

**W.K. v Archdiocese of N.Y.**

2025 NY Slip Op 31678(U)

April 8, 2025

Supreme Court, New York County

Docket Number: Index No. 950008/2020

Judge: Sabrina Kraus

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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. SABRINA KRAUS PART CVA 1 / 57M**

*Justice*

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W. K.,

Plaintiff,

- v -

ARCHDIOCESE OF NEW YORK, ST. MATTHEW  
CHURCH, ST. MATTHEW SCHOOL

Defendant.

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INDEX NO. 950008/2020

MOTION DATE 02/26/2025

MOTION SEQ. NO. 002 003

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 134, 135

were read on this motion to/for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 136, 137

were read on this motion to/for JUDGMENT - SUMMARY.

**BACKGROUND**

Plaintiff commenced this CVA action and alleges that from the summer of 1980 through the summer of 1981, he was sexually abused by Father Michael O’Hara (O’Hara), his basketball coach and seventh and eighth grade teacher, at St. Matthew School.

The complaint asserts a cause of action for negligence as to each of the defendants. Both defendants have moved for summary judgment. For the reasons set forth below, the motions are denied.

## FACTS

The following facts are taken from the statements of fact and responses submitted by the parties, and unless otherwise noted are uncontested by any evidence in the record.

From 1978 through 1983, O'Hara was employed as a teacher and basketball coach at St. Matthew School, a Catholic School within the geographical and ecclesiastical bounds of the Archdiocese of New York.

Plaintiff enrolled at St. Matthew's School in the first grade and remained there until his eighth-grade graduation in 1981.

Plaintiff was first introduced to O'Hara during sixth-grade at St. Matthew School, when O'Hara was his gym teacher. Thereafter, beginning in seventh grade, O'Hara was Plaintiff's teacher and basketball coach.

On multiple occasions during the summer leading into eighth grade, the eighth-grade school year, and the summer after eighth grade (1980-1981), Plaintiff was sexually abused by O'Hara at O'Hara's apartment in Hastings-on-Hudson, New York, O'Hara's apartment in Dobbs Ferry, New York, St. Matthew School, O'Hara's car, and on overnight trips.

O'Hara's sexual abuse of Plaintiff began when O'Hara left pornographic magazines out in the open for Plaintiff to see in his car and in his apartment when Plaintiff would come over to help paint in exchange for money.

Sometime shortly after the incident where O'Hara exposed Plaintiff to pornographic magazines for the first time, O'Hara and Plaintiff went to a sleep-away camp and O'Hara gave Plaintiff pornographic magazines and paper towels and told him to "do whatever you want with it" while O'Hara went to shower.

The sexual abuse of Plaintiff at O'Hara's apartment escalated. O'Hara asked Plaintiff to again pull his pants down and O'Hara kneeled down and started to perform oral sex on Plaintiff until ejaculation in exchange to alter Plaintiff's answers on his test. After, O'Hara would clean Plaintiff off with a warm washcloth and put Noxzema all over Plaintiff's penis and genitals. O'Hara would then wipe the Noxzema off with a clean rag.

The sexual abuse of Plaintiff began occurring on a weekly basis at either O'Hara's apartment or at St. Matthew School. O'Hara would lock Plaintiff in a closet in the school near the gymnasium and tell him to wait for him. O'Hara would then go into the closet when it was clear and perform oral sex on Plaintiff. Further, O'Hara would send Plaintiff out of class and tell him to go to the gymnasium to put the folding mats away. If the mats were in a pile backstage of the gymnasium, O'Hara would have Plaintiff lie down on the mats and perform oral sex on him while class was in session.

St. Matthew School has a ground floor, a lower level and a floor above the ground floor. The gymnasium is located on the ground level. Classrooms are located on the floor above the ground floor. The gymnasium is also used as an auditorium and, as such, includes a stage.

On several occasions, O'Hara took naked polaroids of Plaintiff and showed Plaintiff naked polaroids of other boys and fellow classmates while he sexually abused them.

The sexual abuse of Plaintiff by O'Hara escalated again. O'Hara started having Plaintiff perform sexual acts on him. O'Hara started having Plaintiff masturbate him and perform oral sex on him and would ejaculate in Plaintiff's mouth.

O'Hara forced Plaintiff on at least one occasion to touch his anus. O'Hara would also stick his fingers in Plaintiff's anus and would lick Plaintiff's anus while performing oral sex on him.

