ARK190 Doe v Archdiocese of N.Y.
2026 NY Slip Op 31318(U)
March 30, 2026
Supreme Court, New York County
Docket Number: Index No. 950199/2020
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**

Justice

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ARK190 DOE,

Plaintiff,

- v -

ARCHDIOCESE OF NEW YORK, ST. PAUL, PARISH OF STS. PETER AND PAUL AND ASSUMPTION, DOES 1-5 WHOSE IDENTITIES ARE UNKNOWN TO PLAINTIFF

Defendants.

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INDEX NO. 950199/2020

MOTION DATE 01/15/2026, 01/13/2026

MOTION SEQ. NO. 001 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1, 47, 48, 49, 50, 51, 52, 87, 88, 89, 91, 92, 93, 94, 95, 96, 97

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

The following e-filed documents, listed by NYSCEF document number (Motion 002) 1, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 90

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

BACKGROUND

Plaintiff commenced this action pursuant to the Child Victims Act ("CVA") seeking damages for child sexual abuse allegedly perpetrated by Father Michael O'Herlihy ("O'Herlihy") while he was a student at the parish of St. Peter, St. Paul and Assumption Church s/h/a St. Paul and Parish of Sts. Peter and Paul and Assumption (the "St. Paul").

FACTS

The following derives from admissions in the parties' statements of material fact.

Plaintiff was raised in a devout Roman Catholic family and would attend mass at the Parish every Sunday. Plaintiff also attended weekly religious education classes at St. Paul Elementary School from when he was around eleven to sixteen years old around 1962 to 1967.

O'Herlihy would occasionally enter the classroom to check in on the sessions. Plaintiff was also part of St. Paul's Catholic Youth Organization ("CYO") sports league.

The following information derives from Plaintiff's testimony (NYSCEF Doc No. 42).

Plaintiff became acquainted with O'Herlihy when he was around ten or eleven years old through St. Paul's CYO program. Plaintiff and O'Herlihy used to interact at the CYO events and in church as Plaintiff was a skilled player on the team.

When Plaintiff was around fourteen, he was in attendance at a Wednesday religious education session at St. Paul Elementary. The session, which was called a "confraternity" session, was usually run by the same nun. One day near the end of the confraternity session, O'Herlihy came into the room and directed everyone to leave but Plaintiff. O'Herlihy told Plaintiff that they needed to check out the new uniforms for the basketball team at the rectory, which is the building at a parish wherein priests are housed. After everyone left, O'Herlihy then brought Plaintiff to a parlor in the rectory. As the two were looking at the basketball uniforms, O'Herlihy asked Plaintiff whether he had a girlfriend and whether Plaintiff kissed his girlfriend. O'Herlihy then asked Plaintiff to come closer to him. Plaintiff asked to leave and O'Herlihy initially did not allow Plaintiff to do so. After repeated requests O'Herlihy then Plaintiff go.

Another time, Plaintiff was again at a confraternity session when O'Herlihy arrived at the end of class and directed Plaintiff to meet him at the rectory. O'Herlihy brought Plaintiff to the parlor and then asked him similar questions about the manner in which Plaintiff would kiss his girlfriend. O'Herlihy then leaned toward Plaintiff and attempted to kiss Plaintiff on his ear. As he kissed Plaintiff's ear, O'Herlihy had his hand underneath his robe and began to masturbate himself. Plaintiff told O'Herlihy to stop and asked to leave, but O'Herlihy would not allow him to do so. Plaintiff testified that the door was secured with a chain on it. Plaintiff then pushed

O'Herlihy aside and he eventually opened the door of the rectory for Plaintiff to leave.

