



IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

JANE DOE #1. :  
 :  
 : C.A. No. 09C-06-020 WLW  
 :  
 Plaintiff, :  
 :  
 :  
 :  
 v. :  
 :  
 :  
 :  
 LAUREL SCHOOL DISTRICT, ROBERT :  
 L. WHALEY, SAMUEL A. TYNDALL, :  
 and RICHARD A. GIVENS, II, all :  
 individually and in their official capacities :  
 as Members of the Board of Education of :  
 the Laurel School District; DR. JOHN :  
 MCCOY, in his official capacity as :  
 Superintendent of the Laurel School District :  
 and HEINZ RETZLAFF, individually, :  
 :  
 :  
 Defendants. :

Submitted: September 9, 2011  
Decided: December 19, 2011

**ORDER**

Upon Defendants' Motion to Amend.. *Denied.*

Thomas S. Neuberger, Esquire, Stephen J. Neuberger, Esquire and Raeann Warner, Esquire of The Neuberger Firm, P.A. and Robert Jacobs, Esquire, co-counsel, of Jacobs & Crumplar, P.A., Wilmington, Delaware; attorneys for the Plaintiff.

James D. Griffin, Esquire of Griffin & Hackett, P.A., Georgetown, Delaware; attorneys for Defendants Richard A. Givens, John McCoy, Samuel A. Tyndell, Robert L. Whaley, and Laurel School District.

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James E. Liguori, Esquire and Gregory A. Morris, Esquire of Liguori Morris & Yiengst, Dover, Delaware and Stephani J. Ballard, Esquire, co-counsel, of Wilmington, Delaware; attorneys for Defendant Heinz Retzlaff.

WITHAM, R.J.

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### **Issue**

Whether an anonymous complaint is proper in this case brought pursuant to 10 *Del. C.* § 8145 by an adult alleging that she was the victim of sexual abuse as a child?

### **Procedural History**

Plaintiff, Jane Doe #1, filed a complaint with the Court on June 10, 2009 pursuant to 10 *Del. C.* § 8145, which suspended the statute of limitations for alleged victims of childhood sexual abuse allowing them to file complaints in Superior Court for 2 years following July 9, 2007. Without moving to do so, Plaintiff identified herself as “Jane Doe #1.” She did not seek to file the caption under seal pursuant to Superior Court Civil Rule 5(g). As a result, Defendants, Laurel School District et al., moved to dismiss on grounds that the filing was of no legal effect. In an order on March 16, 2010, the Court noted that Plaintiff’s unilateral anonymous complaint went against Superior Court Civil Rules 5(g), 8(a), and 10(a). The Court found, however, that under Superior Court Civil Rules 1 and 8(f), dismissing the case on the ground that Plaintiff unilaterally filed anonymously would not be in the best interests of justice. In denying Defendants’ motion, the Court ordered that within ten days Plaintiff had to either amend her Complaint or seek to file her case caption under seal, pursuant to Superior Court Civil Rule 5(g). Plaintiff moved to file her case caption under seal pursuant to Superior Court Civil Rule 5(g). The Court granted an order to allow filing under seal. Defendant, Heinz Retzlaff, joined by the School District Defendants, then filed the Motion to Amend Pseudonymous Case Caption at issue here, and Plaintiff responded.

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### *Standard of Review*

Superior Court Civil Rule 15(a) requires liberal granting of amendments “when justice so requires.”<sup>1</sup> If there is no prejudice to another party, the Court is “required to exercise its discretion in favor of granting leave to amend.”<sup>2</sup>

### Discussion

On May 16, 2011, the Court, in a consolidated order (hereinafter referred to as “Order”)<sup>3</sup> decided, “Whether an anonymous complaint is effective in a case brought by an adult alleging that she was the victim of sexual abuse as a child.”<sup>4</sup>

In the Order, the Court found two competing interests.<sup>5</sup> First, Plaintiff may have a legitimate privacy interest in proceeding anonymously in cases that would tend to expose Plaintiff to humiliation or would otherwise cause her serious harm.<sup>6</sup> Most

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<sup>1</sup>*Mullen v. Alarmguard of Delmarva, Inc.*, 625 A.2d 258, 263 (Del. 1993) (superceded on other grounds).

<sup>2</sup>*Id.*

<sup>3</sup>The Order was in relation to *Danielle Beyers, et al. v. Board of Education of Capital School District*, C.A. No. 09C-05-025 and *Jane Doe #6 v. Brandywine School District, et al.*, C.A. No. 09C-06-073. It should be noted that there is an earlier Superior Court decision on this topic which focuses on two factors: “[W]hether Plaintiff is required to disclose information of the utmost intimacy and whether this disclosure outweighs any interest in maintaining public proceedings.” *John Yoe #1 v. Catholic Diocese of Wilmington, Inc., et al.*, C.A. No. 09C-06-188, at 6, Scott, J. (Del. Super. Mar. 16, 2010). This Court’s take on the same issue is slightly different in focus as is explicated below.

<sup>4</sup>Order at 3.

<sup>5</sup>*See id.* at 6-8.

<sup>6</sup>*Lindsey v. Dayton-Hudson Corp.*, 592 F.2d 1118 (10th Cir. 1979).

