

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

<b>ERIC EDEN</b>	)	
	)	
Plaintiff,	)	ID No. 04C-01-069 CLS
	)	
v.	)	
	)	
<b>OBLATES OF ST. FRANCIS DE SALES;</b>	)	
<b>OBLATES OF ST. FRANCIS DE SALES</b>	)	
<b>INCORPORATED</b> , a Delaware	)	
Corporation;	)	
<b>SALESIANUM SCHOOL, INC.</b> , a	)	
Delaware corporation;	)	
<b>CATHOLIC DIOCESE OF</b>	)	
<b>WILMINGTON, INC.</b> , a Delaware	)	
corporation;	)	
<b>REV. JAMES W. O'NEILL, O.S.F.S.;</b>	)	
<b>REV. ROBERT D. KENNEY, O.S.F.S.;</b>	)	
<b>REV. JOSEPH G. MORRISSEY,</b>	)	
<b>O.S.F.S.;</b>	)	
<b>REV. MICHAEL A. SALTARELLI; and,</b>	)	
<b>REV. LOUIS S. FIORELLI, O.S.F.S.</b>	)	
	)	
Defendants.	)	

Date Submitted: December 29, 2006  
Date Decided: March 30, 2007

*Upon Consideration of Defendants' Motion for  
Reconsideration/Clarification or in the Alternative for Reargument*  
**DENIED.**

Thomas S. Neuberger and Stephen J. Neuberger, Esquires, The Neuberger Firm, P.A., Wilmington, DE; Robert Jacobs and Thomas C. Crumplar, Esquires, Jacobs & Crumplar, P.A., Wilmington, Delaware, Attorneys for Plaintiff.

Mark. L. Reardon, Esquire, Elzufon, Austin, Reardon, Tarlov & Mondell, P.A., Wilmington, Delaware, Attorney for Defendants Oblates of St. Francis de Sales, Inc., Salesianum School, Inc., Rev. Robert D. Kenney, O.S.F.S., Rev. Joseph G. Morrissey, O.S.F.S., Rev. Louis S. Fiorelli, O.S.F.S.

Francis J. Trzuskowski, Esquire, Elzuvon, Augst, Reardon, Tarlove & Mondell, P.A., Bear, Delaware, Attorneys for the Defendant Rev. James W. O'Neill, O.S.F.S.

Anthony G. Flynn, Neilli Mullen Walsh and Jennifer M. Kinkus, Esquires, Young, Conaway, Stargatt & Taylor, LLP, Wilmington, Delaware, Attorneys for Defendants Catholic Diocese of Wilmington, Inc. and Rev. Michael A. Saltarelli.

**SCOTT, J.**

Defendants Oblates of St. Francis de Sales, the Oblates of St. Francis de Sales, Inc., the Salesianum School, Inc., the Catholic Diocese of Wilmington, Inc., Reverend James W. O'Neill O.S.F.S., Reverend Robert D. Kenney O.S.F.S., Reverend Joseph G. Morrissey O.S.F.S. and Reverend Louis S. Fiorelli O.S.F.S. (hereinafter "the Church Defendants") have filed three separate Motions for Reconsideration/Clarification or in the Alternative for Reargument pursuant to Superior Court Civil Rule 59(e). The Church Defendants contend the Court's December 4, 2006 decision on Defendants' Motion to Dismiss or in the Alternative for Summary Judgment. Specifically, Defendants ask for Reconsideration/Clarification or in the Alternative Reargument of the Court's Opinion as to the personal injury and breach of contract claims. Upon consideration of these Motions, Church Defendants' Motions are **DENIED**.

### **BACKGROUND**

This case arises from the alleged sexual molestation of Plaintiff Eric Eden ("Eden") by Defendant Reverend James W. O'Neill ("O'Neill"). Eden initially filed a Complaint on January 8, 2004 in arbitration, suing Church Defendants for breach of contract, intentional misrepresentation, civil conspiracy, assault and battery and negligence.

In the Complaint, Eden claims that Defendant O'Neill sexually molested him over a nine year period from 1976 to 1985. Eden allegedly reported the last incident in 1985 to his parents. When Eden's parents complained of the incident to Church Defendants, Eden claims that Defendants and his parents entered into a contract. Eden has proffered no evidence of the contract, but contends that his parents agreed not to sue Defendants as long as O'Neill: (1) would never again have the opportunity to be around any minor youths, (2) would be removed from Salesianum High School where he was serving as principle, and (3) would be placed immediately into intensive psychotherapy. According to Eden, Church Defendants breached this contract by allowing Defendant O'Neill to later serve as pastor of a North Carolina parish where he oversaw 1900 families.

