law expert, Fr. Doyle,

contradicts Fr. Garvey, he has no factual knowledge about the state of affairs in the Diocese in the early 1970s.⁸ (A. 184.) Regardless, nothing in Fr. Doyle's affidavit contradicts Fr. Garvey's statement that the board had no authority to address sexual misconduct issues in 1970.

In light of Fr. Garvey's undisputed testimony, there is no evidence that the Diocese ever manifested any consent to have Fr. Garvey act as its agent in responding to allegations of sexual misconduct by priest. *Trentor v. Pothan*, 46 Minn. 298, 300–01, 49 N.W. 129, 129–30 (1891) (“The rule which imputes to the principal the knowledge possessed by the agent applies only to cases where the knowledge is possessed by an agent within the scope of whose authority the subject-matter lies.”). Thus, appellants cannot meet their burden of establishing that an agency relationship existed between the Diocese and Fr. Garvey. *Jurek v. Thompson*, 308 Minn. 191, 200–01, 241 N.W.2d 788, 793 (1976) (overturning jury's finding on agency and stating that there must be “persuasive evidence of manifestation of consent, right of control, and fiduciary relationship,” otherwise there is no agency as a matter of law).

3. *Fr. Garvey was not acting within the scope of any alleged agency when he learned of the allegations against Roney.*

Even if there is a question of fact as to whether an agency relationship existed between Fr. Garvey and the Diocese, Fr. Garvey's knowledge about Roney cannot be imputed to the Diocese because Fr. Garvey was not acting within the scope of his agency with the Diocese when he acquired that knowledge. An agent's knowledge is only

⁸ As a canon-law expert, Fr. Doyle's opinion on agency, a civil law issue, is without legal basis or foundation.

imputed to the principal in limited circumstances: A corporation is charged with constructive knowledge of the facts acquired by its agent, only if the agent acquires that knowledge while acting in the course of employment within the scope of his authority. *Travelers Indem. Co. v. Bloomington Steel & Supply Co.*, 718 N.W.2d 888, 895–96 (Minn. 2006); *Brooks Upholstering Co. v. Aetna Ins. Co.*, 276 Minn. 257, 262, 149 N.W.2d 502, 506 (1967). Thus, courts tend to restrict—not expand—the doctrine of imputed notice, and apply it only within clear and definite limits. *Trentor*, 46 Minn. at 300, 49 N.W. at 129.

Here, there is no evidence that Fr. Garvey was acting as an agent of the Diocese when he learned about Roney’s inappropriate behavior in 1970. According to Fr. Garvey, “Rudy” contacted him “simply [because he was] another priest in the area” and spoke to him at his hospital office. (A. 59.) When Mr. Iverson spoke to Fr. Garvey, he did so at the state hospital, where both were state employees. Mr. Iverson explained, he reported the matter to Fr. Garvey because both “worked at the State Hospital, and Fr. Garvey’s office was right across the hall from [his].” (A. 29.)

Likewise, there is no evidence that Rudy or Mr. Iverson contacted Fr. Garvey because of his role on the priest personnel board. None of the reports about Roney came during a board meeting. In fact, the record establishes that such reports would have been outside the purview of the board at that time. Fr. Garvey’s decision not to bring the allegations about Roney’s conduct to the board’s attention is consistent with his testimony that the board did not have any authority over such issues.

The fact that Fr. Garvey was a pastor at St. Patrick Catholic Church in 1970 is also of little, if any, consequence. There is no evidence that Fr. Garvey was acting in his capacity as such when he learned of the misconduct. Likewise, there is no evidence that Fr. Garvey, as a local pastor, had any control over Roney, a neighboring priest.

“[G]eneral corporate legal principles limit the knowledge that is attributed from agent to principal to that knowledge acquired by the agent while acting in the course of employment within the scope of his or her authority.” *Travelers*, 718 N.W.2d at 896 (quotation omitted). Because there is no evidence that Fr. Garvey acquired knowledge about Roney’s inappropriate behavior while acting as an agent of the Diocese, any knowledge he had was not imputed to the Diocese. Therefore, there is no basis for appellants’ claim that the Diocese knowingly made a false representation about Roney.

