JOHN D. WATTS *v.* HEATHER CHITTENDEN
(SC 18474)

Norcott, Palmer, Zarella, McLachlan, Eveleigh and Vertefeuille, Js.

Argued February 17—officially released July 19, 2011

James F. Sullivan, with whom, on the brief, was

Elizabeth S. Tanaka, for the appellant (plaintiff).

Michael S. Hillis, for the appellee (defendant).

Opinion

EVELEIGH, J. The plaintiff, John D. Watts, appeals, following our grant of his petition for certification, from the judgment of the Appellate Court, which reversed the judgment of the trial court awarding the plaintiff damages for intentional infliction of emotional distress on the part of the defendant, Heather Chittenden. On appeal, the plaintiff claims that the Appellate Court improperly reversed the judgment of the trial court by concluding that the existence of an original duty must be established before applying the continuing course of conduct doctrine to toll the statute of limitations in a nonnegligence cause of action for intentional infliction of emotional distress. We agree with the plaintiff and, accordingly, reverse the judgment of the Appellate Court.

The Appellate Court opinion recites the following facts, as found by the trial court, and procedural history pertinent to the plaintiff's appeal. "The plaintiff and the defendant are former husband and wife. They were married in July, 1993; however, the defendant filed a dissolution of marriage action in the Superior Court in March, 1999. During the course of the marriage, the parties had two daughters, born in 1995 and 1996. Following the dissolution, the defendant was granted joint custody and visitation rights. Several days before the dissolution action was filed, the defendant transferred her children to a new pediatrician. Specifically, the children saw Janet Murphy, a nurse practitioner, whom the defendant, also a nurse practitioner, had met while a student in a class taught by Murphy on the subject of sexual molestation of children.

"At approximately 10:30 p.m. on June 3, 1999, the defendant [telephoned] the department of children and families (department) to report that her eldest daughter had been abused sexually by the plaintiff. These allegations were then relayed by the department to the state police. The same report was also made by the defendant to Dawn Torres, a pediatrician. Thereafter, on June 10, 1999, the defendant met with [Anthony Buglione and James McGlynn, detectives with] the state police and reiterated her report that her daughter had been abused sexually by the plaintiff. She gave a five page written statement to the police providing details of her claims. Following this report, the state police contacted the plaintiff and requested pubic hair samples to be used in connection with the criminal investigation. On July 1, 1999, the investigation concluded in the absence of any evidence to suggest that the plaintiff was abusing his daughter.

"On July 21, 1999, McGlynn received another report from the department, which was based on new allegations made by the defendant regarding the plaintiff's abuse of their eldest daughter. On August 19, 1999, the

defendant told McGlynn that the plaintiff continued to abuse their daughter, and, as a result, the investigation was reopened. During the course of the investigation, the daughter was evaluated by the Yale Child Sexual Abuse Clinic at Yale-New Haven Hospital (clinic). The clinic reported that the daughter indicated repeatedly during interviews that the plaintiff had not abused her. She did relate, however, that the defendant had been touching her vaginal area and saying, 'this is what daddy does.' The investigation stemming from this complaint was closed on January 11, 2000.

"Shortly thereafter, on January 19, 2000, the department received a report from Livia Orsis-Abdo, a physician in Southport, who stated that she had been told by the parties' youngest daughter that the plaintiff had abused her sexually. As a result, the investigation against the plaintiff was reopened once again. The police eventually concluded that there was no evidence to support the allegations against the plaintiff but that there was substantial evidence that the defendant had sexually abused her two daughters while telling them that it 'was what daddy [did].'

"As a result of the investigation, the defendant was arrested and charged in a substitute information with two counts of risk of injury to a child in violation of General Statutes (Rev. to 1999) § 53-21 (1) and (2), false reporting of an incident in violation of General Statutes (Rev. to 1999) § 53a-180 (a) (3) (A), false statement in the second degree in violation of General Statutes § 53a-157b, attempt to commit malicious prosecution in violation of General Statutes §§ 53a-49 (a) (2) and 53-39, and sexual assault in the fourth degree in violation of General Statutes (Rev. to 1999) § 53a-73a (a) (1). On April 11, 2002, the defendant pleaded guilty, as a part of a plea agreement, to falsely reporting an incident and attempt to commit malicious prosecution. In the statement of facts read into the record by the prosecutor, the defendant acknowledged that the allegations of sexual abuse asserted against the plaintiff were false and that the defendant made the false reports in an effort to have the plaintiff arrested. On May 30, 2002, the defendant was sentenced to a term of one year incarceration, execution suspended, and three years probation on each count.

"Following her guilty plea on April 11, 2002, the defendant made repeated accusations to family therapists regarding the plaintiff's continuing sexual abuse of his daughters. Specifically, in 2004, she told Nina Rossamondo, a family therapist, that the plaintiff had abused sexually one or more of his children. In May, 2006, she also told Peter Kossef, a family therapist, that the plaintiff had molested the eldest daughter at least once.

