



NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

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September 9, 2022

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RE: Jane Doe v. Joseph R. Green Jr., CL-2021-13110

Dear Counsel:

This matter came before the Court on Defendant's Plea in Bar to Plaintiff's Amended Complaint. Defendant asserts Plaintiff's claims for negligence *per se*, battery, and intentional infliction of emotional distress ("IIED") are time-barred pursuant to Va. Code §§ 243, 249. For

OPINION LETTER

the reasons noted below, the Court concludes that Plaintiff's claims were not timely filed. Accordingly, the Court grants Defendant's Plea in Bar to all counts.

I. Procedural History and Background

Jane Doe ("Ms. Doe" or "Plaintiff") was born on [REDACTED] Plaintiff's Amended Complaint alleges that on or about June 2005, when Plaintiff was [REDACTED] years old, Joseph R. Green ("Mr. Green" or "Defendant") and Plaintiff began engaging in regular sexual intercourse. At the time of the alleged engagement, Mr. Green was thirty-three-years-old. In May 2021, Plaintiff received a diagnosis of Post-Traumatic Stress Disorder ("PTSD") by her licensed clinical psychologist as a result of the alleged sexual abuse she suffered beginning in June 2005. In Plaintiff's Amended Complaint, she asserts that since the time of the alleged sexual abuse, she is unable to form meaningful relationships with people, is unable to enjoy engaging in sexual intercourse as an adult, and suffers from mental, psychological, and emotional injuries such as suicidal thoughts. *See* Am. Compl. ¶¶ 48-51. Plaintiff is suing for negligence *per se* (Count I); battery (Count II); and IIED (Count III).

On June 3, 2022, Defendant filed this Plea in Bar. Defendant argues that Plaintiff's claims are time-barred and must be dismissed because the statute of limitations expired in December 2010, two years after Plaintiff's eighteenth birthday. Defendant contends that due to the expiration of Plaintiff's claims in December 2010 and because her claims do not fall under the definition of "sexual abuse" as referenced in Va. Code §§ 8.01-243, 249, her claims are subject to the "normal" two-year statute of limitations, for personal injury claims pursuant to Va. Code § 8.01-243.

Plaintiff maintains that the claims against Defendant should not be dismissed because the current version of Va. Code § 8.01-243(D) allows actions for injury resulting from sexual abuse occurring during infancy, as set forth in Va. Code § 8.01-249(6), to be brought within twenty (20) years after the cause of action accrues. As such, if Ms. Doe's claims constitute "sexual abuse," the current versions of the applicable accrual and limitations statutes do not run until May of 2041, twenty (20) years after Ms. Doe's diagnosis date.

After oral argument on July 1, 2022, Defendant filed a Motion to Supplement the Record with Legislative History. Plaintiff filed a reply brief to the Motion to Supplement the Record and the Court took both briefs into consideration.

II. Legal Analysis

A plea in bar presents a distinct issue of fact which, if proven, bars a plaintiff's right of recovery. *Hilton v. Martin*, 275 Va. 176, 654 S.E.2d 572 (2008). The issue raised by a plea in bar may be submitted to the circuit court for decision based on a discrete body of facts identified by the parties through their pleadings or developed through the presentation of evidence supporting or opposing the plea. *Kroger Co. v. Appalachian Power Co.*, 244 Va. 560, 422 S.E.2d 757 (1992).

Actions for personal injury "shall be brought within two years after the cause of action accrues." Va. Code § 8.01-243. However, when the plaintiff was an infant at the time the alleged tort was committed, the statute of limitations is tolled until the plaintiff reaches the age of

majority. Va. Code § 8.01-229(A)(1). Thus, ordinary personal injury claims that accrue during infancy must be brought within two years of the plaintiff's eighteenth birthday.

A cause of action exists when a plaintiff is injured due to tortious action, “and the injury need only be slight; it is immaterial that more substantial damage may occur at a later date.” *McHenry v. Adams*, 248 Va. 238, 243, 448 S.E.2d 390, 393 (1994); *see also Mahony v. Becker*, 246 Va. 209, 213, 435 S.E.2d 139, 141 (1993) (“Any cause of action for intentional infliction of emotional distress accrues and the time limitation begins to run when the tort is committed”).

