

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

KRISTIN DOUGLAS,)	
<i>a/k/a TINA BETH MARTIN,</i>)	
)	
Plaintiff)	
)	
v.)	Docket No. 02-102-P-S
)	
YORK COUNTY, et al.,)	
)	
Defendant)	

**MEMORANDUM DECISION ON PLAINTIFF’S MOTION TO STRIKE AND
RECOMMENDED DECISION ON DEFENDANTS’ MOTION FOR SUMMARY
JUDGMENT**

The defendants, York County and the York County Sheriff’s Department,¹ move again² for summary judgment on the grounds that the plaintiff’s claims are barred by the statute of limitations and the

¹ The complaint in effect at this time also names as defendants “Unknown Defendants, Deputy Sheriffs.” Amended Complaint and Jury Claim (Docket No. 11) at 1. Counsel for York County and the York County Sheriff’s Department does not represent the unknown deputy sheriff defendants. Letter dated September 4, 2002 from Gene R. Libby to William S. Brownell (Docket No. 10) at 1. By letter dated September 6, 2002 counsel for the plaintiff represented that he “does not wish to amend to exclude the unidentified defendants” and “seeks to leave in unnamed parties until such time as individuals may be identified.” Letter from Thomas F. Hallett to William S. Brownell (Docket No. 12). Two and one-half years later, there is no indication on the record that any such individuals have been “identified” or served, nor has any motion for default been filed with respect to these individuals. The case should therefore be dismissed as against these defendants. *Carreras-Rosa v. Alves-Cruz*, 215 F.3d 1311 (table), 2000 WL 543968 (1st Cir. Apr. 20, 2000), at **1-**2; *Glaros v. Perse*, 628 F.2d 679, 685 (1st Cir. 1980).

² This is the defendants’ third motion for summary judgment on the issues of the statute of limitations and the doctrine of laches. The first, Docket No. 16, was granted on the statute-of-limitations issue. Docket Nos. 37 (recommended decision), 42 (affirming decision on different basis). The plaintiff appealed from that judgment, Docket No. 49, and the First Circuit reversed and remanded, Docket Nos. 53-55. I recommended that the second motion for summary judgment, Docket No. 56, be granted on the same basis as that set forth in my original recommended decision, Recommended Decision on Defendants’ Motion for Entry of Summary Judgment (Docket No. 63). After hearing argument on that recommended decision, Judge Singal held that “there is [in] fact [a] genuine issue of material fact[] as to plaintiff’s overall inability to function in society that may have prevented her from protecting her legal rights” and denied the motion. Transcript of Proceedings, *Douglas v. York County, et al.*, Docket No. 02-102-P-S, July 13, 2004 (“Transcript”), at 37-38. The denial was (continued on next page)

doctrines of collateral estoppel, judicial estoppel and laches. Motion for Summary Judgment, etc. (“Summary Judgment Motion”) (Docket No. 94) at 13-27. The plaintiff responds by contesting the motion on its merits and with a motion to strike portions of the defendants’ motion. Motion to Strike Portions of Defendants’ Third Motion for Summary Judgment, etc. (“Motion to Strike”) (Docket No. 98).³

I. Motion to Strike

The plaintiff seeks to strike all but section V of the defendants’ current motion for summary judgment. Motion to Strike at 1. Section V consists of three paragraphs arguing that the plaintiff “is unable to generate any facts to establish her claim.” Summary Judgment Motion at 26-27. The preceding four sections deal with the statute of limitations and laches. *Id.* at 13-26. The plaintiff contends that “[i]t is fundamentally unfair to permit Defendants to keep on filing multiple Motions for Summary Judgment on the same basic issue” and that “[t]he First Circuit has already ruled . . . that Dr. Schetky’s testimony satisfies the necessary standard” on this issue. Motion to Strike at 3-4, 5. She argues that the defendants are “collaterally estopped from asserting any deficiency with respect to the opinion testimony of Dr. Schetky” and, apparently, that this court’s decision on the second motion for summary judgment bars any further motion on the same issue. *Id.* at 3, 4-5.

