

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

WAYNE BORTLE,

Plaintiff(s),

-against-

THE DIOCESE OF BUFFALO, N.Y.; and MARY
IMMACULATE ROMAN CATHOLIC PARISH OF
PAVILION, N.Y., f/k/a ST. MARY'S CATHOLIC CHURCH
SOCIETY OF PAVILION, N.Y.,

Defendant(s).

Index No. [Redacted]

Summons

Date Index No. Purchased: August 28, 2019

To the above named Defendant(s)

The Diocese of Buffalo, N.Y.
795 Main Street, Buffalo, Erie County, New York

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue is one or more Defendant resides in Erie County
which is located in Erie County, New York.

Dated: New York, NY

August 28, 2019

SIMMONS HANLY CONROY LLC

by 

Attorneys for Plaintiff

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

WAYNE BORTLE,

Plaintiff(s),

-against-

THE DIOCESE OF BUFFALO, N.Y.; and MARY
IMMACULATE ROMAN CATHOLIC PARISH OF
PAVILION, N.Y., f/k/a ST. MARY'S CATHOLIC CHURCH
SOCIETY OF PAVILION, N.Y.,

Defendant(s).

Index No. [REDACTED]

Summons

Date Index No. Purchased: August 28, 2019

To the above named Defendant(s)

Mary Immaculate Roman Catholic Parish of Pavilion, N.Y., f/k/a St. Mary's Catholic Church Society of Pavilion,
N.Y.
11095 Saint Mary Street, Pavilion, Genesee County, New York

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

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SIMMONS HANLY CONROY LLC

by [Signature]

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

WAYNE BORTLE,

Plaintiff,

v.

THE DIOCESE OF BUFFALO, N.Y.; and MARY
IMMACULATE ROMAN CATHOLIC PARISH OF PAVILION,
N.Y., f/k/a ST. MARY'S CATHOLIC CHURCH SOCIETY OF
PAVILION, N.Y.,

Defendants.

Index No.

COMPLAINT

JURY TRIAL DEMANDED

Plaintiff, Wayne Bortle, by his attorneys Simmons Hanly Conroy LLC and the Law Offices of Mitchell Garabedian, brings this action against The Diocese of Buffalo, N.Y.; and Mary Immaculate Roman Catholic Parish of Pavilion, N.Y., formerly known as St. Mary's Catholic Church Society of Pavilion, N.Y., and alleges, on personal knowledge as to himself and on information and belief as to all other matters, as follows:

JURISDICTION AND VENUE

1. This Court has personal jurisdiction over the Defendants pursuant to CPLR 301 and 302, in that each Defendant either resides in New York or conducts or, at relevant times conducted, activities in New York that give rise to the claims asserted herein.

2. This Court has jurisdiction over this action because the amount of damages Plaintiff seeks exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

3. Venue for this action is proper in the County of Erie pursuant to CPLR 503 in that one or more Defendant resides in this County.

PARTIES

4. Plaintiff Wayne Bortle ("Plaintiff"), is an individual residing in Niagara County, New York.

5. Defendant The Diocese of Buffalo, N.Y. (“Diocese of Buffalo”) is a religious corporation organized pursuant to the New York Religious Corporations Law, with its principal office at 795 Main Street, Buffalo, Erie County, New York. The Diocese of Buffalo is a Roman Catholic diocese. At all relevant times, the Diocese of Buffalo created, oversaw, supervised, managed, controlled, directed and operated parishes or churches of the Diocese of Buffalo, including during all relevant times, the Mary Immaculate Roman Catholic Parish of Pavilion, N.Y., formerly known as St. Mary’s Catholic Church Society of Pavilion, N.Y., located in Pavilion, New York.

6. Defendant Mary Immaculate Roman Catholic Parish of Pavilion, N.Y., formerly known as St. Mary’s Catholic Church Society of Pavilion, N.Y., (“St. Mary’s”) of Pavilion, New York is a Roman Catholic Parish within and under the authority of the Diocese of Buffalo and is a religious corporation organized pursuant to the Religious Corporations Law with its principal office located in Genesee County, New York. At all relevant times, the Diocese of Buffalo created, oversaw, supervised, managed, controlled, directed and operated St. Mary’s.