"On August 29, 2005, the plaintiff filed a one count complaint sounding in intentional infliction of emotional distress. The defendant filed an answer on Octo-

ber 20, 2005, in which she asserted as a special defense that the action was time barred under the statute of limitations. The plaintiff filed a reply, denying this special defense on May 22, 2006. On June 11, 2007, the plaintiff sought, and was granted, request for leave to amend his complaint to conform the pleadings to the proof by asserting the specific manner in which the defendant's tortious conduct continued to 2006. Subsequently, the defendant amended her special defenses on September 20, 2007, to assert that the statements she made were privileged and that the claims were barred by the statute of limitations. The plaintiff filed a general denial to the defendant's amended special defenses on October 31, 2007.

"A trial before the court was conducted on May 1 and 2, June 11 and September 20, 2007. The court found in favor of the plaintiff on January 25, 2008 . . . ." *Watts* v. *Chittenden*, 115 Conn. App. 404, 406–408, 972 A.2d 770 (2009). In doing so, the trial court rejected the defendant's special defense that the plaintiff's cause of action was barred by the statute of limitations. Specifically, the trial court determined that the plaintiff's claim was based on a continuing course of conduct by the defendant and that this continuing course of conduct tolled the statute of limitations.[1] The defendant then appealed from the judgment of the trial court to the Appellate Court.

On appeal to the Appellate Court, the defendant claimed, inter alia, that the trial court improperly concluded that the plaintiff's claim was not time barred because: (1) the plaintiff did not submit any evidence of actionable conduct within the period of time prescribed to bring a claim for intentional infliction of emotional distress; and (2) the continuing course of conduct doctrine does not serve to toll the applicable statute of limitations in this intentional infliction of emotional distress claim. Id., 409. The Appellate Court agreed with the defendant, concluding that application of the continuing course of conduct doctrine "is premised necessarily on the existence of a duty in effect at the time of the original wrong." Id., 410. The Appellate Court reversed the judgment of the trial court concluding that the plaintiff had failed to prove the existence of a cognizable duty and that, "[i]n the absence of a breach of a cognizable duty . . . the [trial] court improperly applied the continuing course of conduct doctrine to toll the statute of limitations." Id., 413.

Thereafter, the plaintiff sought certification to appeal from the judgment of the Appellate Court. We granted the plaintiff's petition for certification to appeal, limited to the following issues: "1. Whether the Appellate Court, based on the record before it, properly reversed the trial court's decision by holding that the existence of an original duty must be determined before applying the continuing course of conduct doctrine to toll the

statute of limitations in a nonnegligence cause of action for intentional infliction of emotional distress?

"2. Assuming that the Appellate Court [properly] held that the existence of an original duty must be determined before applying the continuing course of conduct doctrine, whether that court properly determined that there was no duty in this case?"[2] *Watts* v. *Chittenden*, 293 Conn. 932, 932–33, 981 A.2d 1077 (2009).

On appeal to this court, the plaintiff asserts that the Appellate Court improperly concluded that the existence of an original duty must be established before applying the continuing course of conduct doctrine to toll the statute of limitations in a nonnegligence cause of action for intentional infliction of emotional distress. Specifically, the plaintiff claims that because duty is not an element of a cause of action for intentional infliction of emotional distress, it is not logical to require a plaintiff to establish the existence of a duty of care in order to apply the continuing course of conduct doctrine to such a claim. In response, the defendant claims that the Appellate Court properly concluded that an original duty must be established before applying the continuing course of conduct doctrine to toll the statute of limitations in a nonnegligence case. Specifically, the defendant asserts that it is necessary to require proof of a duty of care to apply the continuing course of conduct doctrine in order to avoid vexatious litigation and restrain the application of the doctrine to within a reasonable scope. We agree with the plaintiff and therefore reverse the judgment of the Appellate Court.

"The question of whether a party's claim is barred by the statute of limitations is a question of law, which this court reviews de novo." (Internal quotation marks omitted.) *Certain Underwriters at Lloyd's, London* v. *Cooperman*, 289 Conn. 383, 407–408, 957 A.2d 836 (2008). The parties in the present case do not dispute that the plaintiff's claim is governed by the tort statute of limitations set forth in General Statutes § 52-577. Section 52-577 provides: "No action founded upon a tort shall be brought but within three years from the date of the act or omission complained of." "In construing our general tort statute of limitations . . . we have concluded that the history of that legislative choice of language precludes any construction thereof delaying the start of the limitation period until the cause of action has accrued or the injury has occurred." *Fichera* v. *Mine Hill Corp.*, 207 Conn. 204, 212, 541 A.2d 472 (1988). "The date of the act or omission complained of is the date when the . . . conduct of the defendant occurs . . . ." *Vilcinskas* v. *Sears, Roebuck & Co.*, 144 Conn. 170, 173, 127 A.2d 814 (1956); see also *Valentine* v. *LaBow*, 95 Conn. App. 436, 445 n.8, 897 A.2d 624 ("§ 52-577 is an occurrence statute and . . . its limitation period does not begin when the plaintiff first discovers

an injury" [internal quotation marks omitted]), cert. denied, 280 Conn. 933, 909 A.2d 963 (2006).

