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| <b>T.S. v Wappingers Cent. Sch. Dist.</b>                                                                                                                                                                                      |
| 2024 NY Slip Op 35381(U)                                                                                                                                                                                                       |
| March 1, 2024                                                                                                                                                                                                                  |
| Supreme Court, Dutchess County                                                                                                                                                                                                 |
| Docket Number: Index No. 2021-51149                                                                                                                                                                                            |
| Judge: Maria G. Rosa                                                                                                                                                                                                           |
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| This opinion is uncorrected and not selected for official publication.                                                                                                                                                         |

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF DUTCHESS

Present:

Hon. Maria G. Rosa, Justice

T.S.,

Plaintiff,

DECISION AND ORDER

-against-

Index No.: 2021-51149

WAPPINGERS CENTRAL SCHOOL DISTRICT and  
ROY C. KETCHAM HIGH SCHOOL,

Motion Sequence: 3

Defendants.

The following papers were read and considered on Plaintiff's motion to reargue or renew her opposition to Defendants' motion for summary judgment:

| <u>Document:</u>                                    | <u>NYSCEF Doc. No(s):</u> |
|-----------------------------------------------------|---------------------------|
| NOTICE OF MOTION .....                              | 58                        |
| AFFIRMATION IN SUPPORT and EXHIBITS 1-2 .....       | 59-61                     |
| MEMORANDUM OF LAW IN SUPPORT .....                  | 62                        |
| AFFIRMATION IN OPPOSITION and EXHIBITS A-E .....    | 64-70                     |
| REPLY AFFIRMATION.....                              | 71                        |
| ALL PAPERS SUBMITTED ON THE UNDERLYING MOTION ..... | 21-31, 34-54              |

This is an action brought under the Child Victims' Act (CPLR 214-g) based upon the alleged sexual abuse of Plaintiff while she was a minor attending Defendant Roy C. Ketcham High School ("Defendant High School" or the "High School") within the Wappingers Central School District ("Defendant School District" or the "School District"). On December 19, 2023, the Court issued a Decision and Order (the "underlying decision") granting Defendants' motion for summary judgment to dismiss the complaint, holding that Plaintiff failed to raise triable issues of fact as to whether Defendants may have had legally-sufficient notice that an employee was or may have been committing the sexual abuse, and failed to establish any basis for Defendants' liability predicated upon an alleged failure to implement policies and procedures to protect against sexual abuse of minors.

Plaintiff now moves for leave to reargue her opposition to Defendants' summary judgment motion, arguing that the Court overlooked or misapprehended evidence produced by Plaintiff raising triable issues of fact regarding two witnesses' knowledge or notice of the alleged sexual abuse, Father O'Gorman and Warren Griffen, as well as certain events that occurred on school grounds. Plaintiff moves, in the alternative, for leave to renew her opposition based on "new evidence."

To first address Plaintiff's motion to renew, [a] motion for leave to renew must be based upon new facts not offered on the prior motion which would change the prior determination, and must contain a reasonable justification for the failure to present such facts on the prior motion" (*Jaspar Holdings, LLC v Gotham Trading Partners # 1, LLC*, 186 AD3d 582, 584-85 [2d Dept 2020]; CPLR 2221[e]). The "new evidence" proffered by Plaintiff consists of a two-page affidavit with images of photographs from Plaintiff's high school graduation and of her yearbook. This evidence is plainly not new, as the graduation photos were submitted in opposition to the underlying motion (NYSCEF Doc. Nos. 45, 51), and Plaintiff makes no argument that she only recently came into possession or control of her high school yearbook. Accordingly, it is hereby

**ORDERED** that the branch of Plaintiff's motion as seeks to renew her opposition to Defendants' summary judgment motion is denied.

Turning to Plaintiff's motion to reargue, such a motion "is addressed to the sound discretion of the Supreme Court" (*Cent. Mortg. Co. v McClelland*, 119 AD3d 885, 886 [2d Dept 2014]), and "shall be based upon matters of fact or law allegedly overlooked or misapprehended by the Court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion" (CPLR 2221[d][2]). A motion to reargue "is not designed to provide an unsuccessful party with successive opportunities to reargue issues previously decided, or to present arguments different from those originally presented" (*Mazinov v Rella*, 79 AD3d 979, 980 [2d Dept 2010]).

