

NOT TO BE PUBLISHED WITHOUT THE APPROVAL
OF THE COMMITTEE ON OPINIONS

JACK DOE, RICHARD ROE AND
BRETT BOE, individuals proceeding
under fictitious names,

Plaintiffs,

vs.

BOY SCOUTS OF AMERICA;
PATRIOTS PATH COUNCIL, INC.,
BOY SCOUTS OF AMERICA,
SEDFIELD CIVIC ASSOCIATION,
AND ABC Corporations 1-10 (said names
being fictitious, true identities presently
unknown

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION

BERGEN COUNTY

DOCKET NO. BER-L-805-14

CIVIL ACTION

OPINION

Argued: July 18-19, 2017
Decided: July 31, 2017

Honorable John D. O'Dwyer, J.S.C.

Bruce H. Nagel, Esq., appearing for the Plaintiffs, Jack Doe, Richard Roe, and Brett Boe (from the law offices of Nagel Rice LLP).

Richard E. Snyder, Esq., appearing for the Defendants, Patriots' Path Council, Inc. and Sedgfield Civic Association (from the law offices of Morgan Melhuish Abrutyn).

Harry D. McEnroe, Esq., appearing for the Defendant, Boy Scouts of America (from the law offices of Tompkins, McGuire, Wachenfeld & Barry, LLP).

I. FACTUAL BACKGROUND

Three plaintiffs have brought the present action against Boy Scouts of America ("Boy Scouts"), Patriots' Path Council, Inc. ("Patriots' Path"), and Sedgfield Civic Association ("Sedgfield", hereinafter collectively referred to with Boy Scouts and Patriots' Path as

“Defendants”). At dispute here is whether the cause of action for each plaintiff accrued within two years of the reasonable discovery of the causal relationship of the injury to the acts of sexual abuse and/or was tolled pursuant to the provisions of the Child Sexual Abuse Act (“CSAA”), N.J.S.A. 2A:61B-1.

Plaintiff Doe filed a complaint against defendants on November 2, 2012. Through an amended complaint filed on November 4, 2013, plaintiff Roe was added. Plaintiff Boe filed a separate complaint on January 16, 2014 and the cases were consolidated on June 3, 2015. All three plaintiffs were boy scouts in Troop 173 in Parsippany, New Jersey, sponsored by Sedgefield. Corcoran was an assistant scout master for Troop 173 during the relevant time frame.

A plenary hearing was conducted over two days, July 18-19, 2017, on the issues of accrual of each plaintiff’s cause of action and tolling of the statute of limitations under the CSAA. At the hearing, the Court was required to hear all credible evidence and the Rules of Evidence did not apply, except for Rule 403 or a valid claim of privilege. N.J.S.A. 2A:61B-1(c). The Court heard testimony from plaintiffs’ expert Dr. Dawn Hughes (“Dr. Hughes”), as well as all three plaintiffs. Defendants did not call any witnesses, instead relying on cross-examination of each plaintiff and Dr. Hughes.

II. LAW

In 1992, the New Jersey Legislature enacted the Child Sexual Abuse Act, N.J.S.A. 2A:61B-1, creating a statutory cause of action for sexual abuse. The following two provisions in the statute apply to accrual and tolling:

- b. In any civil action for injury or illness based on sexual abuse, the cause of action shall accrue at the time of reasonable discovery of the injury and its causal relationship to the act of sexual abuse. Any such action shall be brought within two years after reasonable discovery.

c. Nothing in this act is intended to preclude the court from finding that the statute of limitations was tolled in a case because of the plaintiff's mental state, duress by the defendant, or any other equitable grounds. Such a finding shall be made after a plenary hearing. At the plenary hearing the court shall hear all credible evidence and the Rules of Evidence shall not apply, except for Rule 403 or a valid claim of privilege. The court may order an independent psychiatric evaluation of the plaintiff in order to assist in the determination as to whether the statute of limitations was tolled.

N.J.S.A. 2A:61B-1. “‘Accrual’ refers to the date when the statute of limitations begins to run, and ‘tolling’ refers to a pause in the running of the statute once it has already accrued.” R.L. v. Voytac, 199 N.J. 285, 298 (2009). Thus, in the event that the cause of action is found to have accrued outside of the statute of limitations, the statute requires a plenary hearing be held by the court to determine whether the statute of limitations was tolled.

