KCVAWCG-Doe v
Roman Catholic Archdiocese of N.Y.

2024 NY Slip Op 35119(U)

October 3, 2024

Supreme Court, Westchester County

Docket Number: Index No. 69504/2019

Judge: Doris M. Gonzalez

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This opinion is uncorrected and not selected for official publication.

To commence the statutory time for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER
--X
KCVAWCG-DOE,

Plaintiff,

-against-

THE ROMAN CATTHOLIC ARCHDIOCESE OF NEW YORK, CHURCH OF IMMACULATE HEART OF MARY a/k/a THE PARISH OF THE IMMACULATE HEART OF MARY a/k/a IMMACULATE HEART OF MARY SCHOOL, and WESTCHESTER COUNTY PUBLIC ADMINISTRATOR, as Administrator of the Estate of EDWIN GAYNOR,

Defendants.
--X

DECISION AND ORDER
Index No.: 69504/2019
Motion Date: June 25, 2024
Seq. Nos. 3, 4

GONZALEZ, J.:

PAPERS	**NUMBERED**
Sequence No. 3	70 – 81, 205- 300, 303
Sequence No. 4	82 -204, 301- 302

In Motion Sequence No.3, defendant CHURCH OF IMMACULATE HEART OF MARY a/k/a THE PARISH OF THE IMMACULATE HEART OF MARY SCHOOL (hereinafter "IHM") move for an Order granting summary judgment dismissing all claims against it.

In Motion Sequence No.4, the Defendant, ARCHDIOCESE OF NEW YORK s/h/a/THE ROMAN CATHOLIC ARCHDIOCESE OF NEW YORK, (hereinafter the "Archdiocese") moves for an Order granting summary judgment dismissing all claims against it.

Plaintiff commenced this action pursuant to the New York Child Victims Act (hereinafter CVA) (*see* CPLR § 214-g) alleging that during the calendar year 1964 - 1965, he was sexually abused by GAYNOR a children's physical education teacher and sports coach at co-defendant IMMACULATE HEART OF MARY SCHOOL (hereinafter, "IHM"), in Scarsdale, New York. This action was consolidated for discovery with 32 actions alleging abuse by Gaynor at IHM, as well as two other Archdiocesan parishes: Church of St. Bernard ("St. Bernard") and Holy Rosary Roman Catholic Church ("Holy Rosary"). Plaintiff alleges the following causes of action: (1) Negligence; (2) Negligent Training and Supervision of Employees; and (3) Negligent Retention of Employees.

Facts

Plaintiff testified that the abuse occurred during the baseball season of his 4th grade (1964). Gaynor said he was special because he was the youngest chosen to be on the JV baseball team. He was also abused in the 5th grade (1965) school year, when he was approximately 10 years old and on the basketball team. Plaintiff also recalled Gaynor being his physical education teacher. Plaintiff testified that Gaynor's abuse occurred at the school, after baseball and basketball practice when he was sitting on Gaynor's lap at his desk in his office, just outside the locker room. Gaynor would touch the plaintiff under his underwear.

Plaintiff testified he was abused multiple times by Gaynor. Plaintiff stated he never told anyone including his brother, who was three years older, he was being abused. His mother found out he and his brother were abused by Gaynor, when they were horsing around in his parent's bedroom calling each other "mo." She asked why they were using the term "mo." His older brother explained to his mother Gaynor was a homosexual and described what he did to the boys. Thereafter, in 1965, his mother went to Monsignor Caldwell along with other mothers of IHM

students to report Gaynor had been sexually abusing her sons and other boys. Plaintiff believed that "not a damn thing" was done about the reported abuse.

Daniel O'Hare began working at IHM in 1966 as the 7th and 8th grade history and religion teacher. His employment overlapped with Gaynor's for a short period. In 1968, O'Hare became the physical education teacher and baseball and basketball coach. O'Hare testified that Gaynor was forced to leave IHM during the school year due to improper interactions with a student. O'Hare testified he did observe a child on Gaynor's lap on at least one occasion. O'Hare testified the afterschool coaching was organized and paid for by the "Men's Club." O'Hare received a check for coaching issued by the IHM Men's Club, which consisted of a group of parents from IHM.

