Turner v. Roman Catholic Diocese of Burlington, No. 1020-04 Cncv (Katz, J., Nov. 29, 2007)

STATE OF VERMONT
Chittenden County, ss.:

SUPERIOR COURT
Docket No. 1020-04 CnC

TURNER

v.

ROMAN CATHOLIC
DIOCESE OF BURLINGTON

ENTRY
Punitive Damages

In this case alleging negligent supervision, we must determine whether or not to submit the issue of punitive damages to the jury. We determine not to.

The pertinent evidence here is that the malefactor, then Father Alfred Willis, attended St. Mary Seminary, sponsored by defendant Diocese of Burlington. The Definitive Sentence states that during his attendance there, the rector of the seminary sent a letter to the diocesan Vocational Director "that there might be a problem with Alfred Willis in regard to alleged homosexual conduct. The Rector subsequently informed [the Vocational Director] that investigation failed to reveal substance to this concern and asked that the matter be dropped. The Vocation Director judged it unnecessary to convey the matter to the Bishop." (P.'s Ex. 2, p. 1.) Willis was subsequently ordained as a priest and assigned to a parish. He abused plaintiff perhaps three years later, although the exact time is

unclear. The Diocese first learned of the abuse of plaintiff perhaps thirty years later. But within a few years of plaintiff's abuse (1977), the Diocese learned of other abuse of other boys by Willis. Some evidence suggests that diocesan officials took no effective action regarding Willis until it appeared that his actions might be made public.

Other evidence permits the inference that "homosexual conduct" could have been a euphemism for child molestation, widely used, hence within the knowledge of diocesan officials for its true meaning. Again, other evidence suggests that this diocese had tolerated child molesting by other priests, prior to the wrong Willis perpetrated upon plaintiff. Finally, other evidence tends to show that young priests knew that child molestation was often tolerated within the Church at large, if not necessarily this diocese. From all this, a jury might infer that Willis may have believed he would not be punished or stopped by his employer from engaging in child molestation.

Further, the jury could infer that for a Rector to write the sponsor the first letter he did, that there might be a problem with homosexual conduct, implies something quite serious–something more than holding hands in the night with another consenting adult. Higher education officials would not ordinarily be expected to notify sponsors of what they consider to be trivial conduct by students, thereby jeopardizing both their careers and their sponsorship. When the Rector then followed up with "not substantiated," he does not say "it never happened," or "it was actually a different student." A fair reading of the second letter could well be "we just can't prove it." Then, as witness Sipe pointed out, the Vocational Director did not pass this information on to the Bishop; evidently he did not deem it to effect a significant interest of the Diocese. Witness Sipe also pointed out, although it really goes without saying, the record is also silent on any follow-up whatever by the Diocese about why the Seminary would have sent the letter, whether before or after ordination. Given the prosecution's motivation to marshal evidence for the canonical proceedings to first declare Willis infamous and later

seek his laicization, the silence as to follow-up suggests no early supervision of Willis, relative to sexual conduct, by the Diocese.

This summary of evidence, taken most favorably to plaintiff, including inferences fairly drawn from that evidence, suggests plaintiff may take his claim of negligent supervision to the jury. But does it support taking the demand for punitive damages to that jury?

Ordinarily, proof of negligence does not support an award of punitive damages. Because the purpose of punitive damages is to punish conduct that is morally culpable and truly reprehensible, Vermont law has set a high bar for plaintiffs seeking such damages. Monahan v. GMAC Mortgage Corp., 179 Vt. 167, 188 (2005). Plaintiffs must present evidence that defendant's wrongdoing has been intentional and deliberate, and has the character of outrage frequently associated with crime. Id. Vermont law requires actual malice, which at least requires proof of reckless or wanton disregard of the rights of potential victims. Id.

This requirement has been applied to the specific tort of negligent supervision in Brueckner v. Norwich Univ., 169 Vt. 118 (1999). In Brueckner, the evidence showed severe hazing of freshmen by upperclassmen who were clearly permitted to engage in that conduct by the University. The Court affirmed the trial court's imposition of a duty of supervision and jury finding of negligence in that supervision. Id. at 126-27. But the award of punitive damages was vacated. Id. at 129-32. "Defendant's conduct, however wrongful," must also show malice. Id. at 129-30. Despite the plaintiff's assertion that Norwich's "conscious choice to remain ignorant of hazing activities" sufficed, the Court held otherwise. Instead, the Court specifically rejected

> that inaction or inattention of senior corporate officers constitutes malice sufficient to establish punitive damages liability. This is particularly true where, as here, the findings of fact made by the judge in upholding the jury's punitive damages award are

> insufficient to support an inference that the defendant's inaction was infused with 'a bad motive'.

