

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

JOHN DOE 2,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 09C-07-042 PLA
)	
CATHOLIC DIOCESE OF)	
WILMINGTON, INC.,)	
a Delaware corporation;)	
ST. EDMOND’S ACADEMY, INC.,)	
a Delaware corporation;)	
JOHN FLEMING, an individual; and)	
BROTHERS OF THE HOLY CROSS))	
OF THE EASTERN PROVINCE)	
OF THE UNITED STATES)	
OF AMERICA, INC.,)	
a New York corporation,)	
)	
Defendants.)	

UPON DEFENDANT JOHN FLEMING’S
MOTION TO DISMISS
GRANTED

Submitted: August 16, 2010
Decided: October 25, 2010

This 25th day of October, 2010, it appears to the Court that:

1. John Fleming is the second defendant to move for dismissal of claims brought by Plaintiff John Doe (“Doe”) under the Delaware Child Victim’s Act of 2007.¹ Doe alleges personal injuries arising from repeated acts of sexual abuse by

¹ 10 *Del. C.* § 8145.

Fleming, who was employed as a teacher and coach by Defendant St. Edmond's Academy, Inc. ("St. Edmond's"). In addition to Fleming, Doe has also named St. Edmond's, Catholic Diocese of Wilmington, Inc., and Brothers of the Holy Cross of the Eastern Province of the United States of America, Inc. as defendants.

2. Fleming's motion and Doe's response raise issues similar to those addressed in the Court's two recent decisions in *Jane Doe v. Catholic Diocese of Wilmington, Inc.*² In that case, the plaintiff failed to comply with Superior Court Civil Rule 4(j) with respect to service upon two defendants, Charles Wiggins and St. Mark's High School. The Court granted motions to dismiss filed by both of the affected defendants after analyzing the requirements of Rule 4(j) in the context of Jane Doe's failure to take any action to effect service of process within the 120-day period required by the rule until 119 days after the filing of her Complaint. In dismissing Jane Doe's claims, the Court determined that the plaintiff's negligence was inexcusable and that her conduct did not constitute a good faith effort to effect timely service. In the opinion granting St. Mark's motion, the Court also thoroughly considered and rejected an argument that the October 7, 2009 order entered by Judge Scott staying Child Victim's Act litigation involving the Catholic Church tolled the time for effecting service of process on the defendant.

² *Doe v. Catholic Diocese of Wilm., Inc.*, 2010 WL 2106181 (Del. Super. May 26, 2010); *Doe v. Catholic Diocese of Wilm., Inc.*, 2010 WL 3946280 (Del. Super. Sept. 28, 2010).

3. The impact of the Court's prior decisions upon this case should be manifest. Since John Doe did not effect service upon Fleming until December 15, 2009, which was 162 days after the filing of his Complaint, his action is equally (if not more) inexcusable than the delay at issue in *Jane Doe*, and cannot constitute a good faith effort as that term is defined in the *Jane Doe* decisions. Likewise, Plaintiff's contention that the stay tolled the time for effecting service of process must be rejected for the legal reasons set forth in those two decisions, which are incorporated herein by reference.

4. Accordingly, Defendant Fleming's Motion to Dismiss is **GRANTED**.

IT IS SO ORDERED.

Peggy L. Ableman, Judge

Original to Prothonotary

cc: Thomas P. Conaty, IV, Esquire
James S. Green, Esquire
Jared T. Green, Esquire
Anthony Flynn, Esquire
Jennifer M. Kinkus, Esquire
John Fleming