

M.G. v Archdiocese of N.Y.

2025 NY Slip Op 33722(U)

September 26, 2025

Supreme Court, New York County

Docket Number: Index No. 950163/2021

Judge: Sabrina Kraus

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

PRESENT: HON. SABRINA KRAUS PART 57M

Justice

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M. G.,

Plaintiff,

- v -

ARCHDIOCESE OF NEW YORK, CHURCH OF ST. JUDE

Defendant.

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INDEX NO. 950163/2021

MOTION DATE 06/27/2025

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 69, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 94

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

In this CVA action, The Church of St Jude moves for summary judgment and dismissal of the complaint. For the reasons set forth below, the motion is granted.

ALLEGED FACTS

The following facts are taken from the Statements of Material fact submitted by the parties and appear to be uncontested on the record before the Court.

Plaintiff commenced this action pursuant to the Child Victims Act, codified at CPLR §214-g, alleging that he was sexually abused by Father Michael O’Herlihy (“O’Herlihy”) between 1974 and 1975.

Plaintiff and his family were parishioners of the Church of St. Jude. Plaintiff began attending St. Jude School when he was in the fourth grade and began serving as an altar boy at St. Jude Church in the fourth grade, serving several masses per week. Plaintiff was a student at the St. Jude during the years of alleged abuse.

O’Herlihy was ordained as a Catholic Priest by the Archdiocese of New York in 1961. After ordination, O’Herlihy was assigned to Livingston Manor. He then served at St. Aloysius, St. Paul’s Parish, and Our Lady of Solace, before reporting to Cardinal Hayes High School.

When plaintiff was in the fourth grade, St. Jude Pastor, Fr. Bradley, introduced O’Herlihy at a school assembly as a priest from Cardinal Hayes High School, who would conduct occasional masses as a visiting priest. At some point during Plaintiff’s fourth grade year, Plaintiff’s mother asked O’Herlihy to provide Plaintiff with guidance on how to be a better man and to “keep him from going to hell for being gay.”

Following this conversation with Plaintiff’s mother, O’Herlihy picked Plaintiff up from the home Plaintiff shared with his mother and drove Plaintiff to a liquor store and asked Plaintiff what he would like to drink. They then drove to O’Herlihy’s residence at Cardinal Hayes High School. The first instance of abuse occurred at O’Herlihy’s residence during this visit. O’Herlihy brought Plaintiff to his bedroom and started pouring him rum. At some point, a priest knocked on O’Herlihy’s door and entered. When he entered, Plaintiff was sitting on O’Herlihy’s bed with his shirt off drinking rum. O’Herlihy’s shirt was also open. The priest asked, “What’s going on here?” O’Herlihy responded, “Oh, well, we’re watching the game and we’re having a drink and we’re going to have some fun.” The other priest laughed and responded, “You guys keep it down and stay out of trouble.”

Subsequently, O’Herlihy continued to provide Plaintiff with alcohol, leading Plaintiff to become drunk. O’Herlihy told Plaintiff it was time for bed and offered Plaintiff the bedroom. As O’Herlihy closed the bedroom door he whispered to Plaintiff, “remember that real men sleep naked.” Sometime after, O’Herlihy went into the bed with Plaintiff, put his arm around Plaintiff, and then fondled Plaintiff’s genitals for 15-20 minutes.

O’Herlihy sexually abused Plaintiff on three more occasions. For each instance of alleged abuse, O’Herlihy picked Plaintiff up from his house and drove him to O’Herlihy’s residence at Cardinal Hayes High School and give him alcohol. On the second and third occasion, the sexual abuse escalated to O’Herlihy performing oral sex on Plaintiff. On the final occasion, O’Herlihy sodomized Plaintiff.

Plaintiff never told anyone about the alleged abuse when it was occurring, including anyone at St. Judge School and/or church. Plaintiff was 26 years of age the first time he disclosed the alleged abuse to third parties, his mother and two sisters.

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).

A plaintiff bringing a negligence action must allege "a duty owed to the plaintiff by the defendant, a breach of that duty, and injury proximately resulting therefrom" (*Moore Charitable*

Found. v PJT Partners, Inc., 40 NY3d 150, 157 [2023] [Moore], citing *Pasternack v Laboratory Corp. of Am. Holdings*, 27 NY3d 817, 825 [2016]; *Solomon v City of New York*, 66 NY2d 1026, 1027 [1985]; *Akins v Glens Falls City School Dist.*, 53 NY2d 325, 333 [1981]).

In this action the Court agrees with movant that there was no duty owed to plaintiff by Movant on the occasions of abuse. “[T]he existence and scope of that duty is a legal question for the courts to determine. Indeed, in the absence of duty, there is no breach and without breach there is no liability.” *Sheila C. v. Povich*, 11 A.D.3d 120, (1st Dep’t 2004).

When an entity is entrusted with the custody of a child, it has a duty to adequately supervise the child in its’ charge and may be liable for foreseeable injuries related to the absence of adequate supervision. *MCVAWCC-Doe v. Town of Cortlandt*, 231 A.D.3d 818, 820 (2d Dep’t 2024). This duty is derived from the fact that the entity, effectively takes the place of parents and guardians when it assumes physical custody and control over the child. *Id* at 820 citing *J.B. v. Monroe-Woodbury Cent. Sch. Dist.*, 224 A.D.3d 722 (2024). An entity’s “custodial duty ceases once the child has passed out of its orbit of authority and the parent is perfectly free to reassume control over the child’s protection. *MCVAWCC-Doe*, 231 A.D.3d at 820 citing *Pratt v. Robinson*, 39 N.Y.2d 554 (1976) and *Vernali v. Harrison Cent. School Dist.*, 51 A.D.3d 782 (2d Dep’t 2008).

In this action movant has established that the abuse took place off School premises and after School hours and Plaintiff had no improper interactions with O’Herlihy at the School. Thus movant has established that no duty was owed and that it is entitled to dismissal of the complaint as against it. *P.S. v. Beck*, 233 A.D.3d 489, 489 (1st Dept., 2024).