The parties agree that the seminal New Jersey Supreme Court decision articulating the standard to be applied when considering the running of the statute of limitations under the CSAA is R.L. v. Voytac, 199 N.J. 285 (2009). With respect to accrual, the Supreme Court found that the plain language of the CSAA requires that “two events . . . must occur before a cause of action may accrue: the ‘reasonable discovery’ of both (1) the existence of the injury and (2) the causal relationship of that injury to the acts of sexual abuse.” Voytac, 199 N.J. at 298-299. In interpreting legislative intent, the Voytac court found “the Legislature intended for the objective standard of reasonableness upon discovering the connection between the abuse and his or her injuries to refer to a reasonable person who has been subjected to sexual abuse as a child.” Id. at 300. Accordingly, the Voytac court held

that a trial court must determine, based on the totality of the circumstances, when the injured party in fact discovered, or when a reasonable person subjected to child sexual abuse should have discovered, that the claimed injury was causally related to the asserted child abuse by the defendant. The trial court should then use the earlier of those two dates as the date the cause of action accrued under the Act.

Id. at 300. Thus, any inquiry into the accrual date of a cause of action under the CSAA requires the trial court to determine two dates, the earlier of which will be used to determine accrual.

The Voytac court concluded that by adopting a “reasonable discovery” standard, “the Legislature intended to import our jurisprudence regarding the “discovery rule” into child sexual abuse cases.” Id. at 299. Under the discovery rule, the limitations period does not begin to run “until the injured party discovers, or by an exercise of reasonable diligence and intelligence should have discovered that he may have a basis for an actionable claim.” Id. at 299 (quoting Lopez v. Swyer, 62 N.J. 267, 272 (1973)).

In evaluating the reasonableness of a plaintiff’s claim, a Court may consider several factors, including: “the age at the time the sexual abuse occurred; any threats the wrongdoer may have made to plaintiff; the length of time that passed between the end of the abuse and the emergence of the injuries; the nature of the injuries; the difficulty in discovering certain injuries; and whether the delay may ‘have peculiarly or unusually prejudiced the defendant.’” Voytac, 199 N.J. at 300 (quoting Lopez, 62 N.J. at 276).

Addressing the issue of the statute of limitations under the CSAA, the court in J.L. v. J.F., 317 N.J. Super. 418 (App. Div. 1999) found that

[o]nce a potential claimant knows she has been injured and that the injury is the fault of another, the statute-of-limitation period begins to run. The period begins to run when a potential claimant knows or should know the facts underlying his injury and fault, and not necessarily when she learns the legal effect of those facts. Ignorance of the existence of a cause of action generally will not toll the statute-of-limitation period unless there was concealment.

J.L. v. J.F., 317 N.J. Super. 418, 430-431 (App. Div. 1999) (citations omitted). Thus, once the causal connection is made between the injury and the abuser, the statute of limitations period begins to run, regardless of awareness of any potential cause of action. This is further

demonstrated by the Appellate Division's decision J.P. v. Smith, 444 N.J. Super. 507 (App. Div. 2016).

In J.P. v. Smith, the plaintiff was sexually abused by the assistant band director at her high school in 2004. As a result of the abuse, the plaintiff was impregnated and subsequently had an abortion. For several years, plaintiff's parents were in denial of the abuse until 2013, when a prosecutor recorded a phone call where the defendant admitted to the abuse. The plaintiff's expert found that the plaintiff "was only fully able to understand that the sexual relationship was abuse and that it had severe consequence, when [Smith] confessed to the crime in July [] 2013 and she finally received validation from the police and her parents." J.P. v. Smith, 444 N.J. Super. at 516.

In finding that the accrual date of the plaintiff's claims was July 2013, the Court found that

Here, plaintiff was undoubtedly aware of the abuse, Smith's identity as her abuser, and Smith's affiliation with the School, when she became pregnant in 2000. However, viewing the facts in the light most favorable to plaintiff as the non-moving party, as we must, plaintiff arguably was unaware of the emotional effects of the sexual abuse at that time. In any event, the competent evidence before the court at the summary judgment stage, as demonstrated by plaintiff's own expert psychologist, Dr. Hatchard, clearly establishes that by July 2013, plaintiff was "able to fully understand that the sexual relationship was abuse and that it had severe consequences."

Id. at 527. This effectively establishes that, in determining the accrual date, the real inquiry should be into when the plaintiff should have been able to comprehend that the abuse caused the severe psychological and emotional consequence.

The plaintiff bears the burden of proof under the CSAA with respect to accrual and tolling. Voytac, 199 N.J. at 300-1. Expert testimony typically may be used "to prove the

objective reasonableness of [the plaintiff's] failure to connect the link between the abuse and the injuries." Id. at 300.

Upon a determination that the complaint was filed more than two years after the date the cause of action accrued, the Court must then consider the tolling provision of the CSAA. The CSAA expressly requires the holding of a plenary hearing on the issue of tolling. Pursuant to the CSAA, the running of the statute of limitations may be tolled "because of the plaintiff's mental state, duress by the defendant, or any other equitable grounds." N.J.S.A. 2A:61B-1(c). The test for each of these three bases for tolling are highly subjective. Voytac, 199 N.J. at 301. At this plenary hearing, "plaintiff may present a full array of credible evidence to assist the court in its determination. That evidence may include empirical evidence as well as testimony from experts." Id.

