The Legal Intelligencer
THE OLDEST LAW JOURNAL IN THE UNITED STATES 1843-2020
PHILADELPHIA, APRIL 14, 2015
An ALM Publication

The Use of Pseudonyms in Civil Suits Over Sexual Abuse

Survivors of childhood sexual abuse often lead lives in silence, secrecy and shame. Not only do they suffer from the traumatic effects of sexual abuse, which often causes depression, post-traumatic stress and addiction issues, but the fear of exposing that secret creates its own hosts of problems.

BY DANIEL F. MONAHAN

Survivors of childhood sexual abuse often lead lives in silence, secrecy and shame. Not only do they suffer from the traumatic effects of sexual abuse, which often causes depression, post-traumatic stress and addiction issues, but the fear of exposing that secret creates its own hosts of problems. One of the more significant obstacles to recovery is survivors' reluctance to report the abuse to criminal authorities or pursue civil remedies against the perpetrators and the institutions that protect them. In my practice, I have spoken with dozens of survivors who either could not reveal their secrets or did not recognize the significant harms that the abuse inflicted until years, and sometimes decades, after the abuse occurred.

Although there are serious questions of when the statute of limitations should be imposed with respect to these cases, that is a debate that continues to rage in both the legislature and the courts in Pennsylvania. That is a discussion for another day. However, one of the other obstacles that inhibit survivors is the uncertainty in Pennsylvania of pursuing civil cases using a pseudonym to protect the identity of the survivors of sexual abuse. The time has come for an open discussion on uniform rules and procedures to deal with this issue.

Currently, the Pennsylvania Rules of Civil Procedure do not provide any option to handle this situation. In addition, over the past six years, in handling a variety of sexual-abuse matters, primarily in the Philadelphia Court of Common Pleas, I have discovered that the procedure for dealing with the issue has been inconsistent at best.

In a series of childhood sexual-abuse cases filed between 2011 and 2013, the Philadelphia courts have dealt with the question of filing a complaint using a pseudonym in the following manner: (1) the prothonotary permitted the filing without objection; (2) the prothonotary required the filing of a precomplaint petition for permission to file using a pseudonym; and (3) after filing the complaint, the court required discovery and hearings after defendants' filing of preliminary objections. In the aftermath of numerous childhood sexual-abuse cases including not only those filed against organizations responsible for supervising young children, the time has come to adopt such a rule of civil procedure.

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There is a long history in our nation of allowing plaintiffs to proceed in

bringing a civil lawsuit under a fictitious name. In fact, allowing particular plaintiffs to proceed under a fictitious name often serves the public good. For example, courts have allowed those with mental illness to bring civil suits under fictitious names in the name of the public good, as in *Doe v. Hartford Life and Accident Insurance*, 237 FRD 545, 550-551 (D NJ, 2006):

"There is substantial public interest in ensuring that cases like the plaintiff's are adjudicated and the rights of mental illness sufferers are represented fairly and without risk of stigmatization. However, this goal cannot be achieved if litigants suffering from mental illness are chilled from ever reaching the courthouse steps for fear of repercussions that would ensue if their condition was made public. Although any litigant runs the risk of public embarrassment by bringing their case and revealing sensitive facts in a public courtroom, the situation here is vastly different because plaintiff's bipolar condition is directly tied to the subject matter of the litigation—his mental illness and the disability benefits he allegedly is entitled to as a mental illness sufferer. … Plaintiff is faced with circumstances that society may not yet understand or accept, and his condition is directly tied to the issues before the court."

Precedent from other jurisdictions may also offer clarity in how the court should go about determining whether to allow plaintiffs to proceed under fictitious names. "The Ninth Circuit does allow the use of pseudonyms in unusual cases where concealing a party's identity is necessary to protect that party from 'harassment, injury, ridicule or personal embarrassment,'" the court said in *Doe v. Texaco*, L 2850035, *3-4 (ND Cal, 2006), citing *United States v. Doe*, 655 F2d 920, 922 n. 1 (9 Cir 1981), and *Does I thru XXIII v. Advanced Textile*, 214 F.3d 1058, 1068 (9 Cir 2000).

In one persuasive case in the U.S. District Court for the Eastern District of Pennsylvania, a plaintiff brought civil rights claims against the commissioner of the Pennsylvania State Police, as well as other state troopers and officers, arising from incidents of sexual assault by a Pennsylvania state trooper. In *Doe v. Evans*, 202 FRD 173, 175 (ED Pa., 2001), the plaintiff sought to proceed under a pseudonym. In deciding the motion, the court considered the following factors:

"The factors which support the use of the pseudonymous litigation are as follows: (1) the extent to which the identity of the litigant has been kept confidential; (2) the bases upon which disclosure is feared or sought to be avoided, the substantiality of these bases; (3) the magnitude of the public interest in maintaining the confidentiality of the litigant's identity; (4) whether, because of the purely legal nature of the issues presented or otherwise, there is an atypically weak public interest in knowing the litigant's identities; (5) the undesirability of an outcome adverse to the pseudonymous party and attributable to his refusal to pursue the case at the price of being publicly identified; and (6) whether the party seeking to sue pseudonymously has illegitimate ulterior motives.