At issue in the pending motion, as it was in the two previous motions for summary judgment, is a Maine statute that provides an exception to the state’s general six-year statute of limitations, found at 14 M.R.S.A. § 752. The exception states, in relevant part, that section 752 is tolled when the person bringing the action at issue was mentally ill when the cause of action accrued and for a sufficient period of time thereafter so that the complaint was filed within six years after the disability imposed by the mental illness

specifically made “without prejudice for later motions to be filed.” *Id.* at 38.

ceased. 14 M.R.S.A. § 853; *see generally Dasha v. Maine Med. Ctr.*, 665 A.2d 993, 994-96 (Me. 1995); *Bowden v. Grindle*, 675 A.2d 968, 971 (Me. 1996). Under Maine law, a person is “mentally ill” for purposes of section 853 if she suffers from an overall inability to function in society that prevents her from protecting her legal rights. *McAfee v. Cole*, 637 A.2d 463, 466 (Me. 1994).

My recommended decision on the first motion for summary judgment assumed for purposes of argument that the plaintiff could establish that she was mentally ill at the time her cause of action accrued. Recommended Decision on Defendants’ Motion for Summary Judgment (“First Recommended Decision”) (Docket No. 37) at 11. I recommended that summary judgment be entered for the defendants because the evidence in the summary judgment record “compel[led] a conclusion that the plaintiff was not suffering, from the date on which this cause of action accrued in 1971 through May 4, 1996 (six years before this action was filed), from a mental illness that imposed an overall inability to function in society that prevented her from protecting her legal rights.” *Id.* I specifically did not reach the defendants’ argument based on the doctrine of laches. *Id.* at 11-12. The plaintiff objected to the recommended decision and Judge Hornby, after hearing oral argument, entered summary judgment for the defendants. Order Affirming Recommended Decision of the Magistrate Judge (Docket No. 42). However, Judge Hornby based his decision on his conclusion that the only evidence presented by the plaintiff on the question whether she was mentally ill at the time her cause of action accrued, an affidavit of Dr. Diane H. Schetky, was unclear on this point. *Id.* at 3-4. He specifically did not reach the question of her ability to bring this action after the cause of action accrued. *Id.* at 4. He did not mention the laches defense.

³ The portion of this motion that sought a stay pending the court’s action on the motion to strike has been denied. Margin Endorsement, Motion to Strike.

In ruling on the plaintiff's appeal from Judge Hornby's decision, the First Circuit held that the district court should have considered a supplemental affidavit from Dr. Schetky proffered by the plaintiff with her motion for reconsideration of that decision. *Douglas v. York County*, 360 F.3d 286, 289-91 (1st Cir. 2004). Specifically, the First Circuit reversed and remanded because it found that the trial court's denial of the plaintiff's motion for reconsideration was an abuse of its discretion in that it refused to consider the supplemental affidavit. *Id.* at 290. In *dicta*, the First Circuit also stated that "a correct application of the summary judgment standard to Dr. Schetky's first affidavit very well might have obviated the need for a reconsideration motion." *Id.* This statement cannot reasonably be read as the plaintiff would have it, Motion to Strike at 3, as a "ruling" by the First Circuit that Dr. Schetky's affidavit or affidavits "satisfie[d] the necessary standard." It is nothing more than a suggestion, albeit a strong one, that the district court consider whether the doctor's affidavits were sufficient on the prong of the *McAfee* test that requires proof that the plaintiff was mentally ill at the time her cause of action accrued. It says nothing about the requirement that the plaintiff's mental illness also prevented her from bringing the action until a date less than six years before the day she filed this action.

After remand, the defendants again moved for summary judgment based on the reasoning in my first recommended decision. Motion for Entry of Judgment on Alternative Grounds (Docket No. 56) at 3-9. Laches was not mentioned in this motion. I again recommended that the motion be granted, on the grounds set forth in my first recommended decision. Recommended Decision on Defendants' Motion for Entry of Summary Judgment (Docket No. 63) at 2-3. Chief Judge Singal, to whom the case had been re-assigned, heard oral argument on the plaintiff's objection to the recommended decision and ruled as I have noted in footnote 2 above.

The plaintiff now contends that collateral estoppel bars the defendants from raising the statute-of-limitations issue again. Motion to Strike at 4. The only authority cited by the plaintiff in support of this argument, *Acevedo-Garcia v. Monroig*, 351 F.3d 547 (1st Cir. 2003), requires as one of several elements necessary for the application of collateral estoppel that an earlier resolution of the issue was final, *i.e.*, that the issue was determined by a valid and binding final judgment, *id.* at 575. A ruling denying a party summary judgment can never be correctly characterized as a valid and binding final judgment; by its very terms such a ruling contemplates further litigation of the claims asserted. Contrary to the plaintiff's characterization, the question "whether the opinion testimony of Dr. Diane Schetky [was] sufficient to create [a] jury question," Motion to Strike at 4, was not finally decided by the First Circuit, nor would entry of a final judgment be appropriate as to any of the plaintiff's claims even if the characterization were correct.

