

COA draws lines between secular, religious issues

By: David Donovan July 14, 2015

The Bible instructs followers to “be subject for the Lord’s sake to every human institution,” but the judicial branch has generally preferred to avoid getting tangled up in church governance, at least when disputes would require judges to parse through ecclesiastical laws alongside secular ones.

Following that same measured path, the North Carolina Court of Appeals ruled July 7 that an anonymous plaintiff could proceed with some—but not all—of his claims against the Catholic Diocese of Raleigh, whom he claims failed to properly supervise a priest who sexually assaulted him.

The court unanimously ruled that the plaintiff could proceed with claims against the diocese for negligent supervision and the resulting infliction of emotional distress, holding that the issue was a “purely secular one.” But it granted the diocese’s request to dismiss a claim based on its refusal to require the accused priest to undergo STD testing, finding that it challenged decisions involving religious doctrine and practice.

The plaintiff, “John Doe 200,” alleges that Edgar Sepulveda, a priest who was incardinated to the diocese, sexually assaulted him on multiple occasions, beginning in May 2009 when the plaintiff was 16 years old. Sepulveda, the plaintiff claims, groomed Doe for sexual assault and used his stature as a priest to secure an invitation to spend a night at the boy’s home, where one of the incidents occurred.

The plaintiff, now 22 years old, filed suit against Sepulveda, the diocese, and the bishop of the diocese, Michael Burbidge, in 2013. He claims that the church knew or had reason to know of Sepulveda’s sexual attraction to minors and his propensity to engage in sexual misconduct with them, and that the defendants failed to protect him from the dangers the priest posed.

Burbidge and the diocese moved to dismiss all the claims against them, arguing that a diocese’s relationship with its priests are informed by the canon law of the Roman Catholic Church, and a claim for negligent supervision would violate the First Amendment because it would require a jury to decide whether such canon law-based doctrines and practices are reasonable.

The appeals court disagreed, however, saying that North Carolina law recognized a difference between imposing liability for a church’s decisions to hire or discharge a cleric—which would be inseparable from religious doctrine—and holding a church civilly liable for a minister’s sexual misconduct because it knew about his proclivity to engage in such conduct, which would not be enmeshed in religious doctrine.

“Were we to adopt the Diocese Defendants’ argument on this issue, then the First Amendment would, as a practical matter, serve as a complete shield to tort liability for religious organizations in the sexual abuse context except in those cases in which the plaintiff specifically alleged prior sexual assaults by the cleric at issue,” Judge Mark Davis wrote for the court. “We do not believe the First Amendment requires such a result.”

Davis said that a negligent supervision claim would not require a jury to determine whether Sepulveda should have been allowed to remain a priest, and therefore was governed by neutral principles of law.

However, the appeals court granted the diocese’s motion to dismiss the plaintiff’s claim for negligence arising from its failure to compel Sepulveda to undergo STD testing, finding that such a theory of liability was premised on church tenets regarding the degree of control that exists between a bishop and a priest and whether the church failed to properly exercise that control. That sort of inquiry would constitute “precisely the type of ecclesiastical inquiry courts are forbidden to make,” the court held.

The plaintiff also brought two claims for negligent infliction of emotional distress stemming from each of those charges. The court allowed only the claim based on a theory of negligent supervision to go forward.

Leto Copeley of Copeley Johnson Groninger in Charlotte and Gregg Meyers of Jeff Anderson & Associates in Minnesota represented the plaintiff. Copeley was traveling and could not be reached to comment on the decision, but Meyers said that he was pleased with the court’s ruling.

“The case gets to go forward, so the bottom-line result from our perspective is good,” Meyers said. “Some of the

claims being made are unusual because the facts are so unusual, so we weren't terribly surprised to see how the court reacted to the claim they dismissed."

Drew Erteschik, Charles Powers and Thomas Lindgren of Poyner Spruill in Raleigh represented the diocese and Burbidge. Erteschik noted that a Wake County trial judge had previously dismissed claims against the church based on vicarious liability and a failure to educate the plaintiff as to the proper boundaries concerning physical contact between priests and parishioners.

"The sole remaining issue is whether the diocese knew about an alleged propensity for any sexually abusive behavior on the part of Father Sepulveda," Erteschik said. "The diocese has consistently asserted that it had no knowledge about any such alleged behavior."

Erteschik said his team is still in the process of fully analyzing the ruling and has not yet decided whether they will appeal.

The alleged assaults at issue in the case happened more than four years before the case was filed, but the plaintiff is an active member of the military and claims that the statute of limitations was stopped under a federal law that provides protections for military members. The court did not examine that issue in its decision, but Meyers said he expected that the federal law would allow his client to continue pursuing his claims.

"It's always hard for an abuse victim, particularly a male abuse victim, to talk to people about what happened, so often it doesn't happen until far later in life," Meyers said. "The law has gotten better educated about that over the years, but that continues to be a big challenge that tends to come out in statute of limitations issues."

Meyers also said that the court's decision allowing the case to go forward should allow his client to conduct discovery that might help reveal whether Sepulveda engaged in any other misconduct.

After the decision was released, a spokesman for the Raleigh diocese told The Associated Press that he could not comment on Sepulveda's current whereabouts, other than to say he is still in the state but not living on church grounds. The priest is also prohibited from visiting any parish or school.

The 26-page decision is *Doe 200 v. Diocese of Raleigh* (Lawyers Weekly No. 15-07-0661). The full text of the opinion is available online at nclawyersweekly.com.

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