The IHM parish was organized under a corporate organization with the Pastor, designated by the Archdiocese, as the head of that corporation. The Pastor was canonically appointed by the Archbishop; and the Archbishop works for the Archdiocese. Every parish had a board, of which the Archbishop was the head. A letter of ecumenical appointment from the Archbishop of the Archdiocese of New York was required to appoint a Pastor as the head of a parish school. The Pastor, hired by the Archbishop, had the ultimate authority over the way in which a parish school was run.

The Archdiocese controlled the schedule and activities of the Catholic Youth Organization ("CYO"), where Gaynor was a coach, at the parishes. A representative for IHM testified, in order to create the CYO game schedules, the coordinator of CYO at IHM would work together with the various coordinators, under the direction of the Archdiocese. Further, the CYO program at IHM was part of a larger league, which the Archdiocese of New York coordinated and organized. The Archdiocese of New York CYO would coordinate and regulate the code of conduct, and the rules and policies of the CYO.

Sister Patricia Anastasio (hereinafter, "Sr. Patricia") testified regarding the alleged time of the abuse, each parish religious corporation employed and supervised the staff and faculty of its own school. As per Sr. Patricia, the exclusive authority and control over the day-to-day operation of parish elementary schools – ie., hiring, supervising, paying, and terminating faculty and staff belonged to the Pastor of the parish. Parish schools, such as IHM, were independently owned, operated, maintained, and managed. The Archdiocese and IHM maintained separate financial accounts. According to her testimony, the Archdiocese, did not employ or supervise teachers, athletic coaches, or other staff at IHM, nor had the authority to do so.

A 1962 IHM diploma issued to one of the plaintiffs in a related CVA action is signed by the Archdiocese Superintendent of Schools. The Superintendent of Schools' Office is a department in the Archdiocese. In addition, the Archdiocese Superintendent of Schools oversaw all Catholic schools within its jurisdiction.

Motion Sequence No: 3

IHM argues that its motion should be granted because (1) IHM cannot be held vicariously liable for Gaynor's alleged acts; (2) there is no evidence of any notice to IHM regarding the alleged abuse; (3) there is no notice to IHM of the Gaynor's propensity to sexually abuse to support a claim of negligent hiring, retention and supervision.

IHM argues, initially, that liability will not attach for torts committed by an employee acting solely for personal motives unrelated to the furtherance of the employer's business, citing *Joshua S. by Paula S. v. Casey*, 206 A.D.2d 839 (4th Dept. 1994) and *Dia CC v. Ithaca Central School District*, 304 A.D.2d 955 (3rd Dept. 2003).

As to notice, IHM argues that the undisputed facts demonstrate that IHM did not have notice of Gaynor's alleged acts of sexual abuse against Plaintiff. Further, there is no evidence

showing that IHM could have reasonably anticipated that Gaynor would abuse Plaintiff because IHM did not have notice of Gaynor's propensity to engage in sexually inappropriate conduct with minors. In fact, IMH argues, the record establishes that once the alleged abuse was reported to IHM in 1967, he was immediately asked to leave IHM.

Further, IHM argues, the record establishes that IHM did not know nor should have known of Gaynor's alleged propensity to engage in sexual conduct with minors. Plaintiff's failure to establish actual or constructive notice is fatal to Plaintiff's claims for negligent hiring, negligent retention and negligent training or supervision.

In opposition, Plaintiff argues that IHM has not met its prima facia burden for summary judgment in the face of substantial evidence. Gaynor was employed by IHM and no evidence was produced demonstrating lack of notice of Gaynor's abuse or propensity to abuse. Further, Plaintiff argues that IHM owed plaintiff a duty under the" in local parentis" doctrine.

