

PA Supreme Court Limits Exceptions to Otherwise Time-barred Childhood Sexual Abuse Cases Against Institutional and Corporate Entities

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Litigation Alert

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Earlier today, the Pennsylvania Supreme Court held that a victim of childhood sexual abuse must exercise due diligence to discover whether an institutional or corporate principal of the abuser is also a cause of their injuries within the effective statute of limitations. See *Rice v. Diocese of Altoona-Johnstown*, 2021 Pa. LEXIS 3050, 3 WAP 2020 (decided July 21, 2021) (*Rice II*). This due diligence obligation is triggered when a plaintiff has knowledge of the injury and the person alleged to have inflicted it. Ignorance with respect to secondary causes of a plaintiff's sexual abuse injuries will not toll the statute of limitations.

This decision has far reaching implications for any entity facing lawsuits that claim it, in some fashion, enabled an abuser. Although the Pennsylvania Legislature, along with many other legislatures throughout the country, lengthened the time in which plaintiffs can bring timely lawsuits arising from childhood sexual abuse, today's decision reinforces that exceptions to those limitations will be narrowly construed.

BACKGROUND

The plaintiff in *Rice* (Rice) sued the Diocese of Altoona-Johnstown as well as individual Diocesan clergy, in 2016. She alleged fraud, breach of fiduciary duty and civil conspiracy against the Diocese, stemming from childhood sexual abuse by a priest in the 1970s and 1980s. Each cause of action had a two-year statute of limitations. Ordinarily, a cause of action begins to accrue when an injury is inflicted. See *Wilson v. El-Daief*, 964 A.2d 354, 364 (Pa. 2009). Thus, a straightforward application of the statute of limitations would have required Rice to file suit in the 1980s, within two years of the last alleged sexual assault.

Rice invoked different arguments to attempt to maintain the untimely lawsuit, including: 1) she did not "discover" the injury or its cause until 2016 when she learned the extent of Diocesan involvement in protecting child predators (the "discovery rule"); and 2) the Diocese had a duty to her specifically, based on a special relationship she had with her parish, to inform her of its knowledge of the cover-up, but it failed to do so ("fraudulent concealment"). These exceptions are well-established, but still require a plaintiff to exercise reasonable diligence to discover an injury and its cause.

TRIAL COURT AND SUPERIOR COURT

The trial court dismissed the case applying well-settled principles of statute of limitations law in Pennsylvania and precedent, but the Superior Court reversed, in a published decision, *Rice v. Diocese of Altoona-Johnstown*, 212 A.3d 1055 (Pa. 2019) (*Rice I*). That decision was directly contrary to numerous Pennsylvania Supreme Court and Superior Court cases involving untimely civil actions for childhood sexual assault. The earlier decisions involved similar factual allegations where the courts routinely and expressly rejected arguments that the statute of limitations is tolled by such theories as the discovery rule or fraudulent concealment in this context. See e.g., *Bowser v. Guttendorf*, 541 A.2d 377 (Pa. Super. 1988); *E.J.M. v. Archdiocese of Phila.*, 622 A.2d 1388 (Pa. Super. 1993); *Dalrymple v. Brown*, 701 A.2d 164 (Pa. 1996); *Meehan v. Archdiocese*, 870 A.2d 912 (Pa. Super. 2005); *Baselice v. Franciscan Friars Assumption BVM Province*, 879 A.2d 270 (Pa. Super. 2005).

Additionally, the Superior Court held Rice's claim of civil conspiracy against the Diocese was an independent cause of action, separate from the underlying torts stemming from her allegation of childhood sexual assault. Since Rice alleged the civil conspiracy did not end until 2016, the same year she filed the suit, the Superior Court held that claim was timely.

