STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1721

John Doe 169,
Appellant,

vs.

Paul Alan Brandon, et al.,
Defendants,

Minnesota District Council of the Assemblies of God,
Respondent.

Filed May 28, 2013
Reversed and remanded
Peterson, Judge

Hennepin County District Court
File No. 27-CV-11-11654

Jeffrey R. Anderson, Sarah G. Odegaard, Jared D. Shepherd, Jeff Anderson & Associates PA, St. Paul, Minnesota (for appellant)

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Considered and decided by Ross, Presiding Judge; Peterson, Judge; and Smith, Judge.

U N P U B L I S H E D O P I N I O N

PETERSON, Judge

Appellant challenges the summary-judgment dismissal of his negligence claim arising out of sexual abuse by an ordained, credentialed minister during a period when respondent was involved in the annual renewal of the minister's credentials. Appellant argues that the district court erred by concluding that, absent a special relationship, respondent owed no duty of reasonable care to appellant under general negligence principles. Because no showing of a special relationship is required and there is sufficient evidence to permit a jury to conclude that respondent had knowledge of the minister's history of inappropriate relationships with youth while employed as a youth minister, the record is sufficient to require a jury to consider the issue of foreseeability, and we reverse and remand.

FACTS

Appellant John Doe 169's negligence claim against respondent Minnesota District Council of the Assemblies of God arises out of Paul Brandon's sexual abuse of appellant in 2005 while Brandon was a volunteer in the youth-ministry program at Emmanuel Christian Center of the Assemblies of God Inc. (ECC). ECC is a church that is part of the Assemblies of God denomination. From 1993 to 2006, Brandon held credentials as an ordained minister of the Assemblies of God.

Respondent is a local district council that is one of 60 satellite branches of the National General Council (the General Council) of the Assemblies of God Church. The General Council, in cooperation with the affiliated district councils, ordains, licenses, and

certifies ministers. An individual seeking to minister first obtains a license to preach, and then may seek ordination. Minister credentials are obtained through the ordination process. Minister credentials must be renewed annually, and yearly applications for renewal are submitted to district councils.

The General Council and district councils "reserve the authority to discipline or dismiss clergy whose conduct violates certain Biblical standards as enumerated in the General Council Bylaws." And the "General Council is authorized to discipline or dismiss a minister following an investigation by a District Council." Neither the General Council nor respondent has authority to appoint, supervise, or retain volunteers at local churches. Respondent has no authority to supervise or control day-to-day activities of local churches in connection with ministers or volunteers.

Brandon's Employment at Maple Grove

From 1991 to 1999, Brandon was employed as a youth pastor at Maple Grove Assembly of God Church (Maple Grove). At that time, Gregory Hickle was the senior pastor at Maple Grove, and he hired Brandon. Hickle, Mark Brown, and Darrel Lindquist made up Maple Grove's body of elders.

In late 1996 or 1997, Hickle learned that Brandon was hosting sleepovers for male church youths at his home. An elder told Hickle that the elder's son had slept over at Brandon's house. During the sleepover, Brandon insisted that he give the son back and leg rubs and that the son sleep in his bed with him. The son said that Brandon put pressure on him to comply, and although he was uncomfortable, he gave in to the pressure. When Hickle and the elder confronted Brandon, he admitted to the behavior

but said that nothing inappropriate or immoral happened. Hickle instructed Brandon to immediately stop the sleepovers. Two or three months later, Hickle learned that Brandon continued to have male youths sleep at his house; a family informed Hickle that their son attended sleepovers at Brandon's and was uncomfortable with Brandon's insistence that he sleep in Brandon's bed with Brandon. Hickle informed the elders and Brandon about the complaint and instructed Brandon to immediately stop the sleepovers. Brandon said that he now understood that his behavior could be viewed as inappropriate and agreed to stop the sleepovers.

In the spring of 1998, the elders began to work with Brandon on improving three job-performance issues: insubordination, Brandon's attitude, and Brandon's inappropriate relationships with teenage boys. The elders were concerned that Brandon lacked adequate adult relationships and that his primary relationships were with teenage boys. Of particular concern was Brandon's relationship with the elder's son whom the elders believed Brandon was manipulating emotionally and attempting to use as an adult confidante.