Motion Sequence No. 4

The Archdiocese argues that summary judgment should be granted dismissing Plaintiff's complaint against it on the ground that despite the Plaintiff's contrary allegations, the evidence establishes that the Archdiocese had no connection to Gaynor, no responsibility for Gaynor's employment at IHM, and no duty to supervise Gaynor or to protect the Plaintiff. The Archdiocese did not own, create, oversee, supervise, manage, control, direct, or operate IHM parish or school, and by extension, the Archdiocese did not hire, train, retain, supervise, employ, pay, transfer, or control Gaynor.

The Archdiocese argues that it played no part in Plaintiff's attendance at IHM, his affiliation with the basketball team, or his interactions with Gaynor, and that there is absolutely no nexus between the Archdiocese and Gaynor. The Archdiocese maintains that the unrefuted

testimonial and documentary evidence detailed in its Statement of Material Facts, together with the affidavit of Sr. Patricia, establishes that Gaynor was not an employee or agent of the Archdiocese, and that the Archdiocese did not hire, train, retain, supervise, employ, pay, transfer, control or have any authority over Gaynor. The Archdiocese did not have authority to discipline Gaynor or any lay person purportedly acting as a physical education teacher or coach at IHM.

Further, the Archdiocese maintains that the Certified Certificate of Incorporation of IHM, and the affidavit of Sr. Patricia, establish that IHM is an independent religious corporation, incorporated separately from the Archdiocese. Because the Archdiocese was never entrusted with Plaintiff's care or custody and was never in a special or fiduciary relationship with him, Plaintiff's theory that Archdiocese had a duty to protect Plaintiff from injury, it argues, is invalid as a matter of law. Therefore, the admissible evidence before this Court demonstrates unequivocally that Gaynor did not have any relationship, including an employment or agency relationship, with the Archdiocese.

The Archdiocese further contends that even if the Court accepts that a duty existed, the Archdiocese had neither notice of any alleged propensity on the part of Gaynor to commit abuse nor of the specific acts of alleged child sexual abuse by Gaynor. They maintain that Gaynor's conduct was unknown to the Archdiocese, and that once the allegations came to light, appropriate action was taken.

Plaintiff contends that there is evidence that the Archdiocese did in fact exercise control over IHM and Gaynor. Monsignor Caldwell was an Archdiocesan clergy, appointed by the Archbishop, at IHM when Plaintiff was abused. The Archdiocese controlled student life and the curriculum at IHM. IHM followed the guidelines or policies that the Archdiocese superintendent of schools imposed. The Archdiocese testified that the "significance of the logo" on the IHM report

card is "that the school comes under the superintendent of schools . . . of the Archdiocese." The Archdiocese superintendent of schools gave the authority to use the coat of arms. The superintendent of schools was "the official in the Archdiocese in charge of that office that would oversee Catholic schools," and would ask parish schools to "remit the funds." The Archbishop heads the Archdiocese, and its ecclesiastical territory, including IHM. The Archbishop assigned Monsignor Caldwell, Monsignor Little, and the other clergy and nuns at IHM. The Archbishop was the head of IHM board.

Discussion

The Child Victims Act, effective February 14, 2019, revived the statute of limitations to commence civil actions against any party for physical, psychological, or other injury suffered as a result of conduct that would constitute a sexual offense under the penal law committed against a minor (CPLR § 214-g). The primary intent of the legislation was to revive civil claims by survivors of childhood sexual abuse and provide a more generous statute of limitations for such claims in the future (*see* Vincent Alexander, Practice Commentaries, McKinney's Cons. Laws of N.Y., Book 7B, CPLR § 214-g).