III. DISCUSSION

A. Preliminary Matters

Under the CSAA, plaintiffs have the burden of proving that the cause of action accrued within two years of the reasonable discovery of the causal relationship of the injury to the acts of sexual abuse, as well as whether the statute of limitations was tolled pursuant to the provisions of the CSAA. At the summary judgment stage, the parties took two diametrically opposed positions. Following oral arguments, the Court found that a plenary hearing was required on the issues pursuant to N.J.S.A. 2A:61B-1(c).

It is noteworthy that defense counsel failed to call any lay or expert witnesses to refute or contradict the testimony of plaintiffs' expert and plaintiffs themselves, wholly relying on cross-examination.¹

B. Plaintiff's Expert Dr. Dawn Hughes

At the outset of the plenary hearing, plaintiffs called Dr. Dawn M. Hughes, Ph.D. ("Dr. Hughes") to testify as to whether each of the plaintiffs' causes of action accrued within two years of the filing of their respective claims. Dr. Hughes received her Doctorate of Philosophy in Clinical Psychology from Nova Southeastern University in Fort Lauderdale, Florida. She has been a licensed psychologist in the State of New York since 1997, and a board-certified forensic psychologist since 2005. The subject of Dr. Hughes' doctoral dissertation was "Memory for childhood sexual abuse: prevalence and relationship to abuse characteristics and psychological effects." Her postdoctoral fellowship was at the Anxiety and Traumatic Stress program at Weill Cornell Medical College – New York Presbyterian Hospital. While there, she worked with victims of childhood abuse and domestic violence, as well as individuals from the hospital's burn unit suffering from traumatic stress.

Dr. Hughes has operated an independent practice in Clinical and Forensic Psychology since 1998, specializing in traumatic stress, interpersonal violence, and anxiety disorders. In her clinical practice, she focused on the treatment of the adult survivors of childhood sexual abuse. According to her own estimate, she has treated hundreds of survivors of childhood sexual abuse.

¹ Defendants had psychological evaluations conducted on each of the three plaintiffs. Dr. Michael J. Fiore issued expert reports as to plaintiffs Doe and Roe, while Dr. Louis B. Schlesinger issued a report as to plaintiff Boe. Defendants chose to serve only the expert report prepared by Dr. Schlesinger as to plaintiff Boe. Although the Rules of Evidence do not apply at a plenary hearing and despite attempts by Plaintiffs' counsel to have the reports of Dr. Fiore admitted, the Court has not taken the reports of Dr. Fiore into consideration.

As part of the investigative process in this case, Dr. Hughes reviewed deposition transcripts, the initial complaint, answers to interrogatories, medical records, psychiatric records, and school records. A schedule of what was reviewed by Dr. Hughes was attached to the expert reports prepared for each of the plaintiffs individually. At the time the written reports were issued, the depositions had not yet been completed. However, for the written certifications prepared in response to Defendants' motion for summary judgment, Dr. Hughes reviewed the completed deposition transcripts.

In evaluating each of the plaintiffs, Dr. Hughes used a standard forensic methodology called a multi-method, multi-hypothesis theory, which involves analyzing various forms of information including a semi-structured clinical interview and psychological testing for a wide range of symptomatology. Dr. Hughes looks for consistency with the external data.

Dr. Hughes discussed at length certain psychological defense mechanisms subconsciously employed by victims of childhood sexual abuse to help cope. Specifically, she discussed the concepts of avoidance, dissociation, suppression, and compartmentalization. According to Dr. Hughes, avoidance is a way of consciously and unconsciously "pushing" the negative material from the mind. This is not limited to the visual material but also the sensory material, including the negative feelings associated with the abuse. Dissociation is a primitive defensive structure distancing the physical body from the emotional-self due to the acts of abuse.

These coping mechanisms essentially halt the cognitive processes by preventing a victim from understanding that the reason for distress is the prior abuse. Cognitively, children tend to believe that they were somehow complicit in the acts of abuse. This can lead to non-disclosure of the abuse by victims, as they are unable to comprehend that they were powerless and blameless.

In discussing defense mechanisms, Dr. Hughes also expanded on the concept of “grooming” that is commonly seen in child sex abuse cases. The abuse stems from a very manipulative and coercive relationship between the abusive adult and the victims. At all times throughout that relationship, the abuser determines what is right and what is normal. In order to maintain the relationship with that trusted adult, victims of child sexual abuse may need to suppress and compartmentalize.

