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NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(San Joaquin)

D.D., Plaintiff and Appellant, v. THE ROMAN CATHOLIC BISHOP OF STOCKTON et al., Defendants and Respondents.	C057260 (Super. Ct. No. CV031440)

This case requires us to explore the many revisions and amendments to Code of Civil Procedure section 340.1,[1] a special statute of limitations governing causes of action alleging childhood sexual molestation.

Plaintiff, who has been designated the fictitious name D.D., appeals from a judgment following the sustaining of a demurrer, without leave to amend, to his complaint for damages against defendants The Roman Catholic Bishop of Stockton and the Pastor of St. Anne Church (Church defendants).

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[1] Undesignated statutory references are to the Code of Civil Procedure.

Plaintiff alleges that in the 1970's while he was a pupil at a Catholic school, Doe 4, a priest, teacher and employee of the Church defendants, subjected him to horrific and continuous acts of sexual abuse. Defendants allegedly knew of the abuse and concealed, condoned, and otherwise failed to protect plaintiff from Doe 4, despite actual or constructive notice that he had also abused other minors and was a chronic child molester. Plaintiff claims he repressed all memory of the abuse, but recovered his memory and linked it to his psychological problems in the summer of 2005. He filed this action in late 2006, 30 years after the childhood sexual abuse had ended.

Section 340.1, revised in 2002 when the Legislature also opened up a one-year "revival window" for bringing childhood sexual abuse claims, sets an outer date for commencement of an action to recover damages as the result of childhood sexual abuse of "three years of the date the plaintiff discovers or reasonably should have discovered that psychological injury or illness occurring after the age of majority was caused by the sexual abuse . . . ." (§ 340.1, subd. (a).) The question on appeal is whether this language applies retroactively to childhood sexual abuse claims that had already lapsed[2] by virtue of the statute of limitations.

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[2] In this opinion, we use the term "lapsed" to "describe a cause of action against which the limitations period has run, but which no court has adjudicated." (*David A. v. Superior Court* (1993) 20 Cal.App.4th 281, 284, fn. 4 (*David A.*).)

We agree with the trial court that the answer to this question is "no." The delayed discovery provisions of section 340.1, subdivision (a) were not intended to operate retroactively. Nor may plaintiff avail himself of common law theories of delayed accrual, since the Legislature has withdrawn its sanction of such theories in its revisions to the statute.[3] We shall affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff alleges that from 1973 to 1976, while he was between the ages of 8 and 11, he was abused "numerous times" and "often a few times a week" by Doe 4, a priest and teacher who was employed by the Church defendants.

According to the complaint, the Church defendants had actual or constructive knowledge that Doe 4 was a habitual child molester, but condoned the misconduct and concealed it from public view.

Most of the acts of sexual abuse took place after plaintiff was summoned to the vestibule "to help DOE 4 clean up." It was

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[3] We acknowledge that the applicability of the delayed discovery doctrine to claims such as plaintiff's, either through common law theories of delayed accrual or through section 340.1, subdivision (a), is now pending before the California Supreme Court, which has granted review in two cases, including one from this district. (*Quarry v. Doe I* (2009) 170 Cal.App.4th 1574, review granted June 10, 2009, S171382 [briefing pending]; *K.J. v. The Roman Catholic Bishop of Stockton* (2009) 172 Cal.App.4th 1388, review granted June 24, 2009, S173042 [further briefing deferred pending disposition in *Quarry v. Doe I*].)

in the vestibule, "where DOE 4 would sexually harass, molest and abuse Plaintiff." However, plaintiff "felt as if he had to show up [at] the vestibule as DOE 4 had required, and could not easily terminate his relationship with Defendant DOE 4."

Plaintiff alleges that "[f]ollowing the above-described sexual harassment, abuse, and molestation," he "repressed all memories of said harassment, abuse, and molestation . . . and had no awareness of the actions, injury or wrongfulness of such acts." Only when plaintiff received a letter of apology from Doe 4 in the summer of 2005 did he "beg[i]n realizing and becoming aware of the wrongfulness of the abuse." The letter triggered plaintiff's realization that the "multiple mental and emotional problems" that he was experiencing were being caused by the childhood sexual abuse inflicted on him by Doe 4. Furthermore, "[d]ue to Defendants' manipulation of [p]laintiff, he was incapable of discovering that his psychological injury or illness was caused by the sexual harassment, molestation and abuse he endured at the hands of DOE 4 at an earlier date."