To obtain summary judgment, the movant is required to sufficiently establish its cause of action or defense to warrant the court as a matter of law in directing judgment in its favor (CPLR § 3212[b]). The movant "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case. Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers" (*Winegrad v. New York University Medical Center*, 64 N.Y.2d 851 [1985][internal citations omitted]). Once this showing has been made, the burden shifts to the party opposing the motion to produce evidence in admissible form sufficient to establish the existence of a triable

issue of fact (*Alvarez v. Prospect Hospital*, 68 N.Y.2d 320 [1986]). "A motion for summary judgment should not be granted where the facts are in dispute, where conflicting inferences may be drawn from the evidence, or where there are issues of credibility" (*Ruiz v. Griffin*, 71 A.D.3d 1112 [2d Dept 2010][internal quotations omitted]). The evidence must be viewed in a light most favorable to the nonmoving party and it should be given the benefit of all favorable inferences (*Gonzalez v. Metropolitan Life Ins. Co.*, 269 A.D.2d 495 [2d Dept. 2000]). However, speculative and conclusory assertions are insufficient to defeat summary judgment (*Hartman v. Mt. Valley Brew Pub, Inc.*, 301 A.D.2d 570 [2d Dept 2003]).

To prevail on a negligence claim, plaintiff must demonstrate a duty owed by the defendant to plaintiff, a breach of that duty, and injury proximately resulting therefrom (*Mitchell v. Icolari*, 108 A.D.3d 600 [2d Dept. 2013]). To sustain a cause of action for negligent supervision due to injuries related to an individual's intentional acts, plaintiff must demonstrate that the defendant knew or should have known of the individual's propensity to engage in such conduct, such that the individual's acts could reasonably have been anticipated or were foreseeable (*Fuller v. Family Servs. of Westchester, Inc.*, 209 A.D.3d 983 [2d Dept. 2022]; *Navaeh T. v. City of New York*, 132 A.D.3d 840 [2d Dept 2015]). Actual or constructive notice to defendant of prior similar conduct is generally required (*see Navaeh T. v. City of New York*, 132 A.D.3d 840 [2d Dept. 2015]).

Similarly, to establish a cause of action for negligent retention or negligent supervision of an employee, plaintiff must demonstrate that "the employer knew or should have known of the employee's propensity for the conduct which caused the injury" (*Fuller*, 209 A.D.3d at 984).

Under the doctrine of respondeat superior, "an employer may be vicariously liable for the tortious acts of its employees only if those acts were committed in furtherance of the employer's business and within the scope of employment." (N.X. v. Cabrini Medical Center, 97 N.Y.2d 247,

251 (2002)(citations omitted). Plaintiff does not dispute that in CVA cases, as here, the doctrine of respondeat superior generally does not apply, as an employer is not liable for conduct by an employee for the employee's sexual gratification. (*Wagner v. State of New York,* 214 A.D.3d 930, 187 N.Y.S.3d 61 [2d Dept. 2023].)

As Plaintiff argues, there is sufficient evidence to raise issues of fact as to actual notice. Plaintiff has adduced evidence that numerous students and parents alerted Archdiocesan clergy members at IHM, including Monsignor Caldwell, who was the Pastor at the time, about the abuse by Gaynor. In this regard, Plaintiff has raised issues of fact as to whether Mrs. K. made a report of Gaynor's sexual abuse to Monsignor Caldwell in 1965.

Moreover, the allegations of numerous instances of sexual abuse, occurring on school grounds for an extended period of time for years, raises issues of fact as to constructive notice. In *Doe v. Whitney* (8 A.D.3d 610, 779 N.Y.S.2d 570 [2d Dept. 2004]), a first-grade teacher, removed the plaintiff from his classes, wherein he was then abused on school grounds. Defendants' motion for summary judgment dismissing plaintiff's *in loco parentis* negligence and negligent supervision claims was denied, and defendants appealed. On appeal, the Second Department affirmed, finding an issue of fact as to the *in loco parentis* and negligent supervision claims even without actual notice:

> "Plaintiffs raised triable issues of fact by submitting the deposition testimony of the infant plaintiff, who testified that Whitney often kept her in his first-grade classroom at recess, and that Whitney removed the infant plaintiff from his second and third grade classes on a weekly basis, without explanation, and with the consent of those teachers. A factfinder could reasonably conclude that the failure to notice the plaintiff's absence at recess and the teachers' allowing Whitney to constantly remove the infant plaintiff from class without explanation constituted breaches of the duty of a parent of ordinary prudence." (*Doe, supra,* at 612 [internal citations omitted].)