C. Respondent the Diocese is a civil corporation, with no authority to appoint or remove a priest.

Appellants argue that respondents misrepresented Roney by holding him out as a fit and qualified priest. (AB 32.) But respondent Diocese, a civil corporation, was not involved in any decision to allow Roney to continue working as a priest.⁹ Rather, it is the bishop alone who, when acting in his ecclesiastical capacity, has the power to appoint or discharge a priest.¹⁰ (R. 39, at ¶ 20–21.) *Eller v. Diocese of St. Cloud*, No. A05-828, 2006 WL 163526, at *4–*7 (Minn. App. Jan. 24, 2006) (recognizing that the bishop, not

⁹ Indeed, no such “decision” was made in the 1960s and 1970s, when appellants allege the abuse occurred, because the Diocese was not aware of those allegations.

¹⁰ The Bishop of the Diocese of New Ulm is not a party to this matter. (R. 5–20.)

the diocese, has authority to appoint and remove priests, and that the bishop does not act on behalf of the civil diocesan corporation when doing so).¹¹

Minnesota law authorizes formation of a civil diocesan corporation and grants specific powers to it. Minn. Stat. § 315.16, subd. 1. The bishop of a diocese and the bishop's successors are members of the corporation. *Id.*, subd. 2. Although Minnesota law authorizes the formation of a diocesan corporation and grants specific powers to the corporation, it does *not* grant any powers to individual members or officers of the corporation. *Eller*, 2006 WL 163526, at *6. Nor does Minnesota law grant to the diocesan corporation any authority to appoint, transfer, or remove priests. Rather, such authority is derived solely from the *Code of Canon Law*¹² and is vested solely in the bishop. Thus, when appointing or discharging priests, a bishop exercises his ecclesiastical authority, which has nothing to do with his authority as a member of the board of directors under civil law. In contrast, a bishop exercises his authority under civil law when he acts as president of the civil diocesan corporation. Respondent Diocese, as

¹¹ Respondents' brief cites several unpublished cases. Respondents are aware of Minn. Stat. § 480A.08(3) (2008). These cases are cited as persuasive authority, and respondents respectfully note that they deal with situations uniquely similar to those involved here. Copies of all unpublished cases cited in this brief are reproduced in respondents' appendix.

¹² The *Code of Canon Law* is a collection of internal law governing the Catholic Church and it applies to the ecclesiastical diocese. (R. 37, at ¶ 11.) An ecclesiastical diocese, as defined under the *Code of Canon Law*, is an ecclesiastical entity consisting a particular geographic area. (R. 39, at ¶ 24.) An ecclesiastical diocese is not a legal entity under civil law. (The only exception is when a concordat exists between the Holy See and the government of a country. No such concordat exists between the Holy See and the United States.) (*Id.*)

an entity created and existing under civil law (not the *Code of Canon Law*), has no authority to appoint, transfer, or remove a priest from a parish. (R. 39, at ¶ 23).

In *Eller*, the Minnesota Court of Appeals held that the plaintiff did not produce evidence establishing that the diocese's board of directors (that is, the board of directors for the civil diocese—a corporate entity) had granted the bishop authority to appoint or remove priests or that the bishop acted as the diocese's agent in appointing a priest. 2006 WL 163526, at *6–*7. Without such evidence, the court said, the record could not support a finding that the diocese (again, meaning the civil diocese) consented to the bishop appointing and removing priests on its behalf. *Id.* at *6.

As was the case in *Eller*, appellants here have not produced any evidence that the bishop, when acting as a member of the board of directors of the civil corporation, had authority to assign Roney to any parish, including St. Francis or St. Mary. As a result, appellants cannot establish an essential element of their claim, namely, that respondent the civil diocesan corporation made a representation about Roney.

D. The First Amendment bars inquiry into the Bishop's decision to appoint Roney.

Even if the Diocese could be held responsible for a bishop's decision to exercise his ecclesiastical power and appoint or remove a priest, the First Amendment prohibits courts from imposing liability for ecclesiastical hiring decisions.¹³ U.S. Const. amend. I;

¹³ The district court concluded that it was barred by the First Amendment from determining whether the Diocese made any misrepresentation by holding out Roney as a fit and competent priest. (A. 225.) Appellants have not challenged this conclusion on appeal and have made no showing that the district court erred. *See Melina*, 327 N.W.2d at 20 (stating that issues not briefed on appeal are waived).

J.M. v. Minn. Dist. Council of the Assemblies of God, 658 N.W2d 589, 593-95 (Minn. App. 2003).