We begin with a brief overview of the continuing course of conduct doctrine. This court has recognized the continuing course of conduct doctrine in many cases involving claims sounding in negligence. For instance, we have recognized the continuing course of conduct doctrine in claims of medical malpractice. See, e.g., *Martinelli* v. *Fusi*, 290 Conn. 347, 355–56, 963 A.2d 640 (2009) ("[w]e have recognized . . . that the statute of limitations and period of repose contained in [General Statutes] § 52-584 may be tolled, in the proper circumstances, under either the continuous course of conduct doctrine or the continuing treatment doctrine, thereby allowing a plaintiff to bring an action more than three years after the commission of the negligent act or omission complained of"). In doing so, we noted that "[t]he continuing course of conduct doctrine reflects the policy that, during an ongoing relationship, lawsuits are premature because specific tortious acts or omissions may be difficult to identify and may yet be remedied." Id., 356. The continuing course of conduct doctrine has also been applied to other claims of professional negligence in this state. See, e.g., *Vanliner Ins. Co.* v. *Fay*, 98 Conn. App. 125, 139–42, 907 A.2d 1220 (2006) (applying continuing course of conduct doctrine to legal malpractice action); see also *Handler* v. *Remington Arms Co.*, 144 Conn. 316, 321, 130 A.2d 793 (1957) (statute of limitations tolled by defendant manufacturer's continuing failure to warn of potential danger associated with inherently dangerous cartridge of ammunition).

In these negligence actions, this court has "held that in order [t]o support a finding of a continuing course of conduct that may toll the statute of limitations there must be evidence of the breach of a duty that remained in existence after commission of the original wrong related thereto. That duty must not have terminated prior to commencement of the period allowed for bringing an action for such a wrong. . . . Where we have upheld a finding that a duty continued to exist after the cessation of the act or omission relied upon, there has been evidence of either a special relationship between the parties giving rise to such a continuing duty or some later wrongful conduct of a defendant related to the prior act. *Fichera* v. *Mine Hill Corp.*, supra, 207 Conn. 209–10 (no evidence to support continuing duty on part of defendant after property sold); see, e.g., *Connell* v. *Colwell*, [214 Conn. 242, 571 A.2d 116 (1990)] (improper reliance on theory [by plaintiff in medical malpractice action]); *Beckenstein* v. *Potter & Carrier, Inc.*, 191 Conn. 150, 464 A.2d 18 (1983) (no continuing duty on defendant's part after completion of roof installation); *Prokolkin* v. *General Motors Corp.*, [170 Conn. 289, 299, 365 A.2d 1180 (1976)] (continuing course of conduct theory inappropriate in strict product liability action);

Handler v. *Remington Arms Co.*, supra, 144 Conn. 316 (applying continuing course of conduct doctrine to toll statute of limitations on . . . basis of continuing duty to warn of defective cartridge by manufacturer); *Vilcinskas* v. *Sears, Roebuck & Co.*, [supra, 144 Conn. 174] (continuing course of conduct inapplicable where act completed by sale of air rifle). . . . *Blanchette* v. *Barrett*, [229 Conn. 256, 275–76, 640 A.2d 74 (1994)].

"Therefore, a precondition for the operation of the continuing course of conduct doctrine is that the defendant must have committed an initial wrong upon the plaintiff. . . .

"A second requirement for the operation of the continuing course of conduct doctrine is that there must be evidence of the breach of a duty that remained in existence after commission of the original wrong related thereto. . . . *Blanchette* v. *Barrett*, supra, 229 Conn. 275. This court has held this requirement to be satisfied when there was wrongful conduct of a defendant related to the prior act. . . .

"Finally, in *Blanchette* and [*Cross* v. *Huttenlocher*, 185 Conn. 390, 440 A.2d 952 (1981)], the plaintiffs presented expert testimony that the defendants' omissions amounted to a breach of the standard of care. See *Blanchette* v. *Barrett*, supra, 229 Conn. 279 ([t]he testimony of the plaintiff's expert witness . . . which the jury might have found credible, was sufficient for the jury to find not only . . . a continuing duty on the part of the defendant . . . but also continuing negligence on the part of the defendant based upon a breach of his professional duty of care to the plaintiff); *Cross* v. *Huttenlocher*, supra, [402] (plaintiff presented expert testimony that, if credited by the jury, could have been sufficient to make out a case of negligent failure to warn)." (Citations omitted; internal quotation marks omitted.) *Sherwood* v. *Danbury Hospital*, 252 Conn. 193, 203–205, 746 A.2d 730 (2000).