On February 12, 2004, Church Defendants filed a Motion to Dismiss the Complaint in which they contended that Plaintiff Eden's personal injury and breach of contract claims violate the statute of limitations.

Subsequently, on April 21, 2005, Defendant O'Neill filed a reply brief in support of the Motion to Dismiss. On April 22, 2005, Defendant Saltarelli also filed a reply brief in support of the Motion to Dismiss, or in the Alternative for Summary Judgment. The Court also notes that Plaintiff's psychiatric expert conducted an examination of Plaintiff and wrote a report

in May 2005 that confirmed Plaintiff's memory suppression of the nine years prior to 1985.

Following the submission of these documents, the Court held a hearing on June 26, 2006 during which it heard arguments on Defendants' Motion to Dismiss. The Court issued an Opinion on December 4, 2006 that denied Defendants' Motion in part and granted it in part with regard to Defendant Bishop Saltarelli. Viewing the evidence in the light most favorable to the non-moving party, the Court found that Plaintiff established a genuine issue of material fact as to the personal injury and breach of contract claims. The Court tolled the statute of limitations for the personal injury claims prior to the last incident in 1985 due to Plaintiff's memory suppression. Furthermore, the Court found that Plaintiff demonstrated a possibility of performing the contract terms within a year and a possibility of fraudulent concealment by Church Defendants.

## **DISCUSSION**

Defendants have filed their Motion for Reargument pursuant to Superior Court Civil Rule 59(e).<sup>1</sup> "A Motion for Reargument is the proper

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<sup>1</sup> Super. Ct. Civ. R. 59 states:

(e) *Rearguments*. A motion for reargument shall be served and filed within 5 days after the filing of the Court's opinion or decision. The motion shall briefly and distinctly state the grounds therefore. Within 5 days after service of such motion, the opposing party may serve and file a brief answer to each ground

device for seeking reconsideration by the Trial Court of its findings of fact, conclusions of law, or judgment....The manifest purpose of all Rule 59 motions is to afford the Trial Court an opportunity to correct errors prior to appeal....”<sup>2</sup> A Motion for Reargument is not a device for raising new arguments or stringing out the length of time for making an argument.<sup>3</sup> It will be denied unless the Court has overlooked a controlling precedent or legal principles, or the Court has misapprehended the law or facts such as would have changed the outcome of the underlying decision.<sup>4</sup> “A party seeking to have the Court reconsider the earlier ruling must demonstrate newly discovered evidence, a change in the law or manifest injustice.”<sup>5</sup>

After reviewing submissions by the parties, the Church Defendants have not shown that the Court has overlooked a controlling precedent or legal principles, or has misapprehended the law or facts such as would have

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asserted in the motion. The Court will determine from the motion and answer whether reargument will be granted. A copy of the motion and answer shall be furnished forthwith by the respective parties serving them to the Judge involved.

<sup>2</sup> *Cummings v. Jimmy’s Grille, Inc.*, 2000 WL 1211167, at \*2 (Del. Super.)(quoting *Hessler, Inc. v. Farrell*, 260 A.2d 701, 702 (Del. 1969)).

<sup>3</sup> *Id.* (citing *Murphy v. State Farm Ins. Co.*, 1997 Del. Super. LEXIS 298).

<sup>4</sup> *Id.* (citing *Interim Health Care v. Fournier*, 1994 Del. Ch. LEXIS 43).

<sup>5</sup> *Brenner v. Vill. Green, Inc.*, 2000 WL 972649, at \*1 (Del. Super.).

changed the outcome. The Court will individually address Defendants' arguments due to the nature of their Motions.

First, Defendant Catholic Diocese of Wilmington expresses concern that the Court's conclusions of law may preclude any further defense or limit the scope of discovery on the issue of personal injury and breach of contract. Within the context of its December 4, 2006 Opinion, the Court did not make conclusions of law or preclude further discovery. The phrase "material issue of fact" generally implies that the parties can conduct more discovery on these issues prior to trial.