More recently, the Second Department considered a CVA case predicated on sexual abuse committed by one teacher in the same classroom over the course of three years. The defendant

school's potential liability was based on constructive notice and the lack of adequate supervision. In finding that constructive notice existed, the Second Department focused on, *inter alia*, the frequency of the abuse and the failure of the school district to monitor the interaction between teacher and student. The Court stated as follows:

> "Here, the defendants failed to establish, prima facie, that they lacked constructive notice of the teacher's alleged abusive propensities and conduct (see Palpoli v Sewanhaka Cent. High Sch. Dist., 166 A.D.3d 639, 641; Johansmeyer v New York City Dept. of Educ., 165 A.D.3d at 636). In particular, given the frequency of the alleged abuse, which occurred over a three-year period, and always occurred inside the same classroom during the school day, the defendants did not eliminate triable issues of fact as to whether they should have known of the abuse (see Nizen-Jacobellis v Lindenhurst Union Free Sch. Dist., 191 A.D.3d at 1008; Johansmeyer v New York City Dept. of Educ., 165 A.D.3d at 636). Additionally, the defendants failed to eliminate triable issues of fact as to whether their supervision of the teacher or the plaintiff was not negligent, in light of, among other things, the teacher was on 'probationary' status during the relevant period, the special education lessons during which the alleged abuse occurred were one-on-one and behind closed doors, the plaintiff testified at his deposition that the school principal 'never came in' or 'checked' on him during the lessons, and only a single observation report from Columbus Avenue Elementary School is available in the teacher's employment file during the relevant period."(*MCVAWCD-DOE v. Columbus Ave. Elementary Sch.*, 2024 N.Y. App. Div. LEXIS 1752, *4-5, 2024 NY Slip Op 01703, 2 [2d Dept. 2024].)

(See *also*, *J. B. v. Monroe-Woodbury Cent. Sch. Dist.*, 224 A.D.3d 722, 2024 N.Y. App. Div. LEXIS 855 [2d Dept. 2024] [in CVA action, defendants failed to eliminate triable issues of fact as to whether it was negligent to permit the plaintiff to be alone behind closed doors with a physician during medical examinations, in contravention of the School District's own policy]; *Murray v. Research Foundation of State University of New York* (283 A.D.2d 995, 723 N.Y.S.2d 805 [4th Dept. 2001][mother raised issues of fact regarding whether school district breached a duty, including whether a reasonably prudent parent would have permitted the child to meet with employee behind closed doors].)

Here, in view of the length of time the abuse continued in the school, raises issues of fact as to whether it should have been uncovered in the exercise of reasonable oversight and

by the Defendants. These disputed factual issues preclude summary judgment on the issue of constructive notice.

The Archdiocese argues that IHM was a separate entity which oversaw the day-to-day operation of the school, and thus the Archdiocese cannot be held liable based on a lack of control. However, the Plaintiff has established that the Archdiocese was a constant and pervasive presence at IHM. The pastor who ran IHM was appointed by the Archdiocese, and the Archdiocese controlled matters of policy and curriculum. The Archdiocese controlled the schedule of the CYO, for which Gaynor was a coach, and the activities of the CYO league at the parishes. The baseball and basketball leagues were organizations extended beyond individual parishes. Plaintiff has adduced sufficient evidence to raise issues of fact as to whether the Archdiocese sufficiently controlled IMH in order to be liable for the alleged lack of supervision.

Any contentions or allegations of the parties not specifically addressed herein have been considered and are without merit.

Accordingly, it is hereby;

ORDERED, that all defendants' motions for summary judgment are denied.

The foregoing constitutes the Decision and Order of the Court.

Dated: 10/3/2024
White Plains, New York

E N T E R:

HON. DORIS M. GONZALEZ, J.S.C.