

PENNSYLVANIA SUPREME COURT CONFIRMS LIMITS OF DISCOVERY RULE—FOR NOW

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Appellate Litigation Alert

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The Pennsylvania Supreme Court has confirmed that the “discovery rule” is only a narrow exception to the statute of limitations, but the court has hinted that changes might be coming that would toll the running of the statute of limitations against a particular defendant until the plaintiff knows she has been injured and has a cause of action against that particular defendant.

In *Rice v. Diocese of Altoona-Johnstown*, No. 3 WAP 2020 (July 21, 2021), the Court considered a claim by a woman that, as a girl, she was abused by a priest. She filed a claim against the diocese decades later and, among other things, asserted that the statute of limitations did not bar her claim because she only discovered the diocese's (alleged) role when she read a 2016 grand jury report that alleged that the diocese was responsible for the misconduct of certain priests. She argued that, under the discovery rule, the limitations period did not begin to run until she saw the grand jury report and learned that the diocese allegedly had some responsibility for clergy abuse. The trial court disagreed and dismissed her case as time barred based on two, decades old Superior Court decisions. On appeal, the Superior Court reversed and held that, under the Pennsylvania Supreme Court's decision in *Nicolaou v. Martin*, 195 A.3d 880 (Pa. 2018), the question of the plaintiff's diligence in discovering her cause of action was one for the jury and that *Nicolaou* effectively overruled the earlier Superior Court cases.

A divided Pennsylvania Supreme Court reversed. Justice Christine Donohue wrote for the majority and explained that, under the long-accepted understanding of the discovery rule in Pennsylvania, the limitations period begins to run when the plaintiff knows she has been injured and that the injury might have been the fault of some other person or entity. The majority explained that the plaintiff indisputably knew she had been injured by another at the time the priest allegedly abused her and, so, there was no question to be resolved by a jury. That knowledge started the clock, even if the plaintiff did not know that the diocese might also be liable for its misconduct in allowing the abuse to occur.

But, for purposes of anticipating the future of the discovery rule, the two separate opinions in *Rice* might be just as important as the majority. Chief Justice Max Baer, in concurrence, wrote that he agreed with the majority's holding based on the existing state of Pennsylvania law and the issues properly preserved in *Rice* but that he would be open in a future case to modifying the discovery rule to follow the formulation used in some other states. The Chief Justice explained that he believes the discovery rule should toll the statute of limitations not just until the plaintiff learns of the injury but until the plaintiff learns that she actually has a cause of action against the specific defendant.

This was not the first time Chief Justice Baer had made his preference known. In *Wilson v. El-Daief*, 964 A.2d 354, 364 (Pa. 2009), he dissented and argued for Pennsylvania to adopt the broader approach to the discovery

rule. He made a similar point in his opinion in *Nicolaou*, but concluded that the issue was not properly presented in that case just as it was not in *Rice*.

Justice David Wecht dissented in *Rice*. He wrote that, under *Nicolaou*, he believed there remained a jury question about whether Ms. Rice was appropriately diligent in discovering the diocese's alleged role in the abuse. While Justice Wecht did not say so explicitly, his analysis echoes Chief Justice Baer's in that both would start the limitations clock only when the plaintiff has significantly more knowledge than Pennsylvania law currently requires. Justice Debra Todd joined the Wecht dissent.

The concurring and dissenting opinions suggest that at least three of the seven justices are open to broadening the discovery rule should a case come before the court that squarely presents the issue.

Were the court in some later case to follow Chief Justice Baer's preferred approach, the discovery rule in Pennsylvania would provide that the limitations clock begins to run not just when the plaintiff has "inquiry notice" of an injury caused by another person but when the plaintiff has enough information to identify a cause of action and to identify the alleged wrongdoer. And that significant change would likely apply to a host of claims beyond the clergy abuse alleged in *Rice*.

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