Plaintiff testified that the rectory had a housekeeper who worked at the rectory named "Mrs. Shaughnessy" and that she likely saw him and O'Herlihy in the rectory as she was cooking or cleaning. During one instance, Plaintiff testified that O'Herlihy had left the parlor and went upstairs when Shaughnessy approached him. She then warned Plaintiff, "He is after you" (*id.* at 231). She unlocked a back door to the cellar and let Plaintiff out of the building. After Shaughnessy retired, another housekeeper took her place whom Plaintiff stated was "part of the Archdiocese" (*id.* at 234). Plaintiff also saw this woman several times at the rectory.

Regarding his removal from the confraternity sessions, Plaintiff testified that O'Herlihy did so "[c]onsistently" on "every Wednesday for a couple of years" (*id.* at 68). He also testified that "everybody knew in the neighborhood" about O'Herlihy's alleged misconduct (*id.* at 86).

After the instances in the rectory, Plaintiff was standing outside of a grocery store with his friends when O'Herlihy pulled up to the friend group in his car. O'Herlihy exited the vehicle and asked Plaintiff to come with him, but Plaintiff refused and ran into nearby woods. O'Herlihy chased Plaintiff on foot through the woods, and Plaintiff tripped. O'Herlihy fell on top of Plaintiff, and Plaintiff was able to free himself from underneath O'Herlihy. Plaintiff's friends had followed the two into the woods, and after Plaintiff got up, O'Herlihy left them alone.

The next instance of abuse happened when Plaintiff was on a Boy Scouts trip with O'Herlihy at a site called Pouchcamp. Plaintiff was in one of the cabins on the campground when O'Herlihy entered the cabin. O'Herlihy told Plaintiff and the other boys that when they took a shower, they should make sure that they hung their bathing suits outside the cabin to dry. Plaintiff then entered the campground shower, which he described as an open space without individual stalls, and he found O'Herlihy inside naked. Plaintiff ran out of the shower and told

his friend that he saw O'Herlihy naked. Around thirty minutes later, O'Herlihy came into Plaintiff's cabin and asked Plaintiff to keep the incident quiet. Plaintiff told one of the adult troop leaders about this instance with O'Herlihy but the troop leader did not take action.

Finally, Plaintiff testified that the last instance of abuse occurred on an annual trip to Coney Island with other children who were part of the CYO sports league to Coney Island. One day, Plaintiff, O'Herlihy and other children on the team traveled to Coney Island on a yellow school bus. The only other adult on the trip was the school bus driver. After everyone arrived at Coney Island, O'Herlihy directed the children to take showers in a public shower. Everyone went into the shower facility together and there were no individual stalls. Plaintiff and the other children kept their bathing suits on while O'Herlihy watched them take their showers. O'Herlihy also kept on his bathing suit, and Plaintiff testified that no touching occurred during this instance.

PENDING MOTIONS

Plaintiff asserts three causes of action against each defendant: (1) negligence, (2) negligent training and supervision and (3) negligent retention (NYSCEF Doc No. 1).

On March 2, 2026, the Archdiocese moved for an order granting summary judgment dismissing Plaintiff's complaint as against it (NYSCEF Doc No. 47 [mot. seq. 001]).

On March 26, 2026, the Parish moved for an order granting summary judgment dismissing Plaintiff's complaint as against it (NYSCEF Doc No. 33 [mot. seq. 002]).

The motions were fully briefed and marked submitted on March 26, 2026, and the Court reserved decision.

The Court denies both motions as movants failed to meet their burden of establishing a right to judgment as a matter of law and for the additional reasons set forth below.

DISCUSSION

Summary judgment is a drastic remedy reserved for cases where "no material and triable issue of fact is presented" (*Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]). To prevail on summary judgment, the movant must establish *prima facie* entitlement to judgment as a matter of law, tendering evidence in admissible form demonstrating the absence of any triable issues of fact (CPLR § 3212(b); *Matter of New York City Asbestos Litig.*, 33 NY3d 20, 25–26 [2019]). A defendant's initial burden on summary judgment cannot be satisfied by "merely point[ing] to perceived gaps" in the plaintiff's proof "rather than submitting evidence showing why" the plaintiff's claim fail (*Matter of New York City Asbestos Litig.*, 174 AD3d 461, 461 [1st Dept 2019] [alteration in original]).