FACTS COMMON TO ALL CLAMS

Defendants’ Background and Abuse of the Plaintiff

7. During the times relevant to the allegations set forth herein, Father Robert Conlin (“Father Conlin”), was Pastor of St. Mary’s. Father Conlin died in 1997.

8. Through most of Plaintiff’s childhood, Plaintiff was raised by a single mother.

9. In or around 1979, when Plaintiff was about 14 years of age, Plaintiff became aware that Father Conlin had had a basketball court built next to the rectory of St. Mary’s and had had tabletop games which teenage boys enjoyed playing, such as ping-pong and foosball, placed in the rectory. Father Conlin invited Pavilion neighborhood boys, including Plaintiff, to use the basketball court and to play the tabletop games at the rectory. Although Plaintiff was not Catholic, Father Conlin

befriended Plaintiff when Plaintiff was about 14 years of age. Father Conlin, at about that time continuing into 1980, when Plaintiff was about 15 years of age, took Plaintiff to high school sports games.

10. When Plaintiff was approximately 14 and 15 years of age, although Plaintiff was not Catholic, Father Conlin invited Plaintiff to attend Sunday services. Plaintiff did then attend Sunday services at St. Mary's.

11. It was under these circumstances that Plaintiff came to trust and be under the supervision of Father Conlin, who used his position of trust and authority over Plaintiff to sexually abuse Plaintiff.

12. In or around 1980, when Plaintiff was about 15 years of age, Father Conlin invited Plaintiff to come to the St. Mary's rectory for an evening. At that time Plaintiff believed that Father Conlin had invited other boys of the same approximate age to come to the rectory that same evening. When Plaintiff arrived that evening, he learned he was the only boy invited to come to the St. Mary's rectory for that evening. During that evening in 1980, Father Conlin, while acting as a priest, counselor, teacher, trustee, director, officer, employee, agent, servant and/or volunteer of the Defendants sexually assaulted, sexually abused and/or had sexual contact with Plaintiff in violation of the laws of the State of New York.

13. At all times material hereto, Father Conlin was under the direct supervision, employ and/or control of Defendants.

14. All the Defendants knew and/or reasonably should have known, and/or knowingly condoned, and/or covered up, the inappropriate and unlawful sexual activities of Father Conlin who sexually abused Plaintiff.

15. Defendants had the responsibility to supervise and/or direct priests serving at St. Mary's, and specifically, had a duty not to aid a pedophile, such as Father Conlin, by assigning, maintaining and/or appointing him to a position with access to minors.

16. Plaintiff suffered personal physical and psychological injuries and damages as a result of Father Conlin's actions, as well as other damages related thereto, as a result of the childhood sexual abuse Plaintiff sustained.

17. As a direct result of the Defendants' conduct described herein, Plaintiff suffered and will continue to suffer great pain of mind and body, severe and permanent emotional distress, and physical manifestations of emotional distress. Plaintiff was prevented and will continue to be prevented from performing his normal daily activities and obtaining the full enjoyment of life; has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling; and, on information and belief, has incurred and will continue to incur loss of income and/or loss of earning capacity. As a victim of Father Conlin's sexual abuse, Plaintiff is unable at this time to fully describe all of the details of that abuse and the extent of the harm he suffered as a result.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

Negligent Hiring/Retention/Supervision/Direction

18. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 17 as if fully set forth herein.

19. Defendants owed a duty of care to all minor persons, including Plaintiff, who were likely to come within the influence or supervision of Father Conlin in his role as priest, counselor, trustee, director, officer, employee, agent, servant and/or volunteer, to insure that Father Conlin did not use his assigned position to injure minors by sexual assault, sexual abuse, or sexual contact in violation of the laws of the State of New York.