SUPREME COURT DECISION

Discovery Rule

The Supreme Court concluded that the Superior Court's discovery rule analysis was "clearly erroneous." Specifically, the Supreme Court held that Rice's claims against the Diocese based on the priest's alleged conduct, which last occurred in 1981, were barred because "she was on inquiry notice regarding other potentially liable actors, including the Diocese, as a matter of law." *Rice II* at *32. Therefore, the discovery rule did not serve as a basis to bring suit against the Diocese past the statute of limitations time-frame. Rice had knowledge of her injury which was linked to the conduct of the individual priest at the time of each alleged assault. Accordingly, an action against the priest could have been brought in the 1980s, and she could have, at that time, filed suit and sought discovery from the Diocese. The time to investigate and inquire as to other "secondary causes" of her known injury, was during the statute of limitations period controlling her sexual assault claims against the priest. *Id.*

Fraudulent Concealment

The Pennsylvania Supreme Court likewise criticized the Superior Court for manufacturing a theory of fraudulent concealment that "eliminates the plaintiff's due diligence obligations." *Rice II* at *34. Because Rice knew of her injury and its cause, the Supreme Court concluded its discovery rule analysis resolved the fraudulent concealment argument, in that Rice failed to exercise reasonable diligence to inquire into other causes of her injury when she knew of the injury and its causes in the 1980s. *Id.* at *37-39. The Court did not expressly resolve whether fraudulent concealment is based solely on affirmative misrepresentations or may, as Rice argued and the Superior Court concluded, be premised on silence where there is a duty to speak. However, the Supreme Court noted that the Superior Court's analysis in that respect relied on jurisdictions which either applied a different approach to statute of limitations analyses or which applied a statutory expression, indicating legislative approval. Nevertheless, the Supreme Court specifically advised that even if the law required the Diocese to disclose its own cover-up, "the failure to do so does not trump a plaintiff's due diligence obligation to investigate other possible causes of her known injury." *Id.* at *39.

Civil Conspiracy

With respect to the Superior Court's conclusion that civil conspiracy may proceed as timely irrespective of the other causes of action, the Supreme Court noted Rice conceded that the outcome of her case was dependent on her discovery rule and fraudulent concealment arguments. Because the Supreme Court concluded neither doctrine applied to her case, it concluded the issue was not squarely before it. However, it "disapproved" of the Superior Court decision and analysis to the extent that the Superior Court's decision could be read to announce a new "stand alone tolling doctrine" in civil conspiracy cases. *Rice II* at *45.

Responsive Opinions

Justice Wecht authored a dissenting opinion joined by Justice Todd. In their view, the issue of Rice's due diligence should be a fact determination made by a jury. Thus, the Justices would have allowed the case to proceed. Chief Justice Baer authored a concurring opinion. He joined the majority opinion in its entirety, meaning he believed the Court correctly decided the case by applying existing principles of Pennsylvania law. Chief Justice Baer, however, reiterated his opinion that Pennsylvania should adopt a less-restrictive paradigm by which to analyze discovery rule issues. He further observed the Court was constrained to maintain the current formula until a case is presented which preserves and develops the issue.

TAKEAWAYS

Under Pennsylvania law, the discovery rule and fraudulent concealment theories may excuse a technically untimely lawsuit or may establish a different accrual time for the statute of limitations to begin to run. In childhood sexual assault civil cases:

- A cause of action accrues if a plaintiff knows the injury at the time and a factual cause of an injury; for example, the person who commits the sexual assault.
- Where there is an actual known cause of harm, the plaintiff is under an obligation to investigate other "secondary causes."
- The discovery rule and fraudulent concealment doctrines will not cure an untimely lawsuit without due diligence as to possible causes of the injury.
- Three of the seven Justices of the Court critiqued either the majority opinion or the current status of the law. It is imperative, therefore, to be aware of potential changes of the law on the horizon, particularly if the Supreme Court grants allocatur in a case in which a party challenges the current approach to statute of limitations and discovery analyses in Pennsylvania.

White and Williams lawyers defend entities in multiple states against claims of sexual abuse and monitor developments in the law in order to counsel clients and insurers. For questions or further information, please contact Robert G. Devine (deviner@whiteandwilliams.com; 856.317.3647), Michael W. Horner (hornerm@whiteandwilliams.com; 856.317.3658) or Kimberly M. Collins (collinskm@whiteandwilliams.com; 856.317.3655).

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