

Steele v Nicholson
2020 NY Slip Op 32147(U)
July 1, 2020
Supreme Court, Kings County
Docket Number: 523641/2019
Judge: George J. Silver
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS**

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HEATHER STEELE,

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Plaintiff,

-against-

**DONALD J. NICHOLSON, WARRENSBURG
CONGREGATION OF JEHOVAH’S WITNESSES,
WATCHTOWER BIBLE AND TRACT SOCIETY OF
NEW YORK, INC., THE GOVERNING BODY OF
JEHOVAH’S WITNESSES AND CHRISTIAN
CONGREGATION OF JEHOVAH’S WITNESSES,**

Defendants.

-----X
HON. GEORGE J. SILVER:

Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC. (“Watchtower” or “defendant”) moves for an order, pursuant to CPLR §§ 503, 510, and 511, to change the venue of this action from Kings County, New York (“Kings County”) to Ulster County, New York (“Ulster County”). Plaintiff HEATHER STEELE (“plaintiff”) opposes the motion. For the reasons discussed below, the court denies the motion.

BACKGROUND AND ARGUMENTS

This action was commenced with the filing of plaintiff’s summons and complaint on or about October 30, 2019. Plaintiff alleges that defendant DONALD NICHOLSON (“Mr. Nicholson”) sexually abused her when she was a congregant at the Congregation in Warrensburg, New York (“Warrensburg”). Plaintiff’s causes of action include sexual abuse and battery, negligent supervision, negligent retention, negligent failure to train, negligent failure to warn, negligent failure to provide a safe and secure environment, and intentional infliction of emotion distress.

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On November 7, 2019, Watchtower served plaintiff with a written demand requesting that this matter be tried in Ulster County. On November 8, 2019, plaintiff submitted an affidavit opposing Watchtower's demand to change venue.

Defendant argues that venue is improper in Kings County because no party resided in Kings County at the time plaintiff commenced this action. Rather, defendant avers that Ulster County is the proper venue because Watchtower resided there at the time plaintiff commenced this action, and Watchtower currently has its principal place of business in Ulster County.

Defendant also argues that "a substantial part of the events or omissions" giving rise to plaintiff's claims did not occur in Kings County. According to defendant, plaintiff's complaint was brought "pursuant to the Child Victims Act," to address sexual abuse that occurred in or around Warrensburg when plaintiff was a congregant at the Congregation.¹ In that regard, defendant contends that at all relevant times, Mr. Nicholson was physically present in Warrensburg when he committed the alleged acts of child abuse, and therefore, anyone supervising him would be present in the same location. Similarly, defendant highlights that because the congregation where plaintiff participated in activities was located outside Kings County, any acts involving training, warning, or protecting plaintiff occurred outside Kings County.

In opposition, plaintiff argues that defendant's decisions, policies, and omissions, which form a substantial part of the acts and omissions giving rise to her claim, occurred in Kings County. Plaintiff contends that "defendant Governing Body," working through its service departments, and

¹ Defendant notes that plaintiff first asserts that venue is proper in Kings County in her November 8, 2019 affidavit, which states that 1) Watchtower and Governing Body had their principal place of business in Kings County prior to the commencement of this action, and 2) "a substantial part of the acts and omissions alleged in the complaint against these defendants occurred in Kings County." Specifically, defendant points out that plaintiff stated that the "substantial part of the acts" occurred years ago when Watchtower and Governing Body maintained residency in Kings County, and that the alleged acts/omissions included the failure to prevent or adequately respond to the sexual abuse that occurred outside of Kings County.

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Watchtower, all of whom operated from Brooklyn,² were responsible for appointing Mr. Nicholson as an Elder, and retained him despite knowing the risk he posed to children. Plaintiff also asserts that the Governing Body failed to train local congregations to recognize and guard against child sexual abuse, and warn congregants about known child molesters, including Mr. Nicholson. Plaintiff further notes that the Governing Body promulgated policies and directives designed to deter congregants from reporting such abuse to local law enforcement. According to plaintiff, these acts/omissions occurred in Kings County.

Additionally, plaintiff posits that while the effects of defendant's failure to protect her may have occurred in Warrensburg, defendant's negligent failure to supervise, warn, and train occurred in Kings County.

