Filed in Ninth Judicial District Court
2/26/2018 11:15 AM
Red Lake County, MN

STATE OF MINNESOTA	IN DISTRICT COURT
COUNTY OF STEARNS	SEVENTH JUDICIAL DISTRICT
Doe 65, Plaintiff, vs. Diocese of St. Cloud, St. Anne's Church, Defendants.	COURT FILE NO.: 73-CV-15-7611 **ORDER**

The above matter came before the undersigned Judge of District Court for hearing on January 8th, 2016 on Defendants' Rule 12.02(e) motions for judgment on the pleadings. Attorneys Joseph Crumley and Joshua D. Peck appeared on behalf of Plaintiff Doe 65. Attorney Thomas B. Wieser and Thomas A. Janson appeared on behalf of Defendant Diocese of St. Cloud ("Diocese"). Attorney Paul C. Engh appeared on behalf of Defendant St. Anne's Church ("St. Anne's"). Defendant Diocese moves to dismiss Counts I (private nuisance), II (public nuisance), and III (general negligence) of Plaintiff's complaint. Defendant St. Anne's moves to dismiss the general negligence claims asserted against it in Count VI.

NOW, based upon all the files and proceedings herein and the applicable law, it is hereby **ORDERED:**

1. **THAT**, Defendant Diocese's Rule 12.02(e) motion for judgment on the pleadings is **GRANTED, IN PART**. Count I (private nuisance) is **DISMISSED**. The motions to dismiss Counts II (public nuisance) and Count III (general negligence) are **DENIED**.
2. **THAT**, Defendant St. Anne's Rule 12.02(e) motion for judgment on the pleadings is **DENIED**.

Ex. 6

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3. **THAT,** the attached Memorandum is incorporated by reference.

Dated this 1st day of April, 2016.

Frederick L. Grunke
Judge of District Court

JUDGMENT
I hereby certify that the foregoing Order/Conclusions of constitutes that Judgment of the Court.
Dated: 4/1/16
George Lock, Court Administrator
By: Bethany Voigt Depu

MEMORANDUM

I. RULE 12.02(E) STANDARD

Rule 12.02(e) of the Minnesota Rules of Civil Procedure provides for summary dismissal of claims, even before an answer is filed, if the complaint fails, on its face, to state a claim upon which relief can be granted. In order to successfully oppose such a motion, Plaintiff need only set forth in the Complaint facts that are legally sufficient to justify the relief that is sought. *Wiegand v. Walser Automotive Groups, Inc.*, 683 N.W.2d 807 (Minn. 2004). At this stage of the proceedings, the Court must presume that the facts alleged are true and make reasonable assumptions and inferences in favor of the non-moving party. *Alliance for Metropolitan Stability v. Metropolitan Council,* 671 N.W.2d 905 (Minn. App. 2003). Defendants' arguments in support of dismissal do not raise or rely upon matters outside the pleadings. The motions must therefore be considered under the Rule 12.02(e) standard, rather than the alternative summary judgment standard permitted by the Rule.

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II. FACTS

The facts, viewed in accordance with the Rule 12.02(e) standard, are as follows. Plaintiff Doe 65 was raised Roman Catholic and participated in worship and youth activities at St. Anne's Church in Kimball, Minnesota. St. Anne's is part of the Diocese St. Cloud. Father Donald Rieder served as a priest within the St. Cloud Diocese from 1955 to 1985 and was assigned to St. Anne's Church from 1964 to 1969.

Through her involvement as a member of St. Anne's, Plaintiff and her family became acquainted with Fr. Rieder. During his tenure at St. Anne's Plaintiff participated in the Confraternity of Christian Doctrine ("CCD"), an educational program for church youth. Plaintiff was in her mid-teens at the time and, as a devout Roman Catholic raised in the church, was trusting of Church agents and officials, including Fr. Rieder. Plaintiff was sexually abused by Fr. Rieder during this time. Plaintiff justifiably felt pressure, as a result of Church culture and norms, to keep the abuse secret.

Prior to Fr. Rieder's placement at St. Anne's, and before his sexual abuse of Doe 65, Defendants knew or should have known that he had a history of sexual abuse of children and was unfit to serve in a position of authority over children. Defendants failed to report their knowledge to law enforcement and did not warn or inform the public, let alone Plaintiff, her family, or any other St. Anne's parishioners, of Fr. Rieder's past conduct and propensities. Defendants took no precautions to protect Plaintiff and others from harm and abuse. Fr. Rieder was just one of many priest-abusers protected and left unchecked by the Church's concealment of past incidents of

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sexual abuse. Defendants knew of many other priests or agents of the Church who were committing acts of sexual abuse against children entrusted to their care.

