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LAVINE, J., concurring. I agree with the majority that the continuing course of conduct doctrine does not operate to bring the claims of the plaintiff, John D. Watts, within the statute of limitations; General Statutes § 52-577; given the facts of this case and the present state of our law. I write separately to stress that this case is confined to its facts and that in appropriate cases, particularly those involving ongoing abusive relationships, a more flexible application of the doctrine is warranted.

Statutes of limitation serve numerous salutary purposes. They (1) prevent the enforcement of stale or fraudulent claims, (2) aid in the search for truth that may be impaired by loss of evidence, fading memories and the disappearance of documents and (3) advance the finality of litigation. *Navin v. Essex Savings Bank*, 82 Conn. App. 255, 260–61, 843 A.2d 679, cert. denied, 271 Conn. 902, 859 A.2d 563 (2004).

When an intentional tort involving ongoing allegations of child sexual abuse in the context of a custody dispute is involved, however, strong countervailing concerns exist. The general policy of encouraging lawsuits to be brought at an early date must be weighed against the adverse consequences of fomenting litigation in highly charged family cases involving minor children. I acknowledge that this court has declined to apply the continuing course of conduct doctrine in an action for intentional infliction of emotional distress, concluding that no continuing duty existed on the basis of a former husband and wife relationship. *Smulewicz-Zucker v. Zucker*, 98 Conn. App. 419, 423–25, 909 A.2d 76 (2006), cert. denied, 281 Conn. 905, 916 A.2d 45 (2007). The practical reality, however, is that even if former spouses do not have a legal duty to one another that brings the continuing course of conduct into play, former spouses, as parents, do have a continuing legal obligation to protect and to promote the best interests of their minor children.

Rather than commence an action the first time the defendant, Heather Chittenden, made false allegations of sexual abuse in 1999, the plaintiff did what any responsible person would do by allowing various authorities—the department of children and families, the state police, the Yale Child Sexual Abuse Clinic—to investigate the allegations. I do not dispute the majority’s conclusion that, given the facts of this case and the current state of our law, the plaintiff waited too long to bring the action. Requiring him to have brought the action at the time the first allegation of sexual abuse was made, however, has serious adverse consequences from a public policy standpoint. Had he brought suit as soon as the false allegations were made, it would

have made resolution of the underlying dissolution action more difficult, to the detriment of the parties and, more importantly, to the minor children. Such a requirement injects additional rancor, not to mention cost and aggravation, into an already acrimonious and emotional situation. In cases such as this, parties who are attempting to reach an accommodation involving their minor children should be encouraged to work together, not to sue each other. “Whether we want to encourage suits based on these distressful words and acts, and perhaps destroy the underlying relationship in the process, is debatable. By allowing the postponement of suits premised on conduct arising in the course of committed relationships, application of the continuing violations doctrine gives the parties an ample opportunity to ride out tough roads together.” K. Graham, “The Continuing Violations Doctrine,” 43 Gonz. L. Rev. 271, 307 (2007-2008).<sup>1</sup>

Although this case does not involve ongoing abusive conduct within a marriage, or other committed relationship, it does involve sustained abusive conduct within the context of an ongoing relationship between former spouses, both of whom retain responsibility for protecting their minor children from harm, emotional and otherwise. This case therefore resembles, in significant respects, cases in which courts have taken a flexible, pragmatic approach when evaluating continuing course of conduct claims in domestic violence or domestic abuse cases. See, e.g., *Pugliese v. Superior Court*, 146 Cal. App. 4th 1444, 1452, 53 Cal. Rptr. 3d 681 (recognizing that notwithstanding “the difficulty a spouse or ex-spouse may have in defending against domestic violence cases, the continuing tort doctrine seems especially applicable in such cases”), review denied, No. S150513, 2007 Cal. LEXIS 3642 (April 11, 2007); *Curtis v. Firth*, 123 Idaho 598, 604, 850 P.2d 749 (1993) (“By its very nature this tort will often involve a series of acts over a period of time, rather than one single act causing severe emotional distress. For that reason, we recognize [that] the concept of continuing tort . . . should be extended to apply in other limited contexts, including particularly intentional infliction of emotional distress.”), on appeal after remand, 125 Idaho 229, 869 P.2d 229 (1994); *Feltmeirer v. Feltmeirer*, 207 Ill. 2d 263, 284, 798 N.E.2d 75 (2003) (agreeing “with the growing number of jurisdictions that have found that the continuing tort rule should be extended to apply in cases of intentional infliction of emotional distress”); *Cusseaux v. Pickett*, 279 N.J. Super. 335, 345, 652 A.2d 789 (1994) (“It would be contrary to the public policy of this State, not to mention cruel, to limit recovery to only those individual incidents of assault and battery for which the applicable statute of limitations has not yet run. The mate who is responsible for creating the condition suffered by the battered victim must be made to account for his actions—all of his actions.” [Emphasis in origi-

nal.)). In some cases, a persuasive argument can be made that the statute of limitations should begin to run not when the first incident of abuse occurs, but only when the ongoing abusive conduct has ceased.

The majority opinion is decided on the specific facts of this case and should not be construed to apply to all cases involving claims of intentional infliction of emotional distress. How to apply the statute of limitations in other cases must be determined on the basis of the facts of each case.

For the foregoing reasons, I respectfully concur in the majority opinion.

<sup>1</sup>The continuing course of conduct doctrine raises extremely complex legal issues. Determining whether a series of acts should be viewed as discrete, or as part of a continuing course of conduct, is often an intractable problem. For a thoughtful discussion of what a continuing violation is and how courts analyze these claims, see K. Graham, *supra*, 43 Gonz. L. Rev. 271.

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