On an overnight trip to Ice Caves Mountain in Ellenville, New York, O'Hara performed oral sex on Plaintiff while another boy watched and had the other boy perform oral sex on O'Hara while Plaintiff watched. Further, on one occasion, O'Hara had Plaintiff pull his pants down and show his penis to another boy while on a lake in a boat.

O'Hara was a sexual predator and serial pedophile with as many as 200 victims over a period of approximately twenty-five years.

In or about 1966, a complaint of child sexual abuse was made against O'Hara by a child who was a member of the National Council of the Boy Scouts of America, Troop 115. Troop 115 met at and was associated with St. Thomas the Apostle Catholic Church ("St. Thomas") in West Hempstead, New York. A priest at St. Thomas wrote to the Scout Executive of the Nassau County Boy Scouts informing Boy Scouts that Scoutmaster of Troop 115, O'Hara, had given a boy a Playboy Magazine. O'Hara "proceeded to touch the boy impurely and invited the boy to do the same to him".

Thereafter, on August 23, 1966, the Nassau County Scout Executive wrote to the National Council of Boy Scouts of America, Director of Division of Personnel in an effort to put O'Hara on the Boy Scouts' "Red Flag List." The memorandum explains that a meeting was held with Reverend Dolan, the pastor of O'Hara's church, pertaining to O'Hara's history of molesting children. As a result, O'Hara was asked to resign from his position as Scoutmaster and was up before the Board of Education with a determination to be made by the Catholic Church regarding his teaching position.

Despite O'Hara being forced to resign from his position as Scoutmaster in 1966 and the Catholic School's Board of Education meeting to discuss O'Hara's future as a teacher in the

Catholic School System, O'Hara's career as a parochial schoolteacher continued unabated, and he was employed as a teacher within parochial schools for over twenty years thereafter.

O'Hara completed his first application for employment as an elementary school teacher in the Archdiocese of New York in September of 1966. On said application, O'Hara listed Father J. Dolan as a reference. Father J. Dolan was one of the priests who met with O'Hara after he was accused of child sexual abuse in 1966, and asked O'Hara to resign from his position as Scoutmaster of Troop 115.

During the deposition of Sister Anastasio, she stated that "[a] smart principal would have checked references that were listed on the resume." Moreover, Sister Anastasio stated that the Principals had the ability to contact prior employers listed on a teacher's resume.

In 1975, during O'Hara's tenure as camp director of Camp Hayes in Godeffroy, New York, it was reported that O'Hara sexually abused campers. One of O'Hara's victims, James Clemente, disclosed the sexual abuse perpetrated by O'Hara to Archdiocesan priest Father Stinner. Instead of reporting to law enforcement or investigating the allegations of abuse, Father Stinner told him never to speak of the sexual abuse again.<sup>1</sup> The Archdiocese does dispute this allegation to the extent of claiming that Clemente had made contradictory statements at different times as to when he first disclosed his abuse by O'Hara.

Father Stinner was a teacher at John S. Burke High School. At all relevant times herein, John S. Buke High School was operated by the Superintendent's Office of the Department of Education of the Archdiocese of New York, and a separately incorporated entity.

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<sup>1</sup> The Court takes judicial notice that in 2002, the Archdiocese included Fr. Stinner's name on a list of priests credibly accused of sexual abuse of children. In 2005, Fr. Stinner was laicized. He died in August 2017. [Sexual Abuse Crisis | Archdiocese of New York](https://archny.org/ministries-and-offices/child-proteccion/list/) <https://archny.org/ministries-and-offices/child-proteccion/list/>.

In 1975, the unwritten rules of the Department of Education of the Archdiocese of New York would have expected Father Stinner to report the allegations of child sexual abuse to the principal of John S. Buke High School. Thereafter the principal should have independently terminated O'Hara or sought advice from the Office of the Superintendent of the Department of Education of the Archdiocese of New York.

At all relevant times herein, if a pastor received a report that a teacher was sexually abusing kids at a parish school the pastor was required to report the allegations to the Archdiocese of New York.

In 1979, Peter Clemente – brother of O'Hara victim James Clemente, wrote a letter to Cardinal Terence Cooke, Archbishop of the Archdiocese of New York, informing Cardinal Cooke that Peter Clemente had found several trash bags filled with child pornography in O'Hara's cabin at Camp Hayes.