Hickle testified in a deposition that, although he had concerns about Brandon's inappropriate boundary issues with young boys, he never heard an allegation that Brandon engaged in sexually inappropriate behavior. Hickle testified that he would have investigated any allegation of conduct that involved sexual impropriety. Hickle testified that, if he had known there had been any sexual contact between Brandon and any youth, he would have terminated Brandon's employment and reported the conduct to the police. Hickle testified that he never had a concern or a suspicion that Brandon posed a risk of

harm to youths in the Maple Grove congregation or a suspicion that Brandon was not fit to be a youth worker or minister.

In February 1999, after Brandon failed to make progress on the elder's concerns, the elders sought Brandon's resignation from Maple Grove. Because they permitted him to resign, the elders imposed the conditions that Brandon have no contact with the elder's son and present a letter, drafted and signed by the elders, to any future employer outlining Brandon's inappropriate conduct with young boys. The letter identifies the subject matter as being "ISSUES RELATED TO THE MINISTRY OF PASTOR PAUL BRANDON." The letter identifies four main points of concern: (1) inappropriate friendships with youth-group members; (2) favoritism and exclusivity; (3) need for counseling; and (4) failure to heed correction of elders. Under the first area of concern, the letter explains:

> [Brandon] has undertaken very close friendships with members of his youth group or very young leaders (less than 21 years old). These inappropriate friendships are different from mentoring friendships in that [Brandon] becomes very dependent on these young men for the major part of his socializing and companionship. [Brandon] undertook a very close friendship with one youth group member in particular with whom he expressed deep emotional burdens (as between very close "best friends" that are normally peers on a maturity level), and this sharing caused the young man to become extremely distressed. We think these are inappropriate relationships because [Brandon] is a strong authority figure, both by way of his age difference and his pastoral office, relative to these young persons. Consequently, the young person may feel coerced (either real or perceived) into maintaining or deepening the relationship beyond their own desire, and such friendships also lead to other questions and potential problems.

Brandon's Application for Employment at ECC

After leaving Maple Grove, Brandon sought employment at ECC. In April or May of 1999, Mark Denyes, a pastor at ECC, mentioned to Hickle that ECC was considering hiring Brandon in a staff position. Hickle told Denyes that, as a condition of Brandon's departure from Maple Grove, Brandon was required to share a letter with any prospective employer, and the letter would give Denyes a clear picture of Maple Grove's perspective. Denyes "indicated that it would be interesting to see whether Brandon gave them the letter." Hickle did not provide the letter to Denyes nor tell him about its contents. ECC did not hire Brandon.

Brandon's Volunteerism at ECC

From 1999 to 2006, Brandon volunteered in the youth-ministry program at ECC. Brandon applied to ECC's head youth pastor, Nate Ruch, to volunteer at ECC. Brandon did not show Ruch the Maple Grove letter. Hickle learned in 1999 that Brandon was volunteering with the ECC youth-ministry program.

Volunteers in the youth program at ECC are not required to have minister credentials, and Brandon attended the training programs that all volunteers attended, which included noncredentialed, nonlicensed volunteers. But Ruch knew Brandon when Brandon was employed as a youth pastor at Maple Grove and knew that Brandon maintained his minister credentials. When Ruch was asked during a deposition whether Brandon's minister credentials gave Brandon a "leg up" when he came to ECC, Ruch stated that Brandon had to undergo the same process as others in order to become a youth leader but that he felt that Brandon "understood some things that a volunteer that had

never been in youth ministry before would not have known." And when Ruch was asked whether knowing that Brandon was an ordained minister gave Ruch "assurance that [Brandon] had a fitness to work as a youth leader," Ruch said, "yes," and acknowledged that obtaining ministry credentials was an additional process that he understood and that he knew about it and "felt good about it."

