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## 2001 Survey of Rhode Island Law: Cases: Civil Procedure

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**Civil Procedure.** *Martin v. Howard*, 784 A.2d 291 (R.I. 2001). The Rhode Island Supreme Court held that the trial court did not abuse its discretion in staying discovery pending ruling on a statute of limitations issue. The supreme court also held that plaintiff's claims accrued when the sexual relationship ended and that her claims were not tolled until she appreciated the full nature and extent of her injuries. Furthermore, the court held that the personal injury statute of limitations governed the plaintiff's contract, fiduciary duty and fraud claims and that the defendants were not estopped from invoking the statute of limitations.

#### FACTS AND TRAVEL

During a six-month period, beginning in September of 1994 and ending in February of 1995, Joan Martin (Martin or plaintiff) engaged in a sexual relationship with her pastor, the Reverend Evan D. Howard (Howard or defendant).<sup>1</sup> Ultimately, in 1999, Martin filed a complaint against Howard in superior court accusing him of what amounted to clergy malpractice by engaging in an extramarital affair with her.<sup>2</sup> Martin alleged that Howard engaged in this relationship without her valid or knowledgeable consent to do so.<sup>3</sup> Martin also alleged that in February of 1995, a church official from the American Baptist Churches of Rhode Island (ABCORI), also a defendant in this case, contacted Martin informing her that Howard admitted having a sexual relationship with the plaintiff, and that the church defendants would resolve the situation through the process of an internal church mediation.<sup>4</sup> Martin further alleged that a church official notified her on or about May 30, 1995 that Howard was placed on a six-month paid leave of absence and that the church had asked him to take the necessary steps to address his admitted misconduct.<sup>5</sup> Martin further contended that Howard, before taking his leave, denounced her to the other parishioners, blaming her for causing him to stray from his marital vows.<sup>6</sup> As a result of the church allowing Howard to resume his duties in January of 1996 without taking any further

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1. *Martin v. Howard*, 784 A.2d 291, 294 (R.I. 2001).

2. *Id.*

3. *Id.*

4. *Id.* at 295.

5. *Id.*

6. *Id.*

action to remedy his alleged wrongdoing or to redress Martin's injuries, Martin averred that the church allowed Howard to defame her and to blame her for his own misconduct, leading to her constructive removal from the church.<sup>7</sup> Moreover, Martin alleged that because of Howard's conduct, she suffered grievous emotional and psychological injuries for which she sought an award of money damages from the defendants.<sup>8</sup>

In response to Martin's amended complaint, the defendants moved for dismissal under Rule 12(b)(6) of the Superior Court Rules of Civil Procedure.<sup>9</sup> The motion was granted on the grounds that Martin had failed to commence suit on her claims within the applicable three-year statute of limitations for filing personal-injury actions.<sup>10</sup>

#### ANALYSIS AND HOLDING

##### *Stay of Discovery*

On appeal, plaintiff argued that the motion justice improperly prohibited her from conducting discovery pending adjudication of the defendants' dismissal motion, and that this stay of discovery hindered her from effectively defending against the pending motion to dismiss.<sup>11</sup> Martin alleged that she needed to engage in discovery to "flesh out the facts in her complaint".<sup>12</sup> However, a trial court possesses the discretion to stay discovery in a civil case and prevent litigants from engaging in "fishing expeditions" until one or more potentially dispositive issues have been decided.<sup>13</sup> The supreme court held the motion justice acted well within her discretion when she stayed discovery pending her ruling on the statute-of-limitations issue.<sup>14</sup>

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7. *Id.*

8. *Id.*

9. *Id.* at 296.

10. *Id.*; see R.I. Gen. Laws § 9-1-14(b) (2001).

11. *Id.*

12. *Id.* at 297.

13. *Id.* (citing *Sinclair Refining Co. v. Jenkins Petroleum Process Co.*, 289 U.S. 689, 694 (1933); *Coia v. Stephano*, 511 A.2d 980 (R.I. 1986); *Smith v. Johns-Manville Corp.*, 489 A.2d 336 (R.I. 1985)).