Additionally, Dr. Hughes noted that even into adulthood, a victim may have knowledge that the acts of abuse occurred without being able to consciously connect the abuse to the current effects suffered by that victim. Victims will continue to employ the aforementioned defense mechanisms well into adulthood. However, a host of other problems may develop as a result of these defense mechanisms, e.g., hyper-arousal and alcoholism. Disclosure of the abuse represents the first data point in the cognitive process of understanding: a victim’s understanding will evolve over time, as it takes time to understand the dynamics of sexual abuse and the link to the current harm.

Attempting to disprove Dr. Hughes’ findings, defense counsel cited to several statistics pertaining to the occurrence of PTSD in trauma victims, the most pertinent being that 50-70% of all victims of severe trauma never develop PTSD and that 50% of PTSD victims recover within 3 months. These statistics were not specific to victims of childhood sexual abuse, but all victims of severe trauma.

In a post-hearing letter dated July 25, 2017, defense counsel attempts to attack the credibility of Dr. Hughes’ expert testimony and reports. Counsel contends that Dr. Hughes disregarded relevant evidence in formulating her opinion. Specifically, Dr. Hughes’ failure to

directly quote sections of Doe's deposition and failure to discuss his detailed testimony about his sexual intimacy issues in her report and certification undermine her viewpoint.

The crux of Dr. Hughes' opinion was that the cause of action of each of the three plaintiffs accrued within two years of the respective filings. Attached as Appendix A is a list of the materials reviewed by Dr. Hughes in her evaluation of each of the individual plaintiffs. Appendix B sets forth the psychological tests administered to each of the plaintiffs.

C. Plaintiff Jack Doe

During her testimony at the plenary hearing, Dr. Hughes acknowledged the deposition of plaintiff Doe was not completed prior to her issuing of the Summary of Forensic Psychological Evaluation. However, prior to preparing her certification in response to the Defendants' motion for summary judgment, she was able to review the complete deposition transcript.

Dr. Hughes opined that it was clear that plaintiff Doe met the criteria for PTSD and Depression. From the time Doe was 11 years old, Corcoran began normalizing inappropriate behaviors, such as discussing sexual topics and showing Doe pornography, explaining that it was normal for guys to do these things. Corcoran ingratiated himself into Doe's household and took on the role of a father figure, particularly after Doe's parents had divorced and Doe's father had moved to England.

Further, Dr. Hughes emphasizes that she found that Corcoran's normalizing of the behaviors interfered with Doe's ability to connect the abuse to his psychological and emotional issues. According to Dr. Hughes, normalizing creates a tremendous amount of shame in victims, which initiates further avoidance and suppression. This then affects the child's ability to synthesize the connection between the abuse and the resulting harm.

Dr. Hughes also discussed the significance of the flashbacks suffered by Doe during sexual situations. She opined that Doe's normal sexual development was irreparably harmed by the abuse that occurred. As such, Doe suffers from frequent flashbacks during sexual situations. Doe's immediate response to these triggers are defense mechanisms, such as dissociation and suppression. However, these flashbacks are not the equivalent of the cognitive recognition of causation. They are sensory responses, not related to the forming of the cognitive connection between the abuse and the harm.

Based on these findings, Dr. Hughes opined that a reasonable person subjected to child sexual abuse would not have discovered the connection between the child sexual abuse and the psychological and emotional injuries prior to Doe's meeting with Mr. Garcia during late November or early December of 2010.²

D. Plaintiff Richard Roe

At the outset of her testimony, Dr. Hughes noted that each of the three plaintiffs discussed the grooming behaviors of Corcoran with consistency. She pointed out that Roe looked to Corcoran as a father figure. For Roe, this grooming began at age 12 when he joined the Boy Scouts. Corcoran pushed the line of deviance and normalized deviant behavior, eventually progressing to physical abuse during the camp incident when Roe was 14.

Roe continued his relationship with Corcoran in the face of the abuse. Even after Corcoran attempted to abuse Roe in the hot tub, Roe continued to go back because he had been indoctrinated into this abusive context. Dr. Hughes found that Roe's views of what was normal

² See discussion pps. 15-16 infra.

were so deformed that he did not recognize that Corcoran's behaviors were abnormal. This, Dr. Hughes contends, is part of the dissociation dynamic.

Dr. Hughes stated both in her expert report and during testimony that Roe had significant memory blockage of the abuse for most of his life. She opined that it was not until the meeting with Doe's attorney in the summer of 2012 after the criminal case against Corcoran had commenced that he began to recall details of the abuse and made any connection between the abuse and the psychological effects from which he suffered at the time. Roe's memories had been buried in his mind for so long that the initial disclosure was only a starting point to his understanding of the effects of the abuse. In addition, Dr. Hughes found that Roe met the criteria for PTSD. Although he has made progress in his treatment, Roe engages in significant avoidance of thoughts and feelings of the sexual abuse.