As a volunteer at ECC, Brandon began as a volunteer leader, and in 2002 he became a captain. As a captain, Brandon had more responsibility; oversaw volunteer leaders; was required to volunteer 10 to 20 hours per week; and led a cell group, which is a youth-ministry gathering of about 20 male and female middle-school and high-school students at a host home on Friday evenings.

J.J. Slagg, who replaced Ruch as ECC's head youth pastor in 2003, testified in a deposition that whether Brandon maintained his ministry credential was not relevant to his volunteering at ECC. But Slagg also testified that, because Brandon

> was credentialed with the Assemblies of God, he would have had a leg up over other volunteers who came in because he had experience youth pastoring, because . . . Ruch probably had a professional relationship with him from other events or activities or camps. He probably had more of an opportunity to step into a higher position of leadership than, say, a student coming from Northwestern or Bethel or any other college.

Appellant came to know Brandon through appellant's involvement with the youth group at ECC. Appellant attended ECC's student-ministry activities, including a Friday night cell-group meeting. Brandon was the captain of appellant's cell group, and appellant said that he knew Brandon as his youth pastor.

On some occasions after the cell-group meetings, Brandon or his teenage son would invite some of the male youths from the cell group to spend the night at Brandon's home. Appellant at times accepted this invitation. At Brandon's house, the youths socialized, ate, watched and made movies, and played video games. Brandon and the youths slept on sleeping bags on the floor in Brandon's basement. They slept with individual blankets around the perimeter of the room with their heads against the wall and their feet toward the middle of the room.

On one occasion during the summer or fall of 2005 when appellant spent the night at Brandon's house, Brandon moved close to appellant and threw his arm over appellant. Appellant brushed the arm off and moved away, but Brandon then threw an arm and a leg over appellant. Appellant moved his sleeping bag to the middle of the room, and nothing further happened. On a second occasion, Brandon threw an arm over appellant, and appellant brushed it off. Brandon then threw a leg over appellant, and appellant moved away as much as he could without disturbing the boy next to him. Appellant felt poking and thrusting through the blanket on his back and believed that Brandon was thrusting his penis against appellant's back. Appellant moved to a different place in the room and, as he did so, noticed that an area of his blanket was wet.

After the second incident, appellant stopped attending ECC activities and staying overnight at Brandon's house. When ECC learned about appellant's allegations in August 2006, ECC informed Brandon that he could no longer volunteer with ECC. In August 2010, Brandon pleaded guilty to two counts of fourth-degree criminal sexual conduct based on his abuse of appellant and another child.

Brandon's Maintenance of his Minister Credentials

Brandon maintained his minister credentials through 2006. Respondent accepted and processed Brandon's annual applications for renewal of his credentials each year. In May 2004, Hickle became the secretary and treasurer of respondent, and in that position, he signed Brandon's applications in December 2004 and 2005 for renewal of Brandon's credentials for the following years.

Respondent describes its role in the renewal process as that it "receives every credential holder's annual renewal form and gives initial approval of the renewal of their credentials to the General Council, which then decides whether or not to renew the credential." The application-for-renewal form includes a box next to the word "Renew" that respondent could check. Hickle stated that, in signing off on a renewal application, he did not "make a recommendation as to fitness" of an applicant. He verified that an applicant had satisfied the application process and that there was no reason not to renew an applicant's credentials. He said that, if respondent were to know about a disciplinary action involving an applicant, it would inform the General Council.

Commencement of this Lawsuit

Appellant commenced this action against respondent and ECC, alleging claims of negligence, negligent supervision, and vicarious liability. Respondent and ECC moved for summary judgment. At the summary-judgment hearing, appellant conceded that respondent did not employ Brandon and withdrew his arguments against summary judgment as to the claims against respondent for vicarious liability and negligent supervision. Respondent's and ECC's motions for summary judgment on the negligence

claims related solely to the existence of a duty. In opposing summary judgment on his negligence claim against respondent, appellant argued that (1) respondent owed a duty to protect appellant from harm because respondent and appellant were in a special relationship, and (2) respondent owed a duty of reasonable care to appellant under common-law negligence principles because respondent's role in the annual renewal of Brandon's minster credentials created a dangerous situation in which Brandon's sexual abuse of appellant was foreseeable.