Government action violates the Establishment Clause if it creates excessive entanglement between church and state. *Doe v. Lutheran High School of Greater Mpls.*, 702 N.W.2d 322, 326 (Minn. App. 2005); *see also Lemon v. Kurtzman*, 403 U.S. 602, 612-13, 91 S. Ct. 2105, 2111 (1971). If a claim involves core issues of ecclesiastical concern, the potential for government entanglement precludes judicial review. *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 721-23, 96 S. Ct. 2372, 2386-87 (1976). Moreover, the state may not inquire into or review a religious institution's internal decision making or governance. *Doe*, 702 N.W.2d at 327; *Black v. Snyder*, 471 N.W.2d 715, 720 (Minn. App. 1991) (recognizing that courts refrain from enforcing claims that require a searching and therefore impermissible inquiry into church doctrine (quotation omitted)), *review denied* (Minn. Aug. 29, 1991).

The Minnesota Court of Appeals has held that the First Amendment precludes adjudication of a claim that a church negligently hired a pastor, who had a history of inappropriate sexual contact with parishioners. *J.M.*, 658 N.W2d at 593-95. The court said that the claim was barred because it "implicate[d] core, fundamental church doctrine governing identification of individuals 'called' to the ministry," explaining:

A determination of whether the statutorily required inquiries were made of a pastor-candidate's former employers does not involve church doctrine, *but a determination of how that information should be used in a hiring decision would force the court into an examination of church doctrine governing who is qualified to be a pastor.*

Id. at 594 (emphasis added) (quotation omitted); *Mulinix v. Mulinix*, No. C2-97-297, 1997 WL 585775, at *6 (Minn. App. Sept. 22, 1997) (determining that plaintiff's claims of negligent supervision and retention of a pastor were "fundamentally connected to issues of church governance," and would "necessitate inquiry into the church's motives for not discharging [the pastor], as well as how the church investigates and resolves complaints concerning clergy misconduct"), *review denied* (Minn. Nov. 18, 1997).

Appellants argue that the Diocese was aware of the sexual abuse allegations against Roney, but nonetheless assigned him to serve as a priest at various parishes. Adjudication of such a claim does not merely require a determination of whether the Diocese was aware of misconduct. Rather, it requires appellants to show that the bishop—who had the ecclesiastical authority to appoint and remove a priest—was aware of the misconduct. And, it further requires the court to analyze *how the bishop—when exercising his ecclesiastical power—should have used that information to determine whether the person was qualified to be a Roman Catholic priest*. A court cannot answer these questions without examining church doctrine governing who is qualified to be a priest and, in cases of clergy misconduct, whether the priest should be entrusted with the spiritual care of parishioners. That kind of inquiry creates excessive entanglement between the church and state, and therefore, violates the Establishment Clause of the First Amendment to the United States Constitution.

E. Appellants have not produced evidence of damages attributable to the Diocese's purported misrepresentations.

To be actionable, an intentional misrepresentation must result in damages to the plaintiff and those damages must be attributable to the misrepresentation. *Florenzano*, 387 N.W.2d at 174 n.4. Here, the Diocese was not aware of Roney's misconduct until long after the abuse ended. Appellants make no claim that they were aware of the award to Roney and the assignment to the Guatemalan mission in the mid-1990s, because each of them had purposefully severed their connection with the Catholic Church, at least in part due to their knowledge of Roney's wrongful conduct.¹⁴ Thus, appellants cannot show any damages that resulted from the Diocese's actions.

V. The District Court Properly Granted Summary Judgment Because Appellants' Intentional-Misrepresentation Claim Is Untimely under Minn. Stat. § 541.05, subd. 1(6).

This court ruled that the statute of limitations in Minn. Stat. § 541.05, subd. 1(6), not Minn. Stat. § 541.073, applies to appellants' intentional-misrepresentation claim. *Jane Doe 43C*, 2009 WL 605749, at *5. The caselaw applying Minn. Stat. § 541.05, subd. 1(6), is clear, and places the burden on appellants by requiring them to prove, under an objective, reasonable person standard, that the purported fraud could not have been discovered earlier. On remand, the district court applied Minn. Stat. § 541.05, subd. 1(6), to appellants' intentional-misrepresentation claim and concluded that the claim was

¹⁴ Jane Doe 43F claims she has not been a member of the Catholic Church or practicing Catholic since 1971. (R. 50, 57.) Jane Doe 43C and Jane Doe 43E were not members of St. Mary after 1980. (R. 75; R. 97.) And Jane Doe 43G stopped attending St. Mary in 1985, and moved to Montana the next year. (A. 7, 19.)

untimely. (A. 223–26.) In doing so, the district court recognized that appellants had not met their burden of proving that the fraud could not have discovered earlier.