Based on these findings, Dr. Hughes opined that a reasonable person subjected to child sexual abuse would not have discovered the connection between the child sexual abuse and the psychological and emotional injuries prior to Roe's meeting with the Doe's attorney during the summer of 2012.

E. Plaintiff Brett Boe

Dr. Hughes testified that Boe was in a vulnerable place at the time that he joined Troop 173, as one of Boe's friends had recently passed away. Boe was immediately welcomed by Corcoran, who took Boe under his wing. At the time of the sexual abuse, Boe was also struggling with his sexuality. Dr. Hughes found that the "threesome" with Doe and Corcoran had been incredibly traumatic for Boe, as it ended his friendship with Doe and caused Boe to feel a

tremendous amount of shame, as he felt somewhat complicit in the act. It was not until after being contacted by Doe following the institution of the present action.

Prior to being contacted by Doe, Boe did not conceptualize that the acts perpetrated by Corcoran were sexual abuse. Dr. Hughes' opines that Boe's belief that he was somewhat complicit in the acts prevented this conceptualization. According to Dr. Hughes, Corcoran had used the same grooming techniques that he had used on both Doe and Roe. This grooming resulted in Boe's believing that he was somehow complicit in these acts. Dr. Hughes also found that the abuse by Corcoran included an interruption of and psychological turmoil surrounding Boe's sexual orientation.

Based on these findings, Dr. Hughes opined that a reasonable person subjected to child sexual abuse would not have discovered the connection between the child sexual abuse and the psychological and emotional injuries prior to Boe's meeting with the Morris County Prosecutor's Office.

Defendants maintain that Boe's failure to disclose the childhood abuse to his therapist in 2011 requires the Court to infer that but for this lack of disclosure, Boe would have made the connection between the abuse and the psychological symptomatology during those sessions. Therefore, Defendants' contention is that a reasonable person would have made the connection during the 2011 therapy sessions at the very latest.

IV. DECISION

A. Credibility of Dr. Hughes

As to the credibility of Dr. Hughes, Defendants contend that Dr. Hughes' testimony and the bases of her opinion lack a factual foundation and constitute a net opinion. However, Dr.

Hughes has been a licensed psychologist in the State of New York since 1997, and a board-certified forensic psychologist since 2005. The subject of Dr. Hughes' doctoral dissertation was "Memory for childhood sexual abuse: prevalence and relationship to abuse characteristics and psychological effects." This seems to be very pertinent to the present litigation. Her postdoctoral fellowship was at the Anxiety and Traumatic Stress program at Weill Cornell Medical College – New York Presbyterian Hospital. While there, she worked with victims of childhood abuse and domestic violence, as well as individuals from the hospital's burn unit suffering from traumatic stress.

Dr. Hughes has operated an independent practice in Clinical and Forensic Psychology since 1998, specializing in traumatic stress, interpersonal violence, and anxiety disorders. In her clinical practice, Dr. Hughes focused on the treatment of the adult survivors of childhood sexual abuse. According to her own estimate, she has treated hundreds of survivors of childhood sexual abuse.

She has conducted psychological testing on each of the three victims, including in-person meetings on multiple occasions. It was clear to the Court that Dr. Hughes had reviewed the records and discovery for each of the plaintiffs at length and was well-versed in both the records and histories of the individual plaintiffs. She also was intimately familiar with the psychological concepts to which she testified.

Defendants have failed to set forth any evidence that the psychological concepts of avoidance, dissociation, suppression, and compartmentalization do not apply to any of the plaintiffs. Absent expert testimony to the contrary, it is unclear to the Court how it can reject Dr. Hughes' testimony on credibility grounds.

The Defense, through cross-examination, sought to discredit the findings and opinions of Dr. Hughes. However, nothing presented by the defense undermined, to any significant degree, the psychological concepts that Dr. Hughes testified were applicable to each of the plaintiffs. In the absence of expert testimony presented by the defense coupled with the absence of significant cross-examination of Dr. Hughes as to the concepts of dissociation, avoidance, suppression, and compartmentalization, Defendants have done little to discredit these theories and have failed to call into question Dr. Hughes' credibility.

B. Accrual of Plaintiff Jack Doe's Cause of Action

This Court finds that the claim of plaintiff Doe accrued within two years of the filing of the Complaint. Specifically, this Court finds that the cause of action did not accrue until Doe's meeting with his former attorney Michael Garcia, Esq. between Thanksgiving and Christmas in 2010. Based on a totality of the circumstances, a reasonable person subjected to child sexual abuse should not have discovered that the claimed injury was causally related to the child sexual abuse prior to the meeting between Doe and Garcia. Therefore, any discussion of tolling of plaintiff Doe's claim is moot.