Plaintiff filed suit on December 22, 2006, by which time he was approximately 41 years old, seeking damages against defendants for, inter alia, negligent supervision, negligent hiring and retention, failure to warn, sexual battery and sexual harassment.

The trial court sustained defendants' demurrer without leave to amend, finding that plaintiff's claim lapsed in 1984 under former section 340 and was therefore time-barred under

Hightower v. Roman Catholic Bishop of Sacramento (2006) 142 Cal.App.4th 759, 765-766 (*Hightower*).

DISCUSSION

I. Applicable Principles

Because this appeal arises from a judgment of dismissal following the sustaining of a demurrer without leave to amend, we give the complaint a reasonable interpretation, and treat the demurrer as admitting all material facts properly pleaded. (*Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 543.) "We apply well-established principles of statutory construction in seeking 'to determine the Legislature's intent in enacting the statute "'so that we may adopt the construction that best effectuates the purpose of the law.'"'" (*Shirk v. Vista Unified School Dist.* (2007) 42 Cal.4th 201, 211 (*Shirk*).) The statutory language is generally the most reliable indicator of legislative intent. However, if the statutory language may reasonably be given more than one interpretation, courts may consider various extrinsic aids, including the purpose of the statute, the evils to be remedied, the legislative history,[4] public policy, and the statutory scheme encompassing the statute. (*Shirk*, *supra*, at p. 211.)

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[4] Both parties and their amicus curiae have requested that we take judicial notice of various legislative materials relevant to the history of section 340.1. We have granted these requests. (See *Doe v. City of Los Angeles*, *supra*, 42 Cal.4th at p. 544, fn. 4.)

II. Analysis

"Section 340.1 sets forth a special statute of limitations for victims of childhood sexual abuse." (*County of Los Angeles v. Superior Court* (2005) 127 Cal.App.4th 1263, 1268.) It therefore prevails over more general statutory limitations periods that may apply. (*Aetna Cas. etc. Co. v. Pacific Gas & Elec. Co.* (1953) 41 Cal.2d 785, 787.)

A. The Church Defendants Are Section 340.1, Subdivision (b)(2) Defendants

Section 340.1 contains varying limitations periods for bringing actions for childhood sexual abuse against different groups of defendants. Interpreting the statute is rendered more complicated by the fact that these limitations periods have been amended several times over a period of years. To clarify our analysis at the outset, we observe that the Church defendants are being sued as defendants identified in subdivision (b)(2) of the statute. "The words of subdivision (b)(2) create three conditions that must be met before it applies to a particular case: (1) the nonperpetrator defendant 'knew or had reason to know, or was otherwise on notice'; (2) that the perpetrator--'an employee, volunteer, representative, or agent'--had engaged in 'unlawful sexual conduct'; and (3) 'failed to take reasonable steps, and to implement reasonable safeguards, to avoid acts of unlawful sexual conduct in the future by that person, including, but not limited to, preventing or avoiding placement of that person in a function or environment in which contact with children is an inherent part of that function or environment.'" (*Doe v. City of Los Angeles*, *supra*, 42 Cal.4th at p. 545.)

Here, plaintiff alleged that the Church defendants knew or should have known of Doe 4's past sexual abuse of minors and other pupils under his charge and failed to take reasonable safeguards to prevent him from coming into contact with children such as plaintiff; on the contrary, it is alleged that defendants concealed the abuse and knowingly failed to take reasonable steps to prevent Doe 4 from sexually abusing plaintiff.

Accordingly, as all parties agree, plaintiff seeks to avail himself of the statute of limitations applicable to subdivision (b)(2) defendants.[5]

B. The Issue in Controversy

Plaintiff claims his action is timely based on the "delayed discovery" provision of section 340.1, which permits bringing an action against subdivision (b)(2) defendants until eight years from the age of majority, or within "three years of the date the plaintiff discovers or reasonably should have discovered that psychological injury or illness occurring after the age of majority was caused by the sexual abuse," whichever is later. (§ 340.1, subds. (a), (b)(1), (2).) However, subdivision (c) of

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[5] In the course of this opinion, we will use the term "subdivision (b)(2) defendants," interchangeably with "intentional entity defendants" or "intentional nonabuser defendants." We use the word "intentional" not in the sense that these defendants intended the sexual abuse to occur, but that they had knowledge or constructive notice of specific instances of past unlawful sexual conduct by the individual currently accused of sexual misconduct toward the plaintiff. (See *Doe v. City of Los Angeles*, *supra*, 42 Cal.4th at p. 549.)

section 340.1 also features a one-year "window" for reviving claims that had already lapsed by virtue of the statute of limitations. It provides: "Notwithstanding any other provision of law, any claim for damages described in [subdivision (a)(2) or (3)] that is permitted to be filed pursuant to [subdivision (b)(2)] that would otherwise be barred as of January 1, 2003, solely because the applicable statute of limitations has or had expired, *is revived*, and, in that case, a cause of action may be commenced within one year of January 1, 2003." (Italics added.) Because he did not file his complaint until December 2006, plaintiff undisputedly missed the one-year revival deadline provided for in subdivision (c).