The plaintiff next argues that, because discovery was initially bifurcated, so that discovery was initially limited to the statute-of-limitations question, the defendants may not now move for summary judgment, after the initial period of discovery has expired, based on evidence discovered only after the expiration of that period. Motion to Strike at 4-5. The plaintiff cites no authority in support of this novel contention. In any event, the argument cannot be sustained in the face of Judge Singal's ruling at the conclusion of oral argument on the second motion for summary judgment, denying the motion "without prejudice for later motions to be filed" and noting that "this is a close question and one that future factual results may affect." Transcript at 38. *See generally Fisher v. Trainor*, 242 F.3d 24, 29 n.5 (1st Cir. 2001) (initial denial of summary judgment does not foreclose subsequent grant of summary judgment on amplified record).

The plaintiff asserts that "[t]he issue of laches was raised and addressed in Plaintiff's initial Motion for Summary Judgment, and should not again be allowed to be argued." Motion to Strike at 4 n.2.

Understandably, no authority is cited in support of this argument. As noted above, the issue of laches was not reached in any decision made by the court in this case to date. There is no conceivable legal basis for the plaintiff's position on the laches issue.

Finally, the plaintiff asks the court to order the defendants to pay "all expert fees, costs and attorney's fees for the Plaintiff" if her motion is denied. Motion to Strike at 5. The plaintiff apparently seeks payment of all such costs, regardless of when they were incurred or to which issue they may relate. Contrary to the plaintiff's assertion, she will not be "dramatically prejudiced" if the court entertains the current motion for summary judgment. She would have incurred all of her expert witness fees and most of her costs and attorney fees even if the motion had not been brought. Whether the motion for summary judgment is granted or not, the plaintiff has been "prejudiced," at most, to the extent of costs actually incurred solely in connection with that motion. Because the plaintiff has not established that the motion was wrongfully brought by the defendants, she is not entitled to an award of fees or costs.

The motion to strike is denied.

II. Motion for Summary Judgment

A Summary Judgment Standards

1. Federal Rule of Civil Procedure 56

Summary judgment is appropriate only if the record shows "that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c); *Santoni v. Potter*, 369 F.3d 594, 598 (1st Cir. 2004). "In this regard, 'material' means that a contested fact has the potential to change the outcome of the suit under the governing law if the dispute over it is resolved favorably to the nonmovant. By like token, 'genuine' means that 'the evidence about the fact is such that a reasonable jury could resolve the point in favor of the nonmoving party.'" *Navarro v.*

Pfizer Corp., 261 F.3d 90, 93-94 (1st Cir. 2001) (quoting *McCarthy v. Northwest Airlines, Inc.*, 56 F.3d 313, 315 (1st Cir. 1995)).

The party moving for summary judgment must demonstrate an absence of evidence to support the nonmoving party's case. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). In determining whether this burden is met, the court must view the record in the light most favorable to the nonmoving party and give that party the benefit of all reasonable inferences in its favor. *Santoni*, 369 F.3d at 598. Once the moving party has made a preliminary showing that no genuine issue of material fact exists, the nonmovant must "produce specific facts, in suitable evidentiary form, to establish the presence of a trialworthy issue." *Triangle Trading Co. v. Robroy Indus., Inc.*, 200 F.3d 1, 2 (1st Cir. 1999) (citation and internal punctuation omitted); Fed. R. Civ. P. 56(e). "As to any essential factual element of its claim on which the nonmovant would bear the burden of proof at trial, its failure to come forward with sufficient evidence to generate a trialworthy issue warrants summary judgment to the moving party." *In re Spigel*, 260 F.3d 27, 31 (1st Cir. 2001) (citation and internal punctuation omitted).