“The construction and application of a statute of limitations, including the law governing the accrual of a cause of action, is a question of law and is reviewed de novo.” *MacRae v. Group Health Plan, Inc.*, 753 N.W.2d 711, 716 (Minn. 2008).

The statute of limitations for fraud claims, including appellants’ claim here, is six years. *Jane Doe 43C*, 2009 WL 605749, at *5; *see also* Minn. Stat. § 541.05, subd. 1(6). A court has “no power to extend or modify statutory limitation periods.” *Johnson v. Winthrop Labs.*, 291 Minn. 145, 151, 190 N.W.2d 77, 81 (1971). A statute of limitations is meant to “prescribe a period within which a right may be enforced and after which a remedy is unavailable for reasons of private justice and public policy.” *Entzion v. Illinois Farmers Ins.*, 675 N.W.2d 925, 928 (Minn. App. 2004); *Karels v. Am. Family Mut. Ins.*, 371 N.W.2d 617, 619 (Minn. App. 1985) (recognizing that a statute of limitations “discourages fraud and endless litigation and prevents a party from delaying an action until papers are lost, facts forgotten, or witnesses dead”), *aff’d mem.*, 381 N.W.2d 441 (Minn. 1986).

The statute of limitations on an intentional-misrepresentation claim begins to run “when the aggrieved party discovers the facts constituting the fraud.” Minn. Stat. § 541.05, subd. 1(6). “[T]he facts constituting the fraud are deemed to have been discovered when, with reasonable diligence they could and ought to have been discovered.” *Blegen v. Monarch Life Ins. Co.*, 365 N.W.2d 356, 357 (Minn. App. 1985) (quotation omitted). In this regard, section 541.05, subd. 1(6), imposes a “standard of

objective reasonableness upon a plaintiff to discover the facts constituting the fraud.” *Klehr v. A.O. Smith Corp.*, 87 F.3d 231, 235 (8th Cir. 1996) (citing *Bustad v. Bustad*, 263 Minn. 238, 242, 116 N.W.2d 552, 555 (1962)). “A ‘party need not know the details of the evidence establishing a cause of action, only that a cause of action exists.’” *Id.* (quoting *Buller v. A.O. Smith Harvestore Prods., Inc.*, 518 N.W.2d 537, 542 (Minn. 1994)).

The plaintiff bears the burden of alleging and proving that the facts constituting the fraud could not have been discovered until six years before commencing the action. *Blegen*, 365 N.W.2d at 357. The mere fact that a plaintiff did not discover the fraud will *not* extend the statutory limitation if the failure was the result of the plaintiff’s own negligence and inconsistent with reasonable diligence. *Id.*; *Hope v. Klabal*, 457 F.3d 784, 792 (8th Cir. 2006) (citing *Bustad*, 116 N.W.2d at 555).

A. Appellants had enough information to commence their intentional-misrepresentation claim more than six years before 2004.

This court has already ruled that each appellant knew she had been sexually abused by the late 1970s or early 1980s in the case of three appellants, and by 1993 at the latest, in the case of the fourth appellant. *See Jane Doe 43C*, 2009 WL 605749, at *7–*11. It is, thus, undisputed that appellants were aware of the following facts before 1998, which is six years before they started their suit:

- appellants were sexually abused,
- the abuse was perpetrated by Roney (a priest),

- appellants knew the abuse was wrong,¹⁵
- Roney was a pastor at respondent St. Francis and respondent St. Mary when the abuse occurred, and
- respondent St. Francis and respondent St. Mary were part of respondent Diocese.

In light of this knowledge, appellants' claim that respondents misled them by holding Roney out as fit and competent is misplaced. Appellants knew it was not true. Similarly, any awards are irrelevant to determining the timeliness of appellants' claim, because appellants, assuming they were even aware of such awards, would know that they were unwarranted. And even though respondents did not disclose the allegations involving other victims in 1987, appellants knew that they had been victimized by Roney. At least one other court has called the allegations of other victims "insignificant" in evaluating the tolling of the statute of limitations. *See Dymit v. Indep. Sch. Dist. 717*, No. A04-471, 2004 WL 2857375, at *5 (Minn. App. Dec. 14, 2004) (applying delayed-discovery statute and concluding that a school's knowledge about abuse allegations was insignificant in light of fact that victim knew that he had been abused), *review denied* (Minn. Feb. 15, 2005). Further, appellants have not identified any basis for concluding that respondents had any obligation to disclose the allegations of other victims.

