

ARK403 Doe v Archdiocese of N.Y.

2026 NY Slip Op 31837(U)

April 28, 2026

Supreme Court, New York County

Docket Number: Index No. 950366/2021

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

-----X

ARK403 DOE,

Plaintiff,

- v -

ARCHDIOCESE OF NEW YORK, ST. DENIS, DOES 1-5
WHOSE IDENTITIES ARE UNKNOWN TO PLAINTIFF

Defendants.

-----X

INDEX NO. 950366/2021

MOTION DATE 02/27/2026,
02/27/2026

MOTION SEQ. NO. 002 003

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 95

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

The following e-filed documents, listed by NYSCEF document number (Motion 003) 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 96

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER.

BACKGROUND

Plaintiff commenced this action under the Child Victims Act (“CVA”) seeking damages for personal injuries allegedly perpetrated by Father Gennaro Gentile (“Gentile”).

FACTS

Gentile was a priest ordained by the Archdiocese of New York (the “Archdiocese”).
Gentile was a priest at both St. Mary’s in Poughkeepsie and the church of defendant St. Denis (“St. Denis Church”).

The following information derives from Plaintiff’s testimony (NYSCEF Doc No. 52).

When Plaintiff was eleven to twelve years old around 1978 to 1977, Plaintiff and his family were parishioners at both St. Mary’s Church in Poughkeepsie and later St. Denis Church

during which Gentile was a priest. Gentile became personal friends of Plaintiff's family when he was a priest at both parishes.

Plaintiff testified that Gentile abused him on three occasions.

Gentile commonly hosted Plaintiff and his family at Gentile's privately owned cabin in Ballston Spa, New York (*see id.* at 26). The first instance of abuse occurred when Plaintiff was accompanied by his family on a trip to the cabin. Before everyone went to sleep, Gentile asked Plaintiff's mother if Plaintiff could sleep in Gentile's bed that night. Plaintiff's mother assented, and the two slept in Gentile's bed. After Plaintiff had fallen asleep, he awakened to Gentile wrapping his leg around Plaintiff's body and rubbing his erection on Plaintiff's buttocks.

During the second incident, Gentile similarly had invited Plaintiff and his family to his cabin and arranged for Plaintiff to sleep in his bed. Gentile then rubbed his erection on Plaintiff's body while the two were together in bed.

The final time, Plaintiff's mother allowed him to accompany Gentile alone to the cabin. After Plaintiff and Gentile had dinner, Gentile directed Plaintiff to sit with him on the couch and remove his shirt. Gentile then put Plaintiff on his lap and began to rub his erection on Plaintiff's buttocks. Sometime thereafter, Gentile removed Plaintiff's underwear and anally raped him.

Plaintiff testified that he told his mother and brother about the abuse about two years after the final incident but they did not believe him (*id.* at 36–38). Plaintiff also testified that he never reported the abuse to anyone at St. Denis Church or the Archdiocese (*id.* at 39–40).

PENDING MOTIONS

On April 15, 2026, the Archdiocese moved for summary judgment dismissing Plaintiff's complaint as against it (NYSCEF Doc No. 36 [mot. seq. 002]).

On April 15, 2026, St. Denis Church moved for summary judgment dismissing Plaintiff's complaint as against it (NSCEF Doc No. 46 [mot. seq. 003]).

The motions were fully briefed and marked submitted on April 15, 2026, and the Court reserved decision.

The Court grants the motions of St. Denis and the Archdiocese as they both establish a *prima facie* case that they did not owe Plaintiff a duty.

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, according the nonmovant with “the benefit of every reasonable inference” (*Negri v Stop & Shop, Inc.*, 65

NY2d 625, 626 [1985]).

The Court Grants the Motions of the Archdiocese and St. Denis Church as They Neither Owed a Duty to Plaintiff nor Were the Proximate Cause of His Harm

The threshold question in any negligence action is whether the alleged tortfeasor owed a duty of care to the injured plaintiff (*Espinal v Melville Snow Contrs.*, 98 NY2d 136, 138 [2002]). Although a jury decides whether and to what extent a particular duty was breached, courts must determine whether any such duty exists (*Tagle v Jakob*, 97 NY2d 165, 168 [2001]). When articulating the scope of a duty, courts must consider “the foreseeability of the possible harm” and “the reasonable expectations of the parties and society in general” (*Elmaliach v Bank of China Ltd.*, 110 AD3d 192, 200 [1st Dept 2013]).

