

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

EVAN WARREN SOKOLOVE,)
)
 Plaintiff,)
)
 v.) C.A. No. S13C-08-022 RFS
)
 ROXANE SOKOLOVE MARENBERG,)
)
 Defendant.)

**ORDER REFUSING CERTIFICATION OF INTERLOCUTORY APPEAL
OF DEFENDANT ROXANE SOKOLOVE MARENBERG**

NOW, this 23rd day of December, 2013, the Court has reviewed the application of Defendant Roxane Sokolove Marenberg (“Defendant”) for certification of an Interlocutory Appeal to the Delaware Supreme Court. The request is to seek preliminary appellate review of the Court’s decision concerning Defendant’s Motion to Dismiss (“Motion”) against Plaintiff Evan Warren Sokolove (“Plaintiff”), which was put on record on December 5, 2013. In that decision, the Court denied in part and granted in part, with further consideration to be given to the matter after submissions of supplemental memoranda.

1) A trial court may not certify an interlocutory appeal unless the particular order determines a substantial issue, establishes a legal right, and meets any of the

criteria of Delaware Supreme Court Rule 42(b)(i)-(v).¹

2) Defendant, against whom Plaintiff alleges sexual abuse inflicted on him throughout his childhood and early adolescence, principally argues that neither subsection (a) nor subsection (b) of the Child Victim's Act ("CVA") applies to claims such as Plaintiff's, in which the alleged abuse occurred prior to the CVA's enactment, but had not run the two-year limitations period under 10 *Del. C.* § 8119. She contends that subsection (a) cannot be interpreted to have retroactive effect; and that under this Court's decision in *Keller v. Maccubbin*.² therefore, the entirety of the CVA provides Plaintiff no protection from § 8119's limitations period.

Defendant asserts that the question of whether the CVA bars Plaintiff's claims is a substantial issue because a favorable ruling on it would eliminate much of this litigation and increase the likelihood that the parties could resolve the matter. Plaintiff counters that the issues of duress and the application of 18 U.S.C. § 2255 to this case, both discussed in the Motion, remain in play; therefore, interlocutory review would not have dispositive effect. He also notes that no immediacy justifying interlocutory review is present, as demonstrated by the parties scheduling discovery matters after the Court rendered its decision on the Motion.

¹ Supr. Ct. R. 42(a)-(b).

² 2012 WL 1980417 (Del. Super. May 16, 2012).

Defendant contends that a legal right is established because she is advocating an interpretation of the CVA that would time-bar many of Plaintiff's claims against her. Plaintiff counters that the Delaware Supreme Court has already determined that the CVA only affects matters of procedure and remedies, rather than legal rights.³ Additionally, Plaintiff notes that he has valid claims against Defendant in the other jurisdictions; and thus, at best, Defendant can only hope to remove this case from a Delaware forum.

Defendant asserts that an interlocutory appeal in this case is appropriate because a split in authority exists within this Court, with the Motion and this Court's decision in *Waterhouse v. Hollingsworth*⁴ supporting Plaintiff's view, and *Keller*⁵ supporting Defendant's view.⁶ Plaintiff counters that no split exists, and that *Keller* does not support Defendant's position.⁷ Further, he claims that interlocutory review

³ Plaintiff cites *Sheehan v. Oblates of St. Francis de Sales*, 15 A.3d 1247 (Del. 2011). He further argues that *Sheehan* and the Delaware Supreme Court's decision in *Hubbard v. Hibbard Brown & Co.*, 633 A.2d 345 (Del. 1993) conclusively support his interpretation of the CVA.

⁴ 2013 WL 5803136 (Del. Super. Oct. 10, 2013).

⁵ 2012 WL 1980417; *Keller v. MacCubbin*, 2013 WL 1859326 (Del. Super. Apr. 30, 2013).

⁶ Defendant further argues that even this Court's decision in *Waterhouse* supports that subsection (a) of the CVA does not have retroactive effect, as the Court noted in that case that subsection (a) indeed did not mention retroactive application.

⁷ Much contention exists between the parties regarding the interpretation of this Court's decision in *Keller*. Plaintiff regards *Keller* as a case dealing with the issue of repressed memory, and any reference made by the Court in interpreting the CVA in that case "is unbinding dicta that

is inappropriate because the factual issue of duress is still in dispute.

3) The Court finds the first element necessary for interlocutory review satisfied.

When a court denies a motion to dismiss, finding against a statute of limitations defense, a substantial issue is decided.

4) The Court does not find the second element necessary for interlocutory review satisfied. Rejecting a statute of limitations defense does not establish a legal right *per se*.⁸

5) Where an interlocutory application is considered, there should be a reasonable likelihood that appellate review may end or substantially reduce litigation or should be made for some consideration of justice.⁹ The Court disagrees with Defendant that a split in authority interpreting the CVA exists, justifying interlocutory review. As the Court held in the Motion, its decision in *Keller* did not focus on whether the CVA saved or barred claims such as Plaintiff's. *Keller* was a repressed-memory case, and did not analyze the precise issue presented and decided in

is ambiguous at best." Opp'n to Def.'s Appl. for Certification of Interlocutory Appeal at 3.

Plaintiff also draws attention to *Norbertine Fathers of Del., Inc. v. Whitwell*, 2008 WL 2138049 (Del. May 20, 2008), in which the Delaware Supreme Court denied interlocutory review of the constitutionality of the CVA.

⁸ *Edgcomb Corp. v. Scharf*, 1998 WL 15017, at *1 (Del. Jan. 14, 1998) (citing *Levinson v. Conlon*, 385 A.2d 717, 720 (1978)).

⁹ *Celotex Corp. v. Bradley*, 582 A.2d 934 (Del. 1990).

Waterhouse. Additionally, the Court notes that the issues of duress and the application of § 2255 to this case are pending.

Consequently, Defendant's request for certification of the interlocutory appeal is refused. When the case is concluded, all issues will be ripe for usual review by the Delaware Supreme Court, following final adjudication.

IT IS SO ORDERED.

/s/ Richard F. Stokes

Richard F. Stokes, Judge

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