20. Defendant Diocese of Buffalo at all relevant times held the parishes of the Diocese of Buffalo out to be safe places for minors to attend, and its priests as individuals to whom it was safe to entrust the care of minor children. Defendant Diocese of Buffalo entered into an express and/or implied duty to safely treat Plaintiff and assumed the

duty to protect and care for him.

21. Father Conlin sexually assaulted, sexually abused, and/or had sexual contact with Plaintiff when Plaintiff was a minor in New York.

22. Defendants Diocese of Buffalo and St. Mary's negligently hired, retained, directed, and supervised Father Conlin, although they knew or should have known that Father Conlin posed a threat of sexual abuse to minors.

23. Defendants Diocese of Buffalo and St. Mary's knew or should have known of Father Conlin's propensity for the conduct which caused Plaintiff's injuries prior to, or at the time of, the injuries' occurrence.

24. Defendants Diocese of Buffalo and St. Mary's were negligent in failing to properly supervise Father Conlin.

25. The sexual abuse of children by adults, including priests, is a foreseeable result of negligence.

26. At all times material hereto, Defendants' actions were willful, wanton, malicious, negligent, reckless, and/or outrageous in their disregard for the rights and safety of Plaintiff.

27. As a direct and proximate result, Plaintiff has suffered and will continue to suffer the injuries described herein.

28. By reason of the foregoing, the Defendants are liable to the Plaintiff, jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

SECOND CAUSE OF ACTION

Negligence/Gross Negligence

29. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 17 as if fully set forth herein.

30. Defendants knew, or were negligent in not knowing, that Father Conlin posed a threat of sexual abuse to children.

31. The acts of Father Conlin described hereinabove were undertaken, and/or enabled by, and/or during the course, and/or within the scope of his employment, appointment, and/or agency with the Defendants.

32. Defendants owed Plaintiff, at the relevant times a minor, a duty to protect him from Father Conlin's sexual deviancy, both prior to and/or subsequent to Father Conlin's misconduct.

33. Defendants' willful, wanton, grossly negligent and/or negligent act(s) of commission and/or omission, resulted directly and/or proximately in the damages set forth herein at length.

34. Defendants:

- a. gave improper or ambiguous orders or failed to make proper regulations, and/or employed improper persons or instrumentalities in work involving risk of harm to others;
- b. failed adequately to supervise the activities of Father Conlin;
- c. permitted, and/or intentionally failed and/or neglected to prevent, negligent and/or grossly negligent conduct and/or allowed other tortious conduct by persons, whether or not their servants and/or agents and/or employees, upon premises or with instrumentalities under their control; and
- d. allowed the acts of omission and/or commission and/or any or all of the allegations set forth in this Complaint, to occur.

35. At all times material hereto, with regard to the allegations contained herein, Father Conlin was under the direct supervision, employ and/or control of Defendants.

36. At all times material hereto, Defendants' actions were willful, wanton, malicious, reckless, negligent, and outrageous in their disregard for the rights and safety of Plaintiff.

37. As a direct and/or indirect result of said conduct, Plaintiff has suffered the

injuries and damages described herein.

38. By reason of the foregoing, Defendants, jointly, severally and/or in the alternative, are liable to the Plaintiff for compensatory damages, and for punitive damages, together with interest and costs.

THIRD CAUSE OF ACTION
Breach of Fiduciary Duty

39. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 17 as if fully set forth herein.

40. There exists a fiduciary relationship of trust, confidence, and reliance between Plaintiff and Defendants. This relationship is based on the entrustment of the Plaintiff while he was a minor child to the care and supervision of the agent or servant of the Defendants. Through the position to which Father Conlin was assigned by the Defendants, Father Conlin was put in direct contact with Plaintiff, then a minor. Father Conlin had been assigned to be Pastor of St. Mary's. This entrustment of the Plaintiff to the care and supervision of the agent or servant of the Defendants, while the Plaintiff was a minor child, required the Defendants to assume a fiduciary relationship and to act in the best interests of the Plaintiff, as well as to protect him while he was a minor and vulnerable child.

41. Pursuant to their fiduciary relationship, Defendants were entrusted with the well-being, care, and safety of Plaintiff.

42. Pursuant to their fiduciary relationship, Defendants assumed a duty to act in the best interests of Plaintiff.

43. Defendants breached their fiduciary duties to Plaintiff.

44. At all times material hereto, Defendants' actions and/or inactions were willful, wanton, malicious, reckless, negligent, and outrageous in their disregard for the rights and safety of Plaintiff.

45. As a direct result of said conduct, Plaintiff has suffered injuries and

damages described herein.

46. By reason of the foregoing, Defendants, jointly, severally and/or in the alternative, are liable to Plaintiff for compensatory damages, and for punitive damages, together with interest and costs.

FOURTH CAUSE OF ACTION
Breach of Non-Delegable Duty

47. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 17 as if fully set forth herein.

48. Plaintiff, when he was a minor, was placed in the care of all of the Defendants for the purposes of, *inter alia*, providing plaintiff with a safe environment to engage in age appropriate youth activities. There existed a non-delegable duty of trust between Plaintiff and Defendants.

49. Plaintiff was a vulnerable child when placed within the care of the Defendants.

50. As a consequence, the Defendants were in the best position to learn of Father Conlin's inappropriate conduct with other minors and to prevent Father Conlin's sexual abuse of Plaintiff.

51. By virtue of the fact that Plaintiff was sexually abused as a minor entrusted to the care of the Defendants, Defendants breached their non-delegable duty to Plaintiff.

52. At all times material hereto Father Conlin was under the direct supervision, employ and/or control of the defendants.

53. As a direct result of said conduct, Plaintiff has suffered injuries and damages described herein.

54. By reason of the foregoing, Defendants, jointly, severally and/or in the alternative, are liable to Plaintiff for compensatory damages, and for punitive damages, together with interest and costs.

FIFTH CAUSE OF ACTION**Negligent Infliction of Emotional Distress**

55. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 17 as if fully set forth herein.

56. As described aforesaid, the actions of Defendants, including their agents, servants and/or employees, were conducted in a negligent and/or grossly negligent manner.

57. Defendants' actions endangered Plaintiff's safety and caused him to fear for his own safety.

58. As a direct and proximate result of Defendants' actions which included, but were not limited to, negligent and/or grossly negligent conduct, Plaintiff suffered the severe injuries and damages described herein, including, but not limited to, mental and emotional distress.

59. By reason of the foregoing, Defendants, jointly, severally and/or in the alternative, are liable to Plaintiff for compensatory damages, and for punitive damages, together with interest and costs.

SIXTH CAUSE OF ACTION**Breach of Duty *in Loco Parentis***

60. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 17 as if fully set forth herein.

61. Plaintiff when he was a minor was entrusted to the control of Father Conlin for the purposes of *inter alia*, providing Plaintiff with appropriate guidance and an opportunity to enjoy educational and youth activities under responsible adult supervision. Defendants owe - and owed - a duty to minors entrusted to them to act *in loco parentis* and to prevent foreseeable injuries.

62. Defendants breached their duty to act *in loco parentis*.

63. At all times material hereto, said Defendants' actions were willful, wanton,

malicious, reckless, negligent, grossly negligent and/or outrageous in their disregard for the rights and safety of Plaintiff.

64. As a direct result of Defendants' conduct, Plaintiff has suffered the injuries and damages described herein.

65. By reason of the foregoing, Defendants, jointly, severally and/or in the alternative, are liable to Plaintiff for compensatory damages, and for punitive damages, together with interest and costs.

WHEREFORE Plaintiff, demands judgment against the Defendants on each cause of action as follows:

- A. Awarding compensatory damages in an amount to be proved at trial, but in any event in an amount that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction;
- B. Awarding punitive damages to the extent permitted by law;
- C. Awarding prejudgment interest to the extent permitted by law;
- D. Awarding costs and fees of this action, including attorneys' fees, to the extent permitted by law;
- E. Awarding such other and further relief as to this Court may seem just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury on all issues so triable.

Dated: August 28, 2019
New York, New York

Respectfully Submitted,

/s/ Paul J. Hanly, Jr.
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