

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

-----X

W.D.,

Plaintiff,

COMPLAINT

-against-

DIOCESE OF BUFFALO; a/k/a MOST REVEREND RICHARD
JOSEPH MALONE, as Bishop and Corporate Sole of the
DIOCESE OF BUFFALO; and HOLY NAME OF JESUS parish;

Index No. _____

Defendants.

-----X

TO THE SUPREME COURT OF THE STATE OF NEW YORK:

Plaintiff, W.D., by and through undersigned counsel, respectfully shows to this Court and
alleges as follows:

Introduction

This is a revival action brought pursuant to the New York Child Victims Act, CPLR § 214-
g. The Plaintiff, when he was a minor, was sexually assaulted by a Monsignor of the Diocese of
Buffalo, Edward J. Walker, who was assigned to Holy Name of Jesus parish.

Parties, Jurisdiction and Venue

1. Plaintiff, W.D., is a citizen and resident of the State of New York. Plaintiff brings
this Complaint using his initials because of the sensitive nature of the allegations of child sexual
abuse in the Complaint, which is a matter of the utmost intimacy. Plaintiff fears embarrassment
and further psychological damage if his identity as a victim of child sexual abuse were to become
publicly known. His identity will be made known to Defendants, at the latest, upon service of
the Summons and Complaint.

2. Defendant, Diocese of Buffalo, and Richard Joseph Malone as Bishop and Corporate Sole of the Diocese of Buffalo (hereafter, the “Diocese” or the “Diocese of Buffalo”), is a religious institution and organization with principal offices located at 795 Main St., Buffalo, NY, 14203. The Diocese of Buffalo controls all Catholic religious, pastoral and educational functions in the counties of Erie, Niagara, Genesee, Orleans, Chautauqua, Wyoming, Cattaraugus and Allegany. The Diocese operates and controls approximately 166 parishes and 67 schools. The Diocese is a citizen and resident of the State of New York.

3. Defendant, Holy Name of Jesus is a Catholic parish and church located in Buffalo, New York (hereafter, “Holy Name of Jesus” or the “Church”). At all relevant times, Holy Name of Jesus was owned, controlled and operated by the Diocese of Buffalo.

4. This Court has subject matter jurisdiction of this action pursuant to Article VI of the New York Constitution.

5. Personal jurisdiction lies over Defendants Diocese and the Church as they are present and domiciled in the State of New York.

6. Venue of this action lies in Erie County as a substantial part of the events or omissions giving rise to the claim occurred in Erie County or one of the Defendants resides in Erie County.

Facts of Sexual Abuse by Monsignor Edward J. Walker

7. Plaintiff and his family were members of Holy Name of Jesus parish in Buffalo, New York. At the time, Monsignor Edward J. Walker was assigned as a priest to the parish.

8. Plaintiff met Monsignor Walker in or about 1966 when Plaintiff was approximately 14 years old. Plaintiff was introduced to Walker through Plaintiff’s brother, who was in the seminary at the time and was being assisted in his path to becoming a priest by Walker. Plaintiff

was introduced to Walker in the rectory of the parish and the two discussed Plaintiff's attendance at church.

9. Some time later, Walker called Plaintiff at his home and told him that he would like Plaintiff to visit him at the rectory as soon as possible. Plaintiff met Walker at the rectory alone. There, Walker poured himself a drink, sat next to Plaintiff and rubbed Plaintiff's leg. Walker then kissed Plaintiff on the lips, unbuckled Plaintiff's pants and performed oral sex on Plaintiff.

10. Walker sexually assaulted Plaintiff on two subsequent occasions in the rectory of the parish. In both instances Walker sodomized Plaintiff, forced Plaintiff to perform oral sex and ejaculated in Plaintiff's mouth.

11. Upon information and belief, Monsignor Walker was at all relevant times a serial sexual predator who sexually abused multiple boys over a period of decades.

12. Among other things, prior to his time at Holy Name of Jesus, Monsignor Walker sexually assaulted an altar boy at St. Joseph's parish in Fredonia, New York operated by the Diocese of Buffalo. Upon information and belief, the sexual abuse of the altar boy at St. Joseph's was reported to officials at Diocese of Buffalo by the child's father. Walker was subsequently transferred to Holy Name of Jesus, where the sexual abuse of Plaintiff occurred.

13. Walker continued in ministry with access to numerous children until he died in 2002.

14. At all relevant times, the Diocese and the Church knew or in the exercise of reasonable care should have known that Walker had a propensity for the conduct which caused injury to Plaintiff, in particular, that he had a propensity to engage in the sexual abuse of children.

15. At all relevant times, it was reasonably foreseeable to the Diocese and the Church that Walker would commit acts of child sexual abuse or assault on a child.

16. At all relevant times, the Diocese and the Church knew or should have known that Walker was unfit, dangerous, and a threat to the health, safety and welfare of the minors entrusted to his counsel, care and/or protection.

17. With such actual or constructive knowledge, the Diocese and the Church provided Walker unfettered access to Plaintiff and gave him the opportunity to commit foreseeable acts of child sexual abuse or assault.

Diocese's Concealment of Acts of Sexual Abuse by Priests

18. The Bishop of the Diocese at all relevant times knew that Priests of the Diocese, under his supervision and control, were grooming and sexually molesting children with whom the Priests would have contact in their ministry and pastoral functions. At all relevant times, the Archbishop knew that this was a widespread, ubiquitous and systemic problem in the Diocese, involving many Priests and numerous victims.

19. In 2018, the Diocese released a list of its clergy, acknowledging what it deemed credible allegations of child sexual abuse that had been made against the listed clergymen. These clergymen are acknowledged to have abused children within the Diocese over decades. The list includes Walker.

20. Despite receiving credible allegations of child sexual abuse against clergy, the Diocese acted to conceal these allegations in an effort to avoid scandal and accountability.

21. This concealment was in accordance with a policy of the Diocese, as agent, and the Holy See, as principal. In 1922, the Holy See released a confidential document to its Bishops and other officials of Catholic organizations regarding the handling of cases of solicitation of sex in the confessional. This document mandated a specific procedure for Holy See's agents, including the Bishop of the Diocese, to use when a cleric abused children using the confessional. This

document required strict secrecy. The 1922 document showed that the Holy See and its agents were fully aware that there was a systemic problem of clergy sexually molesting children using the confessional.

22. In 1962, the Holy See released the confidential document, *Instruction on The Manner of Proceeding in Cases of Solicitation* (The Vatican Press, 1962) (hereinafter referred to as “*Crimen Sollicitationis*”). The heading of the document states, “From the Supreme and Holy Congregation of the Holy Office To All Patriarchs, Archbishops, Bishops and Other Diocesan Ordinaries ‘Even of the Oriental Rite,’” and contains specific instructions regarding the handling of child sex abuse by clergy. According to the document itself, it is an “instruction, ordering upon those to whom it pertains to keep and observe it in the minutest detail.” *Crimen Sollicitationis* at paragraph 24.

23. The 1962 document reinforced that the Holy See and its agents to whom the documents was directed had knowledge that there was a systemic problem of Catholic clergy sexually molesting children using the confessional.

24. At the same time, the Holy See was involved in the formation of secret facilities in the United States where sexually offending clergy would be sent for short periods of time. In 1962-63, Fr. Gerald Fitzgerald reported to the Pope on the problem of abuse of children by clergy and expressed concerns if these priests were returned to active duty.

25. Fr. Fitzgerald’s reports were kept secret under the Holy See’s standing policy to avoid scandal at all costs. It’s recommendation was ignored, however, and instead the Holy See made a choice to return known offending priests to active duty. At this point, it is clear that the Holy See and its agents, including the Diocese, knew they had a widespread problem of clergy sexually molesting minors, and they participated in the creation and the operation of facilities in

the United States where sexually offending clergy could be sent before they were moved to another parish to work and potentially abuse again.

26. The Holy See's policy of secrecy under penalty of immediate removal from the organization (excommunication) for all involved in an accusation of child sexual abuse created a shroud of secrecy insulating Priests from consequence. Through this policy and others, the Holy See and its agents, including the Diocese, knowingly allowed, permitted and encouraged child sex abuse by the Diocese's Priests.

27. The Holy See mandates secrecy for all those involved, including agents and itself, in handling allegations of sexual abuse. Penalties for child sexual abuse include an order to move offending priests to other locations once they have been determined to be "delinquent." In response to allegations, the document mandates that supplementary penalties include: "As often as, in the prudent judgment of the Ordinary, it seems necessary for the amendment of the delinquent, for the removal of the near occasion [of soliciting in the future], or for the prevention of scandal or reparation for it, there should be added a prescription for a prohibition of remaining in a certain place." *Crimen Sollicitations* at paragraph 64. Under this policy of secrecy and transfers or reassignments, all involved are threatened with excommunication and, thus, damnation, if they do not comply.

28. The policy of secrecy and the severest of penalties for its violation were reiterated in documents issued by officials of the Holy See for the benefit of its agents, including the Bishop of the Diocese, in 1988 and 2001.

29. The policies and practices of the Diocese designed to conceal sexual abuse by clergy and protect it from scandal and liability included the following:

- (a) transfer and reassignment of clergy known or suspected to abuse minors to

deflect attention from reports or allegations of child sexual abuse;

(b) concealing from parishioners and even other clergy that a priest reassigned to their parish posed a danger of sexual abuse to children;

(c) failing to alert parishioners from the Priest's prior assignments that their children were exposed to a known or suspected child molester;

(d) failing to report sexual abuse to criminal authorities; and

(e) otherwise protecting and fostering the interests of abusive clergy to the detriment of the victims and the community, for the purpose of avoiding scandal and public scrutiny.

30. Indeed, the policy of secrecy and lack of consequences for the sexual abuse of children was perceived as a perquisite by clergy sex abusers. The Holy See and Diocese believed it to be perceived as a perquisite, which it condoned and used to its advantage in controlling Priests.

31. Plaintiff was in a zone of foreseeable harm as a child engaged in Catholic activities in close proximity to or with Catholic clergy.

32. The Diocese was in the best position to protect against the risk of harm as it knew of the systemic problem and foreseeable proclivities of its Priests to sexually abuse children.

33. At all relevant times, while the Diocese had special and unique knowledge of the risk of child sexual abuse by its Priests, such Priests who would prey on children were outside the reasonable contemplation of the Catholic community and families who trusted Priests to have access to their children.

34. Plaintiff and his parents had no opportunity to protect Plaintiff against a danger that was solely within the knowledge of the Diocese.

35. Upon information and belief, after Plaintiff was abused, the Diocese engaged in a

plan and scheme pursuant to the Holy See's secrecy policies and practices to avoid discovery of Walker's child sexual abuse and the Diocese's wrongful conduct which facilitated the sexual abuse of young children.

Nature of Conduct Alleged

36. This action alleges physical, psychological and emotional injuries suffered as a result of conduct which would constitute a sexual offense on a minor as defined in Article 130 of the New York Penal Law, including without limitation, conduct constituting rape (consisting of sexual intercourse) (N.Y. Penal Law §§ 130.25 – 130.35); criminal sexual act (consisting of oral or anal sexual conduct) (N.Y. Penal Law §§ 130.40 – 130.53), and/or sexual abuse (consisting of sexual contact) (N.Y. Penal Law §§ 130.55 – 130.77).

37. The limitation of liability set forth in CPLR Art. 16 is not applicable to the claim of personal injury alleged herein, by reason of one or more of the exemptions provided in CPLR § 1602, including without limitation, that Defendants acted with reckless disregard for the safety of others, including Plaintiff, or knowingly or intentionally, in concert with Walker, to retain Walker with unfettered access to children.

COUNT I

NEGLIGENCE

(against Holy Name of Jesus)

38. Plaintiff repeats and realleges Paragraphs 1 through 37 above.

39. At all material times, Holy Name of Jesus and Plaintiff were in a special relationship of church – parishioner, in which Holy Name of Jesus owed Plaintiff a duty of reasonable care.

40. At all material times, Holy Name of Jesus and Walker were in a special relationship of employer – employee, in which Holy Name of Jesus owed a duty to control the acts and conduct of Walker to prevent foreseeable harm.

41. The Church owed a duty to Plaintiff to use reasonable care to protect the safety, care, well-being and health of the Plaintiff while he was under the care, custody or in the presence of Holy Name of Jesus. The Church's duties encompassed the retention and supervision of Walker and otherwise providing a safe environment for Plaintiff.

42. Holy Name of Jesus breached these duties by failing to protect the minor W.D. from sexual assault and lewd and lascivious acts committed by an agent and employee of the Church.

43. At all relevant times, the Church created an environment which fostered child sexual abuse against children it had a duty to protect, including Plaintiff.

44. At all relevant times, the Church had inadequate policies and procedures to protect children it was entrusted to care for and protect, including Plaintiff.

45. As a direct and proximate result of Holy Name of Jesus's negligence, Plaintiff has suffered and continues to suffer severe and permanent psychological, emotional and physical injuries, shame, humiliation and the inability to lead a normal life.

46. The Church's acts and conduct shows a reckless or willful disregard for the safety and well-being of W.D.

WHEREFORE, Plaintiff demands judgment against Holy Name of Jesus for compensatory damages, punitive damages, costs and such other and further relief as this Court deems proper.

COUNT II
NEGLIGENCE

(against the Diocese of Buffalo)

47. Plaintiff repeats and realleges Paragraphs 1 through 37 above.

48. At all material times the Diocese, as principal, and the Church, as agent, were in an agency relationship, such that the Church acted on the Diocese's behalf, in accordance with the Diocese's instructions and directions on all matters, including those relating to clergy personnel. The acts and omissions of the Church were subject to the Diocese's plenary control, and the Church consented to act subject to the Diocese's control.

49. At all material times, the Diocese and Plaintiff were in a special relationship of church – parishioner, in which the Diocese owed Plaintiff a duty of reasonable care.

50. At all material times, the Diocese and Walker were in a special relationship of employer – employee, in which the Diocese owed a duty to control the acts and conduct of Walker to prevent foreseeable harm.

51. The Diocese owed a duty to Plaintiff to use reasonable care to protect the safety, care, well-being and health of the Plaintiff while he was under the care, custody or in the presence of the Diocese. The Diocese's duties encompassed the retention and supervision of Walker and otherwise providing a safe environment for Plaintiff.

52. The Diocese breached these duties by failing to protect the minor W.D. from sexual assault and lewd and lascivious acts committed by an agent and employee of the Diocese.

53. At all relevant times, the Diocese created an environment which fostered child sexual abuse against children it had a duty to protect, including Plaintiff.

54. At all relevant times, the Diocese had inadequate policies and procedures to protect children it was entrusted to care for and protect, including Plaintiff.

55. As a direct and proximate result of the Diocese's negligence, Plaintiff has suffered and continues to suffer severe and permanent psychological, emotional and physical injuries, shame, humiliation and the inability to lead a normal life.

56. The Diocese's acts and conduct shows a reckless or willful disregard for the safety and well-being of W.D.

WHEREFORE, Plaintiff demands judgment against the Diocese of Buffalo for compensatory damages, punitive damages, costs and such other and further relief as this Court deems proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial in this action.

Dated: New York, New York
August 14, 2019

Respectfully submitted,

HERMAN LAW
434 W. 33rd St., Penthouse
New York, NY 10001
Tel: 212-390-0100

By: /s/ Daniel Ellis

Jeff Herman

jherman@hermanlaw.com

Daniel G. Ellis

dellis@hermanlaw.com

Stuart S. Mermelstein

smermelstein@hermanlaw.com