When a movant meets this burden, summary judgment will be denied only when the nonmovant provides evidence in admissible form demonstrating the existence of triable issues of fact (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). However, "[m]ere conclusions, expressions of hope, or unsubstantiated allegations or assertions are insufficient" to defeat summary judgment (*Justinian Capital SPC v WestLB AG*, 28 NY3d 160, 168 [2016] [alteration in original]). Courts view the evidence in a light most favorable to the nonmovant and accord the nonmovant with "the benefit of every reasonable inference" (*Negri v Stop & Shop, Inc.*, 65 NY2d 625, 626 [1985]).

The Court Denies the Parish's Motion

The Parish first argues that summary judgment is appropriate because it had no actual or constructive notice of O'Herlihy's abusive propensities or conduct. The Parish cites Plaintiff's testimony, which states that he never told anyone at the Parish about the abuse, and also the testimony of Father Michael Chicon, who served as pastor at St. Paul from 2007 to 2021 and

stated that he was unaware of any investigations into O'Herlihy's conduct during his tenure.

Plaintiff's second and third causes of action are based in a theory of negligent hiring, retention and supervision which provides that an employer is liable to a third party for the tortious conduct of an employee when (1) the employer knew of its employee's harmful propensities, (2) the employer failed to take necessary action and (3) this failure caused harm to others (*Waterbury v New York City Ballet, Inc.*, 205 AD3d 154, 160 [1st Dept 2022], citing *Gonzalez v City of New York*, 133 AD3d 65, 67–68 [1st Dept 2015]). A defendant possesses culpable knowledge when the defendant is on actual or constructive notice of an employee's tortious propensities or conduct (*Nellenback v Madison County*, 44 NY3d 329, 334–35 [2025]; *Norris v Innovative Health Sys., Inc.*, 184 AD3d 471, 472–73 [1st Dept 2020]). Constructive notice arises when the defendant "has *reason* to know of the facts or events evidencing that propensity" (*Nellenback*, 44 NY3d at 335 [emphasis in original]).

The Parish's own submissions raise numerous questions of fact as to whether it was on actual or constructive notice of the abuse. Plaintiff's testimony alleges that there was widespread knowledge of O'Herlihy's propensity for sexual misconduct through the community among both children and adults. Plaintiff also testified that Mrs. Shaughnessy, a potential employee of the Parish, helped him escape O'Herlihy after O'Herlihy left him alone in the rectory's parlor.

Regarding constructive notice, Plaintiff testified that O'Herlihy would consistently remove him from confraternity sessions at the end of class over the course of a year with a teacher and other students present. Plaintiff also testified that the woman who replaced Mrs. Shaughnessy likely saw O'Herlihy and him together in the rectory.

Even assuming that Plaintiff's testimony did not raise issues of fact as to actual or constructive notice, the Parish, assuming a duty to supervise Plaintiff *in loco parentis* during

these confraternity sessions, may have been negligent in allowing O'Herlihy to consistently remove Plaintiff from class. A school standing *in loco parentis* of a child owes a duty to supervise and protect the child and is liable for foreseeable injuries proximately caused by the absence of adequate supervision (*Mirand v City of New York*, 84 NY2d 44, 49 [1994]). This duty continues even after the child exits the school's custody and is breached when the student is released "without further supervision into a foreseeably hazardous setting it had a hand in creating" (*C.M. v West Babylon Union Free Sch. Dist.*, 231 AD3d 809, 812 [2d Dept 2024] [*holding that a school may be liable for the sexual abuse of the plaintiff occurring off campus when it may have been on constructive notice of the teacher's abusive propensities*], quoting *Boyle v Brewster Cent. Sch. Dist.*, 209 AD3d 619, 621 [2d Dept 2022]). If the Parish "had a hand in" enabling O'Herlihy to remove Plaintiff from these confraternity sessions, the Parish may be liable for negligently releasing Plaintiff into a potentially hazardous environment.