At the plenary hearing, plaintiff Doe testified that he had not made the connection between the abuse and his psychological issues prior to a late 2010 meeting with his former attorney Garcia. Prior to that time, Doe was unaware that his childhood sexual abuse might be the cause of the issues negatively affecting his life. Despite seeking earlier psychological help, he had never discussed the sexual abuse he suffered as a child and did not comprehend that the abuse could be the reason for his anger issues or for his sexual intimacy issues.

The finding that the cause of action did not begin to accrue until the date of Doe's disclosure to Garcia is largely supported by the testimony of Dr. Hughes. At the plenary hearing, Dr. Hughes testified that the Corcoran's normalizing of the deviant behaviors prevented Doe from making the connection between the physical abuse and the psychological and emotional issues that affect his adult life.

Defendants point to a different date for the time when Doe discussed his prior sexual abuse with his attorney Garcia. Specifically, they note two invoice entries from Mr. Garcia's representation of Doe in the criminal matter. These entries are dated February 2 and February 3, 2010, and both reference a discussion of Doe's "childhood issues". However, the existence of these entries does not serve to confirm an earlier date of disclosure. When asked about these entries at the plenary hearing, Doe testified that they were not discussions of his childhood sexual abuse. This was corroborated by Mr. Garcia's testimony to same.

Defense counsel also points to Doe's answers to interrogatories, deposition and hearing testimony on the subject of the date of the revelation. Specifically, counsel notes that in Doe's answer to Interrogatory 1, Doe stated "[i]n approximately March/April of 2012, Plaintiff met with his new attorney to discuss the sexual abuse case. It was during these discussions that Plaintiff first began to understand that the sexual abuse he suffered caused him injuries." Although this response does contradict the finding that the Doe made the causal connection in late 2010, both Doe's deposition testimony and Dr. Hughes' findings point to Doe's meeting with Mr. Garcia in November or December 2010 as being the point at which Doe started to make the cognitive connection between the abuse and his psychological injuries.

Defendants failed to refute the accuracy and credibility of Dr. Hughes findings. During the cross-examination of Dr. Hughes, defense counsel referred to various ethical standards which

the defense claimed Dr. Hughes had failed to adhere. Moreover, defense counsel noted statements made during Doe's deposition that were not cited in Dr. Hughes' report or certification. Specifically, defense counsel referenced Doe's statement that he never believed that he was at fault. This appears to be an attempt to have Dr. Hughes' report thrown out as a net opinion, based on a failure to consider all aspects of the record in the case.

However, Dr. Hughes explicitly indicated that despite not directly citing to different parts of the record throughout her report and the certification, she did consider all relevant parts of the record in formulating her opinion. While the certification may not specifically reference the deposition testimony of Doe, Dr. Hughes testified that the certification was somewhat of an addendum to the expert report.

Furthermore, while defense counsel contends that the failure of plaintiff Doe to discuss the earlier sexual abuse with counselors at Hampton Counseling Center should serve as evidence that a reasonable person subjected to abuse would have made the connection between the abuse and the injuries at an earlier, this Court finds this to instead undercut the Defendants' argument. This failure to discuss the earlier sexual abuse serves as evidence that plaintiff Doe was incapable of "connecting the dots" at that time, instead blaming the negative psychological effects on other aspects of his life.

There was also an indication from Defendants that Doe's training as a police officer should have resulted in his understanding that the psychological and emotional injuries from which he suffered were the result of the childhood sexual abuse. Specifically, counsel points to Doe's training in sexual abuse. Doe in no way refutes that he was aware that the sexual abuse was a crime. Defendants contend that Doe's knowledge that Corcoran's acts were illegal would

have led a reasonable person to make the connection between the abuse and the injuries.

However, the Court is not persuaded by this assertion.

During the cross-examination of Dr. Hughes, defense counsel noted that the PTSD diagnosis of each of the three plaintiffs did not occur until 2016, several years after the filing of each complaint in this matter. Although the diagnosis of plaintiff Doe was not made at the time of the filing of his complaint, Dr. Hughes did opine that there was a reasonable degree of psychological probability that the PTSD symptoms in Doe existed before the disclosure to Mr. Garcia during the late 2010 meeting.

Essentially, Defendants have asked the Court to reject the psychological concepts of avoidance, dissociation, and suppression. Simply put, they contend that Doe's knowledge of the sexual abuse and awareness of his sexual intimacy issues would have resulted in a reasonable person making the cognitive connection that the abuse directly caused the psychological issues. However, the Court is not tasked to undertake a "reasonable person" analysis. The applicable standard, as set out in the statute and relevant case law, is that of a "reasonable person subjected to child sexual abuse". It is clear that the aforementioned psychological concepts of avoidance, dissociation, suppression, and compartmentalization apply in this scenario.

