

**[J-56-1998]**  
**IN THE SUPREME COURT OF PENNSYLVANIA**  
**WESTERN DISTRICT**

MICHAEL S. HUTCHISON, JR., BY	:	56 W.D. Appeal Dkt. 1997
MARY J. HUTCHISON, PARENT AND	:	
NATURAL GUARDIAN,	:	Appeal from the Order of the Superior
	:	Court entered September 4, 1996 at No.
Appellants,	:	1305PGH94, vacating the Judgment of the
	:	Court of Common Pleas of Blair County,
	:	Civil Division, entered June 28, 1994 at
v.	:	No. 1175CP1987.
	:	
	:	
FATHER FRANCIS LUDDY, ST.	:	
THERESE'S CATHOLIC CHURCH,	:	
BISHOP JAMES HOGAN AND DIOCESE	:	
OF ALTOONA-JOHNSTOWN,	:	
	:	
	:	
Appellees.	:	ARGUED: March 9, 1998

**DISSENTING OPINION**

**MR. JUSTICE CASTILLE**

**DECIDED: NOVEMBER 24, 1999**

I respectfully dissent. As a reviewing court, our task is simply to ascertain the governing law and to apply it without passion or prejudice. This task grows more difficult in a case such as this one, where the facts engender a great deal of outrage against the tortfeasor and sympathy for the victim. Nevertheless, I believe that the governing law is fixed and clear, and that it precludes liability for either Bishop Hogan, St. Therese's Catholic Church, or the Diocese of Altoona-Jamestown. Consequently, I am constrained to dissent.

The threshold determination that must be made in any tort case is whether a duty of care is owed by the defendant to the plaintiff. If a duty of care is owed, then a determination must be made as to what level of care was required to discharge the duty, whether there was a breach of the duty, whether the breach caused damages, and what the damages were. Martin v. Evans, 551 Pa. 496, 502, 711 A.2d 458, 461 (1998). This Court has adopted Section 317 of the Restatement of Torts in determining whether an employer owes a duty to a third party to control the conduct of a servant when that servant is acting outside the scope of his employment. See Dempsey v. Walso Bureau, Inc., 431 Pa. 562, 568, 246 A.2d 418, 420 (1968)(collecting appellate cases since this Court adopted Section 317).<sup>1</sup> Section 317 provides as follows:

§ 317. DUTY OF MASTER TO CONTROL CONDUCT OF SERVANT

A master is under a duty to exercise reasonable care so to control his servant while acting outside the scope of his employment as to prevent him from intentionally harming others or from so conducting himself as to create an unreasonable risk of bodily harm to them, if

(a) the servant

(i) is upon the premises in possession of the master or upon which the servant is privileged to enter only as his servant, or

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<sup>1</sup> The Opinion Announcing the Judgment of the Court suggests that the Superior Court erred on the issue of whether a duty existed by limiting its analysis to Section 317, implying that “case law” should have been considered separate and apart from Section 317. I cannot glean wherein the putative error lies, since the “case law” of this Court has explicitly adopted Section 317 for determining whether a duty exists in circumstances such as these. Dempsey, supra. Moreover, the jury was charged only under Section 317 of the Restatement with respect to appellees’ potential liability. R.R. at 151a-159a. However, the Opinion Announcing the Judgment of the Court here believes that it is appropriate to support a verdict with reference to a theory of liability upon which the jury was never even charged. For all these reasons, the Superior Court properly confined its analysis to Section 317 of the Restatement. Thus, this Dissenting Opinion focuses exclusively on why Section 317 precludes liability.

(ii) is using a chattel of the master, and

(b) the master

(i) knows or has reason to know that he has the ability to control his servant, and

(ii) knows or should know of the necessity and opportunity for exercising such control.

Thus, while the Opinion Announcing the Judgment of the Court may well be correct that appellees acted negligently in retaining or in failing to discipline Luddy, or in neglecting to keep him away from children altogether, this determination in and of itself is not legally significant unless a determination is first made that appellees owed a duty to appellant under Section 317 at the time of the incidents at issue. Since the servant in this case, Luddy, was not upon premises in possession of the master at the time of the alleged negligent acts, the essence of the inquiry becomes whether Luddy was upon premises which he was privileged to enter only as his master's servant. Rest. (Second) Torts § 317(a)(ii). The evidence adduced at trial, even when viewed in the light most favorable to appellants as verdict winners, did not support a finding by the jury that Luddy was privileged to enter Michael Hutchison's hotel room only due to his status as a servant -- in this case his status as a priest of the Diocese of Altoona-Johnstown. Stated succinctly, Luddy's status as a priest of the Diocese was irrelevant to Hutchison's decision to ask Luddy to meet him and to allow Luddy access to the hotel room.