2. Local Rule 56

The evidence the court may consider in deciding whether genuine issues of material fact exist for purposes of summary judgment is circumscribed by the Local Rules of this District. *See* Loc. R. 56. The moving party must first file a statement of material facts that it claims are not in dispute. *See* Loc. R. 56(b). Each fact must be set forth in a numbered paragraph and supported by a specific record citation. *See id.* The nonmoving party must then submit a responsive "separate, short, and concise" statement of material facts in which it must "admit, deny or qualify the facts by reference to each numbered paragraph of the moving party's statement of material facts[.]" Loc. R. 56(c). The nonmovant likewise must support each denial or qualification with an appropriate record citation. *See id.* The nonmoving party may also submit its

own additional statement of material facts that it contends are not in dispute, each supported by a specific record citation. *See id.* The movant then must respond to the nonmoving party's statement of additional facts, if any, by way of a reply statement of material facts in which it must "admit, deny or qualify such additional facts by reference to the numbered paragraphs" of the nonmovant's statement. *See* Loc. R. 56(d). Again, each denial or qualification must be supported by an appropriate record citation. *See id.*

Failure to comply with Local Rule 56 can result in serious consequences. "Facts contained in a supporting or opposing statement of material facts, if supported by record citations as required by this rule, shall be deemed admitted unless properly controverted." Loc. R. 56(e). In addition, "[t]he court may disregard any statement of fact not supported by a specific citation to record material properly considered on summary judgment" and has "no independent duty to search or consider any part of the record not specifically referenced in the parties' separate statement of fact." *Id.*; *see also, e.g., Cosme-Rosado v. Serrano-Rodriguez*, 360 F.3d 42, 45 (1st Cir. 2004) ("We have consistently upheld the enforcement of [Puerto Rico's similar local] rule, noting repeatedly that parties ignore it at their peril and that failure to present a statement of disputed facts, embroidered with specific citations to the record, justifies the court's deeming the facts presented in the movant's statement of undisputed facts admitted." (citations and internal punctuation omitted)).

B. Factual Background

The parties have submitted extensive statements of material facts in connection with the motion for summary judgment, in accordance with this court's Local Rule 56.⁴ I will recite here only the undisputed

⁴ The defendants have even submitted, without seeking leave to do so, a "reply" to the plaintiff's response to the statement of material facts submitted by the defendants in support of their motion for summary judgment. Defendants' Reply to Plaintiff's Response to Defendants' Statement of Material Facts (Docket No. 121). Such a "reply" is not contemplated by Local Rule 56. In the absence of any request for leave to file this document, it will not be considered.

material facts that differ from or expand upon those submitted by the parties in connection with the two earlier motions for summary judgment. Those facts are summarized in my recommended decision on the first motion for summary judgment.⁵

When the plaintiff was taken to the York County jail in 1971, she was unable to make bail. Defendants' Statement of Material Facts ("Defendants' SMF") (Docket No. 95) ¶ 197; Plaintiff's Response to Defendants' Statement of Material Facts ("Plaintiff's Responsive SMF") (Docket No. 111) ¶ 197. When the plaintiff was arraigned on these charges she was represented by a public defender. *Id.* ¶ 199. After the arraignment the plaintiff contacted a lawyer who was a friend of the family and he agreed to represent her. *Id.* ¶¶ 200, 206. On October 20, 1971 the plaintiff, in the presence of her lawyer, executed a waiver of indictment and petition acknowledging that she had been advised of the nature of the charge against her, advised of her rights, and waived prosecution by indictment and consented to the case proceeding against her by information. *Id.* ¶ 208. On October 22, 1971 the plaintiff appeared in court and was convicted, based on her guilty plea, of the offense of using a motor vehicle without the owner's consent. *Id.* ¶ 218.⁶

⁵ For a summary of the other undisputed material evidence in the summary judgment record, see First Recommended Decision at 3-6.

⁶ The plaintiff objects to eleven subsequent paragraphs of the defendants' statement of material facts on the asserted ground that they are based on an exhibit which was "not timely offered as F.R.Civ.P. 44 evidence, and [are], therefore, inadmissible." Plaintiff's Responsive SMF ¶¶ 227-28, 230-37. I do not rely on the information included in those paragraphs in reaching my recommended decision. I do note, however, that after Judge Singal's ruling on the second motion for summary judgment, I issued a scheduling order which established December 17, 2004 as the discovery deadline and as the deadline to identify and produce Local Rule 44 records. Report of Scheduling Conference and Second Phase Scheduling Order (Docket No. 73) at 2. I assume that it is the deadline for Local Rule 44 materials to which the objection refers; the plaintiff does not mention this objection in her memoranda. The discovery deadline was extended, at the plaintiff's request, to January 31, 2005. Margin endorsement, Plaintiff's Motion to Enlarge Discovery Period (Docket No. 84). Counsel for the defendants represents that the exhibit at issue was provided to the plaintiff on January 31, 2005, the new discovery deadline. Reply to Plaintiff's Opposition to Defendants' Motion for Summary Judgment ("Summary Judgment Reply") (Docket No. 120) at 2. Counsel may not assume that the deadline for Rule 44 documents was extended in a similar fashion *sub silentio* when the discovery deadline was stated separately in the initial scheduling order.