This court has not, however, addressed whether the existence of an original duty is necessary in order to apply the continuing course of conduct doctrine to a claim of intentional infliction of emotional distress. The defendant asserts, and the Appellate Court concluded, that this court's previous cases requiring the existence of an original duty to apply the continuing course of conduct doctrine to actions for negligence necessitate the conclusion that the existence of an original duty is necessary to apply the continuing course of conduct doctrine to a claim of intentional infliction of emotional distress. We disagree.

"In order for the plaintiff to prevail in a case for liability under . . . [intentional infliction of emotional distress], four elements must be established. It must be shown: (1) that the actor intended to inflict emotional distress or that he knew or should have known that

emotional distress was the likely result of his conduct; (2) that the conduct was extreme and outrageous; (3) that the defendant's conduct was the cause of the plaintiff's distress; and (4) that the emotional distress sustained by the plaintiff was severe." (Internal quotation marks omitted.) *Appleton* v. *Board of Education*, 254 Conn. 205, 210, 757 A.2d 1059 (2000). Unlike a claim based on negligence, therefore, the existence of a duty is not a required element for establishing liability for intentional infliction of emotional distress. We conclude, therefore, that the existence of an original duty is not necessary to apply the continuing course of conduct doctrine to a claim for intentional infliction of emotional distress.

In concluding that the trial court improperly applied the continuing course of conduct doctrine in the absence of a cognizable duty, the Appellate Court relied on *Smulewicz-Zucker* v. *Zucker*, 98 Conn. App. 419, 423–24, 909 A.2d 76 (2006), cert. denied, 281 Conn. 905, 916 A.2d 45 (2007). In *Smulewicz-Zucker*, the Appellate Court refused to apply the continuing course of conduct doctrine to a claim of intentional infliction of emotional distress by the plaintiff for the conduct of the defendant, her former husband. Id., 422–25. In doing so, the Appellate Court rejected the plaintiff's claim that the defendant owed a " 'fiduciary like' " duty to the plaintiff because of their spousal relationship, particularly when their marriage was dissolved more than three years prior to the plaintiff's filing of her action for intentional infliction of emotional distress. Id., 423–25. We disagree with the defendant's reliance on *Smulewicz-Zucker*. In *Smulewicz-Zucker*, the plaintiff did not claim that the existence of an original duty is not necessary in order to apply the continuing violation doctrine to toll the statute of limitations in a cause of action for intentional infliction of emotional distress. In the present case, the plaintiff specifically claims, and we agree that the existence of an original duty is not necessary to apply the continuing course of conduct doctrine in an action for emotional infliction of emotional distress. Thus, to the extent that *Smulewicz-Zucker* required the existence of an original duty to apply the continuing course of conduct doctrine to toll the statute of limitations in an action for intentional infliction of emotional distress, it is overruled.

Our conclusion that the existence of an original duty is not necessary for the application of the continuing course of conduct doctrine is bolstered by a review of the nature and use of the continuous course of conduct doctrine in other jurisdictions.

In examining the use of the continuing course of conduct doctrine, we are mindful of the nature of the doctrine as Chief Judge Richard Posner of the Seventh Circuit Court of Appeals has explained: "A violation is called 'continuing,' signifying that a plaintiff can reach

back to its beginning even if that beginning lies outside the statutory limitations period, when it would be unreasonable to require or even permit him to sue separately over every incident of the defendant's unlawful conduct. The injuries about which the plaintiff is complaining in [these] case[s] are the consequence of a numerous and continuous series of events. . . . When a single event gives rise to continuing injuries . . . the plaintiff can bring a single suit based on an estimation of his total injuries, and that mode of proceeding is much to be preferred to piecemeal litigation despite the possible loss in accuracy. But in [cases in which the continuing course of conduct doctrine is applicable, each incident increases the plaintiff's injury]. Not only would it be unreasonable to require him, as a condition of preserving his right to have [the full limitations period] to sue . . . to bring separate suits [during the limitations period] after each [incident giving rise to the claim]; but it would impose an unreasonable burden on the courts to entertain an indefinite number of suits and apportion damages among them.