¹⁵ Jane Doe 43F testified that she knew the abuse "wasn't right" and she "didn't like" the abuse or Roney. (R. 47.) Jane Doe 43C testified that the abuse made her "uncomfortable" and that she knew something was "wrong" with Roney. (R. 90.) Jane Doe 43E testified that she "didn't like" the abuse, that it made her feel "uncomfortable," and that she knew it was "inappropriate." (R. 112-13.) Jane Doe 43G testified that she avoided Roney and that she resisted the abuse because it "gross[ed]" her out, she "didn't like it," and "didn't want to do it." (R. 124-26.)

Appellants have not met their burden of proving that they did not discover the facts constituting fraud before 1998, and therefore the district court properly granted summary judgment.

B. Appellants ought to have discovered, with reasonable diligence, the facts constituting the fraud more than six years before starting this action.

Appellants argue that their claim is timely, because they could not have discovered with reasonable diligence, the respondents' purported knowledge about Roney's misconduct between 1964 and 1975. But appellants, just like the plaintiff in *Collins v Johnson*, 374 N.W.2d 536 (Minn. App. 1985), *review denied* (Minn. Nov. 26, 1985), have not met their burden of demonstrating that the fraud could not have been discovered earlier.

In *Collins*, a plaintiff brought suit against her plastic surgeon after an unsuccessful tummy-tuck procedure and claimed that the statute of limitations on her claim was tolled due to fraudulent concealment.¹⁶ 374 N.W.2d at 541. Specifically, the plaintiff asserted that her doctor concealed the cause of action by reassuring her during four post-operative visits that the incision was healing well, that the numbness and swelling would subside, and that she should not worry. But the Minnesota Court of Appeals rejected her

¹⁶ Although *Collins* dealt with tolling of the statute of limitations due to fraudulent concealment, it has application here, because the inquiry in *Collins* centered on "reasonable diligence," just as it does here, 374 N.W.2d at 541; *see also Haberle v. Buchwald*, 480 N.W.2d 351, 357 (Minn. App. 1992) ("To establish fraudulent concealment, a plaintiff must prove there was an affirmative act or statement which concealed a potential cause of action, that the statement was known to be false or was made in reckless disregard of its truth or falsity, and *that the concealment could not have been discovered by reasonable diligence.*" (emphasis added)), *review denied* (Minn. Aug. 4, 1992).

argument, observing that the medical records established that she was aware of problems throughout the period of post-operative care. *Id.* at 541. The court concluded that the plaintiff could have discovered any concealment sooner by exercising reasonable diligence and “she was not prevented from discovering facts upon which her alleged cause of action might rest.” *Id.* at 542.

Here, appellants, like Ms. Collins, had sufficient facts to commence their suit: they knew that they had been abused by Roney, a priest who served as a pastor at St. Mary and St. Francis, both of which are in the Diocese of New Ulm; they knew the abuse was wrong; and they were not prevented from discovering facts upon which to commence suit against respondents.

In light of these facts, appellants’ argument that they had no obligation to use reasonable diligence because they had no notice of the potential cause of action is wrong. Appellants cite *Buller*, 518 N.W.2d at 542, but *Buller*’s reasoning supports the conclusion that appellants had sufficient notice of their cause of action for fraud. In *Buller*, the Minnesota Supreme Court affirmed the district court’s conclusion that the plaintiffs should have discovered the existence of their cause of action for fraud because they knew, when they saw spoiled feed, that the defendant had sold them a defective silo. 518 N.W.2d at 542–43; *see also Hydra-Mac, Inc. v. Onan Corp.*, 450 N.W.2d 913, 919 (Minn. 1990) (holding that fraudulent concealment did not toll statute of limitations because party knew that it had a cause of action for the defective engine because it was aware of the performance problems with the engines); *Kassan v. Kassan*, 400 N.W.2d 346, 350 (Minn. App. 1987) (concluding that mere suspicions about business activities

triggered the running of the statute of limitations on fraud claim), *review denied* (Minn. Apr. 23, 1987).

It is not clear, under appellants' reasoning, when the statute of limitations on any intentional-misrepresentation claim begins to run. Appellants argue that even though they were aware of clergy sexual abuse in other jurisdictions, this was not sufficient to require them to exercise reasonable diligence and investigate their potential claim against respondents. (AB 23.) Further, appellants' expert claims that 1984 was a "high point" for public awareness of sexual abuse by Catholic clergy in the United States. (A. 175.) Nonetheless, appellants fail to offer any reason for not investigating their claim against respondents earlier and waiting to commence this suit until 2004—20 years after appellants' expert claims there was "high" public awareness of sexual abuse by Catholic clergy.