Id. at 130-31. Reviewing the evidence, the Court noted actual knowledge of numerous, often serious, hazings, leaving the senior wrongdoers virtually unsupervised, not encouraging reports from campus security; summed up as "indifferent to the health and safety of the rooks [freshmen]." Id. at 131-32. In sum, the factual conclusions are remarkably similar to the inferences plaintiff would have the jury draw here. Indeed, the Brueckner facts are stronger, because no inferences were needed; there was actual knowledge of the hazing by the Norwich administration. Inaction and inactivity is precisely what plaintiff here suggests on the part of the Diocese. Even to the extent plaintiff suggests evidence that the Diocese had a long-term policy of looking the other way regarding priest abuse of young parishioners, of being more concerned with "scandal" than children, the evidence here shows less direct knowledge of the malefactor's plans and actions and their effects than was shown in Brueckner.

Other states that have considered the issue of punitive damages in the context of priest abuse have imposed a similarly high standard. Hutchinson v. Luddy, 896 A.2d 1260 (Pa.Super. 2006) ("Hutchinson V"), affirmed an award of punitive damages. But the Superior Court (appellate) found that

> the record supports the jury's finding the Diocese subjectively appreciated the risk of harm of pedophilia long before Father Luddy molested Michael, yet acted, or failed to act, in conscious disregard of the risk despite knowing or having reason to know priests within the Diocese were molesting its children. In particular, the jury cold have properly found outrageous the Diocesan parties' failure to investigate and discipline its priests, including Father Luddy, for acts of molestation occurring as early as 1967…

Id. at 1275. The court related evidence of a number of molestations by the particular offending priest, of which other priests had knowledge, before the molestation of plaintiff Michael Hutchinson. Id. at 1272-74. Hence, the knowledge of proclivity of the particular priest who offended against plaintiff was known in the way it was not in the present case. The two-part legal requirement

for punitive damages, in Hutchinson V, is stated to be a subjective appreciation of the risk of harm to which the plaintiff was exposed and failure to act in conscious disregard of that risk. Id. at 1267. Subjective appreciation must be understood to be quite beyond the mere requirement for proving negligent supervision. Negligence is inherently an objective determination, as it is made against the standard of the reasonable employer. Subjective appreciation goes a significant step beyond, requiring actual knowledge by this employer, not merely what would be appreciated by some reasonable equivalent. At the time this plaintiff was injured by Willis, there is no evidence that any person within the Diocese of Burlington had a subjective appreciation of the errant Willis's danger to young males. The "red flags" from the St. Mary rector may have been that, but there is a substantial gap between knowledge of flags and subjective appreciation of a particular priest's actual danger.

Mrozka v. Archdiocese of St. Paul, 482 N.W.2d 806 (Minn.App. 1992) affirmed a judgment including punitive damages. The appellate court noted that there was

> evidence from which the jury could conclude that Church officials repeatedly and knowingly placed [offending priest] Adamson in situations where he could sexually abuse boys and then failed to properly supervise him and disclose his sexual problem.

Id. at 813. On this basis, the jury verdict of punitive damages was deemed supported. Again, the evidence of pre-offense knowledge is of a significantly different quality than what is present in this case.

Neither "heedless disregard of the consequences" nor "indifference attributable to negligence" suffice to support punitive damages. Brueckner, 169 Vt. at 132; Monahan v. GMAC Mtg. Corp., 179 Vt. 167, 190 (2005). If believed by the jury, plaintiff's evidence may add up to heedless disregard or indifference, but that is not enough. Punitive damages, like any relief in any lawsuit, must punish the tort committed against the plaintiff- in this case negligent supervision of Willis, leading to molestation of Mr. Turner. Such damages always focus on the

this tort; they are not for punishing a more general policy or course of conduct. See, e.g., Sweet v. Roy, 173 Vt. 418, 446-47 (2002) (requiring compensatory damages to be found before punitive damages may be permitted), citing Crump v. P&C Foods, 154 Vt. 284, 297 (1990) (defining requisite malice as reckless disregard of the rights of the plaintiff). See also BMW of North America, Inc. v. Gore, 517 U.S. 559 (1996) (requiring punitive damages award to bear reasonable relation to the degree of harm suffered by the plaintiff).

The court will not submit the question of punitive damages to the jury.

Dated at Burlington, Vermont, ____ November 2007.

M. I. Katz, Judge