C. Accrual of Plaintiff Richard Roe's Cause of Action

This Court finds that the claim of plaintiff Roe accrued within two years of the filing of the Complaint. Specifically, this Court finds that the cause of action did not accrue until Roe's meeting with Doe's attorney following the commencement of Doe's civil case. Based on a totality of the circumstances, a reasonable person subjected to child sexual abuse should not have discovered that the claimed injury was causally related to the child sexual abuse prior to the

meeting in the summer of 2012. Therefore, any discussion of tolling of plaintiff Roe's claim is moot.

At the plenary hearing, plaintiff Roe testified that prior to the summer 2012 meeting with Doe's attorney, he had not made the connection between the childhood abuse and the psychological and emotional effects. In fact, Roe did not recall any instances of abuse prior to this meeting due to, as Dr. Hughes opined, severe memory blockage. As Roe did not have any memory of the instances of abuse, Roe could not make the cognitive connection between the abuse and the injuries suffered.

This finding that Roe's cause of action did not begin to accrue until the summer of 2012 is supported by the testimony and expert report of Dr. Hughes. Roe suffered from severe memory blockage that prevented him from recognizing that any of the psychological symptomatology was the result of the childhood abuse. Dr. Hughes further found that Roe's views of what was normal at the time of the abuse were so deformed that he did not recognize that Corcoran's behaviors were abnormal. Even after Corcoran attempted to abuse Roe in the hot tub, Roe continued to go back because he had been indoctrinated into this abusive context.

Defendants failed to refute the accuracy and credibility of Dr. Hughes findings as to plaintiff Roe's cause of action. During the cross-examination of Dr. Hughes, it was noted that Dr. Hughes did not diagnose any of the three plaintiffs with PTSD until 2016, several years after the filing of Roe's claim. However, Dr. Hughes testified that this later diagnosis in no way precludes a finding that the symptoms of PTSD existed at the time of filing. Her diagnosis was made at the time of her psychological examinations of each plaintiff.

During the cross-examination of plaintiff Roe, defense counsel questioned Roe about his employment history. Counsel also referred to the significant vocational impairment of Roe

during cross-examination of Dr. Hughes. It is unclear to the Court what the purpose of this line of questioning was, but it did not have any effect on the Court's analysis of accrual.

D. Accrual of Plaintiff Brett Boe's Cause of Action

This Court finds that the claim of plaintiff Boe accrued within two years of the filing of the Complaint. Specifically, this Court finds that the cause of action did not accrue until Boe's meeting with members of the Morris County Prosecutor's Office to discuss the criminal case filed against Corcoran. Based on a totality of the circumstances, a reasonable person subjected to child sexual abuse should not have discovered that the claimed injury was causally related to the child sexual abuse prior to the meeting Morris County Prosecutor's Office. Therefore, any discussion of tolling of plaintiff Boe's claim is moot.

Before meeting with the Morris County Prosecutor's Office, Boe had always found that he was somewhat complicit in the abuse. Unlike Roe, Boe was always aware of the sexual acts by Corcoran. However, Boe testified that he believed he was responsible for these actions. This belief prevented him from recognizing that the abuse had caused him psychological harm until well after the fact.

As with plaintiffs Doe and Roe, Defendants failed to call any witnesses to refute the testimony of plaintiff Boe and the portions of Dr. Hughes' testimony related to Boe's claim, instead relying on cross-examination to refute the testimony elicited on direct.

Defendants attempted to discredit Dr. Hughes' finding that a reasonable person subject to child sexual abuse would not have discovered earlier that the psychological symptomatology was the result of the childhood sexual abuse. However, nothing of substance has been offered by the

Defendants to reject Dr. Hughes' opinion that Boe's cause of action accrued within two years of the date of filing. In fact, Defendants own expert expressly agrees with Dr. Hughes' finding.³

In support of Defendants' contention that Boe's cause of action accrued earlier than the meeting with the Morris County Prosecutor's Office, Defendants assert that had Boe disclosed the sexual abuse to his therapist in 2011, Boe would have made the connection between the abuse and the psychological effects on an earlier date. However, as with plaintiff Doe, this supports the opposite conclusion. Boe's deposition transcript shows that during these sessions, he "was not thinking about [the abuse] at all." Based on this representation, it appears that Boe had not ever contemplated that these acts of abuse could be causing the then-present psychological turmoil from which he was suffering.

V. CONCLUSION

It is uncontroverted that plaintiffs were aware of the abuse by Corcoran. It is equally uncontroverted that each of the plaintiffs have suffered various psychological difficulties in adulthood as set forth at length herein. The defense submits that the recognition of these two independent facts ends the analysis and results in striking of plaintiffs' Complaints on statute of limitations grounds. However, the defense omits from the analysis a critical component. That is, the linking of the two – the abuse with the resulting psychological harm. For example, Defendants point to Doe's sexual intimacy issues from adolescence and ask the Court to equate awareness of these issues to knowledge of causation. However, not only does Dr. Hughes explicitly reject this conclusion, she indicates that difficulty with sexual intimacy and recognition

³ Defendants' expert, Dr. Louis B. Schlesinger, found that "as [he] understand[s] the law, the statute of limitations has been met[.]"

of same does not demonstrate knowledge of prior sexual abuse and causal connection to sexual intimacy issues.