"In between the case in which a single event gives rise to continuing injuries and the case in which a continuous series of events gives rise to a cumulative injury is the case in which repeated events give rise to discrete injuries, as in suits for lost wages. If our plaintiff were seeking backpay for repeated acts of wage discrimination (suppose that every pay day for five years he had received $100 less than he was entitled to), he would not be permitted to reach back to the first by suing within the limitations period for the last. E.g., *Knight* v. [*Columbus*], 19 F.3d 579, 581–82 (11th Cir. 1994); *Pollis* v. *New School for Social Research*, 132 F.3d 115, 119 (2d Cir. 1997); see also *Thomas* v. *Denny's Inc.*, 111 F.3d 1506, 1513 (10th Cir. 1997); *Ashley* v. *Boyle's Famous Corned Beef Co.*, 66 F.3d 164, 168 (8th Cir. 1995) (en banc). As emphasized in *Pollis*, the damages from each discrete act of discrimination would be readily calculable without waiting for the entire series of acts to end. There would be no excuse for the delay. And so the violation would not be deemed 'continuing.' The present case is different. It would [be] impractical to allocate [a plaintiff's injury] day by day across the period during which [the continuing course of conduct occurred]." (Citations omitted.) *Heard* v. *Sheahan*, 253 F.3d 316, 319–20 (7th Cir. 2001).

Chief Judge Posner has further explained: "The principle strikes a balance between the plaintiff's interest in being spared having to bring successive suits, and the two distinct interests, *Gates Rubber Co.* v. *USM Corp.*, 508 F.2d 603, 611 (7th Cir. 1975), that statutes of limitations serve. One is evidentiary—to reduce the error rate in legal proceedings by barring litigation over claims relating to the distant past. The other is repose—to give people the assurance that after a fixed time they can go about their business without fear of having their

liberty or property taken through the legal process. Apart from the harmful effect of uncertainty on planning, it is more painful to lose what you have come to think of as your own than it is gratifying to get back something you wrote off many years ago and have grown accustomed to doing without. See [O. Holmes, 'The Path of the Law'], 10 Harv. L. Rev. 457, 477 (1897); cf. [J. Hirshleifer, Price Theory and Applications (Prentice-Hall, 1976), p. 61]. When the final act of an unlawful course of conduct occurs within the statutory period, these purposes are adequately served, in balance with the plaintiff's interest in not having to bring successive suits, by requiring the plaintiff to sue within the statutory period but letting him reach back and get damages for the entire duration of the alleged violation. Some of the evidence, at least, will be fresh. And the defendant's uncertainty as to whether he will be sued at all will be confined to the statutory period. His uncertainty about the extent of his liability may be greater, but that is often true in litigation." *Taylor* v. *Meirick*, 712 F.2d 1112, 1119 (7th Cir. 1983).

The continuing violation doctrine has been recognized and applied in many contexts over the last century. For instance, for more than one century, many jurisdictions have recognized the continuous nature of the tort of seduction without any requirement that the plaintiff establish the existence of an original duty. These jurisdictions have recognized that, although a plaintiff may file an action after the first act of tortious intercourse, the plaintiff is allowed to file a claim at any time until the expiration of the limitations period following the last act of tortious intercourse. See, e.g., *Gunder* v. *Tibbits*, 153 Ind. 591, 604–605, 55 N.E. 762 (1899); *Breiner* v. *Nugent*, 136 Iowa 322, 327–29, 111 N.W. 446 (1907); *Russell* v. *Chambers*, 31 Minn. 54, 54–55, 16 N.W. 458 (1883); *Davis* v. *Young*, 90 Tenn. 303, 304–305, 16 S.W. 473 (1891).

In doing so, these courts have recognized that claims of seduction usually involve a period when the defendant exercised such control over the plaintiff such that the plaintiff did not have the ability to bring an action. The Indiana Supreme Court explained the rationale for treating seduction under the continuing course of conduct doctrine as follows: "If an act is done under any sort of constraint, plain justice forbids the defendant to count the time of his control as a part of the period of limitations." *Gunder* v. *Tibbits*, supra, 153 Ind. 605.

In *Davis* v. *Young*, supra, 90 Tenn. 304–305, the Tennessee Supreme Court further explained: "[T]he seduction is made up of the several violations by the defendant, and he will not be permitted to confine [the victim's] remedy to the first illicit act, as the only one of seduction, and, when sued, relieve himself by showing that first act to have occurred [beyond the limitations period]. Such limitation places it in the power of

the unprincipled to effect the ruin of the confiding female, and then, by flattering the confidence and hopes of his victim, persevere in her debauchery at his will, and at last ignore all his cruel deceptions of the meantime, and insult the disgrace he has brought about by pleading the [statute of limitations] as applicable to the first act in his series of villainy. It should never be that one, by confessing his infamy, may by multiplying the evidences of that infamy, acquit himself from accountability for its consequences."

