

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

JOHN YOE #1,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 09C-06-188 CLS
)	
CATHOLIC DIOCESE OF)	
WILMINGTON, INC., et al.,)	
)	
Defendants.)	

ORDER

AND NOW, TO WIT, this 15th day of March, 2010, **IT IS HEREBY ORDERED** as follows:

Background

Presently before the Court is Defendant's Motion to Compel Plaintiff to proceed under his real name or, in the alternative, Motion to Dismiss Plaintiff's complaint for his failure to do so. There is no dispute that Defendant has knowledge of Plaintiff's true identity. The main issue, therefore, is whether Plaintiff has a right to file an anonymous pleading.

On June 19, 2009, Plaintiff filed a complaint against Defendant alleging that he was sexually molested by Defendant in 1968.¹ In the complaint, he identified himself under the pseudonym of John Yoe #1.² The Defendant argues that Plaintiff should be compelled to proceed under his true identity pursuant to Superior Court Civil Procedure Rule 10(a).³ Specifically, Defendant alleges that a five part test set forth in *Doe v. Shakur*⁴ should be considered to determine whether Plaintiff can proceed anonymously. The factors considered in *Shakur* are:

- (1) whether the plaintiff is challenging governmental activity;
- (2) whether the plaintiff would be required to disclose information of the utmost intimacy;
- (3) whether the plaintiff would be compelled to admit his or her intention to engage in illegal conduct, thereby risking criminal prosecution;
- (4) whether the plaintiff would risk suffering injury if identified;
- and (5) whether the party defending against a suit brought under the pseudonym would be prejudiced.⁵

Plaintiff argues that he should be permitted to proceed anonymously for the following reasons: (1) revealing his identity and having the details of his sexual abuse made public will compound his present injuries and will cause him additional depression, anxiety, stress and other serious medical and psychological problems since he currently suffers from depression and

¹ John Yoe #1 Compl. ¶¶ 17, 18.

² Yoe Compl. ¶ 2.

³ Def. Br. 2.

⁴ 164 F.R.D. 359, 361 (S.D.N.Y. 1996).

⁵ *Id.*

anxiety; (2) the subject of this lawsuit, the sexual abuse of Plaintiff as a child, is humiliating, embarrassing and discomfoting; (3) Plaintiff does not wish to bring the attention of the media and/or the general community to himself or his family, including his wife and children; (4) Plaintiff does not want his friends, co-workers or complete strangers to be aware he was sexually abused as a child; (5) 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 (6) having his name revealed will cause Plaintiff to be self-consciously distressed.⁶

Discussion

Delaware Civil Procedure Rule 10(a) states:

Every pleading shall contain a caption setting forth the name of the Court, the title of the action, the file number, and a designation as in Rule 7(a). In the complaint the title of the action shall include the names of all parties, but in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties.⁷

Rule 10(a) governs the form of the pleading captions and is “interpreted as a mandate that parties file their pleadings under nonfictitious names.”⁸

Therefore, pursuant to this rule, “there is a strong presumption against

⁶ Yoe Compl. ¶ 3.

⁷ Del. R. Civ. P. 10(a). This language is identical to the language in Federal Civil Procedure Rule 10(a).

⁸ *Doe v. Archdiocese of Portland in Or.*, 249 F.R.D. 358, 359 (D. Or. 2008).

allowing parties to use a pseudonym.”⁹ The purpose for this presumption is a First Amendment interest in public proceedings.¹⁰ Courts have, however, established exceptions to this requirement and permitted parties to proceed anonymously.

Additionally, Rule 10(a) must be read in conjunction with Delaware Civil Procedure Rule 8(f) which governs the construction of pleadings. Rule 8(f) requires that “[a]ll pleadings shall be so construed as to do substantial justice.”¹¹ The underlying goal, therefore, is to ensure substantial justice to all parties and the court must determine whether permitting a plaintiff to proceed under a pseudonym satisfies the “substantial justice” requirement, based on the particular facts of the case.

Other jurisdictions have established standards for determining when proceeding under a pseudonym is proper. These courts use a totality of the circumstances approach to determine “whether the plaintiff ‘has a substantial privacy right which outweighs the customary constitutionally-embedded presumption of openness in judicial proceedings.’”¹² The Fifth Circuit

⁹ *Roe v. St. Louis Univ.*, 2009 WL 910738, at *3 (E.D. Mo. Apr. 2, 2009).