In 2003 the Diocese publically acknowledged that there were 26 priests under its control and supervision who had been accused of sexually abusing church children. Defendant Diocese later released the names of the 26 priests as well as five others. However, the Diocese continues to conceal critical information about the perpetrators, and others not yet named, including their assignment histories and patterns of grooming and sexual abuse. Since its 2003 disclosure, the Diocese has failed to report numerous new allegations of sexual abuse of children by its agents. The Diocese's concealment, lack of adequate investigation and failure to take other proactive steps to protect children entrusted to its care continues to place children at heightened risk of sexual abuse.

Plaintiff suffered, and continues to suffer, severe emotional distress as a result of Fr. Rieder's abuse and the Diocese's inaction. The emotional distress has manifested itself in physical suffering, embarrassment, depression and other harm. Plaintiff has incurred, and will continue to incur, significant expenses for therapy, counseling, and treatment. Plaintiff will never fully recover from the trauma of her abuse and the quality of her life is thus diminished.

In addition to the direct, personal harm experienced by Doe 65 as a result of Fr. Rieder's abuse, the Diocese's concealment of information regarding its agents' patterns of abuse unreasonably endangers the safety and health of a considerable number of members of the general public. Plaintiff has suffered, and continues to suffer, additional harm due to the Diocese's failure to diligently investigate, disclose and take action to ensure the safety of children in the community.

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So long as the Diocese continues to withhold information and protect perpetrators of abuse from public scrutiny, Doe 65 will continue to suffer emotionally and financially in ways, and to a degree, that she would not have if the Diocese had appropriately acknowledged and dealt with the abuser's in its midst. As a survivor of priest abuse, the harm suffered by Doe 65 is different in kind from that suffered by the general public as a result of the Diocese's action and inaction.

III. ANALYSIS

a. PRIVATE NUISANCE CLAIM

The Diocese seeks dismissal of Plaintiff's private nuisance claim based upon Plaintiff's lack of a real property interest. Plaintiff concedes she has no such interest, but argues that neither common law nor the private nuisance statute, Minn. Stat. 561.01, requires it. The statute at issue provides:

> Anything which is injurious to health, or indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, is a nuisance. An action may be brought by any person whose property is injuriously affected or whose personal enjoyment is lessened by the nuisance, and by the judgment the nuisance may be enjoined or abated, as well as damages recovered.

The statute is not a model of clarity, but its repeated references to "property" tends to support Defendant's position.

Plaintiff cites no authority for an expansive reading of the law that would extend its reach to harm that does not implicate an interest in real property. By contrast, there is substantial precedent supporting the proposition that a real property interest must be at stake, *Anderson v. State, Department of Natural Resources*, 693 N.W.2d 181, 192 (Minn. 2005) ("Private nuisance is

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limited to real property interests."). In *Johnson v. Paynesville Farmers Union Co-op*, 817 N.W.2d 693, 706 (Minn. 2012), the Supreme Court cited *Anderson,* as well as precedent dating back to 1942, as authority for the real property requirement. Because the Complaint fails to allege the requisite interest in real property, the private nuisance claim, Count I, must be dismissed.

b. PUBLIC NUISANCE CLAIM

The Diocese argues that Plaintiff's private claim based upon a public nuisance is also insufficient on its face. The applicable statute provides that a public nuisance exists when a party "by an act or failure to perform a legal duty intentionally…maintains or permits a condition which unreasonably annoys, injures or endangers the safety, health, morals, comfort, or repose of any considerable number of members of the public…" Minn. Stat. § 609.74(1) (2015). The language of the statute is clear and unambiguous. *Am. Family Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000). The statute applies not only to conduct that "injures," but also to conduct that "endangers." *Id.*

The Complaint alleges that Defendant Diocese "maintains or permits a condition," by its ongoing concealment, that "endangers the safety, health, morals, [and] comfort" of a "considerable number of members of the public," specifically children entrusted to the care of its agents with known histories and propensities for sexual abuse. As the noted by the Honorable John. H. Guthmann in the Order entered August 6, 2014 in 62-CV-14-871, the harboring of a dangerous dog constitutes a public nuisance, Minn. Stat. § 347.04 (2015). The harboring and concealment of multiple serial child-molesters at large in the community is hardly a lesser threat to public safety. The conduct alleged in the Complaint is sufficient to state a claim for public nuisance.