The use of the continuing course of conduct doctrine to toll the statute of limitations in seduction cases demonstrates two important public policy considerations underlying this doctrine. First, courts have determined that it would be inequitable for the limitations period to begin to run when a plaintiff is incapable of bringing an action because he or she is under the control of the defendant and is thus unable to bring an action. Second, as we have recognized in professional malpractice actions, these cases also demonstrate that it may serve the interest of judicial economy to toll the statute of limitations in cases involving such close personal relationships in order to allow the involved parties the opportunity to work out their dispute rather than requiring a plaintiff to commence an action immediately. See, e.g., *Martinelli* v. *Fusi*, supra, 290 Conn. 354 ("[t]he continuing course of conduct doctrine reflects the policy that, during an ongoing relationship, lawsuits are premature because specific tortious acts or omissions may be difficult to identify and may yet be remedied" [internal quotation marks omitted]).

In more recent years, courts have continued to recognize the continuing course of conduct doctrine in cases involving close intimate relationships between spouses and cohabiting couples without requiring the existence of any original duty. The Court of Appeals of Texas applied the continuing course of conduct doctrine to toll the statute of limitations in an action by a plaintiff against the defendant, her former husband, for negligent infliction of emotional distress based on the defendant's repeated attempts to coerce her to join in deviant sexual acts during their marriage. *Twyman* v. *Twyman*, 790 S.W.2d 819 (Tex. App. 1990). In doing so, the court recognized that "[a] continuing tort is one inflicted over a period of time; it involves a wrongful conduct that is repeated until desisted, and each day creates a separate cause of action. [54 C.J.S. 231, Limitations of Actions § 177 (1987)]. This case does not involve acts that are complete in themselves . . . but involves a continuing course of conduct which over a period of years caused injury. Since usually no single incident in a continuous chain of tortious activity can fairly or realistically be identified as the cause of significant harm, it seems proper to regard the cumulative effect of the conduct as actionable." (Citation omitted; internal quotation marks omitted.) *Twyman* v. *Twyman*, supra, 821.

The Idaho Supreme Court has also applied the continuing course of conduct doctrine to toll the statute of limitations for a claim of intentional infliction of emotional distress by a female plaintiff against the defendant, her former male cohabitant. *Curtis* v. *Firth*, 123 Idaho 598, 850 P.2d 749 (1993). In applying the continuing course of conduct doctrine to the claim for intentional infliction of emotional distress for the first time, the Idaho Supreme Court acknowledged that it had applied the continuing course of conduct doctrine to toll the statute of limitations in various other contexts and that these cases demonstrated that "a tort should be analyzed for the purposes of time limitations according to whether it is simply one complete act with ensuing damages, or whether it consists of a series of continuous activities." Id., 602. The Idaho Supreme Court further recognized that "the definition of intentional infliction of emotional distress requires that there must be a causal connection between the wrongful conduct and the emotional distress, and the emotional distress must be severe. . . . By its very nature this tort will often involve a series of acts over a period of time, rather than one single act causing severe emotional distress. For that reason we recognize the concept of continuing tort . . . should be extended to apply in other limited contexts, including particularly intentional infliction of emotional distress. We note, however, that embracing this concept in the area of intentional or negligent infliction of emotional distress does not throw open the doors to permit filing these actions at any time. The courts which have adopted this continuing tort theory have generally stated that the statute of limitations is only held in abeyance until the tortious acts cease. . . . At that point the statute begins to run. If at some point after the statute has run the tortious acts begin again, a new cause of action may arise, but only as to those damages which have accrued since the new tortious conduct began." (Citations omitted.) Id., 604.

The Illinois Supreme Court has also recognized the application of the continuing course of conduct doctrine to toll the statute of limitations in a claim by a plaintiff against the defendant, her former husband, for intentional infliction of emotional distress. In *Feltmeier* v. *Feltmeier*, 207 Ill. 2d 263, 798 N.E.2d 75 (2003), the plaintiff and the defendant had been married for approximately ten years. Id., 265. Approximately twenty months after the parties' marriage was dissolved, the plaintiff brought an action against the defendant, alleging that he had engaged in a pattern of physical and mental abuse, which began shortly after their marriage and continued past its dissolution. Id. The defendant filed a motion to dismiss the plaintiff's complaint on the ground that almost all of the alleged conduct contained in her complaint took place outside the applicable two year statute of limitations. Id., 277–78. The

