

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF MAINE**

<b>KATHLEEN NUCCIO,</b>	)	
	)	
<b>Plaintiff</b>	)	
	)	
<b>v.</b>	)	<b>Civil No. 93-363-P-DMC</b>
	)	
<b>LUKE A. NUCCIO,</b>	)	
	)	
<b>Defendant</b>	)	

**MEMORANDUM DECISION ON DEFENDANT'S MOTION TO DISMISS <sup>1</sup>**

In this diversity-based action the plaintiff alleges that during her childhood the defendant, her father, intentionally inflicted extreme emotional distress upon her by sexually abusing her. She asserts that this conduct caused her to suffer mental illness. In addition, she claims that the defendant threatened her life should she ever disclose his sexual abuse of her. Before the court now is the defendant's motion to dismiss the complaint for failure to state a claim upon which relief can be granted.

In ruling on a motion to dismiss, the court must accept all well-pleaded factual allegations in the complaint as true and draw reasonable inferences therefrom in the plaintiff's favor. *Dartmouth Review v. Dartmouth College*, 889 F.2d 13, 16 (1st Cir. 1989). A court may grant such a motion only when "it appears beyond doubt that the plaintiff can prove no set of facts in support of [her] claim which would entitle [her] to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957) (footnote omitted).

Citing the Maine Law Court's recent decision in *McAfee v. Cole*, No. 6785 (Me. Feb. 18,

---

<sup>1</sup> Pursuant to 28 U.S.C. 636(c), the parties have consented to have United States Magistrate Judge David M. Cohen conduct all proceedings in this case, including trial, and to order the entry of judgment.

1994), the defendant asserts that the plaintiff's cause of action is barred by Maine's applicable statutes of limitations.<sup>2</sup> The plaintiff concedes that *McAfee* places her claim outside the relevant statutes of limitations, but argues that it does not compel a dismissal of her action.

In *McAfee* the Law Court held that the plaintiff's claims based on sexual abuse while a minor accrued when the alleged abuse occurred; that, although the limitations period was tolled during his minority, all of the plaintiff's claims expired long before the discovery rule embodied in 14 M.R.S.A. 752-C<sup>3</sup> was adopted; that neither section 752-C nor any other discovery rule applied to such claims; and that neither of the statutory tolling provisions urged upon the court, 14 M.R.S.A. 853 (mental illness) and 859 (fraudulent concealment), applied as well. Relevant to this case, the Law Court specifically ruled that *McAfee's* complaint did not sufficiently alert the court and opposing parties that mental illness might be an issue, explaining that mental illness under the tolling statute refers to "an overall inability to function in society that prevents plaintiffs from protecting their legal rights" and that *McAfee* did not allege such an overall incapacity. *Id.* at 6 (emphasis in original).

In *McAfee*, the plaintiff alleged that he repressed all memories of his sexual abuse until January 1992 and that, among other things, he suffered mental distress, emotional instability and

---

<sup>2</sup> Even though the complaint does not disclose whether the alleged sexual abuse occurred in Maine or elsewhere, both parties agree that in a diversity action this court is required in either circumstance to apply Maine's statutes of limitations. *See Carlson v. Rice*, 832 F. Supp. 17, 18 n.2 (D. Me. 1993).

<sup>3</sup> This section was amended in 1991 to read in relevant part as follows:

Actions based upon sexual intercourse or a sexual act . . . with a person under the age of majority must be commenced within 12 years after the cause of action accrues, or within 6 years of the time the person discovers or reasonably should have discovered the harm, whichever occurs later.

14 M.R.S.A. 752-C.

trauma. His allegations relating to mental illness were no more explicit. By contrast, the plaintiff here has asserted that as a consequence of the defendant's sexual abuse of her she suffered ``mental illness preventing [her] from appreciating the harm caused her or exercising her rights under the law and instituting legal action . . . ." Complaint 6. I conclude that this language serves sufficiently to alert the court and the defendant to the plaintiff's claim of mental illness of the sort that involves an overall incapacity preventing her from protecting her legal rights. Whether the plaintiff was in fact so incapacitated is an issue for another day. *Carlson*, 832 F. Supp. at 19.

The motion is accordingly denied.<sup>4</sup>

Dated at Portland, Maine this 4th day of April, 1994.

---

David M. Cohen  
United States Magistrate Judge

---

<sup>4</sup> The plaintiff also asserts principles of equitable estoppel and duress as a bar to the defendant's statute of limitations defense as to which I intimate no opinion.