¹⁰ *Id.* See also *Doe v. Blue Cross & Blue Shield United of Wis.*, 112 F.3d 869, 872 (7th Cir. 1997) (discussing the importance of identifying the parties to the proceeding as “an important dimension of publicness”).

¹¹ Super. Ct. Civ. R. 8(f).

¹² *Id.* (quoting *Doe v. Frank*, 951 F.2d 320, 323 (11th Cir. 1992)). See also *Sealed Plaintiff v. Sealed Defendant*, 537 F.3d 185, 189 (2d Cir. 2008) (holding that “when determining whether a plaintiff may be allowed to maintain an action under a

identified three circumstances where courts have permitting anonymity.¹³

These circumstances are where: (1) plaintiffs are challenging governmental activity; (2) plaintiffs are required to disclose information of the utmost intimacy; and (3) plaintiffs are compelled to admit their intention to engage in illegal conduct, thereby risking criminal prosecution.¹⁴ These factors, although not exhaustive, are used to assist the court in performing the balancing test set forth above and, ultimately, in determining whether the circumstances warrant anonymity. The court has discretion in its determination and should “review all the circumstances of a given case and then decide whether the customary practice of disclosing the plaintiff’s identity should yield to the plaintiff’s privacy concerns.”¹⁵

The five factor test used by the Defendant is not the best test to use in analyzing whether Plaintiff is permitted to use a pseudonym. Even if the factors set forth by Defendant were considered, factors one, three, and five

pseudonym, the plaintiff’s interest in anonymity must be balanced against both the public interest in disclosure and any prejudice to the defendant”); *M.M. v. Zavaras*, 139 F.3d 798, 803 (10th Cir. 1998) (permitting a plaintiff to proceed anonymously in cases involving matters of highly sensitive and personal nature, real danger of physical harm, or where the injury litigated against would be incurred as a result of the disclosure of the identity); *Doe v. Stegall*, 653 F.2d 180, 186 (5th Cir. 1981) (weighing the “privacy concerns against the presumption of openness of judicial proceedings” to determine whether a party may sue anonymously).

¹³ See *Stegall*, 653 F.2d at 187.

¹⁴ *Id.* See also, *Frank*, 951 F.2d at 323.

¹⁵ *Frank*, 951 F.2d at 323.

do not apply to the current case.¹⁶ The remaining factors, factors two and four, benefit Plaintiff and weigh in favor of allowing Plaintiff to remain anonymous.¹⁷ Instead of the test proposed by Defendant, the determination of whether to allow Plaintiff to proceed anonymously should focus on whether Plaintiff is required to disclose information of the utmost intimacy and whether this disclosure outweighs any interest in maintaining public proceedings.

The instant case involves allegations of sexual molestation and rape. Clearly, sexual abuse is a highly sensitive and personal matter. Requiring Plaintiff to use his true identity would immediately expose Plaintiff to the public as a victim of rape and molestation. Plaintiff's desire to remain anonymous is understandable and Plaintiff's interest in protecting his identity outweighs any interest in favor of open judicial proceedings. This is particularly true when, as here, Defendant knows the identity of Plaintiff and

¹⁶ The plaintiff is not challenging government activity, the plaintiff would not be required to admit to an intention to engage in illegal conduct, and defendant would not be prejudiced by the use of a pseudonym.

The prejudice to the Defendant and the interests weighed in favor of open judicial proceeding may change throughout litigation and, therefore, “[t]he court must determine the precise prejudice at each stage of the proceedings” *Archdiocese of Portland in Or.*, 2008 WL 656021, at *4. At this point, however, there is no prejudice to Defendant because he knows the identity of Plaintiff and can move forward with the litigation without issue.

¹⁷ Factor two focuses on whether the plaintiff would be required to disclose information of the utmost intimacy and factor four focuses on whether the plaintiff would risk suffering injury if identified.

can continue with the litigation without prejudice, thereby satisfying the substantial justice requirement of Rule 8(f).

For the reasons discussed above, Defendant's Motion to Compel and Motion to Dismiss the Complaint are **DENIED**.

IT IS SO ORDERED

/s/Calvin L. Scott
Judge Calvin L. Scott, Jr.