In reply, defendant argues that while plaintiff claims that the sum and substance of defendant's "acts" "were the promulgation of policies that were subsequently carried out by the Congregation in Warrensburg," these alleged "acts" (the policies) have nothing to do with plaintiff's causes of action in this case. Defendant also maintains that even if they did, they are not a "substantial part of the events or omissions" giving rise to plaintiff's claims.

Instead, defendant posits that it is of no moment that Watchtower may have promulgated religious policies addressing sin, repentance, and qualification for congregation membership in Kings County if these policies were not carried out by the Congregation in Warrensburg. According to defendant, the existence of an alleged policy does not satisfy any element of plaintiff's causes of action, and the existence of any such policy does not give rise to an independent cause of action. As such, defendant reiterates that all facts necessary to prove each of plaintiff's alleged causes of action occurred in Warrensburg.

² Plaintiff underscores that there is no evidence that any member of the Governing Body, all of whom lived and worked in Brooklyn, ever "set foot in Warrensburg."

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DISCUSSION

Pursuant to CPLR § 503(a), “[T]he place of trial shall be in the county in which one of the parties resided when it was commenced [or] the county in which a substantial part of the events or omissions giving rise to the claim occurred.”

Here, as plaintiff has laid venue in Kings County on the basis that a “substantial part of the events or omissions giving rise to the claims” occurred in Kings County,³ rather than the residency of the parties at the time the action was commenced,⁴ the relevant issue is whether “a substantial part of the events or omissions giving rise to [plaintiff’s] claim[s]” occurred in Kings County or Ulster County (CPLR § 503(a)).

Notably, while the alleged acts of sexual abuse may have occurred in Warrensburg when plaintiff was a congregant at Warrensburg Congregation of Jehovah’s Witnesses as a child, the causes of action as set forth in plaintiff’s complaint center around alleged acts/omissions that occurred in Kings County (*Fisher v. Int’l Student Exch., Inc.*, 38 F. Supp. 3d 276, 284 [EDNY 2014] [“‘[F]or venue to be proper, *significant* events or omissions *material* to the plaintiff’s claim must have occurred in the district in question, even if other material events occurred elsewhere.’”] [citations omitted];⁵ *Cont’l Ins. Co. v. Securi Enterprises, Inc.*, No. CV 09-3731 ILG VVP, 2010 WL 3702559, at *2 [EDNY 2010] [“Venue is appropriate in each district where a substantial part of the events or omissions occurred, and thus venue maybe appropriate in a given district even if a greater portion of events occurred elsewhere.”]; *Daniel v. Am. Bd. of Emergency Med.*, 428 F.3d

³ Plaintiff’s complaint states in relevant part, “The basis of venue is CPLR §503(a) - a substantial part of the events or omissions giving rise to the claims occurred within Kings County.”

⁴ While plaintiff states that, “Throughout the time period alleged in plaintiff’s complaint, defendants Watchtower and Governing Body had their principal place of business in Kings County,” plaintiff does not lay venue on the basis of residence (*see*, Footnote 3, *supra*).

⁵ The court’s reliance on *Fisher* and other federal cases is based on the parties’ reliance on the same, and the sparse legal authority and precedent on this issue in New York state courts.

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408, 432–33 [2d Cir. 2005] [“‘Substantiality’” for venue purposes is more a qualitative than a quantitative inquiry, determined by assessing the overall nature of the plaintiff’s claims and the nature of the specific events or omissions in the forum, and not by simply adding up the number of contacts.”]).

Indeed, in plaintiff’s affidavit dated November 8, 2019, plaintiff contends that a substantial part of the acts and omissions alleged in her complaint occurred in Kings County.⁶ To be sure, plaintiff’s complaint alleges that Watchtower kept reports regarding the sexual abuse of children, and were aware that child molestation was a problem within its congregations. According to plaintiff, despite receiving written reports, Watchtower did not promulgate new or effective policies for preventing or responding to child molestation, and did not implement procedures or policies to educate children and adult members of the risk of child molestation within the Jehovah’s Witness organization, how to identify warning signs of molestation, or how to avoid dangerous situations.

Additionally, plaintiff’s complaint alleges that despite receiving a report regarding Mr. Nicholson’s abuse of a minor, Watchtower did nothing to remove Mr. Nicholson from his appointed position as an Elder, and provided no warning to members of Congregation whose children were at risk, including plaintiff and her family. Plaintiff also claims that although Watchtower knew of Mr. Nicholson’s conduct toward plaintiff, and/or his propensity to sexually abuse minors, such as plaintiff, Watchtower maintained Mr. Nicholson’s as its agent.