It is important first to note that, in both the 1982 and 1984 encounters, Hutchison's calls to Luddy requesting a meeting were unsolicited. Thus, Luddy did not gain access to Hutchison's hotel room by explicitly invoking his status as a priest;

instead, he gained access because Hutchison called and asked for the meetings.<sup>2</sup> Hutchison did not testify that he sought a meeting with Luddy in order for Luddy to perform any sort of religious function or simply because Luddy was a priest. To the contrary, when Hutchison departed for Altoona to arrange the 1982 and 1984 meetings with Luddy, he did not even know if Luddy was still a priest in the Diocese of Altoona-Johnstown. R.R. at 1028, 1040.<sup>3</sup> Thus, it defies reason to suggest that Luddy's standing as a priest in the Diocese of Altoona-Johnstown provided the sole impetus for Hutchison's visits when Hutchison himself testified that he was not even sure of Luddy's priestly status at the time he arranged the visits with Luddy.

While Hutchison did not provide any testimony which would support an inference that Luddy was allowed access to the hotel room solely by virtue of his status as a priest in the Diocese of Altoona-Johnstown, Hutchison did provide testimony which established a number of other motivating factors behind his decision to seek out Luddy.

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<sup>2</sup> In footnote one, the Opinion Announcing the Judgment of the Court quarrels with the way we characterize the manner in which Hutchison allowed Luddy to have access to his hotel room. Apparently it is a matter of judicial notice for the Opinion Announcing the Judgment of the Court that, at the moment that Hutchison allowed Luddy to enter into the room he had rented, Hutchison's will was overborne and he was incapable of "voluntarily" allowing Luddy into his room. In any event, it is undeniable that it was Hutchison who first initiated contact with Luddy with respect to the 1982 and 1984 incidents, and that it was Hutchison who rented a room and permitted Luddy to enter into that room on each occasion.

<sup>3</sup> Q: Matter of fact I take it that you undertook this hitch hiking trek to Altoona from Ohio not even knowing if Father Luddy was still assigned to St. Mary's Parish . . . didn't you?

A: I figured he was still there sir.

Q: But you didn't know?

A: As far as being positive no sir I didn't.

Q: You just took a chance he would be there?

A: Yes sir.

(continued...)

While the existence of any one of these factors would be sufficient to preclude liability under Section 317(a)(ii), the combination of factors present in this case renders application of the governing law a most simple task.

First, regarding the 1982 encounter, Hutchison testified that he ran away from his home in Akron in order to return to Altoona because his father was beating him, because he did not have many friends in Ohio, and because he missed his friends in Pennsylvania. With regard to his specific motives for inviting Luddy to visit him in his hotel room upon his return to Altoona, Hutchison testified as follows:

Q: Alright (sic). You just wanted to call and see him because you were feeling depressed and he was the person you wanted to talk to?

A: I missed Father Luddy allot (sic) sir.

Q: And did you feel he could help you with your depression?

A: Yes I did feel he could.

....

Q: I want to find out what part money played in your decision once you got back to Altoona wanting to see your friends, what part money played in your decision to call Father Luddy?

A: Sir I knew Father Luddy would help me out 'cause he had done a lot of nice things for me throughout the years and I knew he would help me out.

....

Q: You said Father, what did you say to Father?

A: I told him that I was having a lot of problems at home, and that I didn't like living in Ohio, and I wanted to see him.

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(...continued)  
R.R. at 1028a.

Q: And I think you told the ladies and gentlemen of the jury you told Father Luddy that you were depressed and you wanted to talk to him because he was a good listener right?

A: Yes sir.

Q: He was a kind person apparently according to you? A nice person?

A: Yes sir.

R.R. at 1039a; 1166-67.

Regarding the 1984 encounter, Hutchison provided the following testimony regarding his motives for meeting with Luddy:

Q: Why did you decide that you wanted to see Father Luddy this time?

A: Because I had really missed him again and I still had deep love in my heart for him sir.

Q: When you came in the fall of 1984 when you said more or less to see Father Luddy because you needed money did you expect that he would give you two hundred dollars more for another sex act?

A: I didn't know how much he would give me. I knew he would help me out with some money sir.

Q: You knew he would give you some money for a sex act right?

A: Not for a sex act but I kind of figured he'd, I got used to him having sex with me and when I get around him he never could keep his hands off me so I figured he would have sex with me that time.

Q: And would give you money?

A: I figured he would help me out sir yes.

R.R. at 1200a-1204a.