The district court concluded that neither ECC nor respondent owed a duty to appellant and granted summary judgment on appellant's negligence claims. The court denied ECC's motion for summary judgment concerning appellant's other claims against ECC, and appellant settled with ECC. This appeal follows.

D E C I S I O N

Summary judgment is appropriate when the record shows "that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law." Minn. R. Civ. P. 56.03. "We review a district court's grant of summary judgment to determine whether there are any genuine issues of material fact and whether the court erred in its application of the law." *Louis v. Louis*, 636 N.W.2d 314, 318 (Minn. 2001). "We view the evidence in the light most favorable to the party against whom summary judgment was granted." *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002). We review de novo whether a genuine issue of material fact exists and whether the district court erred in applying the law. *Id.*

Negligence Claim

"Negligence is generally defined as the failure to exercise such care as persons of ordinary prudence usually exercise under such circumstances." *Domagala v. Rolland*, 805 N.W.2d 14, 22 (Minn. 2011) (quotation omitted). "The basic elements of a negligence claim are: (1) existence of a duty of care; (2) breach of that duty; (3) proximate causation; and (4) injury." *Bjerke v. Johnson*, 742 N.W.2d 660, 664 (Minn. 2007). In a negligence action, a defendant "is entitled to summary judgment when the record reflects a complete lack of proof on any of the four elements necessary for recovery." *Louis*, 636 N.W.2d at 318. At issue in this appeal is the existence of a duty of care. "Duty is a threshold question. . . ." *Glorvigen v. Cirrus Design Corp.*, 816 N.W.2d 572, 582 (Minn. 2012). The existence of a duty of care is a legal question, which appellate courts review de novo. *Foss v. Kincade*, 766 N.W.2d 317, 320 (Minn. 2009).

Appellant argues that the court erroneously concluded that in the absence of a special relationship, respondent owed no duty of reasonable care to appellant under common-law negligence principles. The district court stated "[Appellant] relies on language from *Domagala* to the effect that a duty of reasonable care arises when a 'defendant's conduct creates a foreseeable risk of injury to a foreseeable plaintiff.' But *Domagala* did not abrogate the requirement of a special relationship, which is absent here."

We disagree that, to establish that respondent owed appellant a duty of reasonable care under common-law negligence principles, appellant needed to present evidence of a special relationship. In *Domagala*, the Minnesota Supreme Court recognized two

instances in which a duty to act with reasonable care for the protection of others arises: (1) "a defendant owes a duty to protect a plaintiff when action by someone other than the defendant creates a foreseeable risk of harm to the plaintiff and the defendant and plaintiff stand in a special relationship"; and (2) "general negligence law imposes a general duty of reasonable care when the defendant's own conduct creates a foreseeable risk of injury to a foreseeable plaintiff." 805 N.W.2d at 23. The court held that, "when a defendant owes a plaintiff a duty of reasonable care, the defendant may exercise reasonable care by warning the plaintiff of impending harm." *Id.* at 29.

Citing *Domagla*, appellant argues that respondent owed appellant a duty of reasonable care because respondent's conduct created "a foreseeable risk of injury to a foreseeable plaintiff." *Id.* at 23. Appellant contends that respondent's conduct of "continuing to credential Brandon," by which respondent endorsed Brandon as "safe and fit," created a foreseeable risk of sexual abuse of appellant by Brandon when, through its agent Hickle, respondent knew about "Brandon's dangerous tendencies around young children." Appellant contends further that, by "certifying" Brandon, respondent "placed Brandon in a position where he was able to access [a]ppellant."

We first consider whether Hickle's knowledge may be imputed to respondent. Under the law of agency, an agent's knowledge may be imputed to the principal. *Sussel Co. v. First Fed. Sav. & Loan Ass'n of St. Paul*, 307 Minn. 199, 201, 238 N.W.2d 625, 627 (1976). Whether an agency relationship exists is generally a question for the jury, unless the evidence is conclusive. *PMH Props. v. Nichols*, 263 N.W.2d 799, 802 (Minn. 1978). An agency relationship "results from the manifestation of consent by one person

to another that the other shall act on his behalf and subject to his control, and consent by the other to so act." *Id.* (quotation omitted).

