

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

JANE DOE #7, :
 : C.A. No: K09C-12-042 (RBY)
Plaintiff, :
 :
v. :
 :
INDIAN RIVER SCHOOL DISTRICT, :
BOARD OF EDUCATION OF THE :
INDIAN RIVER SCHOOL DISTRICT; :
CHARLES M. BIRELEY, KELLEY R. :
WILLING, NINA LOU BUNTING, :
DR. DONALD G. HATTIER, :
RANDALL L. HUGHES, II, DONNA :
M. MITCHELL, PATRICIA S. :
OLIPHANT, ROBERT D. WILSON, :
SHELLY R. WILSON, SUSAN S. :
BUNTING and DANA GOODMAN, :
 :
Defendants. :

Submitted: December 11, 2011
Decided: April 20, 2012

*Upon Consideration of the District Defendants’
Motion for Reconsideration of Commissioner’s Order*
DENIED

OPINION AND ORDER

Young, J.

Raeann Warner, Esq., Jacobs & Crumplar, P.A., Wilmington, Delaware and Thomas S. Neuberger, Esq., and Stephen J. Neuberger, Esq., The Neuberger Firm, P.A., Wilmington, Delaware for Plaintiff.

David H. Williams, Esq., James H. McMackin, III, Esq., and Allyson Britton DiRocco, Esq., Morris, James LLP, Wilmington, Delaware for District Defendants.

Dana Goodman, *Pro se*.

SUMMARY

In this civil action based upon the sexual abuse of a child by an adult, Plaintiff filed a motion to amend her complaint in order to add two parties as defendants. The Motion was heard before Commissioner Freud. The Commissioner did not discuss whether or not 10 *Del. C.* § 8145 eliminated the statute of limitations. Rather, the Commissioner allowed Plaintiff to amend her complaint in accordance with Superior Court Rule 15(c). The Order was signed on December 15, 2011. District Defendants filed the instant Motion for Reconsideration of the Commissioner's Order.¹

Title 10, Section 8145(a) of the Delaware Code eliminated the statute of limitations for claims based upon sexual abuse of a minor by an adult. The elimination thereof is not limited to claims against the actual abuser. Accordingly, Plaintiff may amend her complaint. Any issues pertaining to the Commissioner's application of Superior Court Rule 15(c) are moot. District Defendants' Motion for Reconsideration of Commissioner's Order is **DENIED**.

FACTS

On December 23, 2009, Jane Doe #7 (Plaintiff) filed a complaint seeking damages in connection to sexual abuse committed against her between January 2008 and April 2008. According to the complaint, Plaintiff, while seventeen years of age, engaged in a consensual, sexual relationship with her Principal, Dana Goodman (Goodman), while he was employed at Sussex Central High School.

The initial complaint named as defendants: the Indian River School District; the Board of Education of the Indian River School District; Charles Bireley; Kelly Willing; Nina Lou Bunting; Dr. Donald Hattier; Randall Hughes II; Donna Mitchell; Patricia Oliphant; Robert Wilson; Shelly Wilson; and Susan Bunting. With the

¹ "District Defendants" refers to all defendants except Dana Goodman.

exception of Susan Bunting, who was Superintendent of the Indian River School District, each individual named as a defendant was a member of the Board of Education of the Indian River School District.²

On November 28, 2011, two years after the complaint was filed, Plaintiff filed a motion to amend her complaint to add Celeste Bunting and Mike Owens as District Defendants. Bunting was employed as the Indian River School District's Personnel Director after Goodman's hire and at the time during which he engaged in a relationship with Plaintiff. Owens occupied that position when Goodman was hired initially.

In her motion, Plaintiff argued that, pursuant to 10 *Del. C.* § 8145(a), there is no statute of limitations for actions based upon sexual abuse of a child by an adult. Accordingly, Plaintiff maintained that she was entitled to amend her pleadings in accordance with Superior Court Civil Rule 15(a). Moreover, Plaintiff argued that the amendment was proper because it related back to the original complaint under Superior Court Civil Rule 15(c).

In response to Plaintiff's motion, District Defendants argued that Plaintiff's claims against Bunting and Owens were barred by the three year statute of limitations set forth in 10 *Del. C.* § 8106. From there, because three years had elapsed since the last alleged incident of abuse, District Defendants argued that the claims did not relate back to the date of the original complaint, because they did not satisfy the requirements of Superior Court Civil Rule 15(c).

The Commissioner did not consider whether 10 *Del. C.* § 8145(a) eliminated the statute of limitations for civil actions based on sexual abuse of a minor by an adult. Instead, the Commissioner granted Plaintiff's motion on the grounds that the action

² By stipulation of the parties, certain defendants have been dismissed from the action.

was “linked.”

DISCUSSION

District Defendants argued before the Commissioner, and now in their motion for reconsideration, that Plaintiff’s amended complaint does not relate back to her original complaint, because her failure to name Bunting and Owens in the original complaint was a matter of choice, as opposed to a matter of mistake. As to 10 *Del. C.* § 8145, District Defendants assert that it does not eliminate the statute of limitations in actions against an institution. District Defendants agree that §8145(a) eliminated the statute of limitations for claims involving child sexual abuse, but only so far as those claims are asserted against the actual, human abuser. Thus, District Defendants contend that the Commissioner’s decision was contrary to law.

Plaintiff contends that § 8145(a) eliminated the statute of limitations all together, regardless of whether the defendant is the abuser, an institution or an employee thereof. In the alternative, Plaintiff contends that her amendment, adding Bunting and Owens, does, in fact, relate back. In reliance upon either argument, Plaintiff contends that District Defendants’ motion should be denied.

A determination that § 8145 eliminates the statute of limitations renders the relation back analysis moot. Section 8145 states, in pertinent part, as follows:

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

Section 8145(a) eliminated the statute of limitations for actions based upon sexual abuse of a child by an adult. It states that “a cause of action based upon the sexual abuse of a minor by an adult may be filed...at any time following the

commission of the act or acts that constituted the sexual abuse.” The suggestion made by District Defendants that the statute should be read to apply only to claims against the abuser is not supported by the specific language of the statute which appears to preserve any “cause of action.” The import is that the legislature intended to eliminate the statute of limitations for claims against any defendant moving forward. Further, reference to the legislative history appears to support that conclusion. §8145 was introduced, initially, as Senate Bill 29. During the April 4, 2007 Senate Debate in consideration thereof, the Senate was apprised of the fact that, there could be liability against an institution under subsection (a). Accordingly, there is no statute of limitations for civil suits for damages based upon sexual abuse of a minor by an adult.

Because Plaintiff’s claims are not subject to a statute of limitations, she may amend her complaint without consideration of Superior Court Rule 15(c). Any issues regarding the Commissioner’s application of the relation back doctrine are moot.

CONCLUSION

District Defendants’ Motion for Reconsideration of Commissioner’s Order is, therefore, **DENIED**.

SO ORDERED this 20th day of April, 2012.

/s/ Robert B. Young
J.

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