Plaintiff contends the delayed discovery provision applies to the present claim, such that his causes of action did not even accrue until the summer of 2005 when he recovered his memory of the sexual abuses perpetrated by Doe 4. Alternatively, he argues that his claim was timely under equitable, common law theories of delayed discovery or delayed accrual.

The Church defendants maintain that the Legislature gave plaintiffs in D.D.'s position only one chance to bring childhood sexual abuse claims that had previously lapsed--the calendar year 2003--and plaintiff's failure to avail himself of that opportunity forever barred his action. Moreover, defendants say the Legislature has decisively precluded use of common law

doctrines of delayed discovery by deleting language in section 340.1 that had previously permitted their application.

Resolution of the dispute requires us to take a circuitous journey through the history of the statute.

C. History of Section 340.1

As a general rule, a cause of action for childhood sexual abuse accrues at the time of molestation. (*John R. v. Oakland Unified School Dist.* (1989) 48 Cal.3d 438, 443 (*John R.*); *Doe v. Bakersfield City School Dist.* (2006) 136 Cal.App.4th 556, 567, fn. 2.) Prior to the enactment of section 340.1 in 1986, courts applied former section 340, which provided for a one-year statute of limitations for child sexual abuse claims. Courts also applied section 352, which tolled the running of the statute while the plaintiff was a minor, such that the action could be brought timely on or before the plaintiff's 19th birthday. (See former § 340, subd. (3); *DeRose v. Carswell* (1987) 196 Cal.App.3d 1011, 1015.)

Since the last alleged molestation took place in 1976 when plaintiff was 11 years old, he had until his 19th birthday to file suit. He did not. Accordingly, the statute of limitations expired on plaintiff's claim against the Church defendants in either 1984 or 1985.

1. Enactment of section 340.1.

In 1986, the Legislature enacted section 340.1, providing for a three-year statute of limitations for sexual abuse by a relative or household member of a child under the age of 14

years. (Former § 340.1, added by Stats. 1986, ch. 914, § 1, pp. 3165-3166; see *Shirk*, *supra*, 42 Cal.4th at p. 207.) The statute also included a revival provision, permitting the new rule to be applied to any action commenced after January 1, 1987, that would otherwise have been barred by the statute of limitations prior to that date (former § 340.1, subd. (e)), and contained additional language permitting the courts to apply equitable doctrines of delayed discovery.[6] However, none of these provisions applied to nonperpetrator defendants such as the Church defendants. Accordingly, plaintiff's claim remained time-barred.

2. 1990 amendments.

In 1990, section 340.1 was expanded to cover *any* person who sexually abused a child. (*Shirk*, *supra*, 42 Cal.4th at p. 207.) The Legislature also extended the statute of limitations to eight years from the date the victim "attains the age of majority" (i.e., age 26) or three years from the date the victim "discovers or reasonably should have discovered that

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[6] Subdivision (d) of former section 340.1 stated: "Nothing in this bill is intended to preclude the courts from applying delayed discovery exceptions to the accrual of a cause of action for sexual molestation of a minor." (See *Evans v. Eckelman* (1990) 216 Cal.App.3d 1609, 1614 (*Evans*).) The language was retained as subdivision (*l*) in 1990: "Nothing in the [1990] amendments . . . shall be construed to preclude the courts from applying equitable exceptions to the running of the applicable statute of limitations, including exceptions relating to delayed discovery of injuries, with respect to actions commenced prior to January 1, 1991." (Amended by Stats. 1990, ch. 1578, § 1, p. 7552.)

psychological injury or illness occurring after the age of majority was caused by the sexual abuse." (§ 340.1, former subd. (a); see *Shirk*, *supra*, at p. 207.) A plaintiff over the age of 26 years had to provide a certificate of merit from a mental health practitioner. (§ 340.1, former subds. (a), (b), & (d), as amended by Stats. 1990, ch. 1578, § 1, pp. 7550-7551; *Shirk*, at p. 207.) Again, because the amendment did not apply to nonabuser defendants, it did not affect plaintiff's claim.