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of the cases permitting anonymous filing have involved issues such as abortion,<sup>7</sup> birth control,<sup>8</sup> welfare prosecutions involving abandoned or illegitimate children,<sup>9</sup> mental illness,<sup>10</sup> homosexuality,<sup>11</sup> transsexuality,<sup>12</sup> and religion.<sup>13</sup> The first interest in protecting Plaintiff is balanced by the second consideration of Defendants' legitimate interest in transparent litigation. The initiation of a lawsuit inevitably exposes the parties to a degree of unflattering public scrutiny. Nonetheless, the firmly established rule is that parties must generally proceed under their names.<sup>14</sup> The policy causes notoriety to be a cost of litigation. There is also a public interest component to consider. It forces parties to put their names on the line in order to bring legal action. The result of these two competing considerations is that anonymity is generally disfavored except in circumstances where a party's privacy interest is particularly prominent because courts recognize that it is unfair to expose a defendant to the notoriety of a lawsuit while permitting the plaintiff to hide behind a veil of

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<sup>7</sup> *Roe v. Wade*, 410 U.S. 113 (1973).

<sup>8</sup> *Doe v. Deschamps*, 64 F.R.D. 652 (D. Mont. 1974).

<sup>9</sup> *Doe v. Gillman*, 347 F. Supp. 483 (N.D. Iowa 1972).

<sup>10</sup> *Doe v. Colautti*, 592 F.2d 704 (3d Cir. 1979).

<sup>11</sup> *Doe v. Commonwealth's Attorney*, 403 F. Supp. 1199 (E.D. Va. 1975).

<sup>12</sup> *Doe v. McConn*, 489 F. Supp. 76 (S.D. Tex. 1980).

<sup>13</sup> *Doe v. Stegall*, 653 F.2d 180, 186 (5th Cir. 1981).

<sup>14</sup> Del. Super. Ct. Civ. R. 10.

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anonymity.<sup>15</sup>

A good example of a particularly prominent privacy interest appears in *Doe v. Diocese Corp.*<sup>16</sup> There plaintiff brought an action against a religious diocese and several churches alleging that he was sexually molested by a clergyman for 7 years since he was 12 years old.<sup>17</sup> Plaintiff requested anonymity on the grounds that he wished to protect the names of his family members,<sup>18</sup> and plaintiff's therapist testified that public disclosure of plaintiff's identity would cause a setback in his treatment for emotional problems arising from the abuse.<sup>19</sup> The Superior Court of Connecticut relied on testimony of plaintiff's therapist in finding that plaintiff had demonstrated a substantial privacy interest that outweighed any public interest in disclosure of his identity.<sup>20</sup>

In the case at bar, Jane Doe #1 is similar to plaintiff in *Diocese Corp.* Plaintiff explains that the Motion to Amend should be denied for the following reasons:

(a) revealing her identity and having the details of her sexual abuse made public will compound her injuries and will cause additional anxiety and

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<sup>15</sup>*Doe v. Smith*, 429 F.3d 706, 710 (7th Cir. 2005) (warning that anonymous complaints would empower Plaintiffs to launch defamatory charges without fear of damaging their own reputation).

<sup>16</sup>647 A.2d 1067 (Conn. 1994).

<sup>17</sup>*Id.*

<sup>18</sup>Notably, mere embarrassment is insufficient. *See* Order at 8.

<sup>19</sup>*Diocese Corp.*, 647 A.2d at 1069.

<sup>20</sup>*Id.* at 1074.

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stress; (b) the subject of her lawsuit, the sexual abuse of the plaintiff as a child, is humiliating, embarrassing and discomforting; (c) plaintiff does not wish to bring the attention of the media and/or the general community to herself or her family; (d) plaintiff does not want her friends, co-workers or complete strangers to be aware that she was sexually abused as a child; (e) plaintiff does not want to face questions from friends, family and members of the community regarding the incidents or details of the sexual abuse that is the subject of this lawsuit; and (f) having her name revealed will cause her to be self-consciously distressed.

As in *Diocese Corp.*, Plaintiff hopes to spare her family embarrassment and attention. As noted in the May 16, 2011 Order, embarrassment alone is insufficient.<sup>21</sup> However, as in *Diocese Corp.*, Plaintiff here complains of psychological issues, including anxiety and depression. She is currently being treated by a licensed counselor and a doctor. In a supplementary exhibit to the Court filed on September 9, 2011, the licensed counselor wrote in a notarized letter as follows:

I am of the opinion that release of [Jane Doe #1's] true identity, publicly connecting the details of her assault to my client's name, would have a negative psychological impact on her recovery process as well as her sense of well being and safety. . . . It is my opinion that the release of her name, in connection with the details of her abuse, holds the potential for possible re-traumatization . . . .”

The counselor's opinion is supported by her psychological assessment of Plaintiff.<sup>22</sup> The court in *Diocese Corp.* found that protection of plaintiff's family and

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<sup>21</sup>Order at 8.

<sup>22</sup>Pl.'s Resp. Ex. F.

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his therapist's testimony stating that revealing plaintiff's name would cause a setback in plaintiff's treatment for emotional problems arising from abuse is sufficient for anonymity.<sup>23</sup> Given the sworn statement of her licensed counselor noted above and the supporting evidence from her counselor's psychological assessment, Plaintiff has provided sufficient evidence that she has a substantial privacy interest allowing her to continue anonymity in this case.

**Conclusion**

Defendant's motion to amend is hereby denied.

IT IS SO ORDERED.

/s/ William L. Witham, Jr.  
Resident Judge

WLW/dmh

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<sup>23</sup>*Diocese Corp.*, 647 A.2d at 1074.