

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

JANE DOE #2, :
 : C.A. No. 09C-06-021 WLW
Plaintiff, :
 :
v. :
 :
MILFORD SCHOOL DISTRICT; :
O. JOSEPH PENUEL and JOHN L. :
GLENN, all individually and in their :
official capacities as members of the :
Board of Education of the Milford School :
District; CHESTER T. DICKINSON, :
individually and in his official capacity as :
former Superintendent of the Milford :
School District; SHARON GAIL KANTER :
in her official capacity as Superintendent :
of the Milford School District; and :
RICHARD CALDWELL, individually, :
 :
Defendants. :

Submitted: September 9, 2011
Decided: December 20, 2011

ORDER

Upon Defendants' Motion to Amend.
Denied.

Thomas S. Neuberger, Esquire, Stephen J. Neuberger, Esquire and Raeann Warner, Esquire of The Neuberger Firm, P.A. and Robert Jacobs, Esquire, co-counsel, of Jacobs & Crumplar, P.A., Wilmington, Delaware; attorneys for the Plaintiff.

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David H. Williams, Esquire and James H. McMackin, III, Esquire of Morris James LLP, Wilmington, Delaware; attorneys for Defendants Board of Education of the Milford School District, O. Joseph Penuel and Sharon G. Kanter.

James E. Liguori, Esquire and Gregory A. Morris, Esquire of Liguori Morris & Yiengst, Dover, Delaware and Stephani J. Ballard, Esquire, co-counsel, of Wilmington, Delaware; attorneys for Defendant Richard Caldwell.

WITHAM, R.J.

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_____The issue presented is whether an anonymous complaint is proper in this case which was brought pursuant to 10 *Del. C.* § 8145. This is the same issue as presented in the case of *Jane Doe #1 v. Laurel School District, et al.*¹

PROCEDURAL HISTORY

_____Plaintiff, Jane Doe #2, filed a complaint with the Court on June 10, 2009 pursuant to 10 *Del. C.* § 8145, which suspended the statute of limitations for alleged victims of childhood sexual abuse allowing them to file complaints in Superior Court for 2 years following July 9, 2007. Without moving to do so, Plaintiff identified herself as “Jane Doe #2.” She did not seek to file the caption under seal pursuant to Superior Court Civil Rule 5(g). As a result, Defendants, Richard Caldwell, and later, Milford School District et al.,² moved to dismiss on grounds that the filing was of no legal effect. In an order on March 16, 2010, the Court noted that Plaintiff’s unilateral anonymous complaint went against Superior Court Civil Rules 5(g), 8(a), and 10(a). The Court found, however, that under Superior Court Civil Rules 1 and 8(f), dismissing the case on the ground that Plaintiff unilaterally filed anonymously would not be in the best interests of justice. In denying Defendants’ motion, the Court ordered that within ten days Plaintiff had to either amend her complaint or seek to file her case caption under seal, pursuant to Superior Court Civil Rule 5(g). The Plaintiff

¹C.A. No. 09C-06-020, Witham, J. (Del. Super. Dec. 19, 2011).

²As a result of a partial stipulation of dismissal without prejudice granted on October 7, 2011, Defendants O. Joseph Penuel, John L. Glenn, Chester T. Dickinson, and Sharon Gail Kanter are no longer parties to this case.

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moved to file her case caption under seal pursuant to Superior Court Civil Rule 5(g). The Court granted an order to allow filing under seal. Defendant, Richard Caldwell, then filed the Motion to Amend Pseudonymous Case Caption at issue here, and the Plaintiff responded. Defendant, Milford School District, takes no position on this motion.

Standard of Review

Superior Court Civil Rule 15(a) requires liberal granting of amendments “when justice so requires.”³ If there is no prejudice to another party, the Court is “required to exercise its discretion in favor of granting leave to amend.”⁴

DISCUSSION

On May 16, 2011, the Court, in a consolidated order (hereinafter “Order”)⁵ decided, “Whether an anonymous complaint is effective in a case brought by an adult alleging that she was the victim of sexual abuse as a child.”⁶

³*Mullen v. Alarmguard of Delmarva, Inc.*, 625 A.2d 258, 263 (Del. 1993) (superseded on other grounds).

⁴*Id.*

⁵The Order was in relation to *Danielle Beyers, et al. v. Board of Education of Capital School District*, C.A. No. 09C-05-025 and *Jane Doe #6 v. Brandywine School District, et al.*, C.A. No. 09C-06-073. It should be noted that there is an earlier Superior Court decision on this topic which focuses on two factors: “[W]hether Plaintiff is required to disclose information of the utmost intimacy and whether this disclosure outweighs any interest in maintaining public proceedings.” *John Yoe #1 v. Catholic Diocese of Wilmington, Inc., et al.*, C.A. No. 09C-06-188, at 6, Scott, J. (Del. Super. Mar. 16, 2010). This Court’s take on the same issue is slightly different in focus as is explicated below.

⁶Order at 3.