3. 1994 amendments.

In 1994, the Legislature again amended section 340.1 by expressly providing that the 1990 amendments "apply to any action commenced on or after January 1, 1991, including any action otherwise barred by the period of limitations in effect prior to January 1, 1991, thereby reviving those causes of action which had lapsed or technically expired under the law existing prior to January 1, 1991." (§ 340.1, former subds. (*o*)-(p), added by Stats. 1994, ch. 288, § 1, p. 1928.)

But while the Legislature giveth with one hand, it taketh away with the other. The 1990 section 340.1, subdivision (*l*), which had permitted the courts to apply "equitable exceptions to the running of the applicable statute of limitations," including those relating to "delayed discovery of injuries" (see fn. 6, *ante*), was deleted. (Stats. 1994, ch. 288, § 1, p. 1928; see Historical and Statutory Notes, 13C West's Annot. Code Civ. Proc. (2006 ed.) foll. § 340.1, p. 173 (Historical and Statutory Notes).) As we shall see, that deletion was significant.

4. 1998 and 1999 amendments.

In 1998, the Legislature amended section 340.1 to include, for the first time, claims alleging childhood sexual abuse against persons or entities other than the perpetrator. (§ 340.1, former subd. (a)(2) & (3), added by Stats. 1998, ch. 1032, § 1; *Mark K. v. Roman Catholic Archbishop* (1998) 67 Cal.App.4th 603, 610, fn. 4.) The amendment, which permitted suits against parties whose negligent or intentional acts were a "legal cause" of a minor's sexual abuse, also created a firm time cap for actions against nonperpetrator defendants, requiring them to be brought not later than the victim's 26th birthday. (§ 340.1, former subd. (b)(1), amended by Stats. 1998, ch. 1032, § 1; *Shirk*, *supra*, 42 Cal.4th at p. 208.)

Although the 1998 legislation permitted tort claims against intentional nonabusers such as the Church defendants, plaintiff was by then 33 or 34 years old, well above the age 26 time cap. Thus, he was too old to take advantage of the change in the law. (*Hightower*, *supra*, 142 Cal.App.4th at pp. 765-766.)

The Legislature again amended section 340.1 in 1999, clarifying that its 1998 changes relating to the liability of nonabuser defendants applied only to actions begun on or after January 1, 1999, or if filed before that time, actions still pending as of that date, "including any action or causes of action which would have been barred by the laws in effect prior to January 1, 1999." (See *Shirk*, *supra*, 42 Cal.4th at p. 208,

quoting § 340.1, former subd. (s), added by Stats. 1999, ch. 120, § 1.)

5. 2002--the final amendments.

In 2002, the Legislature put one final flourish on section 340.1. (Stats. 2002, ch. 149, § 1.) The age 26 cap was retained (§ 340.1, subd. (b)(1)) *except* in cases such as this, where a nonabuser defendant knew or had reason to know of its agent's or employee's unlawful misconduct and failed to take reasonable steps to protect others from the employee's predatory behavior. (§ 340.1, subd. (b)(2).) In those cases, the statute provided that the limitations would run until the later of the plaintiff's 26th birthday or three years after the plaintiff discovers or should have discovered that his psychological injuries were the result of childhood sexual abuse. At the same time, the Legislature added current subdivision (c) to section 340.1, which expressly *revived lapsed claims* against intentional entity defendants that had been barred due to the expiration of the statute of limitations. For those claims, the Legislature opened up a one-year window period for the bringing of new actions, beginning on January 1 and ending on December 31, 2003. (*Hightower*, *supra*, 142 Cal.App.4th at p. 766.)

Plaintiff's present claim was unquestionably revived by the 2002 legislation. Thus, he had one obvious, legislatively sanctioned opportunity to bring his lapsed causes of action against the Church defendants during the calendar year 2003. However, no suit was filed during that time.

D. Resolution of the Statutory Dispute

Despite having failed to avail himself of the one-year revival window in 2003, plaintiff contends his lawsuit is timely under the "delayed discovery" provision of section 340.1, subdivision (a)--"within three years of the date the plaintiff discovers or reasonably should have discovered that psychological injury or illness occurring after the age of majority was caused by the sexual abuse"--which was made applicable to subdivision (b)(2) defendants in 2002 by virtue of subdivision (c). Plaintiff argues that, because he repressed all memory of the abuse until the summer of 2005, his claim did not accrue until then. The merit of this argument turns on whether the Legislature intended the courts to apply the three-year delayed discovery provision *retroactively*, to claims against intentional entity defendants that had previously lapsed.

In general, a statute will be construed as prospective unless there is clear legislative intent that it apply retroactively. (*Myers v. Philip Morris Companies, Inc.* (2002) 28 Cal.4th 828, 844; *Evangelatos v. Superior Court* (1988) 44 Cal.3d 1188, 1207.) Such intent has been found where there is express language of retroactivity, or where extrinsic sources undisputedly demonstrate that the Legislature intended the statute to be retroactive. (*Evangelatos*, *supra*, 44 Cal.3d at p. 1209 ["[I]n the absence of an express retroactivity provision, a statute will not be applied retroactively unless it

is very clear from extrinsic sources that the Legislature . . . must have intended a retroactive application"].)

The rule is even stricter in the case of legislative changes to a statute of limitations. "[A] legislative change in the statute of limitations is presumed *not* to revive lapsed claims unless the amending act expressly mandates such an effect. (*Gallo v. Superior Court* [(1988)] 200 Cal.App.3d [1375,] 1378; *Barry v. Barry* (1954) 124 Cal.App.2d 107, 112.) If the Legislature wishes to revive lapsed claims, it should so declare in 'unmistakable terms.' (See *Douglas Aircraft Co.* [*v. Cranston* (1962)] 58 Cal.2d [462,] 466.) Otherwise such claims will be left to lie in repose." (*David A.*, *supra*, 20 Cal.App.4th at p. 286.)

In this case, the three-year delayed discovery provision contains no unmistakable, express language of retroactivity. Nor is there anything in the legislative history of section 340.1 that indisputably shows a retrospective application was intended. On the contrary, an examination of the history of the statute points to the opposite conclusion.

Whenever it has amended section 340.1, the Legislature has been clear about whether the courts may apply new limitations periods retroactively. In 1990, the Legislature inserted language containing a limited revival of actions commenced after 1987. The 1994 amendment provided that the liberalized discovery rule enacted in 1990 shall "apply to any action commenced on or after January 1, 1991, including any action

otherwise barred by the period of limitations in effect prior to January 1, 1991, thereby reviving those causes of action which had lapsed or technically expired under the law existing prior to January 1, 1991." (§ 340.1, former subds. (*o*)-(p), added by Stats. 1994, ch. 288, § 1, p. 1928, italics added.) This amendment was added to overrule *David A.*, *supra*, 20 Cal.App.4th at page 286, a case that had held that the 1990 amendment did not revive lapsed claims. (Legis. Counsel's Dig., Assem. Bill No. 2846 (1993-1994 Reg. Sess.) 5 Stats. 1994, Summary Dig., p. 111.)

In 1999, the Legislature clarified that its 1998 changes relating to the liability of nonabuser persons or entities were to be applied to actions commenced on or after or pending as of January 1, 1999, "'including any action or causes of action which would have been barred by the laws in effect prior to January 1, 1999.'" (*Shirk*, *supra*, 42 Cal.4th at p. 208, quoting § 340.1, former subd. (s), added by Stats. 1999, ch. 120, § 1.)

Finally, the 2002 amendments, while removing the age 26 cap on subdivision (b)(2) defendants, explicitly provided that, as to *lapsed claims*, the applicable limitations period "*is revived*," provided suit was commenced within one year of January 1, 2003. (§ 340.1, subd. (c), italics added.)

This sequence demonstrates that the Legislature knows precisely how to specify whether and under what conditions a newly enacted statute of limitations period should be applied to revive lapsed claims. In 2002, the Legislature opened the gates

to lapsed claims against subdivision (b)(2) defendants, but only for a limited one-year period. The enactment, in clear stentorian language, of a one-year revival period, announced to the world that these types of claims must be brought within that period or forever remain in repose. It would be illogical to infer that the Legislature silently intended that lapsed claims *not* filed within the window period could nevertheless be revived through the back door by use of the delayed discovery rule.

