IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

MARYANN SEMONELLE,	:	
	:	C.A. No. K09C-06-045 WLW
Plaintiff,	:	
	:	
v.	:	
	:	
GLORIA P. NOLAN, BERNARD J. NOLAN, and GERALD P. NOLAN,	:	
	:	
Defendants.	:	

Submitted: December 9, 2011
Decided: December 13, 2011

ORDER

Upon Plaintiff's Motion for Partial Summary Judgment.
Granted in part; Denied in part.

Raeann Warner, Esquire of The Neuberger Firm, P.A., Wilmington, Delaware; attorney for the Plaintiff.

Ms. Gloria P. Nolan and Mr. Gerald P. Nolan, *pro se*

WITHAM, R.J.

ISSUE

Whether Plaintiff's motion for partial summary judgment as to defendants Gloria Nolan and Gerald Nolan should be granted at this juncture?

FACTS

Pursuant to 10 *Del. C.* § 8145,[1] Maryann Semonelle (hereinafter "Plaintiff") alleges that between ages 10 and 16 years old, from 1978 through roughly 1984, she was sexually molested by defendants Gloria Nolan (hereinafter "Gloria"), Gerald Nolan (hereinafter "Gerald"), and Bernard Nolan on over 100 occasions. Plaintiff also alleges liability separately under common law battery.[2] This motion for partial summary judgment concerns Gloria and Gerald, not Bernard Nolan.[3] Plaintiff deposed Gerald on February 18, 2011 and Gloria on July 27, 2011.

Standard of Review

Summary judgment should be granted only if the record shows that there is no genuine issue as to any material fact and the moving party is entitled to judgment as

[1]The statute allowed for any claims of child sexual abuse by those who would have been barred under the statute of limitations to be filed in Superior Court for two years following July 9, 2007. 10 *Del. C.* § 8145(b).

[2]Plaintiff's motion for summary judgment on the common law battery claim was withdrawn by Plaintiff's counsel at oral argument on December 9, 2011. Therefore, the Court does not address it.

[3]Bernard Nolan passed away during the pendency of this case. Plaintiff's claim against him is now against his estate.

a matter of law.[4] The facts must be viewed in the light most favorable to the non-moving party,[5] and all reasonable inferences must be drawn in favor of the non-moving party.[6] Summary judgment may not be granted if the record indicates that a material fact is in dispute, or if it seems desirable to inquire more thoroughly into the facts in order to clarify the application of the law to the circumstances.[7] However, when the facts permit a reasonable person to draw but one inference, the question becomes one for decision as a matter of law.[8] The movant bears the burden of demonstrating that a genuine issue of material fact does not exist.[9] Should the movant satisfy his burden, then the non-movant must prove that genuine issues of material fact exist.[10] Mere bare assertions or conclusory allegations do not create a genuine issue of material fact for the non-movant.[11]

10 *Del. C.* § 8145(a) states as follows:

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[4]Super. Ct. Civ. R. 56(c).

[5]*Guy v. Judicial Nominating Comm'n*, 659 A.2d 777, 780 (Del. Super. 1995).

[6]*Lundeen v. Pricewaterhousecoopers, LLC*, 2006 WL 2559855 (Del. Super. Aug. 31, 2006).

[7]*Ebersole v. Lowengrub*, 180 A.2d 467, 470 (Del. 1962).

[8]*Wooten v. Kiger*, 226 A.2d 238, 239 (Del. 1967).

[9]*Lundeen*, 2006 WL 2559855, at *5 (*citing Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979)).

[10]*Id.* (*citing Moore* 405 A.2d at 681).

[11]*Id.* (*citing Sterling v. Beneficial Nat'l Bank, N.A.*, 1994 WL 315365, at *3 (Del. Super. Apr. 13, 1994)).

> A cause of action based upon the sexual abuse of a minor by an adult may be filed in the Superior Court of this State at any time following the commission of the act or acts that constituted the sexual abuse. A civil cause of action for sexual abuse of a minor shall be based upon sexual acts that would constitute a criminal offense under the Delaware Code.

DISCUSSION

Viewing the facts in the light most favorable to the non-moving party, Plaintiff's deposition of Gloria permits a reasonable person to draw but one inference: that Gloria sexually abused Plaintiff. Gloria has not adequately rebutted this inference. The Court cites to the pertinent portions of the deposition:

> Q. Did Maryann ask you to touch her on the genitals?
> A. Probably.
> Q. Did she sometimes beg you to do it?
> A. Probably.
> Q. And she enjoyed it; right?
> A. Right.[12]
> . . . .
> Q. Was there ever French kissing? Not against her will, but just French kissing?
> A. Probably, but anything was done in a manner of love.[13]
> . . . .
> Q. Was there ever any touching of Maryann's vagina in a manner of love?
> A. Maybe, but not against her will. So it's not sexual abuse.[14]

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[12]Gloria Nolan Dep. at 97.

[13]*Id.* at 137.

[14]*Id.*

> . . . .
> Q. Did any intimate contact happen with Maryann after that no-contact order?
> A. Never. Never.
> Q. So it was all before?
> A. Mm-hmm.
> Q. Is that a yes?
> A. Yes.[15]

This question regarding the no contact order is critical because it establishes that sexual abuse occurred when Plaintiff was 13 years old or younger.[16]

In a signed letter titled, "Continuation of My Deposition" Gloria remarked, "Nothing happened between us until she wanted to show her love for me. She would wait until I had a couple of drinks." At the conclusion of the document, she states, "Rae Ann [sic], you got the truth out of me, now I suggest you get it out of your client."