⁶ Plaintiff’s affidavit states that the acts that occurred in Kings County include, inter alia, “[T]he vetting, approval of, and appointment of [Mr. Nicholson] as an Elder within plaintiff’s congregation; the creation and dissemination of policies against notifying congregants of known child molesters within the organization; policies and prescriptions against reporting sexual abuse of children to local law enforcement; policies and prescriptions against crediting allegations of sexual abuse unless there were two witnesses to the abuse; and the decision specifically not to warn plaintiff’s congregation, the Warrensburg Congregation of Jehovah’s Witnesses, prior to the abuse of plaintiff, that [Mr. Nicholson] was accused of child molestation.”

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Plaintiff further asserts that as a minor congregant, Watchtower had a duty to protect her from Mr. Nicholson's sexual criminal acts, competently investigate Mr. Nicholson prior to accepting him as its agent, and competently supervise Mr. Nicholson during the time he served as an Elder. However, plaintiff claims that Watchtower failed to do so.

Similarly, plaintiff avers in her complaint that Watchtower had a duty to establish adequate, competent, and effective professional training and education programs and procedures for their agents, employees, and administrators calculated to identify and prevent sexual abuse of minor congregants by Elders and other agents, like Mr. Nicholson, who came in contact with minor congregants as a result of their positions within the Jehovah's Witness organization.

Likewise, plaintiff's complaint alleges that Watchtower had a duty to warn plaintiff's parents as congregants that Mr. Nicholson's prior molestation of a child put plaintiff at risk for being sexually abuse by Mr. Nicholson. Plaintiff also asserts that Watchtower, who placed Mr. Nicholson in a position of power, owed plaintiff a duty to ensure that Mr. Nicholson did not pose a threat of harm to plaintiff, but failed to provide a safe and secure environment for plaintiff, and as a result, plaintiff was sexually abused by Mr. Nicholson.

Moreover, plaintiff states that Watchtower's knowing and willful failure to act affirmatively to prevent, detect, report, or investigate Mr. Nicholson's alleged acts of abuse aided and abetted Mr. Nicholson. Plaintiff's further alleges that by declining to contact law enforcement about Mr. Nicholson's molestation of plaintiff, and by virtue of Watchtower's efforts to dissuade plaintiff from cooperating with law enforcement investigations into Mr. Nicholson, Watchtower sought to cover up Mr. Nicholson's acts, and protect him from detection or punishment, which thereby ratified his sexual molestation of plaintiff.

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Accordingly, based on the breadth of the alleged “events and omissions” that occurred in Kings County as outlined by plaintiff’s complaint, venue is proper in Kings County. While part of the alleged acts and omissions occurred in Warrensburg, namely, the alleged acts of abuse, it is undisputed that a “substantial part of the events or omissions giving rise to the claim[s]” occurred in Kings County, including, *inter alia*, Watchtower’s alleged failure to supervise, warn, and train (*see, Fisher*, 38 F. Supp. 3d at 284, *supra* “[V]enue may be proper ‘in multiple judicial districts as long as ‘a substantial part’ of the underlying events took place in those districts.’” [citations omitted]; *Cont’l Ins. Co.*, No. CV 09-3731 ILG VVP, 2010 WL 3702559, at *2, *supra*). Accordingly, while Ulster County may have been a proper venue for this action, it was not improper for plaintiff to commence this action in Kings County.

Moreover, while defendant requests to change the place of trial pursuant to CPLR § 510, defendant does not set forth any basis to show that “an impartial trial cannot be had” in Kings County, or that “the convenience of material witnesses and the ends of justice will be promoted by the change” (*see*, CPLR §§ 510(2) and 510(3)). Accordingly, defendant’s application to change the place of trial to Ulster County is denied.

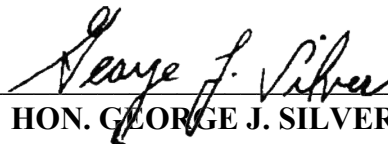
Based on the foregoing, it is

ORDERED that defendant’s motion is denied; and it is further

ORDERED that the court shall issue a separate notice to the parties regarding a future appearance in this matter.

The foregoing constitutes the decision and order of this court.

Dated: 7-1-2020


HON. GEORGE J. SILVER