14. *Id.*

*Failure to Convert the Motion to Dismiss to a Summary Judgment Motion*

The plaintiff also challenged the motion justice's dismissal of all counts of her amended complaint under Rule 12(b)(6), arguing that the justice should have converted the motion to one for summary judgment under Rule 56 of the Superior Court Rules of Civil Procedure.<sup>15</sup> Because the sole function of a motion to dismiss is to test the sufficiency of the complaint, the court has permitted a statute-of-limitations defense to be raised by a motion to dismiss under Rule 12(b)(6) so long as the defect appears on the face of the complaint.<sup>16</sup> However, when the motion justice receives evidentiary matters outside the complaint and does not expressly exclude them in passing on the motion, then Rule 12(b)(6) specifically requires the motion to be considered as one for summary judgment.<sup>17</sup> In this case, the supreme court concluded that the factual matters argued on the motion extraneous to the complaint were not presented in proper form for the court to consider and, as a result, the motion justice did not err by not converting the motion to one for summary judgment.<sup>18</sup>

Martin alleged that the motion justice erred by making findings of fact beyond the allegations in her complaint: specifically, that the motion justice found that the conduct Martin alleged to have caused her injuries occurred on or before February 1995.<sup>19</sup> Martin argued that the date of her injury was a question of fact that could not be determined by the face of the complaint alone.<sup>20</sup> However, the supreme court held that, on the face of the complaint, the motion justice's reading of the complaint was the only reasonable conclusion that could be drawn from the sexual-misconduct allegations.<sup>21</sup> The complaint revealed that Martin's alleged injury occurred during a six-month period beginning in 1994 and ending in February of 1995, while she and Howard engaged in a sexual

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15. *Id.*

16. *Id.* (citing *Boghossian v. Ferland Corp.*, 600 A.2d 288, 290 (R.I. 1991); *Rhode Island Affiliate, ACLU, Inc. v. Bernasconi*, 557 A.2d 1232, 1232 (R.I. 1989); *McDonald v. Rhode Island General Council*, 505 A.2d 1176, 1178 (R.I. 1986)).

17. *Id.* at 298 (citing R.I. Super. Ct. R. Civ. P. 56).

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.*

relationship.<sup>22</sup> Moreover, during 1995, Martin knew that the church mediation process had not led to the termination of Howard's employment with the church or any other significant disciplinary measure.<sup>23</sup> Therefore, it was apparent within the four corners of the complaint that Howard's conduct which allegedly led to Martin's injuries occurred more than three years before Martin filed her complaint in January of 1999.<sup>24</sup> Because Martin was bound to file her personal-injury claims arising from her relationship with Howard within three years after their relationship ended and she failed to do so, her claims were all time-barred.<sup>25</sup>

### *The Accrual of Martin's Claims*

Martin sought to toll the statute of limitations for her personal-injury claims beyond the time when both the alleged injury itself and the wrongful conduct causing that injury should have been discovered in the exercise of reasonable diligence.<sup>26</sup> The court noted that in some situations, when the fact of an injury is unknown to the plaintiff when it occurs, the statute of limitations is tolled until, in the exercise of reasonable diligence, the plaintiff should have discovered the injury or the wrongful conduct that caused the injury.<sup>27</sup> The court also noted that the "reasonable diligence standard is based upon the perception of a reasonable person placed in circumstances similar to the plaintiff's, and also upon an objective assessment of whether such a person should have discovered that the defendants' wrongful conduct had caused him or her to be injured."<sup>28</sup>

In this case, Martin argued that because of Howard's sexual abuse, she did not appreciate the full nature and extent of her injuries at the time she first knew she had suffered harm.<sup>29</sup> However, this court held that even if Martin was initially uncertain about the impropriety of Howard's conduct at the end of their relationship in February of 1995, church officials from ABCORI made it very clear to Martin at the end of May of that same year that they

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22. *Id.* at 299.