> Knowledge of an agent acquired previous to the agency, but appearing to be actually present in his mind during the agency, and while acting for his principal in the particular transaction or matter, will, as respects such transactions or matter, be deemed notice to his principal, and will bind him as fully as if originally acquired by him.

Lebanon Sav. Bank v. Hallenbeck, 29 Minn. 322, 326, 13 N.W. 145, 147 (1882). This rule is limited to circumstances

> where the knowledge is possessed by an agent within the scope of whose authority the subject-matter lies; in other words, the knowledge or notice must come to an agent who has authority to deal in reference to those matters which the knowledge or notice affects.

Trentor v. Pothen, 46 Minn. 298, 300, 49 N.W. 129, 129 (1891).

There is sufficient evidence to create questions for the jury whether Hickle is respondent's agent and his knowledge of Brandon's history of inappropriate relationships with young boys may be imputed to respondent. Hickle acquired knowledge of Brandon's inappropriate boundaries and conduct with male youths while Brandon was employed at Maple Grove. Hickle also knew about the letter that identified these issues and the elders' concerns for the benefit of future employers. In 2002, Hickle was employed by respondent as the secretary and treasurer, and his duties included providing the "initial approval" of applications to renew minister credentials. Hickle verified that an applicant had satisfied the application process and that there was no reason not to

renew the applicant's credentials. Hickle signed Brandon's application to renew his credentials in 2004, effective for the year 2005, and in 2005, effective for the year 2006.

When determining whether a defendant owed a duty of care under common law, courts generally consider the following factors:

> (1) the foreseeability of harm to the plaintiff, (2) the connection between the defendant's conduct and the injury suffered, (3) the moral blame attached to the defendant's conduct, (4) the policy of preventing future harm, and (5) the burden to the defendant and community of imposing a duty to exercise care with resulting liability for breach.

Domagala, 805 N.W.2d at 26. There can be no duty unless the injury suffered is foreseeable. *Moorhead Econ. Dev. Auth. v. Anda*, 789 N.W.2d 860, 888 (Minn. 2010).

"In determining whether a danger is foreseeable, courts look at whether the specific danger was objectively reasonable to expect, not simply whether it was within the realm of any conceivable possibility." *Whiteford by Whiteford v. Yamaha Motor Corp., U.S.A.*, 582 N.W.2d 916, 918 (Minn. 1998).

> [W]e look to the defendant's conduct and ask whether it was objectively reasonable to expect the specific danger causing the plaintiff's injury. If the connection between the danger and the alleged negligent act is too remote to impose liability as a matter of public policy, the courts then hold there is no duty. The test is not whether the precise nature and manner of the plaintiff's injury was foreseeable, but whether the possibility of an accident was clear to the person of ordinary prudence.

Domagala, 805 N.W.2d at 27 (quotations and citation omitted). "A harm which is not objectively reasonable to expect is too remote to create liability." *Foss*, 766 N.W.2d at 322. "Foreseeability of injury is a threshold issue related to duty that is ordinarily

properly decided by the court prior to submitting the case to the jury. In close cases, the issue of foreseeability should be submitted to the jury." *Domagala*, 805 N.W.2d at 27 (quotation and citation omitted).

Viewing the evidence in the light most favorable to appellant, we conclude that the issue of foreseeability should be submitted to a jury for its determination whether it was objectively reasonable to expect that respondent's act of providing the "initial approval" to renew Brandon's credentials, without informing the General Council about Brandon's past inappropriate conduct, could cause injury to appellant by Brandon sexually abusing appellant. Through Hickle, respondent knew about Brandon's history of hosting sleepovers with male youths, maintaining inappropriate relationships, and boundary issues with young boys. Respondent knew that Brandon continued to host sleepovers with male youths even after Hickle directed him to stop; that two youths complained that they felt uncomfortable when Brandon insisted that they sleep in his bed with him; and that Brandon gave one youth leg and back rubs. Respondent knew that Brandon's behavior demonstrated that Brandon had inappropriate boundary issues with young boys. Respondent also knew that the Maple Grove church elders were concerned enough to seek Brandon's resignation because Brandon failed to change his inappropriate relationships with young boys and that the elders required that Brandon have no contact with one youth and show a letter describing their concerns and the reasons for Brandon's resignation to future employers.