According to Dr. Schetky, the plaintiff has the ability to concentrate and retain information, to obtain satisfactory grades when tested on that information, to put together a resume or employment application and to get a job. *Id.* ¶¶ 266-68. At deposition, Dr. Schetky could not give an opinion that the plaintiff was capable of functioning in society and protecting her legal rights at the time she entered the York County jail in 1971 because she did not have enough data. *Id.* ¶ 275.⁷ In Dr. Schetky’s opinion, the fact that an individual is depressed and has an adjustment disorder and personality disorder does not establish whether she is able to function in society and protect her legal rights. *Id.* ¶ 277.

Dr. Schetky has also opined that the plaintiff has been depressed since childhood and did not function well during adolescence. Plaintiff’s Additional Statement of Material Facts (“Plaintiff’s SMF”) (Docket No.112) ¶ 228; Defendants’ Reply to Plaintiff’s Statement of Additional Material Facts (“Defendants’ Responsive SMF”) (Docket No. 122) ¶ 228. When the plaintiff entered jail she was depressed and passively suicidal and had difficulty with focus and concentration. *Id.* ¶ 230.

C. Discussion

1. Statute of limitations. The defendants contend that all of the plaintiff’s claims are barred by the six-year Maine statute of limitations. Summary Judgment Motion at 13-20. Their first argument on this point asserts that the plaintiff cannot show that she was mentally ill when her cause of action accrued. With respect to this issue, the only evidence in the record that postdates the oral argument before Chief Judge

⁷ The plaintiff objects to this paragraph of the defendants’ statement of material facts, contending that the question to which Dr. Schetky gave the response set forth “is not an appropriate standard.” Plaintiff’s Responsive SMF ¶ 275. The applicable standard is not established by statute; it is found in a decision of the Law Court. Specifically, that court said in *McAfee* that “[m]ental illness under the tolling statute refers to an *overall inability* to function in society that prevents plaintiffs from protecting their legal rights.” 637 A.2d at 466 (emphasis in original). I do not agree that the question whether the plaintiff “was overall capable of functioning in life and protecting her legal rights” invokes “a different standard entirely,” as the plaintiff asserts. Plaintiff’s Responsive SMF ¶ 275. At most, the difference in wording between *McAfee* and the question posed goes to the weight to be given to Dr. Schetky’s response, not to its admissibility. The objection is overruled.

Singal that is discussed by the parties is the deposition testimony and third affidavit of Dr. Schetky. Summary Judgment Motion at 14; Plaintiff's Memorandum in Opposition to Defendants' Third Motion for Summary Judgment ("Summary Judgment Opposition") (Docket No. 110) at 19-21. The defendants rely solely on Dr. Schetky's responses to two questions at her deposition, which are presented as paragraphs 275 and 276 in their statement of material facts. The defendants contend that these responses are "strikingly at odds with" statements in Dr. Schetky's second affidavit, which was dated May 27, 2003. Summary Judgment Motion at 14 n.3.