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.* at 300.

27. *Id.* at 299.

28. *Id.* at 300.

29. *Id.*

considered Howard's conduct to be improper.<sup>30</sup> Therefore, Martin should have known by the end of May about the existence and nature of her alleged injuries and the defendant's role in causing them.<sup>31</sup>

*Contract Breach, Violation of Fiduciary Duties, Bad Faith, and Fraud Claims*

Also on this appeal, Martin argued that the defendants breached their agreement to mediate her claims against Howard and violated the fiduciary duties that they owed to her as a parishioner.<sup>32</sup> Martin alleged that the statute of limitations for such claims is ten years.<sup>33</sup> In addition, she argued that the defendants should be equitably estopped from invoking the personal-injury statute of limitations to dismiss her cause of action because the church defendants had, in bad faith, misrepresented the church's mediation process to her.<sup>34</sup>

In determining Martin's breach of agreement claim, the court first had to find whether, based on the face of the complaint, an enforceable contract to mediate ever existed.<sup>35</sup> Although Martin's counsel suggested that a document may exist that shows the existence of the agreed-upon terms of the mediation, the supreme court found that no averment in the complaint described or alluded to any such signed document.<sup>36</sup> The court, citing *Solomon v. Progressive Casualty Insurance Co.*<sup>37</sup>, held that even if the agreement to mediate was in writing, the breach of the alleged agreement fails to state a claim for which relief can be granted.<sup>38</sup>

The court next had to decide whether or not the injuries Martin complained of derived from the prior existence of the personal-injury claims, or whether the asserted breach of contract, bad faith, fraud, and violation-of-fiduciary-duty claims gave rise to

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30. *Id.* at 301.

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.* at 301-02.

37. 685 A.2d 1073, 1074 n.2 (R.I. 1996) (holding that the only recourse would be to petition the superior court for an order to enforce the terms of the agreement).

38. *Martin*, 784 A.2d at 302.

these injuries.<sup>39</sup> The court held that the contract Martin attempted to create out of the defendant's alleged promise derived from and depended upon the prior existence of the personal-injury claims themselves.<sup>40</sup> The court also noted that the breach of contract claim produced no new or different injuries other than the personal injuries for which Martin already was seeking damages.<sup>41</sup> Therefore, the court held that because the only injuries alleged were those to Martin's person, the three year statute of limitations for personal-injury suits applies.<sup>42</sup>

Martin further alleged that the defendants gulled her into failing to act.<sup>43</sup> However, the court stated that the complaint did not allege that Martin had been contemplating suit but that the church defendants promised her that mediation would render moot any need for her to resort to litigation.<sup>44</sup>

Finally, the supreme court noted that even if Martin had filed her complaint before the three-year statute of limitations had elapsed, it would be unlikely that the superior court would have been able to review and adjudicate the defendants' alleged failure to conduct a fair and impartial internal church mediation as allegedly promised.<sup>45</sup> The supreme court held that such judicial inquiry into a matter of "ecclesiastical cognizance" would offend both the free exercise clause of the First Amendment to the United States Constitution as well as article I, section 3 of the Rhode Island Constitution.<sup>46</sup>

#### CONCLUSION

The Rhode Island Supreme Court affirmed the superior court's dismissal of Martin's complaint, holding that Martin had failed to initiate her suit within the applicable three-year statute of limitations for filing personal-injury claims. In addition, the court held

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39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.* at 303.

45. *Id.*

46. *Id.*

that the motion justice did not err in staying discovery until challenges regarding the statute of limitations had been resolved.

Michelle M. Alves



**Civil Procedure/Undue Influence.** *Tinney v. Tinney*, 770 A.2d 420 (R.I. 2001). Undue influence is a fact-specific inquiry, determined by examining the totality of the circumstances.