Thus, the material question for this motion becomes which statute of limitations applies to the underlying facts. Under Virginia law, amendments to statutes of limitations are presumed to be prospective and not retroactive in their operation, in the absence of a clear legislative intent to the contrary. *Ferguson v. Ferguson*, 169 Va. 77, 84, 192 S.E. 774, 776 (1937); *Riddett v. Virginia Elec. & Power Co.*, 255 Va. 23, 29, 495 S.E.2d 819, 822 (1998). The Court does not find clear legislative intent to make the 2021 version of Va. Code § 8.01-249 retroactive rather than prospective.

The Court agrees with Defendant's argument that the 2008 versions of Va. Code §§ 8.01-243, 249 is the applicable statute of limitations. The 2008 version of Va. Code § 8.01-249(6) reads:

In actions for injury to the person, whatever the theory of recovery, resulting from sexual abuse occurring during the infancy or incapacity of the person, upon removal of the disability of infancy or incapacity as provided in § 8.01-229 **or, if the fact of the injury and its causal connection to the sexual abuse is not then known, when the fact of the injury and its causal connection to the sexual abuse is first communicated to the person by a licensed physician, psychologist, or clinical psychologist.** As used in this subdivision, “sexual abuse” means sexual abuse as defined in subdivision 6 of § 18.2-67.10 and acts constituting rape, sodomy, object sexual penetration or sexual battery as defined in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2.

Va. Code § 8.01-249(6) (emphasis added).

In *Haynes v. Haggerty*, the Virginia Supreme Court found that while the victim of alleged sexual abuse was not diagnosed with Dysthymic Disorder until 2012 when the abuse began in 1971, the sexual abuse the victim suffered as a child inherently caused her injury when it occurred. 291 Va. 301, 306–07, 784 S.E.2d 293, 295 (2016); *see Starnes v. Cayouette*, 244 Va. 202, 206–07, 419 S.E.2d 669, 671 (1992) (in cases of childhood sexual abuse, “the infant plaintiff [suffers] an injury in that she experience[s] positive, physical or mental hurt each time [the abusing party commits] a wrongful act against her and her right of action accrue[s] on that date”).

In this case Plaintiff alleges that when she was ■■■ years old the Defendant sexual assaulted her. In May 2021, Plaintiff received a diagnosis of PTSD as a result of the sexual interaction she had with Defendant from her licensed clinical psychologist. Similar to the analysis in *Starnes* and *Haynes*, the limitations period on Plaintiff's claims began to run on her

18th birthday for two years and expired on her 20th birthday in December of 2010. The Court is not persuaded that the application of Va. Code § 8.01-249(6) is correct. Like the Supreme Court's ruling in *McHenry v. Adams*, the injury for a tort claim need only be slight, but it is immaterial that more substantial damage may occur at a later date. *See McHenry*, at 243. This Court finds that the 2021 diagnosis of Plaintiff's PTSD falls under the "more substantial damage" that can occur at a later date as described in *McHenry* and therefore is immaterial for statute of limitations analysis. *See Id.*

Therefore, Plaintiff's claims were subject to the two-year statute of limitations as outlined in Va. Code § 8.01-243. Plaintiff reached the age of majority on [REDACTED] On that date the two-year limitation period on her claims began to run at that point and expired two years after on her 20th birthday on [REDACTED] *See Haynes*, at 306-07; *see also Starnes*, at 207. Thus, the statute of limitations for Plaintiff's claims have expired and the Plea in Bar is granted.

A copy of the Circuit Court's Order is enclosed.

Sincerely,

[REDACTED]
Dontae L. Bugg

Judge, Circuit Court of Fairfax County
19th Judicial Circuit of Virginia

Enclosure

OPINION LETTER

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JANE DOE,)
Plaintiff,)

v.)

Case No. CL-2021-13110


JOSEPH R. GREEN, JR.,)
Defendant.)

ORDER

THIS MATTER came before the Court on July 1, 2022, on Defendant’s Plea in Bar to Plaintiff’s Amended Complaint which the Court took under advisement;

IT APPEARING TO THE COURT that it has considered the pleadings and oral arguments presented by Counsel;

IT IS ORDERED that the Plea in Bar is GRANTED as to Count I negligence *per se*, Count II battery, and Count III intentional infliction of emotional distress (“IIED”) and this case is dismissed with prejudice.

ENTERED this 9^{**B**} day of Sept 2022 
Judge Dontaé L. Bugg

ENDORSEMENT OF THIS ORDER BY COUNSEL OF RECORD FOR THE PARTIES IS WAIVED IN THE DISCRETION OF THE COURT PURSUANT TO RULE 1:13 OF THE SUPREME COURT OF VIRGINIA.