

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

JOHN DOE 6,)	
)	
Plaintiff,)	
)	
v.)	
)	C.A. No. 09C-07-085 CLS
BOY SCOUTS OF AMERICA,)	
et al.)	
)	
Defendants.)	
)	

On Institutional Defendant’s Motion for Summary Judgment following the Parties’
Supplemental Briefing.

Memorandum Opinion

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Attorney for Plaintiff.

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Brian D. Tome, Esq., Eckert Seamans Cherin & Mellott, LLC. Attorneys for
Boy Scouts of American and Del-Mar-Va Council, Inc. Boy Scouts of
America.

Scott, J.

I. Introduction

This is an action based on the Child Victims Act of 2007 (“CVA”) in which Plaintiff John Doe 6 (“Plaintiff”) alleged that in 1968, when he was about 12 years old, he was sexually abused by a scout leader in the Defendants’, Boy Scouts of American and Del-mar-va Council Inc. Boy Scouts of America (“Institutional Defendants”), organization and that the Institutional Defendants were also liable for those acts. Institutional Defendants moved for summary judgment on the basis that no issue of fact existed as to whether any abuse occurred in Delaware. Plaintiff argued that abuse had, in fact, occurred in Delaware and that the abuse which occurred in Delaware served to extend the statute of limitations for civil claims, based on the CVA, of child sexual abuse that occurred in Pennsylvania and in Maryland. The Court denied the Institutional Defendants’ motion for summary judgment based on the acts of abuse alleged to have occurred in Delaware; however, the Court instructed the parties to submit supplemental briefing discussing the language of §8145(b) of the CVA in relation to the grounds upon which the General Assembly lifted the statute of limitations for civil claims of child sexual abuse which occurred outside of Delaware. This is the Court’s ruling on whether the CVA lifts the statute of limitations for those acts of sexual abuse occurring outside of Delaware.

II. Discussion

Plaintiff's argument that acts of abuse occurring in Delaware automatically lift the statute of limitations for those acts which occurred out of state is based primarily on a verbal ruling in *Dingle v. Catholic Diocese of Wilmington, et al*, C.A. 07C-09-025 (Del. Super. Oct. 5, 2009). The ruling in *Dingle* applied to several other sexual abuse cases, known as the "Deluca 8" cases, which were consolidated for the purpose of discovery and pretrial matters. The facts varied among each case with regard to the states in which the children were abused.¹

In a brief verbal ruling addressing the defendants' motions for summary judgment in *Dingle*, President Judge Vaughn stated:

However, I also find that if a person is a victim of child sexual abuse that occurred in this state, that the lifting of the bar of the civil statute of limitations applies to all of that victim's claims, all claims which were previously barred, whether they occurred in this state or without this state.

Therefore, I find that if a person was subject to one sexual act of criminal abuse in this state, he may file suit against his abuser as to all acts of sexual abuse, both the one or ones that occurred in Delaware and ones that occurred in other jurisdictions.²

¹ In addition to *Dingle v. Mulvee, et al.*, C.A. No. 07C-09-025 JTV (Del. Super.), the cases included: *John Does #1 v. Catholic Diocese of Wilmington, Inc. et al.*, C.A. No. 08C-05-040 JTV (Del. Super.); *John Doe #2 v. Catholic Diocese of Wilmington, Inc., et al.*, C.A. No. 08C-06-017 JTV (Del. Super.); *John Doe #3 v. Catholic Diocese of Wilmington, Inc., et al.*, C.A. No. 08C-06-033 JTV (Del. Super.); *Vai v. Catholic Diocese of Wilmington, Inc., et al.*, C.A. No. 08C-06-044 JTV (Del. Super.); *Sowden v. Catholic Diocese of Wilmington, Inc., et al.*, C.A. No. 08C-06-054 JTV (Del. Super.); *Schulte v. Catholic Diocese of Wilmington, Inc. et al.*, C.A. No. 08C-07-017 JTV (Del. Super.); *John Doe #4 v. Catholic Diocese of Wilmington, Inc., et al.*, C.A. No. 08C-10-028 JTV (Del. Super.).

² Pltf. Opening Br. Ex. A, Hearing Transcript, at pp. 3-4.

Judge Vaughn further stated that his interpretation of section (b) was consistent with subsection (a), that the mention of the Delaware Code in section (a) referred to the nature of the acts and not the territorial reach of the Code, and that arguments which were based upon 11 *Del. C.* §204 were not relevant to his finding.³

To determine whether the CVA permits recovery for acts of sexual abuse that occur outside of Delaware, this Court must engage in the traditional statutory analysis consistently applied by Delaware courts.⁴ The Court should be mindful that “[a] statute is passed by the General Assembly as a whole and not in parts or sections. Consequently, each part or section should be read in light of every other part or section to produce an harmonious whole.”⁵ A remedial statute “should be liberally construed to effectuate [its] purpose.”⁶ Nevertheless, “[j]udges must take the law as they find it, and their personal predilections as to what the law should be have no place in efforts to override properly stated legislative will.”⁷

³ *Id.* at p. 4.