Our conclusion is in accord with the result in *Hightower*. There, a prisoner who had allegedly been molested by a priest in the early 1970's claimed that his suit against a Catholic bishop, filed in April 2004, was timely because the delayed discovery rule of section 340.1, subdivision (a) applied. (*Hightower*, *supra*, 142 Cal.App.4th at pp. 761, 763, 767.) The Court of Appeal, Second Appellate District, Division Eight, flatly rejected the notion, stating, "When the Legislature first applied the delayed discovery rule to entity defendants like the bishop in 1998, those claims were subject to the outer limit of the plaintiff's 26th birthday, meaning that his claims remained time-barred. Effective 2003, the Legislature extended the limitations period for claims such as Hightower's to the later of the plaintiff's 26th birthday or the date when the plaintiff discovered that his psychological injuries were caused by sexual abuse. At the same time, the Legislature revived for only one year all such claims that were already time-barred. *The Legislature therefore drew a clear distinction between claims*

that were time-barred and those that were not. Hightower's interpretation would obliterate that distinction by allowing his time-barred claim to take advantage of the new limitations period. Therefore, the new delayed discovery rule does not revive Hightower's previously lapsed claims." (*Hightower*, at pp. 767-768, italics added.)[7]

Plaintiff's argument suffers from the same infirmity as Hightower's. It presupposes an implicit, unexpressed intent to enact a delayed accrual rule retroactively, contrary to settled rules of statutory interpretation and despite the Legislature's unambiguous intent to treat lapsed and unlapsed claims differently.

The unavailability of section 340.1's delayed accrual rule to revive lapsed claims appears to have been acknowledged by the California Supreme Court in *Shirk*. Shirk, a 41-year-old plaintiff in 2003, claimed she was the victim of sexual misconduct by her male teacher during the 1978-1979 school year. She sued the school district that employed him on the basis that it knew or should have known that he was a sexual predator. Shirk filed a government tort claim in September 2003, the date on which she allegedly "discovered" the connection between her

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[7] While it is true that the *Hightower* court also rejected the plaintiff's claim on the alternative ground that the plaintiff's allegations were insufficient to trigger the delayed discovery rule, that conclusion was dictum, since the court had already ruled that his complaint was time-barred. (*Hightower*, *supra*, 142 Cal.App.4th at p. 768.)

psychological problems and the sexual abuse. The trial court sustained a demurrer without leave to amend on the ground that Shirk failed to file timely a government tort claim in 1980. (*Shirk*, *supra*, 42 Cal.4th at pp. 205-206.)

Although the suit was brought under the 2003 "revival" window set forth in section 340.1, Shirk still faced the problem of having failed to file a government claim within the statutory period.[8] She attempted to steer around this obstacle by relying on the delayed discovery rule in subdivision (a), contending that her claim did not "accrue" until she discovered that the sexual abuse was the cause of her psychological injuries. (*Shirk*, *supra*, 42 Cal.4th at p. 206.) After reviewing the history of the statute, the *Shirk* court reaffirmed the long-settled rule that a cause of action for sexual abuse accrues at the time of the molestation. (*Id.* at p. 210.) Finding no indication in either the language or history of the statute that the Legislature's magnanimity in liberalizing the limitations period for civil actions for childhood sexual abuse also included an intent to excuse or delay the time for filing tort claims against governmental entities, the state's high court

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[8] As the *Shirk* court explained, "such claims must be presented to the government entity no later than six months after the cause of action accrues. (Gov. Code, former § 911.2, as amended by Stats. 1987, ch. 1208, § 3, p. 4306.) Accrual of the cause of action for purposes of the government claims statute is the date of accrual that would pertain under the statute of limitations applicable to a dispute between private litigants." (*Shirk*, *supra*, 42 Cal.4th at pp. 208-209.)

held Shirk's action was properly dismissed. (*Id.* at pp. 211-213.)

Had the state Supreme Court accepted the argument advanced by Shirk--and repeated by plaintiff here--that section 340.1 actions against intentional entity defendants do not even *accrue* until discovery of the psychological abuse, Shirk's claim would have been ruled timely, since the time for filing a government claim runs from the date the cause of action accrues. (See fn. 8, *ante*.) The fact that the court adhered to the general rule that the claim accrued when the molestations occurred constituted an implied rejection of the notion that lapsed childhood sexual abuse claims can "accrue" a second time under a delayed discovery theory.[9]

Although unnecessary to our decision, legislative materials surrounding the enactment of Senate Bill No. 1779 (2001-2002 Reg. Sess.), of which we have taken judicial notice, confirm our interpretation. A summary of the 2002 amendments prepared for the Assembly Judiciary Committee cites two aspects of the bill: first, "[r]etroactive *application and revival of lawsuits*," to "create a one-year window" for victims of childhood sexual abuse to bring lawsuits against intentional entity defendants that would otherwise have been barred by the age 26 cap; and, second,

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[9] This "second accrual" theory was advocated by Justice Werdegar in her dissenting opinion. (*Shirk*, *supra*, 42 Cal.4th at pp. 214-216 (dis. opn. of Werdeger, J.).) No other justice, however, joined in that dissent.