Appellants rely on *John Doe 1 v. Archdiocese of Milwaukee*, claiming that their knowledge of the abuse does not require them to use reasonable diligence to discover the facts constituting their fraud claim. 734 N.W.2d 827 (Wis. 2007). But appellants' reliance on *John Doe 1* is misplaced. Unlike the case at issue here, *John Doe 1* arose on a motion to dismiss: The Wisconsin court simply held that it could not determine whether the fraud claims were without merit based solely on the face of the complaint. But the court left open the possibility that summary judgment might be appropriate. *Id.* at 846. Here, in contrast, respondents moved for summary judgment on appellants' claim and the factual record was fully developed.

Further, appellants overstate the holding in *John Doe 1*. The court in *John Doe 1* looked solely at the complaints, which included allegations that the Archdiocese had sent letters *directly* to parishioners applauding the priest, despite knowing about the priest's sexual misconduct, and determined based on those allegations that it could not conclude as a matter of law that a reasonable person in plaintiffs' position should have investigated the Archdiocese's knowledge about the abusers. *Id.* at 840, 845.

John Doe 1 is a Wisconsin case, and as such is not binding on this court. Other courts have reached different results. For example, the Utah Supreme Court held that plaintiffs' claims arising from sexual abuse by a priest, including fraud claims, were untimely where the plaintiffs knew of their own abuse and knew of the relationship between the abusing priest and the institutional defendants, which included a diocese and archdiocese. *Colosimo v. Roman Catholic Bishop of Salt Lake City*, 156 P.3d 806 (Utah 2007).

Here, *Colosimo* is more persuasive than *John Doe 1*. Like the case at issue here, *Colosimo* involved a summary judgment decision. *Id.* at 809. And like the case at issue here, the plaintiffs in *Colosimo* knew that they had been abused, knew who the abuser was, and knew (or at least had constructive notice) of the relationship between the abuser and the institutional defendants. *Id.* at 811. Furthermore, like appellants, the plaintiffs in *Colosimo* made no attempt to investigate their claims against the institutional defendants until well after the statute of limitation had run and thus had no basis for claiming that the statute of limitations should be tolled for fraudulent concealment. *Id.* at 819.

Because appellants had sufficient information about the abuse and Roney's status as a priest at the Diocese and parishes, they were obligated to use reasonable diligence to investigate their potential fraud claim and commence suit against respondents before 1998. Instead, appellants did nothing. It is not objectively reasonable for a litigant to sit on her hands for several years or decades, when she has enough information to discover the purported fraud. The fact that appellants' knowledge about the fraud was "incomplete" or they did not know "all specific evidence" supporting their claim is irrelevant and does not excuse their failure to exercise reasonable diligence. *John Doe 76A v. Diocese of Winona*, No. A04-688, 2004 WL 2711650, at *4 (Minn. App. Nov. 30, 2004) (rejecting the fraud claim because "appellant did not need to know all specific evidence that might support a [fraud] claim in order for the statute of limitations to begin to run"); *see also Klehr*, 87 F.3d at 235 (stating that a party need not know the details of the evidence establishing a cause of action, only that a cause of action exists). Failure to timely commence their suit against respondents was a result of appellants' own negligence. Appellants' intentional-misrepresentation claim is therefore untimely. *See Klehr v. A.O. Smith Corp.*, 875 F. Supp. 1342, 1349 (D. Minn. 1995) (recognizing that summary judgment on the issue of reasonable diligence is appropriate if the evidence leaves no room for a reasonable difference of opinion). Any ruling to the contrary would eviscerate the statute of limitations for fraud claims.

C. The district court did not apply Minn. Stat. § 541.073 to the intentional-misrepresentation claim.

Appellants' assertion that the district court applied Minn. Stat. § 541.073 to the intentional-misrepresentation claim is disingenuous. The district court simply determined whether appellants had exercised reasonable diligence in pursuing their fraud claim, as required by Minn. Stat. § 541.05, subd. 1(6). To do this, the district court used appellants' nonfraud claims as a "proxy" for measuring reasonable diligence, observing that "[e]ven if the only way to obtain information about alleged fraud was through the discovery process," appellants could have obtained that information had they timely initiated their nonfraud claims.¹⁷ (A. 222.)

This analysis does not unlawfully conflate the two statutes. Rather, it simply recognizes that appellants here possessed enough information to trigger the running of either statute of limitations and to require them, under the fraud statute of limitations, to exercise reasonable diligence and investigate their potential fraud claim against respondents. Thus, the district court did not err by finding that appellants' claims were untimely under both statutes.