Illinois Supreme Court noted that "[a] continuing tort . . . does not involve tolling the statute of limitations because of delayed or continuing injuries, but instead involves viewing the defendant's conduct as a continuous whole for prescriptive purposes." Id., 279. The court in *Feltmeier* relied on an Illinois Appellate Court opinion wherein the Appellate Court had reversed the dismissal of a claim of intentional infliction of emotional distress because "the plaintiff had alleged an ongoing campaign of offensive and outrageous sexual pursuit that established a continuing series of tortious behavior, by the same actor, and of a similar nature, such that the limitations period did not commence until the last act occurred or the conduct abated." Id., 281–82, citing *Pavlik* v. *Kornhaber*, 326 Ill. App. 3d 731, 761 N.E.2d 175 (2001). The Illinois Supreme Court further relied on the reasoning in *Pavlik* that "Illinois courts have said that in many contexts . . . repetition of the behavior may be a critical factor in raising offensive acts to actionably outrageous ones. . . . It may be the pattern, course and accumulation of acts that make the conduct sufficiently extreme to be actionable, whereas one instance of such behavior might not be. [See Restatement (Second), Torts, Emotional Distress § 46, comment (j), pp. 77–78 (1965)] (noting that the intensity and duration of the distress may determine whether a pattern of behavior is actionable). It would be logically inconsistent to say that each act must be independently actionable while at the same time asserting that often it is the cumulative nature of the acts that gives rise to the intentional infliction of emotional distress. Likewise, we cannot say that cumulative continuous acts may be required to constitute the tort but that prescription runs from the date of the first act. . . . Because it is impossible to pinpoint the specific moment when enough conduct has occurred to become actionable, the termination of the conduct provides the most sensible place to begin the running of the prescriptive period." (Citations omitted; internal quotation marks omitted.) *Feltmeier* v. *Feltmeier*, supra, 282.

The Illinois Supreme Court further recognized that "[t]he purpose behind a statute of limitations is to prevent stale claims, not to preclude claims before they are ripe for adjudication . . . and certainly not to shield a wrongdoer . . . ." (Citation omitted.) Id., 283. Accordingly, the court agreed "with the growing number of jurisdictions that have found that the continuing tort rule should be extended to apply in cases of intentional infliction of emotional distress."[3] Id., 284.

Nevertheless, the court in *Feltmeier* warned that "embracing the concept of a continuing tort in the area of intentional infliction of emotional distress 'does not throw open the doors to permit filing these actions at any time.' *Curtis* [v. *Firth*, supra, 123 Idaho 604]. As with any continuing tort, the statute of limitations is only held in abeyance until the date of the last injury

suffered or when the tortious acts cease." *Feltmeier* v. *Feltmeier*, supra, 207 Ill. 2d 284.

Our review of the nature and use of the continuing course of conduct doctrine in other jurisdictions confirms that public policy interests weigh in favor of applying the continuing course of conduct doctrine to toll the statute of limitations for a claim of intentional infliction of emotional distress without requiring the existence of an original duty. Therefore, we hold today that, in the context of cases involving only the intentional infliction of emotional distress, the existence of an original duty is not necessary to apply the continuing course of conduct doctrine. We further hold that, although we recognize the continuing course of conduct doctrine in cases of intentional infliction of emotional distress, we further recognize that at some point there must be a limitation on the ability to file an action to recover for such conduct. Therefore, in such cases, if no conduct has occurred within the three year limitations period set forth in § 52-577, the plaintiff will be barred from recovering for the prior actions of intentional infliction of emotional distress. If, however, additional actions occur within the limitations period, the ability to bring an action will be further extended.[4] In the present case, the trial court found that the defendant's conduct continued from June 3, 1999, until her guilty plea on April 11, 2002. In 2004, the defendant made an additional report of sexual abuse. The present action was commenced on August 29, 2005. Further, in May, 2006, the defendant made an additional report of sexual abuse. At no time, as found by the trial court, was there a gap of three years between the reports of sexual abuse reported by the defendant against the plaintiff. Therefore, we agree with the ruling of the trial court, which rejected the defendant's special defense alleging that the statute of limitations had expired.

We conclude, therefore, that the Appellate Court improperly reversed the judgment of the trial court on the ground that the trial court improperly applied the continuing course of conduct doctrine to toll the statute of limitations in this case because of the absence of a breach of a cognizable duty.

The judgment of the Appellate Court is reversed and the case is remanded to that court with direction to affirm the judgment of the trial court.

In this opinion NORCOTT, PALMER and VERTEFEUILLE, Js., concurred.

[1] The trial court also concluded that the statute of limitations was tolled by the defendant's filing of the petition in bankruptcy. Because we conclude that the continuing course of conduct doctrine tolled the statute of limitations during the entire period of the defendant's course of conduct, which continued into 2006, we need not address whether the defendant's bankruptcy petition also tolled the statute of limitations.

[2] Because we conclude that the Appellate Court improperly concluded that the existence of an original duty must be determined before applying the continuing course of conduct doctrine to toll the statute of limitations in a nonnegligence cause of action for intentional infliction of emotional

distress, we need not address the second certified issue.

