

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

LINDA K. COBB, as Guardian Ad Litem for :
her minor daughter, JACLYN K. COBB, :

Plaintiff, :

v. :

C.A. No. 99C-01-213 SCD

MARITA HALKO, Ind. and as Guardian Ad :
Litem of her minor son, KARL T. HALKO, :
and, KARL T. HALKO, Ind. :

Defendants. :

ORDER DENYING LEAVE TO APPEAL
FROM INTERLOCUTORY ORDER

This 4th day of September, 2001, the defendant's application for certification of interlocutory appeal, and the plaintiff's response thereto having been considered, it appears:

1. That the defendant seeks to appeal from this Court's denial of the motion for summary judgment on the grounds that the Court's decision is contrary to established law.

2. That the decision to apply the "time of discovery rule" to a claim of sexual molestation of a minor, allegedly occurring when the child was between two and three and a half years of age, is not contrary to established law. The previously decided Delaware cases which considered the application of the statute of limitations to claims of child sexual abuse. *Garcia v. Nekarda*, Del. Supr., C.A. No. 92C-06-008, Steele, J. (February 19, 1993) and *Warner v. University of Delaware*, Del. Super., C.A. No. 94C-07-104, Babiarz, J. (October 2, 1993), are distinguishable on their facts. In both instances the fact of the abuse had been communicated to others within the limitations period. Neither stands for the proposition that the claim accrues

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before "the plaintiff knows, or in the exercise of reasonable care should have known both the fact of the injury and its cause." *Callahan v. State of Iowa*, Iowa Supr., 464 N.W. 2d 268, 273 (1990).

The requirements not having been met, the application for interlocutory appeal is DENIED.

IT IS SO ORDERED.

Judge Susan C. Del Pesco

Original to Prothonotary
xc: Joseph J. Rhoades, Esquire
Michael I. Silverman, Esquire