Furthermore, it is clear from the district court's analysis that the district court applied the undisputed facts to each appellant's claim. For example, in examining Jane Doe 43G's claim, the district court observed that it was undisputed that Jane Doe 43G

¹⁷ If anything, by starting the clock on their fraud claims after the running on the statute of limitations on their nonfraud claims, the district court gave appellants every benefit of the doubt. The district court's reasoning clearly implies that it concluded that a timely initiation of nonfraud claims was one way appellants could have shown some diligence in discovering the facts constituting the purported fraud, but appellants had not even done that.

had attended a religious conference and listened to a presentation on clergy sexual abuse in 1993. This information, the district court reasoned, was sufficient to put Jane Doe 43G on notice of her fraud claim against respondents. Despite having this information, Jane Doe 43G still did not exercise reasonable diligence in pursuing her claim. The failure of her and her co-appellants to exercise reasonable diligence does not mean that the district court erred in applying the statute of limitations or failed to heed this court's instructions on remand. It simply means that appellants failed to do their part and exercise the reasonable diligence as required of them by the law.

D. There is no confidential relationship excusing appellants' failure to timely commence their claim.

Appellants seek to excuse their delay by claiming that respondents lulled them into a sense of false security due to the "confidential relationship" between appellants and respondents. Appellants' argument is baseless for several reasons.

First, appellants waived this argument by removing their claim that a fiduciary relationship existed between appellants and respondents. Appellants offer no explanation for how their claim of a confidential relationship differs from their prior claim of a fiduciary relationship. Appellants should not be permitted to recast or re-characterize their withdrawn claim by arguing now that a confidential relationship existed.

Second, appellants identify no legal or factual support for their claim that appellants had a confidential relationship with respondents. Minnesota law does not support the conclusion that appellants had a confidential relationship with respondents. In *Meyer v. Lindala*, the Minnesota Court of Appeals held that churches do not have a

“special relationship” with parishioners that could give rise to a duty in a negligence action, because “[p]roviding faith-based advice or instruction, without more, does not create a special relationship.” 675 N.W.2d 635, 639–40 (Minn. App. 2004), *review denied* (Minn. May 26, 2004). If churches do not have a duty of care to parishioners, they cannot have a higher duty to parishioners based on their fiduciary or confidential relationship. *See D.A.B. v. Brown*, 570 N.W.2d 168, 172 (Minn. App. 1997) (“Fiduciary duty is the highest standard of duty implied by law.”). Furthermore, any inquiry into the relationship between a church and its members (whether described as a fiduciary or confidential one) is barred by the First Amendment. *See Quenroe v. Order of St. Benedict*, No. A03-1212, 2004 WL 1381195, at *4 (Minn. App. June 15, 2004), *review denied* (Minn. Aug. 25, 2004); *Ivers v. Church of St Williams*, No. C2-98-519, 1998 WL 887536, at *3 (Minn. App. Dec. 22, 1988).

Appellants do not identify *specific* facts supporting the claim that *they* had a confidential relationship with respondents, especially the Diocese. Instead, appellants assert that the mere fact that respondents are a religious organization and provide facilities to children means that they had a confidential relationship with respondents. (AB 22.) But under such an analysis, any charitable group has a confidential relationship with the population that it serves. Appellants cite no caselaw recognizing this expanded application of fiduciary or confidential relationships. Furthermore, it is undisputed that any confidential relationship with the parishes ended in the 1970s or 1980s when appellants’ involvement with those parishes ended. *See Quenroe*, 2004 WL 1381195, at *4 (observing that the fiduciary relationship, if any, ended when student graduate from

boarding school and had no further contact with the religious order or church); *Dymit*, 2004 WL 2857375, at *5 (presuming that any fiduciary duty ended when student graduated from school).

Third, even in cases where a confidential relationship exists, delay in discovering fraud is not automatically excusable. See *Toombs v. Daniels*, 361 N.W.2d 801, 809 (Minn. 1985) (holding that even in cases involving fraudulent concealment the plaintiff must act with reasonable diligence to discover the fraud); *Schmuking v. Mayo*, 183 Minn. 37–39, 235 N.W. 633 (1931) (same). In *Keough v. St. Paul Milk Co.*, cited extensively by appellants, the Minnesota Supreme Court explained that failure to discover fraud must be justifiable, in light of the circumstances surrounding the purportedly fraudulent transactions and the parties' relationship during the relevant time period. 205 Minn. 96, 104, 285 N.W.2d 809, 815 (1939). Thus, regardless of any confidential relationship, appellants must still prove they could not have discovered the fraud earlier. Appellants here had more than enough facts to discover the fraud long before they started suit in 2004. Unlike the plaintiff in *Keough* who did not know he had been harmed, each appellant knew (by 1993 at the latest) that she had been abused by Roney, and thus that Roney was not a competent or suitable priest. Appellants have no excuse for waiting until 2004 to bring suit.