I agree that paragraph 5 of that affidavit, Affidavit of Diane H. Schetky, Exh. 3 to Motion for Reconsideration (Docket No. 44) ¶ 5, does appear to be inconsistent with the testimony cited in paragraphs 275 and 276 of the defendants' statement of material facts, Transcript, Deposition of Diane H. Schetky, M.D. ("Schetky Dep.") (Exh. P to Summary Judgment Motion) at 61-63. This discrepancy does not mean that the defendants are entitled to summary judgment, however. The defendants cite *Torres v. E.I. DuPont de Nemours & Co.*, 219 F.3d 13, 20 (1st Cir. 2000), in support of their position. Summary Judgment Reply at 3. The situation in the present case is the reverse of that in *Torres*, where the party opposing summary judgment submitted affidavits that contradicted testimony the affiants had given at deposition. *Torres*, 219 F.3d at 20. The First Circuit upheld the striking of the affidavits because no appropriate explanation was provided for the changes. *Id.* at 20-21. Here, the moving party seeks to rely only on the deposition testimony that appears to contradict statements in the deponent's earlier affidavit. Unlike the situation in *Torres*, Dr. Schetky has in this case submitted an explanation of the apparent discrepancy. Affidavit of Diane H. Schetky (Exh. 6 to Summary Judgment Motion) ¶¶ 1, 5. The defendants contend that the court should not consider this most recent affidavit of Dr. Schetky because it "attempts to make a distinction that appears to be no more than gamesmanship." Summary Judgment Reply at 4. In connection

with a motion for summary judgment the court may determine only whether a proffered explanation is satisfactory or appropriate but not whether the affiant is credible. I conclude that the explanation offered by Dr. Schetky is sufficient.

The defendants' next argument is that the plaintiff cannot show that her mental illness continued from the time of the alleged rapes in 1971 to four or six years before she filed the complaint in this action. Summary Judgment Motion at 14-20. The evidence cited by the defendants in support of this contention that was not before the court at the time of Judge Singal's ruling appears in the following paragraphs of their statement of material facts: 170-72, 175, 182, 184, 187-88, 200-01, 205, 208, 211-15, 228, 230, 234-36, 266-74, and 278-79. *Compare* Docket No. 17 *with* Docket No. 95. Of these, the plaintiff adequately disputes paragraphs 212-13, 215, and 271. She objects to paragraphs 228, 230, 234-36, 269, 273-74 and 278-79. The objections to paragraphs 228, 230 and 234-36 are well-taken, for the reasons set forth in footnote 6 above. The objections to paragraphs 269, 273-74 and 278-79 are overruled. Consideration of the additional evidence properly before the court at this time — paragraphs 170-72, 175, 182, 184, 187-88, 200-01, 208, 266-70, 272-74 and 278-79 of the defendants' statement of material facts — leads me to the conclusion that the defendants are correct. The following facts, taken with the previously undisputed material facts, even when considered in the light most favorable to the plaintiff, support a conclusion that the defendants are entitled to judgment as a matter of law because the plaintiff is unable to establish that her mental illness continued throughout the relevant period of time: that the plaintiff completed a one-year full-time dental assistant program, ¶¶ 171-72; that she was a licensed dental assistant for approximately 5 years in the mid- to late 1980s, *id.* ¶ 175; that she was hired after meeting with Dr. Fairchild and his wife, *id.* ¶ 182; that she had no trouble performing her job as a dental assistant for Dr. Fairchild, *id.* ¶ 184; that as part of her work for Dr. Fairchild the plaintiff brought patients into the surgery

room, placed a surgical napkin on their chest, took and recorded their blood pressure, monitored their heart rates, held their heads during the procedure and gave the patients post-op instructions, *id.* ¶¶ 187-88; that she consulted a lawyer who was a friend of the family after her arrest in 1971 and that she knew that this lawyer's father was a judge and a good friend of her grandfather, *id.* ¶¶ 200-01; that she executed a waiver of indictment in connection with the 1971 arrest, *id.* ¶ 208; that Dr. Schetky testified that the plaintiff had the ability to concentrate and retain information, to be tested on that information and obtain satisfactory grades, to put together a resume or employment application and get a job and to sit down, be interviewed by a person who hired her and be perceived as having the necessary skills to do the job, *id.* ¶¶ 266-69; that in her job as a dental assistant, the plaintiff exhibited her training, ability to recollect and a moderate to high level of functioning, *id.* ¶ 270; that prior to her deposition on December 1, 2004 Dr. Schetky was not aware that the plaintiff had retained lawyers to represent her in a worker's compensation case and a Social Security claim, *id.* ¶ 272; that Dr. Schetky opined that the retention of these lawyers demonstrated her ability to function to protect her legal rights in the workplace, but it did not help her with the social support needed to go through a lawsuit involving emotional trauma such as rape, *id.* ¶¶ 273-74 & Schetky Dep. at 51-52; and that Dr. Schetky understood that certain proceedings would have taken place when the plaintiff's guilty plea was accepted by a court and that Dr. Schetky believed, assuming that the court deemed her competent to enter a plea, that the plaintiff was competent to enter a guilty plea to a charge of motor vehicle theft in the early 1970s, Defendants' SMF ¶¶ 278-79.⁸