Second, Defendants Oblates of St. Francis De Sales, Salesianum School Inc., Reverend Robert D. Kenney, OSFS, Reverend Robert D. Kenney, OSFS, Reverend Joseph G. Morrissey, OSFS, and Reverend Louis S. Fiorelli, OSFS argue that the Court's Opinion establishes an unprecedented split cause of action on the personal injury claims. According to Defendants, the Court must consider the nine years of abuse as a whole. Defendants support this contention by referring to *Ewing v. Beck*, a medical malpractice case in which the medical care related to a single condition.<sup>6</sup> In *Ewing*, the Court applied the statute of limitations for

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<sup>6</sup> 520 A.2d 653 (Del. 1987).

personal injury to the “last act in the negligent medical continuum.”<sup>7</sup> This application of the statute does not apply to the case at hand because the nature of Plaintiff’s claims significantly differs from those of a medical malpractice claim. Where as negligent medical treatment may result in a single condition, the Court must account for each individual incident of sexual abuse that caused injury to Plaintiff Eden. The Court, therefore, finds that it appropriately applied the statute of limitations to the present situation by separating the last incident of sexual abuse in 1985 from the alleged 900 previous incidents. As stated by the Delaware Supreme Court in *Ewing*, “It is the well recognized duty of a court to construe statutes of limitation so as to establish just and reasonable guidelines for different classes of cases...”<sup>8</sup>

On the same note, Defendants also accuse the Court of “engaging in judicial legislation by creating exceptions to a statute of limitations.”<sup>9</sup> Defendants claim that the “Court overlooks that ‘inherent unknowability’ is measured by an objective, rather than, subjective standard.”<sup>10</sup> By relying on Delaware precedent, the Court did not overlook this issue. The Court

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<sup>7</sup> *Id.* at 662.

<sup>8</sup> *Id.*

<sup>9</sup> Def. Oblates of St. Francis De Sales, Salesianum School Inc., Reverend Robert D. Kenney, OSFS, Reverend Robert D. Kenney, OSFS, Reverend Joseph G. Morrissey, OSFS, and Reverend Louis S. Fiorelli, OSFS Mot. for Rearg. at 5.

<sup>10</sup> *Id.* at 3 (citing *Layton v. Allen*, 246 A.2d 794, 797 (Del. 1968)).



simply addressed this issue in the light most favorable to the non-moving party. Accordingly, the Court found that “inherent unknowability” of the matter at hand involved facts yet to be determined.

Finally, Defendants contend that the Court’s “decision on the breach of contract claim misapprehends relevant Delaware law and applicable fact.”<sup>11</sup> According to Defendants, “any alleged agreement waiving a statute of limitations must be in writing.”<sup>12</sup> The Court agrees with this contention, but finds that Defendants wrongly apply it here because the alleged contract did not contain any such provision.<sup>13</sup> In addition, Defendants argue that Plaintiff did not meet his burden on “‘fraudulent concealment’ in view of the record facts.”<sup>14</sup> When ruling on the Motion to Dismiss, the Court viewed all evidence in the light most favorable to the non-moving party. The Court found that Plaintiff’s breach of contract claim involves material issues of

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<sup>11</sup> Def. Oblates of St. Francis De Sales, Salesianum School Inc., Reverend Robert D. Kenney, OSFS, Reverend Robert D. Kenney, OSFS, Reverend Joseph G. Morrissey, OSFS, and Reverend Louis S. Fiorelli, OSFS Mot. for Rearg. at 5.

<sup>12</sup> *Id.*

<sup>13</sup> According to Plaintiff Eden, the alleged terms of the contract stated that Defendant O’Neill: (1) would never again have the opportunity to be around minor youths, (2) would be removed from Salesianum High School where he was serving as principle, and (3) would be placed immediately into intensive psychotherapy.

<sup>14</sup> Def. Oblates of St. Francis De Sales, Salesianum School Inc., Reverend Robert D. Kenney, OSFS, Reverend Robert D. Kenney, OSFS, Reverend Joseph G. Morrissey, OSFS, and Reverend Louis S. Fiorelli, OSFS Mot. for Rearg. at 6.

fact in dispute. As such, the Court did not make a final decision on these issues. It merely allowed the parties to conduct further discovery and present these issues to a jury.

As to all other contentions of Defendants, the Court generally finds that Defendants have reiterated substantially their previous arguments. Consistent with the principle that a motion for reargument should not be used merely to “rehash the arguments already decided by the court,” the Court is not persuaded that Defendants’ motion has any merit.<sup>15</sup> Moreover, Defendants have not demonstrated “newly discovered evidence, a change in the law or manifest injustice”<sup>16</sup> that would cause the Court to reconsider its decision. Defendants’ Motions for Reconsideration/ Clarification or in the Alternative for Reargument are **DENIED**.

**IT IS SO ORDERED.**

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**Judge Calvin L. Scott, Jr.**

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<sup>15</sup> *Cunningham v. Horvath*, 2004 WL 2191035, at \*2 (Del. Super.).

<sup>16</sup> *Brenner*, 2000 WL 972649, at \*1 (Del. Super.).