[3] It is also important to note that similar reasoning has been employed to allow a woman with battered woman's syndrome to sue her spouse in tort for injuries sustained as a result of continuous acts of battering during the parties' marriage. See *Cusseaux* v. *Pickett*, 279 N.J. Super. 335, 345, 652 A.2d 789 (1994) ("Because the battered-woman's syndrome is the result of a continuing pattern of abuse and violent behavior that causes continuing damage, it must be treated in the same way as a continuing tort. It would be contrary to the public policy of this [s]tate, not to mention cruel, to limit recovery to only those individual incidents of assault and battery for which the applicable statute of limitations has not yet run. The mate who is responsible for creating the condition suffered by the battered victim must be made to account for his actions—all of his actions. Failure to allow affirmative recovery under these circumstances would be tantamount to the courts condoning the continued abusive treatment of women in the domestic sphere. This the courts cannot and will never do.").

[4] The dissent proposes two factual scenarios in which the continuing course of conduct doctrine should be applied to claims for intentional infliction of emotional distress, namely, when: "(1) the extreme and outrageous nature of the defendant's misconduct, as well as the severity of the plaintiff's distress, does not arise from a single instance of that misconduct, but only from repeated instances, which are continuous and unbroken; or (2) the misconduct arises in the context of a spousal or spouse-like abusive relationship." In either circumstance, the dissent would "conclude that the limitations period begins to run upon the completion of the final wrongful action."

We agree with the dissent that the limitations period begins to run upon the completion of the final wrongful action. Indeed, we conclude herein that if no conduct has occurred within the three year period of limitations under § 52-577, the plaintiff will be barred from recovery for the prior actions of intentional infliction of emotional distress.

We disagree, however, with the dissent's proposal that the continuing course of conduct doctrine should apply only if "the extreme and outrageous nature of the defendant's misconduct, as well as the severity of the plaintiff's distress, does not arise from a single instance of that misconduct, but only from repeated instances, which are continuous and unbroken . . . ." In fact, we conclude that such a requirement would be contrary to the purpose for the application of the continuing course of conduct doctrine. As we recognize herein, not only would it be unreasonable to require a plaintiff to bring separate causes of action during the limitations period after each extreme and outrageous incident giving rise to the claim in order to preserve his right to sue, but it would also impose an unreasonable burden on the courts to entertain an indefinite number of actions and, later, to apportion damages among them. Instead, as we have concluded herein, because it is almost impossible to pinpoint the specific moment when enough conduct has occurred to become actionable, the termination of the conduct provides the most sensible time at which to commence the running of the limitations period, even when one single incident is extreme and outrageous and causes the plaintiff severe distress.

Finally, we also disagree with the dissent's suggestion that if the extreme and outrageous nature of the defendant's misconduct and the severity of the plaintiff's distress arises from a single incident of that misconduct, the continuing course of conduct doctrine should only expressly apply if "the misconduct arises in the context of a spousal or spouse-like, abusive relationship." Under those circumstances, we see no reason to limit the doctrine to a certain class of individuals or certain types of relationships. Although the dissent recognizes the possibility that the doctrine could apply with respect to other relationships, it limits its application to the situation wherein "the nexus between the coercive and abusive nature of the relationship and the plaintiff's delay in bringing the action . . . supports the application of the doctrine . . . ." See footnote 4 of the dissenting opinion. Certainly, the intentional infliction of emotional distress doctrine contains no such restriction by way of relationship. We suggest, by way of example and not limitation, the following relationships, which may be fraught with the potential for intentional infliction of emotional distress, yet are not a spousal or spouse-like relationship: teacher-student, coach-player, physician-patient, social worker-client, employer-employee, and caregiver-child. Indeed, to place a limitation on the continuing course of conduct doctrine, when no such limitation exists in the intentional infliction of emotional distress doctrine, is to ignore the vast variety of human relationships wherein the inten-

tional infliction of emotional distress doctrine has been applied and, based upon our conclusion herein, the continuing course of conduct doctrine should also apply.

The dissent also asserts that "[t]hus far, spousal or spouse-like abusive relationships are the types of relationships in which courts have applied the doctrine on the basis of these equitable principles." Id. We disagree. Courts have repeatedly applied the continuing course of conduct doctrine to claims of intentional infliction of emotional distress arising in many different types of relationships. See, e.g., *Pleveritis* v. *Chicago*, United States District Court, Docket No. 06 C 3401 (N.D. Ill. September 17, 2007) (applying continuing course of conduct doctrine to claim of intentional infliction of emotional distress by individual against police department and individual officers); *Hill* v. *Chicago*, United States District Court, Docket No. 06 C 6772 (N.D. Ill. May 10, 2007) (applying continuing course of conduct doctrine to claim of intentional infliction of emotional distress by estate of deceased prisoner against city); *McCorkle* v. *McCorkle*, 811 So. 2d 258, 264 (Miss. App. 2001) (applying continuing course of conduct doctrine to claim of intentional infliction of emotional distress by father against son); *Cabaness* v. *Thomas*, 232 P.3d 486, 497 (Utah 2010) (applying continuing course of conduct doctrine to claim of intentional infliction of emotional distress by employee against supervisors).