Plaintiff never told anyone about the abuse and does not know if anyone witnessed the abuse at school or was aware that he regularly went to the gym where the abuse took place.

### **DISCUSSION**

Summary judgment is a drastic remedy that should be granted only if no triable issues of fact exist, and the movant is entitled to judgment as a matter of law. *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324 (1986). To establish entitlement to summary judgment, the moving party is required to “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.” *Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851 (1985). Only if the moving party satisfies this burden does the burden shift to the nonmoving party “to produce evidentiary proof in admissible form sufficient

to establish the existence of material issues of fact which require a trial of the action.” *Alvarez v. Prospect Hospital* 68 N.Y.2d 320, 324 (1986).

The Court must view the evidence “in a light most favorable to the party opposing the motion, giving [that party] the benefit of every favorable inference.” *International Rescue Committee v. Reliance Insurance Co.*, 230 A.D.2d 641 (1st Dep’t 1996)

It is well settled that a defendants’ burden cannot be satisfied merely by pointing to gaps in the plaintiff’s proof, and that movants herein are required to affirmatively demonstrate the merit of an alleged defense. *In re New York City Asbestos Litigation (Carriero)*, 174 A.D.3d 461 (1st Dept. 2019); *CM v West Babylon Union Free School District* 231 AD3d 809 (2<sup>nd</sup> Dept., 2024); *Doe v Orange-Ulster Bd. Of Coop. Educ. Servs.* 4 AD3d 387, 388-89 (2<sup>nd</sup> Dept., 2004).

In the following cases the Appellate Division, Second Department<sup>2</sup> reversed the trial court’s award of summary judgment and dismissal of claims regarding sexual abuse by a teacher of a student, because defendants had not established an entitlement to judgment as a matter of law and questions regarding constructive notice and adequacy of supervision were questions of fact for the jury: *Sayegh v City of Yonkers* 228 Ad2d 690 ( 2024)(defendants failed to establish prima facie that they lacked constructive notice and failed to demonstrate their supervision of the teacher and plaintiff was not negligent); *Stanton v Longwood Central School District* 233 AD3d 1010 (2024); *CM v West Babylon Union Free School District* 231 AD3d 809 (2024); *MCVAWCD-DOE v Columbus Avenue Elementary School* 225 AD3d 845 (2024); *Kastel v Patchogue-Medford Union Free School District* 234 AD3d 741(2025); *Sallustio v Southern*

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<sup>2</sup> While this Court is of course mindful that this action is in the First Department, most of the appellate case law at this time comes from the Second Department primarily because the CVA cases outside of New York City are at a more advanced stage.

*Westchester Board Cooperative Educational Services* 235 AD3d 680 (2025); *Brauner v Locust Valley Central School District* 234 AD3d 914 (2025).

In this case, viewing the evidence in the light most favorable to the Plaintiff, there is evidence that defendants either knew or should have known that O'Hara had abused minors and/or was acting inappropriately with the students at St. Matthew.

As far as actual notice, there was 1966 complaint, which Father Dolan was aware of, and then the Clemente brothers' complaints in 1975 to Father Stinner, and in 1979 to Cardinal Cooke.

As far as constructive notice, O'Hara engaged in grooming behavior and actual abuse of Plaintiff on school grounds. O'Hara regularly excused Plaintiff from class and sent him on errands. O' Hara took the boys on overnight trips and other excursions, which were not chaperoned or school sanctioned.

Given all of the above the Court finds that defendants have failed to make a *prima facie* showing that they are entitled to judgment as a matter of law. Defendants have failed to establish that they lacked actual and/or constructive notice, or that they properly supervised O'Hara and Plaintiff during the school day. Defendants essentially rely on what they perceive to be a gap in Plaintiff's proof at trial.

Additionally, the Court finds it surprising that The Archdiocese argues it owed Plaintiff no duty of care, when their own witness, Sister Anastasio testified that the Pastor of a parochial school has final say over the employment of teacher, and the Archbishop of New York has the ultimate authority over religious education within the ecclesiastical bounds of the Archdiocese of New York. Sister Anastasio stated that the safety of students attending parochial schools within the geographical bounds of the Archdiocese was the highest priority of the Archdiocese of New

York. The Sister further acknowledged that the School did not maintain records that referred to reports of sexual abuse.