#### FACTS AND TRAVEL

At the heart of this appeal from a decision of the superior court is a famous Newport landmark, Belcourt Castle, located on Bellevue Avenue in Newport, Rhode Island.<sup>1</sup> Built by the renowned architect Richard Morris Hunt, Belcourt Castle was falling into disrepair until it was purchased by Harold and Ruth Tinney in 1956.<sup>2</sup> The Tinneys visualized Belcourt Castle as a museum open to the public.<sup>3</sup> Aided by their son Donald and his new wife Harle, the Tinney's vision slowly became reality.<sup>4</sup> In 1974 the Tinneys hired a handyman, Kevin Koellisch (Kevin) to repair the plumbing at Belcourt.<sup>5</sup> By 1984, this handy man had become Belcourt's general manager.<sup>6</sup>

In 1989, Ruth Tinney's husband Harold passed away.<sup>7</sup> Ruth was crushed by her loss, having been married for nearly sixty years of marriage. His death left Ruth Tinney depressed, devastated and inconsolable.<sup>8</sup> Coincidentally, during this trying time for the matriarch of the Tinney family, witnesses recounted Kevin's efforts to curry favor with Ruth<sup>9</sup> and described his attitude toward her as "overly solicitous" and "oleaginous."<sup>10</sup> Kevin took Ruth on overnight trips, took her dancing and was seen "rubbing"<sup>11</sup> and kissing her in public.<sup>12</sup> Witnesses who knew Ruth described this behavior as extremely out of character for her.<sup>13</sup> As these attentions progressed, Kevin made clear his desire to be adopted as Ruth's son, and threatened to leave Belcourt if this demand was

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1. *Tinney v. Tinney*, 770 A.2d 420, 423 (R.I. 2001)

2. *Id.*

3. *Id.* at 424.

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.* at 429.

not met.<sup>14</sup> Apparently, these efforts paid off. In 1990, the eighty-four year old Ruth adopted the thirty-seven year old Kevin as her son.<sup>15</sup> The adoption prompted Kevin's natural mother to comment that people would think Kevin had "sold his name for a buck."<sup>16</sup>

Approximately six months after his adoption, Kevin was deeded a one-fourth interest in a parcel of Belcourt and became a joint tenant together with Ruth, Donald and Harle.<sup>17</sup> In 1995, with Ruth's health deteriorating, the Tinneys and Kevin put Belcourt up for sale.<sup>18</sup> Before the property sold however, Ruth passed away, and one-third interests in the property vested in Kevin, Donald and Harle.<sup>19</sup>

Kevin's relationship with the remaining Tinney family members worsened. By 1997, the relationship had so deteriorated that Donald and Harle felt the need to keep the Belcourt property from falling into Kevin's hands.<sup>20</sup> By a series of quitclaim transactions, Donald and Harle became tenants by the entirety.<sup>21</sup> As a result of these conveyances, Kevin began threatening Donald and Harle Tinney with lawsuits and accusations of mismanagement with regard to the operation of Belcourt Castle.<sup>22</sup> Kevin's actions caused Donald and Harle so much grief that in April of 1997 they executed another quitclaim deed which reinstated Kevin as a joint tenant.<sup>23</sup>

The appeasement did not last long. In November of the same year, Donald and Harle once again re-conveyed Belcourt to themselves as tenants by the entirety and Kevin followed through on his threats by bringing suit against the Tinneys for embezzlement of Belcourt funds.<sup>24</sup> In their answer to the complaint, the Tinneys asserted that Kevin had procured his interest in the property by undue influence.<sup>25</sup>

The trial court found that the Tinneys had met the burden of proving Kevin had acquired his interest in Belcourt Castle by un-

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14. *Id.*

15. *Id.* at 425.

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.* at 426.