⁸ In addition to her objection which has been overruled, the plaintiff purports to deny paragraph 279 of the defendants' statement of material facts. Plaintiff's Responsive SMF ¶ 279. The denial offered by the plaintiff does not address the substance of Dr. Schetky's deposition testimony but rather its weight, given the fact that Dr. Schetky seemed to backtrack from the testimony on which the defendants rely. Schetky Dep. at 69-71. I have therefore treated the purported denial as a qualification. I note that Dr. Schetky apparently believes that the plaintiff at all relevant times suffered from an inability to function in society that prevented her from protecting her legal rights with respect to the claims raised in this *(continued on next page)*

Judge Singal stated, at the time of the oral argument before him on the second motion for summary judgment, that the question whether the plaintiff could establish that her mental illness continued to prevent her from functioning in society so as to be capable of protecting her legal rights was a close one. Transcript at 37. It remains a close question, but, particularly given Dr. Schetky's deposition testimony that the plaintiff demonstrated her ability to protect her legal rights on two occasions during the relevant period by hiring lawyers, along with the other undisputed evidence set forth above, the defendants are entitled to summary judgment because the plaintiff has failed to offer evidence that would allow a reasonable factfinder to conclude that she suffered from an overall inability to function in society that prevented her from protecting her legal rights continuously from the time of the alleged rapes to six or four years before this action was brought.

Because the question on the second prong of the *McAfee* test for tolling of the statute of limitations is close, I will address the other issues raised by the defendants.

2. *Estoppel*. The defendants next contend that the plaintiff is collaterally and judicially estopped to contend that she was mentally ill at all times between the alleged rapes in 1971 and six or four years before this action was filed because she entered guilty pleas to criminal charges in 1971 and 1974 and such pleas may not be accepted by a court unless it has ascertained that the defendant understands the charge and makes the plea voluntarily. Summary Judgment Motion at 21. In the absence of transcripts of the proceedings at which the plaintiff pleaded guilty in each instance, the defendants are asking this court to draw a generous inference in their favor — that the courts involved did in fact determine that the plaintiff was entering the pleas voluntarily and knowingly. In considering a motion for summary judgment, this court may draw

action, but the *McAfee* standard is not so narrowly drawn.

inferences only in favor of the party opposing the motion, and then only reasonable inferences. Moreover, none of the case law cited by the defendants supports their arguments that such a plea may support collateral or judicial estoppel. The standards for accepting a guilty plea and the definition of mental illness applicable to this case are not the same. *See, e.g., Chasse v. Mazerolle*, 580 A.2d 155, 157 (Me. 1990).

In addition, for purposes of collateral estoppel, acceptance of a guilty plea in a criminal case cannot reasonably be construed as resolving the question whether the defendant in that criminal case suffered from an overall inability to function in society that prevented her from protecting her legal rights, the legal standard at issue here.⁹ Collateral estoppel requires an identity of issues. *Monroig*, 351 F.3d at 575. Similarly, “[j]udicial estoppel protects the integrity of the courts by preventing a litigant who has obtained a benefit in one forum from invoking the authority of another court to escape the burdens of that bargain.” *Kinan v. Cohen*, 268 F.3d 27, 32 n.5 (1st Cir. 2001). The plaintiff in this action may not reasonably be said to have obtained a benefit when she was allowed to plead guilty to criminal charges. Particularly where, as here, there is no evidence that the plaintiff received a lower sentence or that some charges were withdrawn in connection with her pleas, there is no evidence that either plea involved a “bargain” that she is now seeking to escape by claiming entitlement to tolling of the applicable statute of limitations under 14 M.R.S.A. § 853. The pleas provide some evidence that may be valuable to the factfinder in determining whether the *McAfee* standard has been met, but they cannot stand as sufficient evidence to prove that it has not.

⁹ As an opinion cited by the defendants states, “[a] Rule 11 determination that a plea was voluntary and intelligent subsumes and definitively determines that the plea was made by a competent defendant,” and competence is defined in this context as being “capable of understanding the nature and object of the charges and proceedings against him, of comprehending his own condition in reference thereto, and of conducting . . . his defense in a rational and reasonable manner.” *State v. Vane*, 322 A.2d 58, 61 (Me. 1974). That definition of competence cannot be said to be the equivalent of the *McAfee* standard.