Although Gloria did also deny any wrongdoing at several junctures,[17] this simply appeared to reflect a fundamental misunderstanding and denial of what is sexual abuse under the law. For example, during her deposition, at the same time she admitted "intimate contact," she also stated:

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[15]*Id.* at 148.

[16]Family Court entered the no contact order on August 20, 1981. Pl. Ex. C. Plaintiff's date of birth is September 27, 1967. This would have made Plaintiff 13 years old at the time Gloria stated the abuse ceased.

[17]This includes in her deposition as well as in her signed letter.

> Q. Now if [Maryann][18] testifies in this case that when she was ten years old you started . . . sexually abusing/molesting her, would you say she's lying?
> A. Yes.
> Q. And why is that?
> A. It was not done – nothing was done against her will, and to me, that's sexual abuse, against someone's will. Like this doctor over here.
> Q. Dr. Bradley?
> A. Yeah. All that mess with the kids.[19]

For Gloria to bear any liability under 10 *Del. C.* § 8145, her sexual acts with Plaintiff must have constituted a criminal offense at the time of the act.[20] This essential prerequisite is fulfilled. Around the time of the sexual abuse, 11 *Del. C.* § 761 stated:

> A person is guilty of sexual assault when he has sexual contact with another person not his spouse or causes the other to have sexual contact with him or a third person if: (1) He knows that the contact is offensive to the victim; or (2) He knows that the contact occurs without the consent of the victim; or (3) The contact occurs with the consent of the victim, but the defendant knows that the victim is less than 16 years old

[18]The transcript of the deposition says "Gloria" instead of "Maryann" at this point. It is unclear whether Plaintiff's counsel misspoke or there was an error in transcription. It is clear from the context, however, that Plaintiff's counsel meant Maryann, and Gloria Nolan did not indicate any confusion in answering the question.

[19]Gloria Nolan Dep. at 130.

[20]*Sheehan v. Oblates of St. Francis De Sales*, 15 A.3d 1247, 1258 (Del. 2011).

and the defendant is at least 4 years older.[21]

Further, sexual contact was defined as, "[A]ny touching of the sexual or other intimate parts of the person for the purpose of arousing or gratifying sexual desire of either party."[22]

Even assuming that the sexual contact was consensual as Gloria believes, Plaintiff was less than 16 years of age at the time and Gloria was certainly at least 4 years older.[23] Thus, the sexual contact was a crime at the time of the act under 11 *Del. C.* § 761(3), and therefore it meets the essential prerequisite for an action under 10 *Del. C.* § 8145. The motion for partial summary judgment against Gloria Nolan is granted as to general liability under 10 *Del. C.* § 8145.

The motion for summary judgment with regard to Gerald must be denied. Viewing the facts in the light most favorable to non-moving party, there is a genuine issue of material fact as to Plaintiff's age at the time that the two engaged in sexual intercourse. Plaintiff's counsel insists that Gerald admitted to having sexual relations with Plaintiff when she was 12-17 years old. This is not as clear as she makes it out to be. Plaintiff's counsel conflates the time that Gerald and Plaintiff dated with the period in which they had sexual intercourse. Plaintiff's counsel asked Gerald about Plaintiff's age when she had an abortion:

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[21](1979). The wording of the statute is exactly the same as it was in 1975. 11 *Del. C.* § 761 (1975). A subsequent revision of Title 11 did not occur until 1987.

[22]11 *Del. C.* § 773(d) (1979).

[23]Gloria's date of birth is July 12, 1937.

Q. At that time you say she was 16?
A. Mm-hmm.
Q. That would have been in about 1984, 1985?
A. I guess.[24]

Plaintiff's counsel later asked about how long the two had engaged in sexual relations before the abortion:

Q. When you learned that Maryann was pregnant, just approximate for me how many times you had had sexual intercourse with her before that.
A. Before she was pregnant?
Q. Yes, before you learned she was pregnant.
A. I have no idea.
Q. Many?
A. Twenty, 15. Might have been ten. I don't know.
Q. For about how long a period of time?
A. Before?
Q. Yes.
A. I don't know. Six months.
Q. And do you remember what season it was when she told you? Was it near the holidays?
A. It was summertime.
Q. Summertime?
A. Yeah.
Q. And did Maryann have her driver's license at that time?
A. No.[25]

Viewing this deposition testimony in the light most favorable to the non-

[24]Gerald Nolan Dep. at 81.

[25]*Id.* at 101-02.

moving party, Plaintiff was 16 years old at the time she became pregnant. Gerald said he was informed that she was pregnant in the summertime. Since Plaintiff was 16 years old, and it was summer, this would place her pregnancy in the summer of 1984, shortly before she turned 17. If Gerald started having sexual intercourse with Plaintiff six months before that, she still would have been 16.[26] Assuming in the light most favorable to Gerald that the sexual intercourse was consensual, Plaintiff presents no statute under which the intercourse would have been criminal at the time. Therefore, Plaintiff's motion for summary judgment as to Gerald is denied.

CONCLUSION

The Court hereby grants summary judgment as to general liability against Gloria Nolan on Plaintiff's claim pursuant to 10 *Del. C.* § 8145. The motion for summary judgment against Gerald Nolan under the same statute is hereby denied. The Court will proceed with the remaining claims from Plaintiff's amended complaint and with a determination of damages on this liability judgment under 10 *Del. C.* § 8145 against Gloria Nolan.

IT IS SO ORDERED.

[26]There is the discrepancy that Gerald states that Plaintiff did not have her driver's license at the time, but there could be any number of reasons why she did not have her license at the time, and Plaintiff's counsel did not inquire further. Thus, the Court will view this discrepancy in the light most favorable to the non-moving party.