

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY

WINIFRED SAMMONS, )  
)  
Plaintiff, )  
)  
v. ) C.A. 09C-06-312-PRW  
)  
EDWIN KANG, )  
)  
Defendant. )

Submitted: July 3, 2013  
Decided: August 2, 2013  
Corrected: August 14, 2013

*Upon Defendant's Motion for Costs.*  
**DENIED.**

**OPINION**

Thomas C. Crumplar, Esquire, Jacobs & Crumplar, P.A., Wilmington,  
Delaware, Attorney for Plaintiff.

Stephen P. Casarino, Esquire, Casarino, Christman, Shalk, Ransom, & Doss,  
P.A., Wilmington, Delaware, Attorney for Defendant.

**WALLACE, J.**

## I. Introduction

From June 10 to 14, 2014, this Court heard the above-captioned Child Victim Act (“CVA”) action.<sup>1</sup> On June 14, the jury returned a verdict in favor of the Defendant, Reverend Edwin Kang. On June 24, 2013, Rev. Kang moved this Court to assess costs against Plaintiff, Winifred Sammons. For the reasons stated below, Rev. Kang’s motion is **DENIED**.

## II. Factual and Procedural Background

In 2007, the Delaware Legislature passed the CVA in response to revelations of decades of unreported, yet credible accusations of child sexual abuse that had escaped prosecution. By its terms, the CVA both eliminated any statute of limitations for civil actions arising from future acts of sexual abuse of a child by an adult,<sup>2</sup> and permitted, for a period of two years following July 9, 2007, victims of child sexual abuse who would be barred by the former statute of limitations to bring their cases in this Court.<sup>3</sup> Ms. Sammons filed a Complaint<sup>4</sup> claiming that in the late 1960s, when she was

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<sup>1</sup> See DEL. CODE ANN. tit. 10, § 8145(c)(2007).

<sup>2</sup> DEL. CODE ANN. tit. 10, § 8145(a). “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.” *Id.*

<sup>3</sup> DEL. CODE ANN. tit. 10, § 8145(b)(2007).

<sup>4</sup> Ms. Sammons properly submitted the Complaint on June 30, 2009, just before the end of the two-year period provided by the CVA.

between the ages of 16 and 18, she was sexually abused by Rev. Kang, who at the time was a minister at Minquadale United Methodist Church (“Minquadale UMC”). Ms. Sammons was a member of Minquadale UMC’s youth group and alleged that Rev. Kang sexually abused her in the church rectory, where he lived. When she was eighteen years old, Ms. Sammons gave birth to Rev. Kang’s son.

At trial, Rev. Kang did not dispute he had sexual contact with Ms. Sammons; rather, he claimed the sexual contact between himself and Ms. Sammons occurred just once, at her insistence, and not until after her eighteenth birthday. In his defense, Rev. Kang called Dr. Gordon Ostrum who opined that the date of conception of Ms. Sammons’ and Rev. Kang’s son likely occurred just after her eighteenth birthday. Rev. Kang also called Diane Tait, a licensed clinical social worker who had counseled Ms. Sammons in the 1990s. Ms. Tait read from her treatment notes and recounted her therapeutic conversations with Ms. Sammons, testifying that Ms. Sammons never discussed the abuse she now alleged by Rev. Kang.

Following trial and a jury verdict in favor of Rev. Kang, he filed a Motion for Costs, which Ms. Sammons opposes. Pursuant to 10 *Del. C.* § 5101 and this Court’s Civil Rule 54(d), Rev. Kang requests the following costs:

Trial Testimony of Ms. Tait:	\$300.00
Trial Testimony of Dr. Ostrum:	\$600.00
Filing and Service Fees:	\$420.80 <sup>5</sup>
<b>TOTAL</b>	<b>\$1,320.80</b>

### **III. Discussion**

#### **A. Trial Testimony of Diane Tait, LCSW**

Rev. Kang correctly refers to Ms. Tait as a professional who provided Ms. Sammons' mental health treatment. But it is clear from the pre-trial proceedings through Ms. Tait's actual trial testimony that she was neither engaged nor testified as an expert witness. Notably, Rev. Kang did not disclose Ms. Tait as an expert witness prior to trial. In fact, at the last pre-trial status conference when the scope of Ms. Tait's testimony was discussed, the defense described her testimony as a recitation of the historical facts of Ms. Sammons' treatment. At trial, Ms. Tait did recount the facts of Ms. Sammons' treatment, but stopped short of offering any expert opinion testimony. Because Ms. Tait was a fact witness, and not an

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<sup>5</sup> Rev. Kang's Motion indicates \$420.80 represents the filing and services fees through May 6, 2013. The Court has received no further accounting that would suggest Rev. Kang is requesting additional court costs.