3. *Laches*. The defendants next assert that the plaintiff's delay in bringing this action is unreasonable and has resulted in prejudice to the defendants, contending that the burden of disproving laches is on the plaintiff in this case. Summary Judgment Motion at 25-26 & n.9. In general,

[t]he equitable doctrine of laches bars assertion of a claim where a party's delay in bringing suit was 1) unreasonable, and 2) resulted in prejudice to the opposing party.

K-Mart Corp. v. Oriental Plaza, Inc., 875 F.2d 907, 911 (1st Cir. 1989). When a plaintiff files a complaint within the applicable statute of limitations, the burden is on the defendant to prove the elements of laches. *Id.* The Maine Law Court has observed that a statute of limitations enacted by the Maine Legislature "imposes a maximum time limit within which all civil actions may be brought, but does not prevent the shortening of this period pursuant to the application of the equitable doctrine of laches." *Grindle*, 651 A.2d at 350 n.1. The Law Court has also defined laches as "an omission to assert a right for an unreasonable and unexplained period of time under circumstances prejudicial to the adverse party." *H.E. Sargent, Inc. v. Town of Wells*, 676 A.2d 920, 925 (Me. 1996). In this case, Maine has provided by statute that the applicable statute of limitations is tolled while a plaintiff is mentally ill, and the Law Court has defined mental illness for purposes of that tolling statute. To require the plaintiff to disprove laches in order to benefit, as the legislature intended, from the tolling statute would be to weaken the statute to a point where it would be honored rarely, if at all. Extending a statute of limitations beyond six years will inevitably result in prejudice to the potential opposing party. Here, the Legislature has determined as a matter of law that barring a mentally ill plaintiff from bringing suit because the statute of limitations ran during that mental illness is inherently unreasonable. The plaintiff's delay in bringing this action has been explained and cannot be unreasonable if she establishes that she meets the requirements of the statute and the construing case law.

4. *The Merits.* The defendants' parting shot, presented in conclusory fashion at the close of their initial brief, asserts that the plaintiff is unable to generate facts to establish that there was a custom, policy or habit at the York County jail in 1971 of providing keys to the cells to an inmate trustee. Summary Judgment Motion at 26-27. The plaintiff responds that she has presented enough evidence to allow a jury to find that the defendants were deliberately indifferent to a risk of serious harm to female inmates of the jail in 1971. Summary Judgment Opposition at 32. She cites evidence of a 1969 report by the Maine Department of Health and Corrections on the conditions of the York County jail with recommendations for change which she contends were ignored by the defendants, evidence that inmates were given keys to cells occupied by males and that keys to the cells were kept in an unlocked desk in a room which occasionally was left without a corrections officer in it and to which inmates had access, evidence that female inmates were housed in the same wing of the jail as male inmates and that female prisoners had to walk in front of cells occupied by male inmates, evidence that male guards rather than matrons held the keys to the cells occupied by females in violation of regulations promulgated by the Department of Health and Corrections, and evidence that corrections officers were not give manuals or proper on-the-job training. *Id.* at 32-37. The defendants respond that "many of the facts Plaintiff now offers to support her civil rights claim are either unclear, inadmissible, or contested by Defendants." Summary Judgment Reply at 13. Of course, if the asserted facts are "contested by Defendants," summary judgment is not available by definition. The defendants do not identify those paragraphs of the plaintiff's statement of material facts which they contend are essential to support her argument and are "unclear" or "inadmissible."

While not all of the evidence cited by the plaintiff may provide the necessary "direct causal link" between a policy or custom of the defendants and the alleged rapes, *Burrell v. Hampshire County*, 307

F.3d 1, 10 (1st Cir. 2002), some of it may well do so, and that is all that is required in order to defeat a motion for summary judgment. The defendants are not entitled to summary judgment on this basis.

III. Conclusion

For the foregoing reasons, the plaintiff's motion to strike (Docket No. 98) is **DENIED** and I recommend that the defendants' motion for summary judgment (Docket No. 94) be **GRANTED**. The action should also be dismissed as to any defendants other than York County and the York County Sheriff's Department.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

Dated this 15th day of April, 2005.

David M. Cohen
United States Magistrate Judge

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