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

JORDAN L. WATERHOUSE,	)	
	)	
Plaintiff,	)	C.A. No. 12C-10-123 JAP
	)	
v.	)	
	)	
	)	
KENNETH HOLLINGSWORTH, M.D.,	)	
	)	
Defendant.	)	

MEMORANDUM OPINION

Plaintiff alleges in this personal injury case that she was sexually abused by Defendant when she was a minor beginning on or before 2003 and continuing until "at least February, 2006." Defendant has moved to dismiss, claiming that all or some of Plaintiff's claims are barred by the statute of limitations. Plaintiff responds that at least some of her claims are saved by 10 Del. C. sec. 8145. The court agrees with her.

Procedural History

The procedural history here is unusual and, even though it does not change the end result, is worthwhile noting. In July 2006 Plaintiff's father brought a similar suit against Dr. Hollingsworth on behalf of his daughter, who

was then a minor. At some time during the pendency of that suit Ms. Waterhouse (then a minor) concluded she did not wish to pursue her claim. The trial judge assigned to that case met *in camera* with her and concluded that she wished to withdraw from the litigation. The judge further concluded it would be in the minor's best interest to do so. As a result, on November 2, 2009, the court entered an order dismissing her claims without prejudice.

As mentioned, this prior suit and its dismissal are not of consequence to the present issue. It goes without saying that the dismissal without prejudice does not, by itself, bar the filing of a second suit. Insofar as the statute of limitations is concerned, Plaintiff disavows any contention that the earlier dismissal without prejudice entitles her to any relief under the savings statute.[1]

Analysis

[1] 10 *Del. C.* sec 8118 which provides:

> If in any action duly commenced within the time limited therefor in this chapter, the writ fails of a sufficient service or return by any unavoidable accident, or by any default or neglect of the officer to whom it is committed; or if the writ is abated, or the action otherwise avoided or defeated by the death of any party thereto, or for any matter of form; or if after a verdict for the plaintiff, the judgment shall not be given for the plaintiff because of some error appearing on the face of the record which vitiates the proceedings; or if a judgment for the plaintiff is reversed on appeal or a writ of error; a new action may be commenced, for the same cause of action, at any time within one year after the abatement or other determination of the original action, or after the reversal of the judgment therein.

In years gone by claims for sexual abuse were subject to the two year statute of limitations found in 10 *Del. C.* sec. 8119.[2] Although the General Assembly has carved out an exception to certain statutes of limitations for claims belonging to minors, that exception did not extend to personal injury claims which are limited by section 8119.[3] Thus even in the case of minors lawsuits claiming sexual abuse were barred if they were filed more than two years after the abuse occurred. But minors, perhaps even more so than adults, are understandably often reluctant to disclose that they have been the victim of sexual abuse. As a result section 8119 frequently barred otherwise valid claims for sexual abuse of a minor.

In 2007 the General Assembly remedied this inequity by enacting the Child Victim's Act[4]—10 *Del. C.* sec. 8145. Subsection 8145 (a) eliminates the statute of limitations for civil claims of sexual abuse of a minor[5]:

> A cause of action based upon the sexual abuse of a minor by an adult may be filed in the Superior Court of this State at any time following the commission of the act or acts that constituted the sexual abuse. A civil cause of action for sexual abuse of a minor shall

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[2] That section provides in pertinent part "[n]o action for the recovery of damages upon a claim for alleged personal injuries shall be brought after the expiration of 2 years from the date upon which it is claimed that such alleged injuries were sustained"

[3] 10 *Del. C.* sec. 8116. The section limits the exception for minors to specified statutes of limitation and does not include the personal injury limitation found in section 8119 in those exceptions:

> If a person entitled to any action comprehended within §§ 8101-8115 of this title, shall have been, at the time of the accruing of the cause of such action, under disability of infancy or incompetency of mind, this chapter shall not be a bar to such action during the continuance of such disability, nor until the expiration of 3 years from the removal thereof.

[4] 76 Del. Laws ch. 102

[5] The court considers each instance of sexual abuse to be a separate and distinct claim. *Eden v. Oblates of St. Francis de Sales,* 2008 WL 3380049 (Del. Super.); *Whitwell v. Archmere Academy,* 2008 WL 1735370 (Del. Super.)

> be based upon sexual acts that would constitute a criminal offense under the Delaware Code.

Although subsection (a) makes it clear that going forward there is no statute of limitations for claims of the sexual abuse of a minor, it is silent as to its retroactive effect. Subsection (b) however, provides a narrow window in which victims were allowed to resurrect otherwise stale claims if they did so by filing a complaint on or before July 9, 2009. According to subsection (b):

> For a period of 2 years following July 9, 2007, victims of child sexual abuse that occurred in this State who have been barred from filing suit against their abusers by virtue of the expiration of the former civil statute of limitations, shall be permitted to file those claims in the Superior Court of this State.

The instant suit was not filed until October 2012, and therefore Plaintiff's claims are not covered by the limited resurrection provision of subsection (b). Indeed Plaintiff, to her credit, has disavowed any argument that this subsection applies to her claims. The court concludes, therefore, that Plaintiff's claims for assaults occurring before July 9, 2005 are barred by section 8119.