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The Diocese's appeal to policy considerations as grounds for dismissal is misplaced. It is the district court's duty to apply, not rewrite, the statute. To do otherwise would ignore the separation of powers and be an affront to the legislature. *State v. Lucas*, 589 N.W.2d 91, 94 (Minn. 1999). The statutory language unambiguously encompasses the conduct alleged in the Complaint.

But application of the statute to the facts alleged does not end the inquiry. The court must also determine whether Plaintiff can maintain this *private* claim for this apparent public nuisance. Public nuisance claims are traditionally reserved for government entities. Plaintiff's standing to assert the claim depends on whether she has suffered the requisite harm, as compared to the harm to the general public, which would allow her to prosecute the claim.

The requisite-harm requirement under Minnesota law dates back to the nineteenth century. In *Dawson v. St. Paul Fire & Marine Ins. Co.*, 15 Minn. 136 (1870), the Supreme Court held that a private person asserting a public nuisance claim must, as compared to the general public, have incurred "special and peculiar" damage. *Id.* at 138-39. This prerequisite is now phrased in the disjunctive as requiring "special or peculiar" damage. *Shaubut v. St. Paul S.C.R. Co.*, 21 Minn. 502, 506 (1875). The Court in *Shaubut* also observed that the plaintiff's harm must be different in both and in kind, *Id.* at 505. Thus, to maintain a private claim for public nuisance the plaintiff must prove damages that are not merely special or peculiar, but also different from that suffered by the general public not just in "degree" but also in "kind." *In re Rollins*, 738 N.W.2d 798, 802 (Minn. App. 2007) (citations omitted).

Determining whether a plaintiff's harm is special, peculiar, or different in kind is difficult. *Viebahn v. Bd. of Comm'rs of Crow Wing Cnty.*, 96 Minn. 276, 280 (1905).

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> No general rule can be laid down which can be readily applied to every case. Where to draw the line between cases where the injury is more general or more equally distributed and cases where it is not, where by reason of local situation the damage is comparatively much greater to the special few, is often a difficult task. In spite of all the refinements and distinctions which have been made, it is often a mere matter of degree, and the courts have to draw the line between the more immediate obstruction or peculiar interference, which is a ground for special damage, and the more remote obstruction or interference, which is not.' *Id.*

There is little appellate precedent to guide the application of the rule in this case, and the difficulty in doing so is compounded because the issue has been raised with respect to the pleadings rather than a fully developed record.

The analysis begins with an understanding of the injury allegedly suffered by the general public. For purposes of this Rule 12.02(e) motion, the Court must accept as true Plaintiff's premise that the Diocese has endangered the public by harboring, and concealing information about, certain agents under its control that are known to have committed, or are credibly accused of, sexual abuse of children. The harm suffered by the public is continued victimization of children and the increased risk of child molestation resulting from the lack of the information necessary to allow parents, law enforcement and the community to protect children at risk.

Plaintiff's harm is arguably unique in that she is not just at risk, she has already experienced sexual abuse. That being the case, the Diocese's concealment and inaction is both a persistent reminder of Doe 65's trauma and a threat that new generations of church-going youth will unnecessarily suffer similar harm. The inability to help and warn others is acutely painful given

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Doe 65's personal experience of abuse. It is the Diocese's ongoing concealment, rather than the original sexual abuse, that accounts for this added dimension of harm and distress.

The Complaint alleges that the harm resulting from ongoing concealment is not limited to emotional trauma; Plaintiff has suffered actual pecuniary loss due to the concealment and unmitigated risk which distinguishes her harm from the public harm. This is a difference, not just in degree, but in kind. *Rollins*, 738 N.W.2d at 802. While some members of the public, like Plaintiff, have also suffered actual abuse and have likely suffered similar emotional and pecuniary harm, this harm is arguably not so common as to render Plaintiff's harm "regular" as opposed to special and peculiar. *Viebahn*, 96 Minn. at 280. Plaintiff's pecuniary harm and her distinct response to the Diocese's ongoing concealment distinguishes her claim from harm suffered by the general public and is sufficient to survive a Rule 12.02(e) challenge.

c. GENERAL NEGLIGENCE CLAIMS

Defendants argue that Plaintiff's general negligence claims, i.e. claims that are not based upon their agency or employment relationship with Fr. Rieder, must be dismissed. In addition to the claims for negligent supervision and retention, Plaintiff has asserted generic negligence claims against the Diocese and St. Anne's. It is alleged that both the Diocese and St. Anne's owed a duty to exercise reasonable care and that the breach of those duties was a proximate cause of Doe 65's injuries.