With respect to Father O'Gorman, the Court previously held that because he was not an employee or other actual agent of Defendants, and because Plaintiff produced no evidence or testimony that he ever expressly held himself out to her as such an agent, any knowledge of the alleged sexual abuse which Plaintiff may have imparted to him could not be legally attributed to Defendants. In seeking to reargue this point, Plaintiff asserts that her understanding of Father O'Gorman as the High School "spiritual advisor," her viewing him in the school standing in the main office an unspecified number of times "[m]aybe just having a conversation with somebody," her seeing him on the podium at High School graduations (including Plaintiff's) and the photographs depicting him doing so, and his writing in her High School yearbook do show that Father O'Gorman was an agent who could bind Defendants. As a result, Plaintiff argues, since she told Father O'Gorman about the abuse and gave him evidence of it, the Court should have held that an issue of fact exists concerning Defendants' constructive knowledge of Plaintiff's abuse.

However, Plaintiff's subjective belief in a person's agency based upon her observations and interactions with that person is not sufficient, standing alone, to create a legally binding agency relationship:

Essential to the creation of apparent authority are words or conduct of the principal, communicated to a third party, that give rise to the appearance and belief that the agent possesses authority to enter into a transaction. The agent cannot by his own acts imbue himself with apparent authority. Rather, the existence of apparent authority depends upon a factual showing that the third party relied upon the misrepresentation of the agent because of some misleading conduct on the part of the principal -- not the agent.

(*Hallock v State*, 64 NY2d 224, 231 [1984]; see also *TCVANYCD-DOE v Madison Sq. Boys & Girls Club, Inc.*, 2023 NY Slip Op 31336[U], \*22-\*24 [Sup Ct, NY County 2023]; Restatement (Third) Of Agency § 3.03 (2006) ["Apparent authority. . . is created by [the principal's] manifestation that another has authority to act with legal consequences for the [principal], when a third party reasonably believes the actor to be authorized and the belief is traceable to the manifestation."]).

Thus, in addition to failing to produce evidence that Father O’Gorman’s actions or inactions were legally binding on Defendant, Plaintiff further failed to produce any evidence that Defendants affirmatively represented or misrepresented that Father O’Gorman was their agent. That Defendants may have permitted his presence on school grounds and at graduations is insufficient. Moreover, Plaintiff did not testify that any words or conduct by Defendants resulted in her belief that Father O’Gorman was a member of Defendants’ staff; rather, she testified:

Q. So, what about your observations of [Father O’Gorman] or knowledge of him causes you to believe that he was a member of the staff?

A. I believe I was told.

Q. Do you remember who told you?

A. I think it was general knowledge.

Since Plaintiff failed to furnish evidence to raise a question of fact as to Father O’Gorman’s actual or apparent authority to bind Defendants, and in light of Defendants’ evidence that he had no such authority, the Court properly held that Father O’Gorman’s knowledge of Plaintiff’s sexual abuse could not be imputed to Defendants as a matter of law. Further, it is undisputed that there is no proof that Father Gorman had and conveyed any such information, even if he had a moral obligation to do so.

Regarding Plaintiff’s arguments that constructive notice could be found via one instance of Warren Griffen observing her at the abuser’s home drinking a beer, or via her frequent visits to the High School’s driver’s education office to chat with the abuser and two other instructors, the Court has already considered these facts and held that they were insufficient, without more, to impute “specific knowledge or notice” of the abuser’s actual or potential abuse of Plaintiff (or anyone else) (*Mirand v City of New York*, 84 NY2d 44, 49 [1994]). Plaintiff may not “reargue [such] issues previously decided” (*Mazinov*, 79 AD3d at 980).

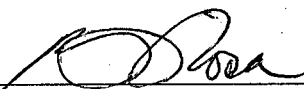
Based on the foregoing, it is hereby

**ORDERED** that the branch of Plaintiff's motion as seeks to leave to reargue her opposition to Defendants' summary judgment motion is denied.

The foregoing constitutes the decision and order of the Court.

Dated: March 1, 2024  
Poughkeepsie, New York

ENTER:

  
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MARIA G. ROSA, J.S.C.

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Pursuant to CPLR §5513, an appeal as of right must be taken within thirty days after service by a party upon the appellant of a copy of the judgment or order appealed from and written notice of its entry, except that when the appellant has served a copy of the judgment or order and written notice of its entry, the appeal must be taken within thirty days thereof.

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