E. There is no evidence of fraudulent concealment and respondents' post-1987 conduct regarding Roney is irrelevant to determining whether appellants' claim is timely.

Appellants argue that they could not have discovered the fraud until 2003, because “[r]espondents actively worked to conceal” the allegations against Roney. (AB 24.) The

party claiming fraudulent concealment has the burden of showing that the concealment could not have been discovered sooner by reasonable diligence and is not the result of his own negligence. *Wild v. Rarig*, 302 Minn. 419, 450–51, 234 N.W.2d 775, 795 (1975). “To establish fraudulent concealment, a plaintiff must prove there was an affirmative act or statement which concealed a potential cause of action, that the statement was known to be false or was made in reckless disregard of its truth or falsity, and that the concealment could not have been discovered by reasonable diligence.” *Haberle*, 480 N.W.2d at 357. Fraudulent concealment requires an intentional and affirmative concealment of a cause of action. *Williamson v. Prasciunas*, 661 N.W.2d 645, 650 (Minn. App. 2003). Even in cases involving a fiduciary or confidential relationship, “mere silence or failure to disclose is not sufficient in itself to constitute fraudulent concealment.” *Goellner v. Butler*, 836 F.2d 426, 431 (8th Cir. 1988) (citing *Wild*, 302 Minn. at 450–51, 234 N.W.2d at 795).

Importantly, appellants have not produced evidence of any affirmative act or statement by which respondents fraudulently concealed any information about Roney from them. Appellants made no inquiries relating to Roney, and respondents did not prevent appellants from obtaining knowledge about Roney. Courts have refused to toll the statute of limitations in cases such as this where a plaintiff does not put forth “any effort” to inquire of the defendant. *Helloid v. Indep. Sch. Dist. No. 361*, 149 F.Supp.2d 863, 870 (D. Minn. 2001). As one court has explained, the doctrine of fraudulent concealment is “not intended to protect those who are not vigilant in advancing their claims,” and “[i]n no case . . . is mere silence or failure to disclose sufficient in itself to

constitute fraudulent concealment.” *Id.* at 869, 871. Furthermore, failure to publicize information about an alleged abuser “does not represent active or fraudulent concealment.” *Dymit*, 2004 WL 2857375, at *5. Appellants cite no authority to the contrary.

Appellants also argue that respondents’ post-1987 conduct regarding Roney made it “difficult” for them to discover the alleged prior knowledge. (AB 25.) Yet, there is no evidence that any appellant was aware of respondents’ actions regarding Roney after 1981. To the contrary, each appellant had either moved out of the area or was no longer participating in activities with respondents during that time period. Thus, respondents’ post-1987 conduct is entirely irrelevant.

CONCLUSION

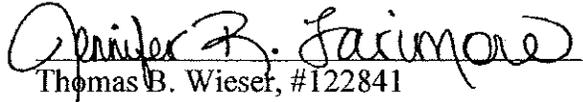
The district court properly granted respondents’ motion for summary judgment on appellants’ intentional-misrepresentation claim. First, the district court correctly granted summary judgment on the merits, because there is no evidence that any respondent, or their purported agent, knowingly made a false representation about Roney to appellants or that any appellant relied on any such representation. Further, there is no evidence that appellants suffered any damage due to the Diocese’s alleged representations. Second, the district court correctly granted summary judgment because appellants’ intentional-misrepresentation claim is untimely under Minn. Stat. § 541.05, subd. 1(6). Accordingly,

respondents respectfully request that this court affirm the district court's order granting summary judgment against appellants' intentional-misrepresentation claim.

Respectfully submitted,

MEIER, KENNEDY & QUINN, CHTD.

Dated: April 20, 2010



Thomas B. Wieser, #122841

Jennifer R. Larimore, #0386663

Attorneys for Respondents Diocese of New
Ulm, St. Francis Parish, and St. Mary's Parish

Bremer Tower, Suite 2200

445 Minnesota Street

St. Paul, MN 55101

Tel: (651) 228-1911