One need only look to the Court's decisions in Voytac and J.P. v. Smith to see the similarities between those cases and the matters currently before the Court. In Voytac, the plaintiff had been sexually abused by the defendant, his mother's boyfriend and later husband, between five and ten times between the ages of ten and twelve. 199 N.J. at 289. The plaintiff never repressed memories of the abuse. Id. Shortly after the sexual contact ended, the plaintiff began cross-dressing. Id. at 290. In addition, the plaintiff frequently abused alcohol and marijuana during high school, and was arrested for theft and driving while intoxicated. Id. During a sexual encounter with his girlfriend at age twenty-one, the plaintiff had a "flashback" to a similar sexual encounter with the defendant and immediately had to stop the encounter and began crying. Id. at 290-91. The next morning, he revealed that the defendant had "done things" to him as a child, and his then-girlfriend expressed concern. Id. Later that day, he also revealed the abuse to his mother. Id. Three years after that revelation, the plaintiff revealed to a co-worker that he cross-dressed and was confused about his gender. Id. After the co-worker suggested that there might be a connection between the childhood abuse and his cross-dressing, the plaintiff realized that there must be a connection. Id.

In remanding to the trial court, the Supreme Court found that the "plaintiff's 'flashback' might possibly have provided a reasonable plaintiff subjected to child abuse with a sufficient incentive to seek out information regarding his or her injury or condition and its cause." Id. at 302. However, the Supreme Court also found that the other conclusion might be reasonable, as "the abuse occurred when plaintiff was relatively young, and a reasonable child victim might

believe his or her psychological conditions were always present and therefore would not connect them with the abuse.” Id. at 303.

Despite knowing about the abuse and being aware of the “abnormality” of his cross dressing, the Supreme Court found that even a reasonable child victim may not have made the connection between the abuse and the psychological conditions. This situation is analogous to those found in the present matter. Both plaintiffs Doe and Boe were aware of the abuse and of their psychological conditions. However, based on their testimony and the opinions of Dr. Hughes neither was aware of the causal connection. The Voytac court also noted that expert testimony on the issue would be useful to assist the fact-finder. Id. at 303. As the only expert testimony offered in the case before the Court is that of Dr. Hughes, her findings and opinions helped guide the Court in its analysis.

Similar parallels can be drawn to the case of J.P. v. Smith. In that case, the plaintiff was sexually abused by her high school’s assistant band director during her junior year of high school. 444 N.J. Super. at 513. As a result of the abuse, the plaintiff became pregnant and subsequently terminated said pregnancy. Id. Following the sexual abuse, plaintiff experienced a number of negative consequences, including drug addiction and impaired sexual relations. Id. at 515. A complaint was not filed in the matter until approximately fourteen years after the abortion. Based on expert testimony, the Court found that until Smith confessed to the crime less than two years before the civil complaint was filed, the plaintiff did not comprehend that the sexual relationship was abuse and that it had severe consequences. Id. at 525.

Like the plaintiff in Smith, despite a bevy of psychological conditions, the plaintiffs here were unaware that those conditions were the result of the childhood abuse they experienced. As with plaintiff Boe here, the plaintiff in Smith did not draw the causal connection between the

abuse and the psychological effects until the abuser had been arrested. The existence of negative consequences and knowledge of abuse does not equate to awareness of the connection, and expert testimony to that effect is given deference.

Defendants have not challenged and did not challenge Dr. Hughes at the Hearing as to the settled principles embedded in the study of child sex abuse victims of dissociation, avoidance, suppression, and compartmentalization. Each of the plaintiffs testified as to the lengths they went to avoid confronting the abuse and the resultant sequelae. Dr. Hughes explained in detail how each of the plaintiffs fit the profile of sexual abuse victims with resultant inability to link the abuse with their psychological ills.

The defense, in essence, presents a common man lay approach to the issue and asks the Court to ignore not only the testimony of Dr. Hughes, but the body of generally accepted and at the Hearing unchallenged medical principles of dissociation, avoidance, suppression, and compartmentalization.

Looking to the Court's decisions in Voytac and J.P. v. Smith, the psychological concepts as expressed by Dr. Hughes herein have been found to delay the accrual of the cause of action until the discovery that the injuries had been caused by the abuse. Plaintiffs here have all exhibited the subconscious use of psychological defense mechanisms in response to the childhood abuse.

Defendants' request to strike the Complaints of each of the three individual plaintiffs on statute of limitations grounds is hereby **DENIED**.