In sum, Hutchison testified that he arranged the 1982 and 1984 meetings with Luddy because he missed Luddy, he was depressed, he wanted someone to talk to, he knew Luddy was a kind person and a good listener who could help with his depression, he had a deep love in his heart for Luddy, and he thought Luddy might give him some

money.<sup>4</sup> Clearly, Hutchison had a number of personal problems -- none of a spiritual or religious nature -- and he thought that Luddy might be able to offer him assistance, financial or otherwise, in dealing with these problems. While being able to help with depression or being a good listener may be qualities that many priests possess, they certainly are not inextricably intertwined with the notion of Priesthood. A priest does not stop becoming a priest if he is unable to help people who are depressed; conversely, being able to help people who are depressed does not make one a priest. Similarly, the fact that Hutchison loved and missed Luddy is not inherently related to Luddy's status as a priest. Thus, by his own admission, Hutchison allowed Luddy into the room for reasons apart from his status as a priest in the Diocese of Altoona-Johnstown.

In light of Hutchison's own testimony, the notion that he might have refrained or hesitated from inviting Luddy into the room if Luddy had announced immediately prior to entry that he was no longer a priest in the Diocese of Altoona-Johnstown flies in the face of both the record and common sense.<sup>5</sup> Yet this is what would be required in order

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<sup>4</sup> The Opinion Announcing the Judgment of the Court points to conflicting testimony, adduced on direct examination, on the role that money played in Hutchison's decision to invite Luddy into the hotel room. The point, however, is that myriad factors entered into Hutchison's mind -- apart from the fact that Luddy was a priest in the Diocese of Altoona-Johnstown -- when he made his decision to call Luddy and arrange a meeting. Even if he had been ousted from the Priesthood in 1982 or 1984, Luddy still would have possessed all the qualities that led Hutchison to seek his assistance at these times. This is precisely why Hutchison stated that he called Luddy and sought him out even though he had no idea of Luddy's priestly status at these times. The Opinion Announcing the Judgment of the Court simply ignores this fact.

<sup>5</sup> The Opinion Announcing the Judgment of the Court attaches significance to the fact that Bishop Hogan testified that "if you're a Priest, you're a Priest 24 hours a day, every day of the year." It may be true that priests are priests at all times, but the relevant question under the Restatement is why Hutchison chose to allow Luddy into his hotel room. Luddy's standing as a priest, as the excerpted testimony illustrates, was irrelevant to Hutchison's decision to allow him into his room.

to impose liability on the Diocese under Section 317. Consequently, the Diocese owed no duty to appellant under Section 317. In the absence of such a duty, appellant cannot recover against the Diocese for negligence.

It may well be true that, were it not originally for Luddy's priestly status, he would never have met young Michael Hutchison, and the repeated incidents of sexual abuse which Hutchison endured would never have come to pass.<sup>6</sup> However, the very narrow issue in this appeal is whether Luddy's priestly status, and his priestly status alone, allowed him to secure access to Hutchison's hotel room on the two occasions in 1982 and 1984. Hutchison's own testimony categorically negates any conceivable notion of an exclusive causal nexus between Luddy's priestly status and his entry to the hotel room. Instead, Hutchison's testimony plainly establishes that he allowed Luddy into his hotel room for a number of reasons, all of which were unrelated to Luddy's standing as a priest in the Diocese of Altoona-Johnstown.

In sum, appellant's own testimony establishes that appellees did not owe him a duty under Section 317 of the Restatement. Because appellees owed no such duty with respect to the two incidents at issue, appellant's cause of action in negligence may not be sustained. Accordingly, I am constrained to dissent.<sup>7</sup>

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<sup>6</sup> The Opinion Announcing the Judgment of the Court takes this negative causal inference out of its context and attempts to convert it into a positive causal inference that Luddy's priestly status did provide the exclusive impetus which drove Hutchison to invite him into his hotel room. As a matter of logic, the Opinion Announcing the Judgment of the Court's approach here is unsound. The fact that Luddy might never have had the opportunity to meet Hutchison if Luddy was not a priest does not in any way entail that it was only Luddy's priestly status, and not other factors, which caused Hutchison to allow him access to his hotel room on the occasions in question.

<sup>7</sup> I note that the Opinion Announcing the Judgment of the Court in this matter should not be viewed as conferring this Court's imprimatur on a cause of action against a religious sect under Section 317 for Constitutional purposes. A number of other state (continued...)



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(...continued)

supreme courts have declined to authorize a cause of action against a religious sect for negligent retention of its religious leaders because to do so would result in excessive entanglements with religious beliefs contrary to the First Amendment of the United States Constitution. See Pritzlaf v. Archdiocese of Milwaukee, 194 Wis.2d 302, 533 N.W.2d 780 (1995); Gibson v. Brewer, 952 S.W.2d 239 (Mo. 1997); Swanson v. Roman Catholic Bishop of Portland, 692 A.2d 441 (Me. 1997). Without commenting on the merit of these decisions, I note simply that the issue of excessive entanglement was not before this Court in this matter, and, accordingly, should not be viewed as having been laid to rest by this decision.