expert witness, Rev. Kang is not entitled to recover costs related to her testimony.<sup>6</sup>

### **B. Trial Testimony of Dr. Ostrum and Electronic Filing Fees**

Under Delaware law, the Court in its discretion may award costs to a prevailing party,<sup>7</sup> which may include expert witness fees,<sup>8</sup> as well as filing and service fees.<sup>9</sup> Under 10 *Del. C.* § 5101, costs are “[g]enerally” recoverable,<sup>10</sup> Civil Rule 54(d) permits cost awards, “unless the Court otherwise directs.”<sup>11</sup>

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<sup>6</sup> *Re v. Gannett Co.*, 1989 WL 158469, at 2 (Del. Super. Ct. Dec. 22, 1989) (“[T]he prevailing party cannot recover costs for an ‘expert’s’ time when that expert testifies as a ‘fact’ witness.”); *Connolly v. Labowitz*, 1987 WL 28316, at \*1 (Del. Super. Ct. Dec. 15, 1987) (same).

<sup>7</sup> *Meuser v. Sowiak*, 2001 WL 258644, at \*1 (Del. Super. Ct. Feb. 21, 2001) (“The numerous opinions of this Court concerning costs demonstrate how that discretion has been exercised in a number of ways and probably not always consistently.”); *Donovan v. Delaware Water and Air Res. Comm’n*, 358 A.2d 717, 722-23 (Del. 1976) (“Determining when costs are awarded and when they are not is, in our judgment, a matter of judicial discretion under the statute. That conclusion is consistent with Superior Court Civil Rule 54(d) . . .”).

<sup>8</sup> *See* DEL. CODE ANN. tit. 10, § 8906 (2013) (“The fees for witnesses testifying as experts or in the capacity of professionals . . . shall be fixed by the Court in its discretion . . .”).

<sup>9</sup> *Chaplake Holdings, Ltd v. Chrysler Corp.*, 2002 WL 148088, at \*46 (Del. Super. Ct. Jan. 10, 2002); *Nygaard v. Lucchesi*, 654 A.2d 410, 412 (Del. Super. Ct. 1994).

<sup>10</sup> DEL. CODE ANN. tit. 10, § 5101 (2013).

<sup>11</sup> *Moore v. Garcia*, 1995 WL 945553, at \*1 (Del. Super. Ct. July 10, 1995).

This Court has previously observed: “Sometimes it is important to win with grace.”<sup>12</sup> As Rev. Kang agreed, he had known since the seminary that any sexual episode between a minister and congregant is “wrong” no matter the age of the participants. And given Ms. Sammons’ pregnancy at barely 18 -- an occurrence that common sense and common experience tells us can, but rarely does, happen on the occasion of a couple’s first sexual contact -- there was a more than fair belief that her case could be actionable under the CVA.<sup>13</sup> Where an incident deserves full explanation by the defendant, “it is right, and just and fair for the defendant to bear the defense cost burden of the successful defense.”<sup>14</sup> The carefully crafted CVA demonstrates the intent of the legislature that such actions should have their day in court. Ms.

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<sup>12</sup> *Id.*; see *Nelson v. Feldman*, 2011 WL 531946, at \*2 (Del. Super. Ct. Jan. 26, 2011); *Mosley v. Milner*, 1999 WL 463550, at \*1 (Del. Super. Ct. April 8, 1999); *Sartin v. Pinkowski*, 1998 WL 35483217, at \*1 (Del. Super. Ct. Oct. 28, 1998).

<sup>13</sup> *See, e.g., id.*, 1995 WL 945553 at \*1 (“The female plaintiff had good reason to bring a lawsuit questioning whether the operation was performed prematurely after a very short period of conservative treatment.”).

<sup>14</sup> *Moore*, 1995 WL 945553 at \*1.

Sammons was a young church member<sup>15</sup> who became involved with a new minister almost twice her age. Their relationship resulted in a child born to a teenage mother. Ms. Sammons demonstrated that she has been profoundly affected by those circumstances, a fact which the jury's well-reasoned verdict in Rev. Kang's favor does not negate. In my opinion, this case was properly heard by a jury, and in my judgment Rev. Kang should bear the \$1,020.80 in costs which under other circumstances he might be due.

**IT IS SO ORDERED.**

*/s/ Paul R. Wallace*

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**PAUL R. WALLACE, JUDGE**

Original to Prothonotary  
cc: Counsel via File and Serve

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<sup>15</sup> The evidence demonstrated she was as young as 17 years and 9 months when they first met and their child was conceived either days before or days after Ms. Sammons turned 18.