"*Prospective application*: People who discover their adulthood trauma from the molestation after the effective date of the bill will have three years from the date the victim discovers or reasonably should have discovered that the adulthood trauma was caused by the childhood abuse." (Italics added.)

The statement on the floor by the author of Senate Bill No. 1779 (2001-2002 Reg. Sess.), John Burton, mirrors this summary. Senator Burton told his colleagues that the bill would allow actions to be filed after the victim's 26th birthday against "a person or entity that knew or had reason to know of any complaint against an employee for unlawful sexual conduct and failed to take reasonable steps to avoid similar acts . . . *in the future*. . . . [¶] This bill *also* revives actions that were previously barred by the statute of limitations and *allows those actions to be filed within one year of the effective date of this bill*." (Italics added.)

These background materials support our conclusion that while the Legislature intended to lift the age 26 cap prospectively as a prophylactic measure, it sought to revive lapsed actions only for a limited one-year period.

Amicus curiae counsel for plaintiff discerns a contrary intent from the Legislature's retention and redesignation of section 340.1, former subdivision (s) as subdivision (u) in 2002. Current subdivision (u) (originally enacted as subdivision (s) in 1999) states, in relevant part: "The *amendments to subdivision* (*a*) *of this section*, enacted *at the*

1998 portion of the 1997-98 Regular Session, shall apply to any action commenced on or after January 1, 1999, and to any action filed prior to January 1, 1999, and still pending on that date, *including any action or causes of action which would have been barred by the laws in effect prior* to January 1, 1999." (Italics added.) Amicus argues that by preserving subdivision (u) in 2002, the Legislature "gave life to the retroactive application of subdivisions (a)(2) and (3)," thereby evincing an intent to apply delayed discovery to claims against nonperpetrator defendants, regardless of when the sexual abuse took place.

Amicus's theory ignores the fact that subdivision (u) refers only to the amendments to section 340.1, subdivision (a) enacted in the 1997-1998 Regular Session. That legislation *capped the limitations period at age 26*. When, for the first time, it *lifted* the age 26 cap and permitted a delayed discovery rule to be applied to intentional nonabusers, the Legislature could easily have expressed its intent that the delayed discovery provision of subdivision (a) be made applicable to claims that would "otherwise have been barred" by preexisting laws. The fact that it did not, but instead revived such claims for only a limited one-year period, refutes amicus's argument.

E. Common Law Delayed Discovery Theories

Both plaintiff and amicus curiae counsel assert that, regardless of whether section 340.1 expressly permits it, plaintiff may avail himself of the common law delayed discovery

doctrine, which "postpones accrual of a cause of action until the plaintiff discovers, or has reason to discover, the cause of action." (*Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 397.) Their primary authority is *Evans*, *supra*, 216 Cal.App.3d 1609. *Evans* was a case where the adult plaintiffs sued their uncle and former foster father for sexual abuse they suffered in their childhood. (*Id.* at p. 1612.) They claimed that "'psychological blocking mechanisms'" such as fear, internalized shame, disassociation and repression caused them to be unaware, for decades, of both the sexual abuses and the psychological injuries they caused. (*Id.* at p. 1613.) The Court of Appeal, First Appellate District, Division Five, applied the common law "delayed accrual" doctrine applicable to fiduciary relationships to hold the complaint sufficient to withstand a demurrer based on the statute of limitations. (*Id.* at pp. 1614-1616.) "We conclude that the purposes of the statute of limitations and the rationale of the delayed discovery rule as it has developed in our courts require that accrual of a cause of action for child sexual abuse by a parent or similar figure of authority be delayed until the plaintiff knows or reasonably should know of the cause of action." (*Id.* at p. 1617.)

Evans was decided in early 1990, at a time when section 340.1 expressly gave courts permission to apply equitable delayed discovery principles to lawsuits alleging child molestation. Former subdivision (d) of the statute then stated: "'*Nothing in this bill is intended to preclude the courts from*

applying delayed discovery exceptions to the accrual of a cause of action for sexual molestation of a minor.'" (*Evans*, *supra*, 216 Cal.App.3d at p. 1614, italics added.) *Evans* quoted that section and relied on it as a legislative imprimatur for its decision. (*Ibid.*)

Four years after *Evans*, when the Legislature liberalized the limitations period to commence actions for childhood sexual abuse, it also *eliminated* the provision that had allowed courts to apply the delayed accrual doctrine.[10] That deletion has been preserved in all subsequent amendments to the statute.