Ordinarily, a defendant has no duty to protect a plaintiff from the tortious conduct of a third person absent a special relationship with the plaintiff or a special relationship with the alleged tortfeasor (*Bindler v Lenox Hill Neighborhood House, Inc.*, 217 AD3d 440, 441 [1st Dept 2023]). The Archdiocese and St. Denis Church establish that there was no special relationship between them and Plaintiff when Gentile allegedly abused him. The abuse occurred on three separate trips to Gentile’s privately owned cabin that were arranged from Gentile’s personal acquaintance with Plaintiff’s family. Defendants thus establish a *prima facie* case to lack of a special relationship as they did not assume physical custody of Plaintiff (*e.g. John Doe 42 v Yeshiva Univ.*, 245 AD3d 545, 546 [1st Dept 2026] [*in loco parentis*]) nor do Plaintiff’s allegations that could “give rise to only a clergy-congregant relationship” create a special duty between them and Plaintiff (*see Marmelstein v Kehillat New Hempstead: The Rav Aron Jofen Community Synagogue*, 11 NY3d 15, 22 [2008]).

In opposition, Plaintiff argues that the Archdiocese and St. Denis Church could have been on actual or constructive notice of Gentile’s abusive propensities or conduct under a theory of

negligent hiring, retention and supervision. A defendant is liable to a third party for the tortious conduct of an employee when (1) the defendant 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]). However, the causation element requires that "the employer's negligence must be a proximate cause of the plaintiff's injury" (*id.* at 162).

Even assuming *arguendo* that the Defendants were negligent in their hiring, retention and supervision of Gentile, there is nothing from the record to indicate that their negligence was the proximate cause of Plaintiff's alleged abuse. All three instances occurred during interpersonal trips to Gentile's private cabin where Plaintiff's family allowed Plaintiff to be in Gentile's presence. Plaintiff's family was even present at the cabin during the first two instances of abuse. The abuse did not occur because the Defendants "place[d] [Gentile] in a position to cause foreseeable harm" but due to an unfortunate interpersonal acquaintanceship (*Moore Charitable Found. v PJT Partners, Inc.*, 40 NY3d 150, 158 [2023]). The case *Ford v Gildin* is directly on point (200 AD2d 224 [1st Dept 1994]). There the First Department held that a landlord was not liable for the negligent hiring of a porter when the porter became personal friends acquainted with one of the building's tenants and this acquaintanceship thereafter enabled him to sexually abuse her daughter (*id.* at 225–26, 227). The First Department held that the allegedly negligent hiring of the porter did not proximately cause the plaintiff's harm, reasoning, "Were we to hold otherwise, then all ex-offenders who had ever committed a violent crime would be rendered virtually unemployable, for to hire them would render the employer liable for any criminal act committed thereafter" (*id.* at 227).

Equally unavailing is Plaintiff's reliance on the Fourth Department decision *PB-20 Doe v St. Nicodemus Lutheran Church* where the "off-premises abuse was preceded by, and continued during, a time period where plaintiffs were groomed by the pastor *while he was engaged in his role as the [defendants'] employee*" (228 AD3d 1233, 1237 [4th Dept 2024] [internal emphasis and alteration added]). Although Gentile met Plaintiff's family when they were parishioners at the churches, the alleged abuse occurred due to his personal friendship with Plaintiff's family and outside his role as a priest—far closer to the facts of *Ford v Gildin*.

Accordingly, the Court grants the motions of the Archdiocese and St. Denis Church as they establish a *prima facie* case that they did not owe a duty to the Plaintiff and the Plaintiff submits no evidence in opposition creating a triable issue of fact.

CONCLUSION

Accordingly, it is hereby:

ORDERED that the Archdiocese's motion for summary judgment (mot. seq. 002) is granted in its entirety; and it is further

ORDERED that the St. Denis's motion for summary judgment (mot. seq. 003) is granted in its entirety; and it is further

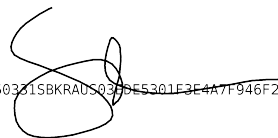
ORDERED that, within twenty (20) days from entry of this order, Defendants shall serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office (60 Centre Street, Room 119, New York, NY 10007); and it is further

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); and it is further

ORDERED that the complaint is dismissed with costs and disbursements to defendants as taxed by the Clerk upon the submission of an appropriate bill of costs; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

This constitutes the decision and order of this Court.



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4/28/2026

DATE

SABRINA KRAUS, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE