

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

FRANK ELDRIDGE AND	:	
AND DAVID ELDRIDGE,	:	C.A. No. 09C-06-022WLW
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
SEAFORD SCHOOL DISTRICT; MARY	:	
ELLEN FARQUHAR, SALLY L. HIGGINS,	:	
RICHARD D. LIVINGSTON, ROBERT W.	:	
THOMAS, SR., and LEON T. GEST, all	:	
individually and in their official capacities as	:	
members of the Board of Education of the	:	
Seaford School District; WILLIAM W. LONG,	:	
individually and in his official capacity as	:	
former Superintendent of the Seaford School	:	
district; DR. RUSSELL H. KNORR, in his	:	
official capacity as Superintendent of the	:	
Seaford School District, and KENNETH	:	
BRYSON, individually,	:	
	:	
Defendants.	:	

Submitted: June 18, 2010

Decided: June 21, 2010

**ORDER**

Upon Defendants' Motion to Stay.

*Granted.*

Thomas S. Neuberger, Esquire, Stephen J. Neuberger, Esquire and Raeann Warner, Esquire of The Neuberger Firm, P.A., Wilmington, Delaware and Thomas C. Crumplar, Esquire of Jacobs & Crumplar, P.A., Wilmington, Delaware; attorneys for the Plaintiffs.

Bruce C. Herron, Esquire of Akin & Herron, P.A., Wilmington, Delaware; attorneys for the Seaford School District Defendants.

James E. Liguori, Esquire of Liguori and Morris, Dover, Delaware and Stephani J. Ballard, Esquire of Law Office of Stephani J. Ballard, LLC, Wilmington, Delaware; attorneys for Defendant Kenneth Bryson.

WITHAM, R.J.

*Eldridge v. Seaford School District, et al.*  
C.A. No. 09C-06-022 WLW  
June 21, 2010

Defendants Seaford School District, Mary Ellen Farquhar; Sally L. Higgins; Richard D. Livingston; Robert W. Thomas, Sr.; Leon T. Gest; William W. Long; and Dr. Russell Knorr (the “Defendants”) filed this Motion for Stay on June 4, 2010. Based upon the reasons set forth below, the Defendants’ motion must be granted.

### **FACTS**

This case involves claims based on Delaware’s Child Victim’s Act<sup>1</sup> (the “CVA”). The CVA created a two-year window in which claims previously time-barred by the statute of limitations could be revived. The Defendants have challenged the constitutionality of the CVA. The Superior Court, in *Sheehan v. Oblates of St. Francis de Sales, et al.*,<sup>2</sup> and *Whitwell v. Archmere Academy, Inc.*,<sup>3</sup> denied similar challenges. The *Sheehan* decision is currently on appeal before the Delaware Supreme Court.

### **DISCUSSION**

On May 26, 2010, this Court granted a Motion to Stay in several CVA cases. The Court, in its Order, held that, “[a]lthough . . . no Delaware court has deemed the CVA unconstitutional, . . . there are legal issues that remain to be decided.”<sup>4</sup> The Court further noted that, despite the stay, depositions and other limited discovery may

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<sup>1</sup> See 10 Del. C. § 8145.

<sup>2</sup> Del. Super., C.A. No. 07C-11-234, Scott, J. (Oct. 27, 2009 & Nov. 10, 2009) (ORDERS).

<sup>3</sup> 2008 WL 1735370 (Del. Super.).

<sup>4</sup> *Beyers v. Capital Sch. Dist., et. al*, Del. Super., C.A. No. 09C-05-025, Witham, R.J. (May 26, 2010) (ORDER).

be taken under “emergency conditions only.”<sup>5</sup>

The Defendants move for a similar stay in the case *sub judice*. Plaintiffs Frank and David Eldridge (the “Eldridges”) maintain that the Defendants cannot make a showing of hardship or inequity. The Eldridges further contend that they would be irreparably harmed if this case is stayed.

The Court recognizes the Eldridges’ position, and is sympathetic to their desire to have their day in court. However, as this Court noted in its May 26, 2010 Order, “there are . . . serious legal questions raised in these cases.”<sup>6</sup> The constitutionality of the CVA is allegedly squarely before the Delaware Supreme Court. Therefore, the Delaware Supreme Court’s decision would greatly simplify the issues presented.

In granting this motion, and similar motions to stay, the Court is not dismissing the case. Should the Delaware Supreme Court deem the CVA constitutional, the case will proceed, and the Eldridges will have their day in court. And, should a situation exist where evidence may be lost due to the delay associated with granting this Motion, the Defendants do not oppose limited discovery to preserve evidence.

The Eldridges maintain that this particular case is procedurally in its early stages.<sup>7</sup> They aver that little discovery has taken place, despite approximately nine months of litigation. Consequently, the Eldridges contend that they are unable to

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> The Eldridges filed their Complaint on June 10, 2009. The Complaint was amended on June 23, 2009. The Defendants filed an Answer on September 21, 2009.

discern whether there are indeed emergency conditions warranting limited discovery. They assert, for example, that they need the personnel records to understand fully the status of their case. The Court acknowledges the Eldridges' concerns, and simply notes that it will accept requests for limited discovery on a case-by-case basis.

The issues presented in this case, and similar actions, are difficult ones. The Court does not make the decisions before it lightly. The Court understands that these cases involve real people with real concerns. If the allegations are true, the Defendants' actions are despicable, and cannot be tolerated in a civilized society. As this Court noted at the Motion hearing, however, the Court must approach these issues objectively.

This Court acknowledges, as the Court did in *Tell v. Roman Catholic Bishops of Diocese of Allentown*, that, to the plaintiffs, "the foregoing analysis must seem to be a cold, sterile calculus devoid of any understanding of the injuries [they] have suffered . . . ."<sup>8</sup> But again, the Court must take an objective approach. Despite the Court's sympathy, when viewing the case objectively and considering the standard set forth in *Lanova Corp. v. Atlas Imperial Diesel Engine Co.*, the Court must conclude that a stay is appropriate.<sup>9</sup>

### **CONCLUSION**

For the foregoing reasons, the Defendants' Motion to Stay is GRANTED. The

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<sup>8</sup> Del. Super., C.A. No. 09C-05-171, Parkins, J. (Apr. 26, 2010) (Mem. Op.).

<sup>9</sup> See 64 A.2d 419, 420 (Del. Super. 1949) (citing *Landis v. North American Co.*, 299 U.S. 248 (1936)).

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C.A. No. 09C-06-022 WLW

June 21, 2010

case is hereby STAYED until the Supreme Court of Delaware issues a decision in *Oblates of St. Francis de Sales v. Sheehan*, No. 730, 2009, or until such time as the Delaware Supreme Court otherwise dismisses the appeal in that case. As the Court noted above, it will entertain requests for limited discovery on a case-by-case basis.

IT IS SO ORDERED.

/s/ William L. Witham, Jr.  
Resident Judge

WLW/dmh