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

due influence.<sup>26</sup> The trial court was particularly persuaded by the testimony of Harle and another of the Tinney's witnesses, but found Kevin's testimony to be unpersuasive and not credible.<sup>27</sup> Factors in the trial court's decision included Ruth's extreme depression and loneliness following the death of her husband Harold; that Ruth became entwined in "a very intimate relationship"<sup>28</sup> with Kevin; that Kevin used this relationship to his advantage going so far as threatening to leave Ruth after he had "gained her confidence and dependency."<sup>29</sup> Kevin was labeled a "bounder and a con-artist"<sup>30</sup> who also took advantage of Donald and Harle and the control that Ruth exerted over them.<sup>31</sup> These factors led the trial court to find, by clear and convincing evidence, that undue influence had been exerted on the Tinney family and consequently, Kevin's interest in the Belcourt parcel was set aside.<sup>32</sup>

Following the decision of the superior court, Kevin filed a timely appeal, asserting among other things, that the trial court had incorrectly applied the law and had overlooked important evidence showing that Kevin had not asserted undue influence over the Tinneys.<sup>33</sup>

#### ANALYSIS AND HOLDING

The supreme court noted that undue influence is not susceptible to any one definition.<sup>34</sup> Any effort to restrict undue influence to a specific set of circumstances might provide a framework for evading liability.<sup>35</sup> The supreme court held that undue influence is "the substitution of the will of the [dominant] party for the free will and choice [of the subservient party]."<sup>36</sup> It is necessarily a fact-specific inquiry determined on a case-by-case basis.<sup>37</sup> The totality of the circumstances must be explored, with reference to factors such as

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26. *Id.* at 430.

27. *Id.* at 431.

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.* at 432.

34. *Id.* at 438.

35. *Id.*

36. *Id.* at 437-38 (quoting *Caranci v. Howard*, 708 A.2d 1321, 1324 (R.I. 1998)).

37. *Id.* at 438.

the opportunity of the dominant party, the mental state of the subservient party and the relationship between those parties.<sup>38</sup>

On appeal, Kevin argued that Ruth had consulted the family attorney prior to deeding him a parcel of Belcourt; a circumstance which he believed discounted any showing of undue influence.<sup>39</sup> The court disagreed, holding that the consultation was only one of many factors the court considered to determine if undue influence had been asserted.<sup>40</sup>

Further, to support his argument that the court had misapplied the law, Kevin asserted that the court had only relied on cases which tended to support a finding of undue influence, while ignoring a pair of cases which would reach the opposite result.<sup>41</sup> The supreme court disagreed, pointing out that the two cases posited by the plaintiff were not factually similar to the Tinney case.<sup>42</sup>

Kevin's last argument on appeal was that the court erred in finding that there was evidence to support undue influence in the execution of the deed to Kevin.<sup>43</sup> The supreme court first noted that the findings of a trial justice sitting without a jury are due substantial deference.<sup>44</sup> The court would not overturn the trial justice's decision unless the findings of fact were clearly erroneous, that evidence was overlooked or misunderstood or the ultimate decision failed to do substantial justice between the parties.<sup>45</sup>

In a forceful rebuke, the court found strong and compelling evidence on the trial court record to find that Kevin's actions toward Ruth surpassed mere "kindness or consideration" in his quest for an interest in the Belcourt property.<sup>46</sup> Additionally, the court upheld the trial justice's finding that Kevin had also asserted undue influence against Donald and Harle Tinney, using Donald's vulnerable physical condition and the Tinney's devotion to Ruth to his advantage in his efforts to procure a deeded parcel of Belcourt.<sup>47</sup>

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.* at 431.

45. *Id.*

46. *Id.* at 440.

47. *Id.*

## CONCLUSION

In light of the specific facts of the case and by a totality of the circumstances, the supreme court upheld the trial court's finding that undue influence had been exerted upon the Tinneys to procure a parcel of Belcourt Castle.<sup>48</sup> The Rhode Island Supreme Court denied plaintiff's appeal and affirmed the decision of the superior court.<sup>49</sup>

Jill A. Taft

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48. *Id.*

49. *Id.*