The Department of Education of the Archdiocese of New York had policies that the schools within its boundaries were required to follow. The evidence in the record supports the claim that the Board of Education for the Archdiocese supervises and directs what happens in its parochial schools, much the same way as the Board of Education for public schools is responsible for oversight of individual schools.

A school or school district “owes a duty to adequately supervise the students in its care, and may be held liable for foreseeable injuries proximately related to the absence of adequate supervision” (*Fernandez v. City of Yonkers*, 139 A.D.3d 895, 896, 31 N.Y.S.3d 595 [internal quotation marks omitted]; see *Doe v. Rohan*, 17 A.D.3d 509, 511, 793 N.Y.S.2d 170). “The standard for determining whether the school has breached its duty is to compare the school’s supervision and protection to that of a parent of ordinary prudence placed in the same situation and armed with the same information” (*Wienclaw v. East Islip Union Free Sch. Dist.*, 192 A.D.3d 945, 946, 144 N.Y.S.3d 106 [internal quotation marks omitted])

*MCVAWCD-DOE v. Columbus Ave. Elementary Sch.*, 225 A.D.3d 845, 847, 207 N.Y.S.3d 669, 671 (2024)

The Archdiocese argues that the question of duty is best expressed as whether the plaintiff’s interests are entitled to legal protection against the defendant’s conduct. It cannot be disputed that the record contains evidence from which a jury could find that the Archdiocese had actual or constructive knowledge, including actual reports of abuse of other children prior to Plaintiff’s abuse. Therefore, the Archdiocese had an obligation to protect Plaintiff from O’Hara in the Schools it governed. There is also evidence from which a trier of fact could find that the Archdiocese did have custody and control over Plaintiff as it was in charge of overseeing the School.

Finally, the Archdiocese argues that it is not responsible for O’Hara’s conduct because he was not acting in furtherance of his employment.

“Although an employer cannot be held vicariously liable for torts committed by an employee who is acting solely for personal motives unrelated to the furtherance of the employer's business, the employer may still be held liable under theories of negligent hiring, retention, and supervision of the employee” (*Johansmeyer v. New York City Dept. of Educ.*, 165 A.D.3d 634, 635, 85 N.Y.S.3d 562 [citations and internal quotation marks omitted]). “To establish a cause of action based on negligent hiring, negligent retention, or negligent supervision, it must be shown that the employer knew or should have known of the employee's propensity for the conduct which caused the injury” (*Shor v. Touch-N-Go Farms, Inc.*, 89 A.D.3d 830, 831, 933 N.Y.S.2d 686; *see Fuller v. Family Servs. of Westchester, Inc.*, 209 A.D.3d 983, 984, 177 N.Y.S.3d 141). “The employer's negligence lies in having placed the employee in a position to cause foreseeable harm, harm which would most probably have been spared the injured party had the employer taken reasonable care in making decisions respecting the hiring[,] ... retention[, or supervision] of the employee” (*D.T. v. Sports & Arts in Schs. Found., Inc.*, 193 A.D.3d 1096, 1097, 147 N.Y.S.3d 622 [internal quotation marks omitted]; *see Johansmeyer v. New York City Dept. of Educ.*, 165 A.D.3d at 635–637, 85 N.Y.S.3d 562).

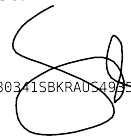
*MCVAWCD-DOE v. Columbus Ave. Elementary Sch.*, 225 A.D.3d 845, 846–47 (2<sup>nd</sup> Dept., 2024)

Here, the Archdiocese has failed to establish conclusively that they lacked actual or constructive notice, and therefore they could be responsible for the foreseeable acts of O’Hara as its agent or employee, and there is sufficient evidence in the record from which a jury could determine that O’Hara was an agent and employee of the Archdiocese.

WHEREFORE it is hereby:

ORDERED that the motions for summary judgment are denied; and it is further

ORDERED that the parties appear for a virtual pre-trial conference on May 5<sup>th</sup>, 2025, at 1:30 pm at which time a final trial date before this Court will be set.

  
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4/8/2025  
DATE

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SABRINA KRAUS, J.S.C.

CHECK ONE:

CASE DISPOSED  
 GRANTED  
 SETTLE ORDER

DENIED

NON-FINAL DISPOSITION  
 GRANTED IN PART  
 SUBMIT ORDER

OTHER

APPLICATION: