

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

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D.W.,

Plaintiff,

COMPLAINT

-against-

ALL SAINTS ROMAN CATHOLIC CHURCH,

Index No. _____

Defendant.

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TO THE SUPREME COURT OF THE STATE OF NEW YORK:

Plaintiff, D.W., 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 was sexually assaulted as a child by Monsignor James P. Hayes, a priest serving as employee/agent at All Saints Roman Catholic Church.

Parties, Jurisdiction and Venue

1. Plaintiff, D.W., is a citizen and resident of the State of New York. Plaintiff brings this Complaint using 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 Plaintiff's identity as a victim of child sexual abuse were to become publicly known.

2. Defendant All Saints Roman Catholic Church (hereinafter "All Saints") is a Roman Catholic parish under the authority of the Diocese of Buffalo, located at 127 Chaddock Ave.,

Buffalo, NY 14207, within the territory of the Diocese of Buffalo. All Saints operates a school known as All Saints School. All Saints is a citizen and resident of the State of New York.

3. Monsignor James P. Hayes at all relevant times served as a priest at All Saints Roman Catholic Church.

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

5. Personal jurisdiction lies over Defendant as it is 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 the Defendant resides in Erie County.

Duty

7. At all relevant times, Defendant All Saints and Plaintiff were in a special relationship as church-parishioner and school-student, such that All Saints owed a duty of care to protect Plaintiff from foreseeable harm. Plaintiff was more than just a parishioner of All Saints, as, among other things, Plaintiff was made an altar server in which Plaintiff was required to engage in a close working and personal relationship with Monsignor Hayes.

8. At all relevant times, Defendant All Saints and Monsignor Hayes were in a special relationship of employer – employee, such that All Saints owed a duty to control the acts and conduct of Monsignor Hayes to prevent foreseeable harm.

9. At all times relevant and material hereto, All Saints was in a special relationship with Plaintiff of parochial school-student, such that it owed a duty to protect Plaintiff from foreseeable harms on school grounds and during school-related activities. In this regard, All Saints was *in loco parentis* with the All Saints' students, including Plaintiff.

10. At all material times, All Saints owned a duty to use reasonable care to protect the health, safety, care, and well-being of the minor Plaintiff while under the care, custody or in the presence of the All Saints. These duties encompassed the protection and supervision of Plaintiff, and otherwise providing a safe environment for Plaintiff while on school premises.

11. At all times relevant and material hereto, All Saints owed a duty to Plaintiff to use reasonable care to protect the safety, care, well-being and health of Plaintiff while under the care, custody or in the presence of the Defendant.

12. The Defendant's duties encompassed using reasonable care in the retention, supervision and hiring of Monsignor Hayes and the duty to otherwise provide a safe environment for Plaintiff.

13. Defendant All Saints owed a duty in transferring or assigning Monsignor Hayes to prevent or avoid foreseeable harm to parishioners, students and others who would have contacts with Monsignor Hayes.

14. Defendant All Saints had a duty to exercise reasonable care in the training of teachers, employees, administration and staff in the prevention of sexual abuse and protection of the safety of children and students in its care.

15. Defendant All Saints had a duty to establish and implement policies and procedures in the exercise of reasonable care for the prevention of sexual abuse and protection of the safety of the children and parishioners in its care. Defendant All Saints had a duty to prevent foreseeable harms on its Church premises, including child sexual abuse by one of its priests.

Facts of Sexual Abuse

16. Plaintiff is from a devout Catholic family. Plaintiff was a student at All Saints School. Plaintiff's family attended services and other functions at All Saints. At All Saints and the All Saints School, Plaintiff encountered Monsignor Hayes, who was gregarious and friendly with the parishioners and students.

17. Monsignor Hayes groomed Plaintiff and gained Plaintiff's trust.

18. After Plaintiff's communion in approximately 1976-1977, Plaintiff became an altar server at All Saints, and served in masses conducted by Monsignor Hayes.

19. When Plaintiff was approximately seven (7) or eight (8) years old, Plaintiff was sexually abused and assaulted by Monsignor Hayes.

20. Monsignor Hayes's sexual abuse of Plaintiff included, but was not limited to, forcing Plaintiff to perform oral sex.

21. Monsignor Hayes's sexual abuse of the Plaintiff occurred on a weekly basis for approximately one (1) to two (2) years.

22. Monsignor Hayes's sexual abuse of the Plaintiff occurred in the church at All Saints before and after mass while Monsignor Hayes was wearing his priest garb.

Notice – Foreseeability

23. Upon information and belief, Monsignor Hayes sexually molested other minor children as a priest before and during his assignment to All Saints.

24. In or about March of 2018, the Diocese of Buffalo released a list of approximately 78 priests against whom credible allegations of child sexual abuse had been made. These priests are acknowledged to have abused children within the Diocese of Buffalo over decades. The list includes the name of Monsignor Hayes.

25. All Saints was at all relevant times aware of a systemic problem of priests sexually abusing children, particularly those acting as altar servers.

26. Plaintiff was in a zone of foreseeable harm as a child engaged in Catholic and church/parochial school-related activities in close proximity to or with Catholic clergy.

27. The Defendant was in the best position to protect against the risk of harm as it knew of the systemic problem and foreseeable proclivities of priests serving in its parish to sexually abuse children.

28. At all relevant times, while Defendant 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.

29. Plaintiff had no opportunity to avoid the danger of clergy-child sexual abuse that was solely within the knowledge of the Defendant. The Defendant knew a significant percentage of priests were using their status and position to identify, recruit, groom and sexually assault vulnerable children.

30. All children engaging in Catholic activities at All Saints, particularly altar servers, were in this manner placed at risk of child sexual abuse. During the time Plaintiff was sexually assaulted by Monsignor Hayes, the Defendant knew or should have known that Monsignor Hayes posed a foreseeable risk of sexual assault to children with whom he would have contact and opportunity.

31. At all relevant times, Defendant knew or in the exercise of reasonable care should have known that Monsignor Hayes 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.

32. At all relevant times, it was reasonably foreseeable to the Defendant that Monsignor Hayes would commit acts of child sexual abuse or assault on a child.

33. At all relevant times, the Defendant knew or should have known that Monsignor Hayes was unfit, dangerous, and a threat to the health, safety and welfare of the minors entrusted to his counsel, care and/or protection.

Breach

34. With such actual or constructive knowledge, the Defendant provided Monsignor Hayes unfettered access to Plaintiff and gave him the opportunity to commit foreseeable acts of child sexual abuse or assault.

35. The Defendant breached its duties by (i) hiring and retaining Monsignor Hayes as a priest with unfettered access to children; (ii) failing to adequately supervise Monsignor Hayes as an active priest of the Diocese employed at All Saints; (iii) granting and maintaining Monsignor Hayes faculties or authorization to act as priest without making any warning or notice of his perverse sexual proclivities to the Catholic faithful who would have contacts with Monsignor Hayes; and (iv) failing to protect Plaintiff who was engaged in Catholic activities at All Saints, including as altar server.

36. At all relevant times, the Defendant had inadequate policies and procedures to protect children from pedophile clergy.

37. The Defendant concealed its knowledge that Monsignor Hayes was unsafe and failed to adopt policies and procedures that would protect children and reduce the risk of child sexual abuse by their employees, agents, and/or priests.

38. The Defendant failed to warn Plaintiff and similarly situated individuals that they were at risk of sexual abuse.

39. As a direct and proximate cause of the foregoing breaches of duty, Monsignor Hayes sexually assaulted Plaintiff.

Nature of Conduct Alleged

40. 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).

41. 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 Defendant acted with reckless disregard for the safety of others, including Plaintiff, or knowingly or intentionally, in concert with Monsignor Hayes, to retain Monsignor Hayes in ministry with unfettered access to children.

COUNT I - NEGLIGENCE
(Against All Saints)

42. Plaintiff D.W. repeats and realleges Paragraphs 1 through 41 above.

43. Defendant All Saints' acts, conduct and omissions show a negligent, grossly negligent, reckless or willful disregard for the health, safety, and well-being of Plaintiff and other children.

44. As a direct and proximate result of Defendant All Saints' aforementioned conduct, acts and omissions, 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.

WHEREFORE, Plaintiff demands judgment against Defendant All Saints for compensatory damages, punitive damages, attorney's fees, interest, costs and such other and further relief as this Court deems proper.

DEMAND FOR JURY TRIAL

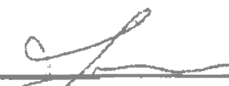
Plaintiff demands a jury trial in this action.

Dated: New York, New York
July 21 2020

Respectfully submitted,

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By: _____


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