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In the Order, the Court found two competing interests.⁷ First, Plaintiff may have a legitimate privacy interest in proceeding anonymously in cases that would tend to expose Plaintiff to humiliation or would otherwise cause her serious harm.⁸ Most of the cases permitting anonymous filing have involved issues such as abortion,⁹ birth control,¹⁰ welfare prosecutions involving abandoned or illegitimate children,¹¹ mental illness,¹² homosexuality,¹³ transsexuality,¹⁴ and religion.¹⁵ The first interest in protecting Plaintiff is balanced by the second consideration of Defendant's legitimate interest in transparent litigation. The initiation of a lawsuit inevitably exposes the parties to a degree of unflattering public scrutiny. Nonetheless, the firmly established rule is that parties must generally proceed under their names.¹⁶ The policy causes notoriety to be a cost of litigation. It forces parties to put their names on the line in

⁷See Order at 6-8.

⁸*Lindsey v. Dayton-Hudson Corp.*, 592 F.2d 1118 (10th Cir. 1979).

⁹*Roe v. Wade*, 410 U.S. 113 (1973).

¹⁰*Doe v. Deschamps*, 64 F.R.D. 652 (D. Mont. 1974).

¹¹*Doe v. Gillman*, 347 F. Supp. 483 (N.D. Iowa 1972).

¹²*Doe v. Colautti*, 592 F.2d 704 (3d Cir. 1979).

¹³*Doe v. Commonwealth's Attorney*, 403 F. Supp. 1199 (E.D. Va. 1975).

¹⁴*Doe v. McConn*, 489 F. Supp. 76 (S.D. Tex. 1980).

¹⁵*Doe v. Stegall*, 653 F.2d 180, 186 (5th Cir. 1981).

¹⁶Del. Super. Ct. Civ. R. 10.

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order to bring legal action. The result of these two competing considerations is that anonymity is generally disfavored except in circumstances where a party's privacy interest is particularly prominent because courts recognize that it is unfair to expose a defendant to the notoriety of a lawsuit while permitting a plaintiff to hide behind a veil of anonymity.¹⁷

The case of *Doe v. Diocese Corp.*¹⁸ is instructive. There plaintiff brought an action against a religious diocese and several churches alleging that plaintiff was sexually molested by a clergyman for 7 years since he was 12 years old.¹⁹ Plaintiff requested anonymity on the grounds that he wished to protect the names of his family members,²⁰ and plaintiff's therapist testified that public disclosure of plaintiff's identity would cause a setback in his treatment for emotional problems arising from the abuse.²¹ The Superior Court of Connecticut relied on testimony of plaintiff's therapist in finding that plaintiff had demonstrated a substantial privacy interest that outweighed any public interest in disclosure of his identity.²²

¹⁷*Doe v. Smith*, 429 F.3d 706, 710 (7th Cir. 2005) (warning that anonymous complaints would empower plaintiffs to launch defamatory charges without fear of damaging their own reputation).

¹⁸647 A.2d 1067 (Conn. 1994).

¹⁹*Id.*

²⁰Notably, mere embarrassment is insufficient. *See* Order at 8.

²¹*Diocese Corp.*, 647 A.2d at 1069.

²²*Id.* at 1074.

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In the case at bar, Jane Doe #2 is similar to plaintiff in *Diocese Corp.* Plaintiff explains that the Motion to Amend should be denied for the following reasons:

(a) revealing her identity and having the details of her sexual abuse made public will compound her injuries and will cause additional anxiety and stress, and further exacerbate her depression; (b) the subject of her lawsuit, the sexual abuse of the plaintiff as a child, is humiliating, embarrassing and discomforting; (c) plaintiff does not wish to bring the attention of the media and/or the general community to herself or her family; (d) plaintiff does not want her friends, co-workers or complete strangers to be aware that she was sexually abused as a child; (e) plaintiff does not want to face questions from friends, family and members of the community regarding the incidents or details of the sexual abuse that is the subject of this lawsuit; and (f) having her name revealed will cause her to be self-consciously distressed.²³

As in *Diocese Corp.*, Plaintiff hopes to spare her family embarrassment and attention. As noted in the Order, embarrassment alone is insufficient.²⁴ However, as in *Diocese Corp.*, Plaintiff here complains of psychological issues, including post-traumatic stress disorder and depression. She is currently being treated by a psychologist, Dr. Peter Appel. One of Plaintiff's exhibits in response to Defendant's motion is a letter in which Plaintiff's psychologist states, "The opposition counsel's desire for her to proceed under her own name threatens the psychological progress she has made, and the idea that 'she might suffer [only] a kind of embarrassment'

²³Pl.'s Resp. at 1.

²⁴Order at 8.

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minimizes the nature of the effects of the abuse, and of what posttraumatic stress is.”²⁵ The court in *Diocese Corp.* found that protection of plaintiff’s family and his therapist’s testimony stating that revealing plaintiff’s name would cause a setback in plaintiff’s treatment for emotional problems arising from abuse is sufficient for anonymity.²⁶ Given the signed letter by Plaintiff’s psychologist discussing Plaintiff’s psychological history and the potential negative impact of lifting the veil of anonymity, Plaintiff has provided sufficient evidence that she has a substantial privacy interest allowing her to continue anonymity in this case. Under the standard explicated by the Court above, Plaintiff would suffer prejudice if forced to continue her case under her real name, and the interests of justice do not require the use of her real name. Therefore, this motion to amend fails.

CONCLUSION

Defendant Richard Caldwell’s motion to amend is hereby denied.

IT IS SO ORDERED.

/s/ William L. Witham, Jr.
Resident Judge

WLW/dmh

²⁵Pl.’s Resp. Ex. D.

²⁶647 A.2d at 1074.