This conclusion does not end the inquiry, however. It is still necessary to resolve what happens to claims for alleged acts of abuse occurring between July 9, 2005 and July 9, 2007. At the time the statute was enacted those claims were not barred by section 8119 because they were not yet more than two years old. Thus for purposes of the resurrection provision of subsection (b), they could not be claims which "have been barred . . . by virtue of the expiration of the former statute of limitations" at the time the statute was enacted. Consequently they were not subject to the resurrection provision in

subsection (b) and, therefore, Plaintiff's failure to file a new claim before July 9, 2009 does not bar her claim.

Defendant points to testimony before the General Assembly as well as some of the legislative debate to support his contention that section 8145 is forward looking only and does not save Plaintiff's claims arising between July 9 2005 and July 9, 2007. The language of the statute, however, compels a different conclusion. Although the provision in subsection (a) eliminating the statute of limitations does not expressly say anything about claims for acts occurring between July 9, 2005 and July 9, 2007, the operation of the statute precludes application of the two year bar in section 8119 to those claims. The first day section 8119 would have barred any of those claims arising during that period (in the absence of section 8145) would have been July 10, 2007—two years and one day after the first day of that period, July 9, 2005. But as of July 10, 2009—the first day Defendant could have raised the statute of limitations defense to alleged assaults occurring on July 9, 2005—the statute of limitations with respect to such result had been eliminated. All of this is a round-about way of saying that by the time Defendant could have raised a statute of limitations defense to these claims, there was no statute of limitations to raise.

Statutes of limitation are often beneficial and play a fundamental role in our civil litigation structure. Even so, they act to preclude courts from deciding barred claims, even meritorious claims, on their merits. Delaware has a strong

public policy favoring resolution of cases on their merits.[6] Consistent with this,

remedial measures such as section 8145 should be broadly construed in favor

of allowing claims to be heard on their merits.[7] To the extent there is doubt about the application of section 8145 (and the court believes there is none), it must be resolved in favor of allowing Plaintiff to present her claims of alleged assault occurring after July 9, 2005.[8]

Finally Defendant argues that Plaintiff has known about her abuse and the injuries it has caused her for some time. He urges that the General Assembly could not have intended a result where Plaintiff could opt "to wait a potential twenty, thirty or forty years to bring her claim, perhaps when her alleged abuser has become more professionally successful, or when key witnesses may have died." Although there may be reasons to require an abuse victim to file suit once he or she has become aware of the extent of his or her

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[6] *Keener v. Isken*, 58 A.3d 407 (Del. 2013).

[7] In *Lynch v. City of Rehoboth,* 2004 WL 1238405 (Del. Ch.) then Master Glasscock wrote:

> There is no public policy reason to construe the statute of repose in a way which would render the complaint here invalid; to the contrary, the public policy in deciding suits on their merits would be contravene by such an interpretation.

[8] During oral argument the court mused whether minor's claims were ever barred in Delaware by the statute of limitations. The court pointed to the General Assembly's tinkering with the statute of limitations when it enacted the Medical Malpractice Act in 1976 as giving rise to this thought. (As discussed above, the court's musings were off base, as section 8119 applies to minor's claims for personal injury.) The court asked the parties if they wished to submit supplemental briefing on this issue. It is apparent from the supplemental briefing that at least one of the parties thought the court was suggesting that the claims here were covered by the Medical Malpractice Act. That is not the case, and the court apologizes to counsel for any confusion it may have created at oral argument.

injuries (as is done in the case of inherently unknowable injuries)[9], that is not the course the General Assembly chose to take. If it ever becomes apparent that the absence of a statute of limitations becomes unworkable or yields unfair results, it lies wholly within the General Assembly's province, not the court's, to decide when and how to change the law.[10]

For the forgoing reasons Defendant's motion is **GRANTED in part** and **DENIED in part.** Plaintiff's claims for alleged sexual assaults occurring before July 9, 2005 are dismissed. The remaining claims are not dismissed.[11]

October 10, 2013

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John A. Parkins, Jr., Judge

oc: Prothonotary

cc: Raeann Warner, Esquire, Jacobs & Crumplar, Wilmington, Delaware –

[9] There are reasons why sexual abuse victims, as opposed to victims of more garden variety torts, might not be able to bring suit even when they are aware of the nature and cause of their injuries. The General Assembly heard there are a large number of variable which determine when, if ever, a victim is able to come forward. It is the General Assembly, not the court, to weigh this against the sort of concerns raised by Defendant.

[10] It is well settled that an ambiguous statute will not be construed to yield an absurd result. *LeVan v. Independence Mall, Inc.*, 940 A.2d 929, 933 (Del. 2007). But such construction arises only in the presence of an ambiguity. There is no ambiguity in this statute and courts are therefore not free to rewrite it because a litigant thinks the plain meaning of the statute could yield an undesirable result.

[11] Plaintiff asks this court to hold that evidence of the assaults giving rise to the dismissed claims is admissible. This request is premature, and the court declines to rule on it.

Counsel for the Plaintiff
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