Defendants argue that only traditional, employment-based negligence claims are viable given the facts of this case. In support, they cite *M.L. v. Magnuson*, 531 N.W.2d 849 (Minn. App. 1995), where the plaintiff sued a pastor and the church that employed him. The Court of Appeals

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held that the trial court erred when it submitted the negligence claim against the employer to the jury based on a generic instruction defining reasonable care. *Id.* at 856. The Court of Appeals stated that Minnesota law "recognizes three causes of action where a claimant sues an employer in negligence for injuries caused by one of its employees: negligent hiring, negligent retention, and negligent supervision." *Id.* at 856. The Court went on to note that the record would permit a finding of liability under one of the "negligent employment theories." *Id.* at 857. Defendants argue that *M.L. v. Magnuson* precludes all other avenues of recovery against employers.

But *Magnuson* can also be reasonably interpreted as rejecting a general negligence theory, and requiring instruction on the particulars of the claim, in only those cases where the employment relationship is the sole basis for liability. This more limited reading of *Magnuson* is consistent with the significant body of Minnesota case law upholding negligence recoveries against employers that were not premised upon the traditional employment theories of negligent supervision, hiring or retention.

In *Conover v. Northern States Power Co.*, 313 N.W.2d 397, 399-400 (Minn. 1981), an employee of an independent contractor hired by NSP was injured by the dangerous condition of a jobsite located on NSP's land. Plaintiff's injury was caused by one of more of NSP's employees. *Id.* at 400-402. But Conover's avenues of recovery were not limited to negligent hiring, supervision, and retention. The case was submitted on a general negligence theory and the Supreme Court, assessing the trial court's granting of judgment notwithstanding the verdict in favor of plaintiff, concluded that NSP's liability could be based upon its duties to supervise its

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jobsite, maintain safe premises, inspect and warn of hazardous conditions and use reasonable care to protect licensees and invitees. 313 N.W.2d 397, 401-402 (Minn. 1981).

The student's claim in *P.L. v. Aubert*, 545 N.W.2d 666, 667 (Minn. 1996) was based on sexual abuse by a teacher. In addition to negligent hiring and supervision claims, the plaintiff asserted a negligent infliction of emotional distress claim against the school district. The trial court, Court of Appeals, and the Supreme Court, all declined to hold that the negligent infliction of emotional distress claim could not be brought against the school district because it was not an accepted theory of negligence sounding in employment. *Id.* at 667-68. More recently, in *J.W. ex rel. B.R.W. v. 287 Intermediate District*, the Court of Appeals held that the trial court correctly denied summary judgment to a bus company on the plaintiff's general negligence claim based on its employee's failure to follow instructions in seating a student. 761 N.W.2d 896, 904 (Minn. App. 2009).

Defendants also argue Plaintiffs' general negligence claims must fail because Minnesota does not recognize "corporate negligence." Corporate negligence is essentially a theory under which hospitals are held liable to patients. *Larson v. Wasemiller*, 738 N.W.2d 300, 306-307 (Minn. 2007). At least in Minnesota, it is distinct from ordinary negligence. *Bothun v. Martin L.M., LLC*, No. A12–1377, 2013 WL 1943019, at *5 (Minn. App. May 13, 2013). It is also distinct from vicarious liability or respondeat superior. *Larson*, 738 N.W.2d at 306-08. The general negligence claims asserted in Counts III and VI do not allege vicarious liability based upon Fr. Rieder's conduct. They allege instead that Defendants breached distinct duties to exercise reasonable care

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arising, for instance, from their special relationship with the Plaintiff and status as owners and possessors of land.

Cairl v. State, 323 N.W.2d 20 (Minn. 1982), is also instructive. The Minnesota Supreme found no duty to warn in that case because the threat posed to the victims was not specific to them. They were only statistically more likely to be victims, rather than specifically targeted victims, and hence there was not legal duty to warn. *Id.* at 26 n.7. Here the opposite is arguably true. Fr. Rieder specifically targeted children, and Defendants' knowledge of his propensity arguably gave rise to a duty to warn. At this stage of the proceedings, Plaintiff's general negligence claims against the Defendants are not insufficient as a matter of law.

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