⁴ *CML V, LLC v. Bax*, 28 A.3d 1037, 1041 (Del. 2011), as corrected (Sept. 6, 2011).

⁵ *Coastal Barge Corp. v. Coastal Zone Indus. Control Bd.*, 492 A.2d 1242, 1245 (Del. 1985).

⁶ *Sheehan v. Oblates of St. Francis de Sales*, 15 A.3d 1247, 1256 (Del. 2011), reargument denied (Apr. 19, 2011); *State v. Cephas*, 637 A.2d 20, 25 (Del.1994).

⁷ *Conaty v. Catholic Diocese of Wilmington, Inc.*, 2011 WL 2297712 (Del. Super. May 19, 2011)(citing *Leatherbury v. Greenspun*, 939 A.2d 1284, 1292 (Del.2007);*Sheehan*, 15 A.3d at 1259 (“We must take the law as we find it, leaving any desirable changes to the General Assembly”).

The Court's first step is to determine whether the statute is ambiguous.⁸ A statute is ambiguous if it is reasonably susceptible of different conclusions or interpretations or if a literal reading of its terms would lead to an unreasonable or absurd result not contemplated by the legislature or inconsistent with the legislature's general intention.⁹

The relevant statutory language is contained in §§ 8145(a) and 8145(b):

(a) 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.**

(b) For a period of 2 years following July 9, 2007, **victims of child sexual abuse that occurred in this State who have been barred from filing suit against their abusers by virtue of the expiration of the former civil statute of limitations, shall be permitted to file those claims** in the Superior Court of this State [...]¹⁰

The plain language of subsection (a) requires a plaintiff filing a civil cause of action for sexual abuse to do so only when the acts of abuse alleged are those that would be considered a criminal offense under the Delaware Code.

Under subsection (b), the class of persons who may bring their claims previously barred by the statute of limitations during the two-year window

⁸ *Taylor v. Diamond State Port Corp.*, 14 A.3d 536, 538 (Del. 2011), reargument denied (Mar. 4, 2011).

⁹ *Green v. Sussex Cnty.*, 668 A.2d 770, 775 (Del. Super. 1995) *aff'd*, 667 A.2d 1319 (Del. 1995)(citing *Hayward v. Gaston*, Del.Supr., 542 A.2d 760 (1988)).

¹⁰ §§ 8145(a) and (b) (emphasis added).

are those “victims of child abuse that occurred in this State.”¹¹ Section 8145(b) is not *reasonably* susceptible to different interpretations. The only reasonable interpretation of the plain language in subsection (b) is that the two year window applies only to acts that occurred in Delaware. There is no indication from the plain language of the statute addressing conduct which occurred out of state. This interpretation is consistent § 8145(a)’s requirement that a civil action for child sexual abuse be based upon acts which constitute a crime under the Delaware Code since the Code includes a territorial provision, 11 *Del. C.* § 204, which governs the specific circumstances under which a person may be convicted under Delaware law of an offense where certain conduct occurs outside of Delaware.¹²

Generally, a state’s legislature does not have the power to regulate conduct occurring outside of its borders.¹³ Therefore, the General Assembly does not have the legislative jurisdiction to regulate conduct occurring outside of the State of Delaware.¹⁴ The conclusion which follows from a literal reading of §8145(b) is that a child who suffered child sexual abuse may only revive those previously timed barred civil claims for acts which

¹¹ § 8145(b).

¹² 11 *Del. C.* § 204 (a)-(c); *see also* 11 *Del. C.* §232; 11 *Del. C.* § 2736; *see Bright v. State*, 490 A.2d 564, 567 (Del. 1985).

¹³ *Adventure Communications*, 191 F.3d 429, 434 (quoting *Stover v. O’Connell Assoc., Inc.* 84 F.3d 132, 136 (4th Cir. 1996)).

¹⁴ *See Klig v. Deloitte LLP*, 36 A.3d 785, 797-98 (Del. Ch. 2011) (“Under our federal system of co-equal state sovereigns, Delaware can readily regulate within its borders, but cannot regulate the wages of an individual working in another state, outside of Delaware’s jurisdiction”).

occurred in Delaware and not those acts which occurred in another State. Such a result is reasonable and consistent the General Assembly's authority.

Because the Court finds that §8145(b) is not reasonably susceptible to different meanings and that the literal interpretation does not produce an absurd or unreasonable result, the Court finds that the statute is not ambiguous. Once it determines that a statute is unambiguous, the Court need not further interpret the statute and must follow the plain meaning.”¹⁵

Therefore, the Court finds that the 2-year window in §8145(b) created to allow victims of child sexual abuse to bring forth previously barred civil claims applies only to those acts which Plaintiff alleged to have occurred in Delaware and not in Pennsylvania and Maryland.

III. Conclusion

For the foregoing reasons, summary judgment is **GRANTED** in favor of the Institutional Defendants on Plaintiff's claims relating to conduct occurring outside of Delaware.

IT IS SO ORDERED.

/S/CALVIN L. SCOTT
Judge Calvin L. Scott, Jr.

Date: September 4, 2013

¹⁵ *Eliason v. Englehart*, 733 A.2d 944, 946 (Del. 1999).