Amicus curiae on behalf of plaintiff dismisses the deletion of section 340.1, former subdivision (d) as "removal of surplusage." We disagree. Cases such as *Evans* had applied equitable, common law principles of delayed discovery to avoid normal rules regarding accrual in cases of childhood abuse. This practice could easily have continued unabated unless the Legislature put a stop to it.

"'It is ordinarily to be presumed that the Legislature by deleting an express provision of a statute intended a substantial change in the law.'" (*People v. Dillon* (1983) 34 Cal.3d 441, 467, quoting *People v. Valentine* (1946) 28 Cal.2d 121, 142.) "'Where the Legislature omits a particular provision

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[10] In 1990, the Legislature reenacted section 340.1, former subdivision (d) in substantially the same form as subdivision (*l*). (See fn. 6, *ante*.) The 1994 bill deleted this language from section 340.1 altogether. (Historical and Statutory Notes, *supra*, foll. § 340.1, pp. 172-173.)

in a later enactment related to the same subject matter, such deliberate omission indicates a different intention which may not be supplanted in the process of judicial construction.'" (*Hoschler v. Sacramento City Unified School Dist.* (2007) 149 Cal.App.4th 258, 269, quoting *Kaiser Steel Corp. v. County of Solano* (1979) 90 Cal.App.3d 662, 667.)

In light of these rules, we cannot view the elimination of section 340.1, former subdivision (d) as a mere housekeeping measure. By withdrawing its previous sanction of common law principles at the same time it made it easier for victims of childhood sexual abuse to sue, the Legislature drew a line in the sand, declaring an end to judicial application of common law delayed discovery theories that were not expressly set forth in the statute.[11]

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[11] *Curtis T. v. County of Los Angeles* (2004) 123 Cal.App.4th 1405, upon which plaintiff and his amicus heavily rely, does not persuade us otherwise. In *Curtis T.*, a guardian ad litem filed a government claim for damages against Los Angeles County on behalf of a 12-year-old child, based on molestations that occurred in a foster home when he was between five and eight years old. (*Id.* at pp. 1411-1413). The Court of Appeal for the Second Appellate District, Division One, applying principles of equitable delayed discovery, held that the claim was timely as long as the guardian could establish that she could not, with reasonable diligence, have discovered the molestations earlier. (*Id.* at pp. 1422-1423.) Unlike actions against private parties, the statute of limitations to file a minor's claim against a public entity is not automatically tolled until the minor reaches the age of majority. (See § 352, subd. (b).) The *Curtis T.* court emphasized that its decision was limited to the filing of *government claims* against public entities on behalf of minors who, because of their tender age, may not appreciate the wrongfulness of what was done to them. (*Curtis T.*, at pp. 1409, 1422.) It also acknowledged that the limitations period for

We conclude that plaintiff may not rely on common law delayed discovery rules that are inconsistent with the limitations periods expressly set forth in section 340.1.

Our conclusion also disposes of plaintiff's contention that his complaint is timely under statutes of limitations applicable to assault and battery. (§§ 335, 335.1.) Such an argument presupposes that plaintiff's causes of action did not accrue until his memory of these torts was awakened in 2005. It therefore relies on a theory of equitable delayed accrual.

F. Conclusion

Plaintiff's claim against the Church defendants arising from childhood sexual abuse accrued when the molestations occurred. Because he failed to file suit by age 19, the statute of limitations expired. (*Shirk*, *supra*, 42 Cal.4th at p. 210; *Doe v. Bakersfield City School Dist.*, *supra*, 136 Cal.App.4th at p. 567, fn. 2.) Plaintiff's lapsed claims remained in repose until they were revived during the calendar year 2003, but he failed to avail himself of the opportunity to file suit within the statutorily advertised window period.

Plaintiff's allegations of repressed memory do not save his complaint, because the delayed discovery rule applicable to intentional nonabuser defendants that was added to section 340.1

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adult plaintiffs to file civil actions based on childhood sexual abuse was governed by section 340.1, a statute that it had no occasion to interpret. (*Curtis T.*, at pp. 1419-1420.) Opinions are not authority for issues they do not consider. (*Stoll v. Shuff* (1994) 22 Cal.App.4th 22, 27.)

in 2002 did not have retrospective effect. Consequently, it did not operate to revive decades-old claims such as plaintiff's, which had lapsed due to the running of the statute of limitations.

DISPOSITION

The judgment is affirmed. Defendants are awarded costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1), (2).)

BUTZ, J.

We concur:

SCOTLAND, P. J.

BLEASE, J.