"On the other side of the scale, the factors which militate against the use of a pseudonym are as follows: (1) the universal level of public interest in access to the identities of litigants; (2) whether, because of the subject matter of this litigation, the status of the litigant as a public figure, or otherwise, there is a particularly strong interest in knowing the litigant's identities, beyond the public's interest which is normally obtained; and (3) whether opposition to pseudonym by counsel, the public, or the press is illegitimately motivated."

Balancing these factors in the case of the sexually violated plaintiff, the court in *Evans* concluded that the plaintiff's use of a pseudonym was justified, largely based on the following considerations: (1) the plaintiff took steps to keep her identity confidential and "some of [her] own close family and friends are not aware of the circumstances giving rise to this lawsuit"; (2) the plaintiff's fear of increased embarrassment, humiliation and emotional distress should her friends and business associates learn of these events was well founded; (3) the public's interest in protecting the identities of sexual-assault victims so that other victims feel more comfortable suing to vindicate their rights; (4) the public's interest in the issues the plaintiff's complaint was raising, and the fact that protecting her identity "[would] not impede the public's ability to follow the proceedings"; and (5) the court's finding that the plaintiff had no "illegitimate ulterior motive" for her request. Based on these factors, the court allowed the plaintiff to

proceed under a fictitious name, finding that "although the public has a strong interest in the subject matter of the case, plaintiff's privacy interest, in this instance, outweighs the public's need to know her identity."

Where a plaintiff has been physically and sexually abused by a person of trust and authority and psychologically abused by large institutions of trust, that abuse usually profoundly impacts much of a person's life. In these circumstances, the use of a fictitious name advances the public good by ensuring that risks to the plaintiff's health, safety, reputation and family do not prevent them and others similarly situated from bringing lawsuits arising out of sexual abuse.

In addition, in cases involving the victims of childhood sexual abuse, courts in other jurisdictions recognize the need for the use of pseudonyms even after the age of majority.

In *Doe 130 v. Archdiocese of Portland in Oregon*, 717 F.Supp.2d 1120 (2010), the court allowed the adult plaintiff to maintain a pseudonym in a suit alleging child sexual abuse by a priest because, despite the passage of time, the plaintiff would still be subject to specific, irreparable injuries. As the court said, "If required to make his name known publicly, John would face a very real risk of harassment, ridicule and personal embarrassment. The experience of sexual abuse can be deeply psychologically traumatic, and public knowledge of such abuse can trigger new trauma even years after the fact. John faces a real risk of harm to which he, as a survivor of clergy sexual abuse, is peculiarly vulnerable, and his fears regarding that risk are entirely reasonable."

In *Doe v. Megless*, Civil Action No. 10-1008. (E.D.Pa. 2010), the court held that "anonymity may be warranted if a case involves highly sensitive or personal matters, or if there is a concrete risk of injury to the plaintiff by disclosure."

The Connecticut Superior Court's 2009 decision in *Doe v. Brown* permitted a pseudonym for an adult plaintiff in a suit concerning abuse that took place while the plaintiff was a minor. In *Doe v. Diocese*, 647 A.2d 1067, 1072 (Conn.Super. 1994), the same court held that the "plaintiff seemed to express real concern and fear of shame and humiliation if he received public exposure. This not only related to his job situation, which might be dismissed as only an economic concern, but also to his desire that friends, acquaintances and even family not know all the details of the experiences he alleges."

In *Doe v. Potter*, 225 S.W.3d 395, 402 (Ky.App. 2006), the court upheld the anonymity of a class of child-abuse victims, some of whom had reached majority by the time of suit, due to fear that the victims could be "irreparably harmed" by disclosure of their names.

In *Doe v. Provident Life and Accident Insurance*, 176 F.R.D. 464, 466 (D. Pa. 1997), the court found in a dispute over claimed psychiatric disorders in the insurance context that "the public may have a strong interest in protecting the privacy of plaintiffs in controversial cases so that these plaintiffs are not discouraged from asserting their claims."

In *Doe No. 2 v. Kolko*, 242 F.R.D. 193 (E.D.N.Y. 2006), the court, citing *Evans*, permitted a pseudonym in a child-abuse case against a rabbi, stating legitimate reasons for necessity of the pseudonym such as fear of "retaliation and ostracism" from the Jewish community, "private nature" and "potential misuse" of the information. And *Doe v. Johns-Manville*, 1980 Pa. Dist. & Cnty. Dec. LEXIS 330 (Pa. C.P. 1980), permitted pseudonyms on a case-by-case basis, saying that a party needs to argue adverse consequences "to outweigh the requirement that actions be brought in the names of the real parties."

Regardless of what procedure the Pennsylvania courts are willing to adopt for filing complaints utilizing a pseudonym, survivors of child sexual abuse and their representatives deserve to have a uniform set of policies and procedures for proceeding in these matters so that survivors of abuse do not face one more hurdle in seeking justice.

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