Hickle acknowledged that by the late 1980's "it was widely known" that sexual abuse of children by ministers and youth workers occurred and was a problem. Hickle

wrote an article about the prevention of sexual abuse of children in the ministry context that was published in a newsletter available to churches and ministers affiliated with respondent. Slagg testified that sex abuse is a well-known hazard of ministering to children. And appellant provided an affidavit of Gary Schoener, a licensed psychologist with expertise in the prevention of sexual abuse in youth activities and programs, which states that

> sexual abuse of children was a well-known and foreseeable hazard in the provision of youth services and activities in . . . church related programming. Broad awareness of this hazard dates back to the 1980's and became even more acute by the 1990's. Locally and nationally thousands of cases were discussed in the news media and it was common knowledge that this was an issue.

Viewing this evidence in a light most favorable to appellant, whether Brandon's sexual abuse of appellant was a foreseeable harm is an issue for the jury.

Constitutional Claim

Respondent argues that "[a] separate and important basis for affirming [respondent's] motion for summary judgment on the common law negligence claim against [respondent] is the problem of excessive entanglement, and thus a lack of subject matter jurisdiction." The First Amendment to the United States Constitution states: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . ." U.S. Const. amend. I. "The First Amendment applies to judicial power." *Olson v. First Church of Nazarene*, 661 N.W.2d 254, 260 (Minn. App. 2003). "Under the entanglement doctrine, a state may not inquire into or review the internal decisionmaking or governance of a religious institution." *Odenthal v. Minn.*

Conference of Seventh–Day Adventists, 649 N.W.2d 426, 435 (Minn. 2002). "When claims involve 'core' questions of church discipline and internal governance, the Supreme Court has acknowledged that the inevitable danger of governmental entanglement precludes judicial review." *Black v. Snyder*, 471 N.W.2d 715, 720 (Minn. App. 1991), *review denied* (Minn. Aug. 29, 1991). But no entanglement problem exists when a dispute can be resolved by applying neutral principles of law; that is "rules and standards that have been developed and are applied without particular regard to religious institutions or doctrines." *Odenthal*, 649 N.W.2d at 435.

This court has held that claims of negligent retention and negligent supervision can be resolved by applying neutral principles of law. *See e.g. Olson*, 661 N.W.2d at 264-65 (holding claims against church for negligent retention and supervision of pastor can be evaluated according to neutral principles of law); *J.M. v. Minn. Dist. Council of the Assemblies of God*, 658 N.W.2d 589, 598 (Minn. App. 2002) (stating that "evaluation of the negligent retention claim can be accomplished using neutral standard, without regard to religious doctrines").

Respondent asserts that "whether Brandon was a fit volunteer . . . at a church, or whether a church adequately investigated Brandon's background in certifying his license cannot be resolved under neutral common law principles, and would invade church provinces, creating excessive entanglement." Respondent suggests that appellant's argument is that respondent "should have intervened in the 'hiring' of Brandon and/or was negligent in certifying him for approval of his minister's license."

But appellant does not challenge respondent's authority to provide "initial approval" of Brandon's annual renewal form. The issue that appellant's negligence claim raises is simply whether providing "initial approval" of Brandon's annual renewal form, when respondent knew about Brandon's history of inappropriate relationships with male youths, created a situation in which Brandon's sexual abuse of appellant was foreseeable. This claim does not require consideration of church doctrine, governance, or bylaws. Because appellant's claim can be considered under neutral principles of negligence law, respondent's constitutional claim fails.

Reversed and remanded.