Finally, the Parish's argument that dismissal is required in light of the Court of Appeals' decision in *Nellenback v Madison County* is unavailing. *Nellenback* was a fact-specific decision holding that the defendant did not have any reason to know about the plaintiff's abuse when, unlike here, the plaintiff was abused off the defendant's premises and the plaintiff's foster records were discarded pursuant to a routine process (*Nellenback v Madison County*, 44 NY3d 329, 331–32, 335 [2025]). *Nellenback* did clarify that a CVA defendant should be held to the standard of care "that was reasonable at the time" for the hiring, retention or supervision an employee, and the First Department has since cited *Nellenback* for this proposition (*id.* at 337; *C.R. v Episcopal Diocese of New York*, 243 NYS3d 348, 355 [1st Dept 2025]). The Parish nevertheless fails to establish a *prima facie* case that it adhered to the relevant standard of care for the time as "a jury determines whether and to what extent a particular duty was breached"

(*Tagle v Jakob*, 97 NY2d 165, 168 [2001]).

The Court Denies the Archdiocese's Motion

The Archdiocese similarly argues that it is entitled to summary judgment as it had no actual or constructive notice of O'Herlihy's abusive propensities or conduct. In support of its motion, the Archdiocese appears to rely on the submissions of the Parish as the Archdiocese provides the Court with no exhibits in its moving papers (*see* NYSCEF Doc Nos. 47–51). This falls far short of meeting its *prima facie* burden on summary judgment.

Moreover, Plaintiff's complaint alleges that the Archdiocese was in an agency relationship with the Parish such that notice acquired by any of the Parish employees acting within the scope of their agency would be "imputed to [the Archdiocese] . . . although the information is never actually communicated to [the Archdiocese]" (*Center v Hampton Affiliates, Inc.*, 66 NY2d 782, 784 [1985]; *see also A.M. v Holy Resurrection Greek Orthodox Church of Brookville*, 190 AD3d 470, 470–71 [1st Dept 2021]; *R.L. v Holland Cent. Sch. Dist.*, 2025 NY App Div LEXIS 7557, at *5 [4th Dept 2025]). Thus, if certain employees at the Parish were "acting on the . . . Archdiocese defendants' behalf" when they learned of O'Herlihy's abusive propensities or conduct, their knowledge would be imputed onto the Archdiocese (*see A.M.*, 190 AD3d at 470–71). As discussed above, the Parish's submissions raise questions of fact as to whether it—and therefore, the Archdiocese—was on actual or constructive notice of O'Herlihy's abusive propensities or conduct.

To the extent that the Archdiocese asks the Court for summary dismissal of Plaintiff's claim for negligent hiring, the argument is without consequence as Plaintiff's complaint does not assert a cause of action based in negligent hiring (*see* NYSCEF Doc No. 1).

CONCLUSION

Accordingly, it is hereby:

ORDERED that the motion of the Archdiocese of New York (mot. seq. 001) is denied in its entirety; and it is further

ORDERED that the motion of St. Paul, Parish of Sts. Peter and Paul and Assumption (mot. seq. 002) is denied in its entirety; and it is further

ORDERED that all other requests for relief are denied; and it is further

ORDERED that the parties appear for a virtual pretrial conference on May 4, 2026 at 1:30 pm at which time a final trial date will be set; and it is further

ORDERED that, within twenty (20) days from entry of this order, Plaintiff shall serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office (60 Centre Street, Room 119, New York, NY 10007); and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh).

This constitutes the decision and order of this Court.

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3/30/2026
DATE

SABRINA KRAUS, J.S.C.

CHECK ONE:		CASE DISPOSED		X	NON-FINAL DISPOSITION		
		GRANTED	X DENIED		GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE