STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1471

Samantha S. Beach,
Respondent,

vs.

Donald Dean Budd,
Co-Appellant,

Minnesota Annual Conference of United Methodist Church,
Appellant.

Filed May 3, 2011
Affirmed in part, reversed in part, and remanded
Connolly, Judge

Hennepin County District Court
File No. 27-CV-09-16142

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Considered and decided by Connolly, Presiding Judge; Ross, Judge; and Harten, Judge.[*]

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

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

CONNOLLY, Judge

Appellant church and co-appellant pastor bring this interlocutory appeal on First-Amendment grounds of excessive religious entanglement, challenging the existence of subject-matter jurisdiction over civil claims brought by a parishioner for sexual abuse. Because we conclude that the parishioner's claims for negligent retention, negligent supervision, and sexual exploitation can be resolved according to neutral principles of law, we affirm in part. But because we conclude that the church did not assume a duty to protect the parishioner, we reverse in part and remand.

FACTS

I. Background

Respondent Samantha Beach was a parishioner at McKinley United Methodist Church (McKinley). Co-appellant Donald Budd was at all relevant times the pastor at McKinley. Appellant Minnesota Annual Conference of United Methodist Church (Conference) allegedly controls and supervises McKinley and allegedly employed Budd.

From 2003 to 2005, through his position as pastor, Budd provided spiritual counseling and alleged psychotherapy to Beach for issues surrounding the death of her grandfather, relationship problems, and other concerns. Beach saw Budd roughly once a week. During the summer of 2003, Budd came to Beach's home and asked if he could be sexual with her. Beach and Budd went upstairs and laid on the bed. Budd undressed Beach and digitally penetrated her vagina for approximately 30 minutes. Afterward, Beach stopped seeing Budd for approximately a year.

Beach resumed seeing Budd in 2004 along with her fiancé for pre-marriage counseling. The couple married in November. Approximately two months later, Beach began seeing Budd between one and three times per week to discuss her marital problems. During this time, Budd would also confide in Beach and discuss his own marital problems. At the end of one of these sessions, Budd asked Beach to model panties for him. Beach felt an obligation to honor the request because she had not been paying Budd for the counseling. Budd continued to ask Beach to model panties for him following each session. Things escalated and Budd kissed Beach's breasts and lips and spanked her. Budd digitally penetrated Beach a total of six times. Beach told Budd she did not want the sexual contact, but Budd would tell her that she was "a more righteous person" than he was, and Beach would feel guilty and allow the behavior to continue. Beach stopped seeing Budd in late 2005.

II. Budd reports temptation to Conference

During this time, Michael Wuehler was a Conference district superintendant. Sometime in 2005, Budd told Wuehler that he was being tempted by a younger woman, presumably Beach. Wuehler asked if Budd needed assistance.[1] Wuehler followed up with Budd a few months later and Budd told him that the temptation was no longer an issue. Wuehler followed up a year later and received the same response. Budd did not recall any follow-up from Wuehler. Wuehler did not report the matter to anyone else.

[1] There is no clear answer to this question in the record. In his deposition, Budd stated that he was "probably" asking for assistance in disclosing his feelings and that he expected that if Wuehler "would do anything, he might have follow-up questions later or they might think it would be appropriate to appoint[] [Budd] elsewhere."

III. Beach reports Budd's conduct to Conference

In 2006, Beach informed the Conference of the events that had transpired with Budd via an e-mail to Bishop Sally Dyck, the Conference's resident bishop for the state of Minnesota. Upon receiving a signed complaint against Budd, the Conference conducted an investigation. In a letter to Beach, the bishop explained that the complaint process is governed by the Conference's *Book of Discipline*. The bishop cautioned Beach about the risks of going forward with a church trial and "to have a realistic understanding of what the process is."

During the investigation, Beach repeatedly asked the bishop to set up a face-to-face meeting with Budd.[2] The bishop felt she was making little progress with the investigation and attempted to move things along by setting up the meeting. The *Book of Discipline* allows for a process of just resolution in which the involved parties are provided an opportunity to speak to each other for emotional reconciliation. Prior to the meeting, the bishop presented Beach with an agreement on mediation and just resolution as described in the *Book of Discipline*. Beach refused to sign the document for fear that she was giving up her rights.

Notwithstanding Beach's refusal to sign the agreement, the bishop arranged a meeting between Beach and Budd. Aware that Beach had previously recorded a conversation that Beach and Budd had, the bishop asked if Beach would agree not to record the conversation. At this time, Beach was working with law enforcement in the

[2] Beach and Budd were "asked not to converse with each other or to speak publicly about the complaint" during the investigation.

preparation of a criminal complaint against Budd. Beach subsequently met with Budd and recorded their conversation.

Once Beach recorded Budd, she decided not to continue with the church-trial process. In 2007, the bishop wrote Beach a letter detailing the history of Beach's complaint, the meeting that had been arranged, and the bishop's attempts to contact Beach following the meeting without a response. The bishop stated that she "must assume" from Beach's lack of communication that Beach no longer wanted to pursue the complaint and that she was dismissing the complaint for lack of evidence.

IV. Criminal charges brought against Budd

Budd was charged with five felony counts of third-degree criminal sexual conduct in violation of Minn. Stat. § 609.344, subd. 1(l)(ii) (2004) (prohibiting sexual penetration of a person by another, who is or purports to be a member of the clergy, during the time the person "was meeting on an ongoing basis with the actor to seek or receive religious or spiritual advice, aid, or comfort in private"), and five felony counts of fourth-degree criminal sexual conduct in violation of Minn. Stat. § 609.345, subd. 1(l)(ii) (2004) (prohibiting sexual contact of a person by another, who is or purports to be a member of the clergy, during the time the person "was meeting on an ongoing basis with the actor to seek or receive religious or spiritual advice, aid, or comfort in private"). Budd ultimately pleaded guilty to two counts of fourth-degree criminal sexual conduct and was sentenced to 21 and 27 months in prison, to run concurrently, with execution of his sentences stayed for 15 years.

V. Beach files civil action

Beach brought this civil action against Budd and the Conference in 2009. Beach alleged professional negligence and negligent infliction of emotional distress against Budd; she alleged intentional infliction of emotional distress and negligent retention, supervision, investigation, and infliction of emotional distress against the Conference. Among other things, Beach alleged in her complaint that Budd (1) provided counseling and therapy for Beach's psychological issues, (2) mishandled the transference phenomenon,[3] and (3) engaged in countertransference,[4] which resulted in Budd sexually touching Beach, all of which fell below the applicable standard of care.

Beach moved to amend her complaint to add statutory claims for sexual exploitation against Budd and the Conference and to add a claim for punitive damages against Budd. Budd opposed Beach's amendments, arguing that Beach was aware of the

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[3] Transference

> is the process whereby the patient displaces on to the therapist feelings, attitudes and attributes which properly belong to a significant attachment figure of the past, usually a parent, and responds to the therapist accordingly. Transference is common in psychotherapy. The patient, required to reveal her innermost feelings and thoughts to the therapist, develops an intense, intimate relationship with her therapist and often "falls in love" with him. The therapist must reject the patient's erotic overtures and explain to the patient the true origin of her feelings.

St. Paul Fire & Marine Ins. Co. v. Love, 459 N.W.2d 698, 700 (Minn. 1990) (quotation and citation omitted).

[4] Countertransference occurs "when the therapist transfers his own problems to the patient. When a therapist finds that he is becoming personally involved with the patient, he must discontinue treatment and refer the patient to another therapist." *Id.*

factual bases underlying her sexual-exploitation claim at the onset of litigation and that Beach had failed to provide the mandatory affidavit stating the specific factual basis for her punitive-damages claim. Budd and the Conference moved for summary judgment against Beach.

The district court granted Beach's motion to add claims for sexual exploitation and punitive damages against Budd. Beach agreed to dismiss her claims of professional negligence and negligent infliction of emotional distress against Budd. The district court also granted Beach's motion to add a claim for sexual exploitation against the Conference. In connection with the sexual-exploitation claims, the district court ruled that Beach was not required to submit an expert affidavit because the statute did not require an affidavit and the applicable standard of care was already set by the statute, which prohibited psychotherapists from having sexual contact with patients.

Additionally, Beach agreed to dismiss her claim for negligent infliction of emotional distress against the Conference, and the district court granted summary judgment in favor of the Conference on the intentional-infliction-of-emotional-distress claim. Regarding Beach's negligence claims pleaded under theories of negligent retention, supervision, and investigation, the district court concluded that genuine issues of material fact remained as to whether the Conference was Budd's employer and if a special relationship had been formed between Beach and the Conference.

In sum, following the district court's order, Beach's claims for sexual exploitation and punitive damages against Budd and her sexual-exploitation and negligence claims against the Conference remained viable. The district court also rejected First

Amendment religious entanglement challenges, concluding that it had subject-matter jurisdiction over Beach's claims because each of the claims could be resolved by applying neutral principles of law, none of them required examination of the *Book of Discipline*, and therefore adjudication of these claims would not result in an excessive entanglement with religion.

VI. Appellate proceedings

The Conference challenges the district court's order to the extent that it denied the Conference's motion to dismiss Beach's negligence claims. *Beach v. Budd*, No. A10-1471, at *1 (Minn. App. Sept. 17, 2010) (order). The Conference's statement of the case indicated that subject-matter jurisdiction was the only issue on appeal. *Id.* at *2. Budd filed a notice of related appeal and was designated a co-appellant. *Id.* at *3-4. In addition to the question of subject-matter jurisdiction, Budd challenges the sexual-exploitation and punitive-damages amendments and the district court's ruling that no expert affidavit was required for the sexual-exploitation claim. *Id.* at *3. By special-term order, this court directed the parties to file informal memoranda on "whether the additional issues raised by [Budd] . . . are properly before this court in this limited, interlocutory appeal under the collateral-order doctrine." *Id.* at *4. Upon receiving the jurisdiction memoranda, a special-term panel of this court concluded that the panel assigned to hear the appeal on the merits should determine which issues are properly raised with the benefit of full briefing and the district court record. *Budd v. Beach*, No. A10-1471, at *2 (Minn. App. Oct. 26, 2010) (order).

D E C I S I O N

I. For purposes of this limited, interlocutory appeal, we address the issue of subject-matter jurisdiction and extend review only to whether the Conference owed a duty to protect Beach.

"Generally, an order denying a motion for summary judgment is not appealable unless the district court certifies the question presented as important and doubtful." *McGowan v. Our Savior's Lutheran Church*, 527 N.W.2d 830, 832 (Minn. 1995); Minn. R. Civ. App. P. 103.03(i). But, consistent with the federal collateral-order doctrine, an order denying a motion for summary judgment based on subject-matter jurisdiction is immediately appealable. *McGowan*, 527 N.W.2d at 833; Minn. R. Civ. App. P. 103.03(j) (stating that appeal may be made to this court regarding such "orders or decisions as may be appealable by statute or under the decisions of the Minnesota appellate courts"). "If the district court here lacks jurisdiction over the subject matter, no purpose is served by putting the parties or the court through the rigors of trial before that determination is made." *McGowan*, 527 N.W.2d at 833.

"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) (*Odenthal I*). But if neutral principles of law apply to claims against a clergy member, there is no entanglement problem and a district court has subject-matter jurisdiction over the claims. *Id.* at 435-36. Because the Constitution limits the judiciary's jurisdiction over disputes involving religious institutions, the entanglement questions raised by the Conference are

properly before us. *See id.* at 435 ("The First Amendment applies to both legislative and judicial power.").

Expansion of appellate jurisdiction to other issues in conjunction with collateral orders, however, is generally disfavored. "[A] rule loosely allowing pendent appellate jurisdiction would encourage parties to parlay . . . collateral orders into multi-issue interlocutory appeal tickets." *Swint v. Chambers Cnty. Comm'n*, 514 U.S. 35, 49-50, 115 S. Ct. 1203, 1211 (1995). Nonetheless, the United States Supreme Court has recognized that an appeal from a collateral order may necessarily require review of related rulings when the related issue is "inextricably intertwined" with the collateral order or review of the related issue is "necessary to ensure meaningful review of the [collateral order]." *Id.* at 51, 115 S. Ct. at 1212. The fact "[t]hat a ruling may burden litigants in ways that are only imperfectly reparable by appellate reversal of a final district court judgment" is not sufficient for pendent appellate jurisdiction. *Mohawk Indus., Inc. v. Carpenter*, 130 S. Ct. 599, 605 (2009) (quotation omitted).

As discussed below, we first conclude that the district court correctly determined that it had subject-matter jurisdiction over Beach's negligent-retention, negligent-supervision, and sexual-exploitation claims because these claims can all be resolved according to neutral principles of law. Second, as for Beach's negligent-investigation claim, we consider whether the Conference owed a duty to protect Beach rather than addressing the constitutional question of entanglement because we generally do not decide constitutional questions unless necessary to dispose of the matter at hand. *See Meyer v. Lindala*, 675 N.W.2d 635, 639 (Minn. App. 2004) (declining to address whether

Establishment Clause of First Amendment precludes subject-matter jurisdiction when claim could be resolved on other grounds). Third, we decline to address the district court's rulings allowing Beach to amend her complaint[5] and permitting Beach to proceed without filing an expert affidavit in connection with her sexual-exploitation claims as these issues are neither sufficiently intertwined with nor do they require resolution for our analysis of subject-matter jurisdiction. *See Swint*, 514 U.S. at 51, 115 S. Ct. at 1212.

II. The Establishment Clause's prohibition against government entanglement with religion does not deprive the district court of subject-matter jurisdiction over Beach's negligent-retention, negligent-supervision and sexual-exploitation claims because such claims can be resolved according to neutral principles of law.

Under the First Amendment, "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). "When claims involve 'core'

[5] To the extent that Budd contends that the punitive-damages claim creates an excessive entanglement with religion, Budd merely asserts that "the reliance by [Beach] and the [district court] upon Budd's guilty plea results in impermissible governmental entanglement." Budd appears to be arguing the merits of whether he is liable for punitive damages, i.e., that his guilty plea is not evidence of deliberate disregard for the rights and safety of Beach. *See* Minn. Stat. § 549.20, subd. 3 (2010) (including "the severity of any criminal penalty to which the defendant may be subject" as factor for determining amount of punitive damages); *Anderson v. Amundson*, 354 N.W.2d 895, 899 (Minn. App. 1984) ("Evidence of criminal penalty is relevant and should be considered by jury in assessing punitive damages."). Furthermore, whether Budd showed deliberate disregard for Beach's rights or safety is determinable according to neutral principles of law. *See Mrozka v. Archdiocese of St. Paul & Minneapolis*, 482 N.W.2d 806, 811-12 (Minn. App. 1992) (concluding that, where church conceded that examining reasonableness of its actions for purposes of determining negligence and compensatory damages regarding placement and discipline of priest who sexually abused children was constitutionally permissible, inquiry into the same matter for purposes of determining punitive damages did not constitute excessive entanglement), *review denied* (Minn. May 24, 1992).

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).

Yet, the Establishment Clause does not bar all government action. *Olson*, 661 N.W.2d at 260. No entanglement problem exists when a dispute can be resolved by applying neutral principles of law, "rules and standards that have been developed and are applied without particular regard to religious institutions or doctrines." *Odenthal I*, 649 N.W.2d at 435. As a question of law, subject-matter jurisdiction is reviewed de novo. *Id.* at 434.

A. Employment-related negligence claims

We begin by observing that some clarification is needed regarding Beach's employment-related negligence claims against the Conference. First, count III of Beach's complaint is titled "Negligent Hiring and Retention—United Methodist Church," but Beach appears to allege only negligent retention and supervision claims.[6] *See Yunker v. Honeywell, Inc.*, 496 N.W.2d 419, 423 (Minn. App. 1993) ("Although some jurisdictions apparently aggregate the theories of 'negligent hiring' and 'negligent

[6] We note that, while Paragraph 19 of Beach's complaint alleges the existence of a standard of care "for the process of select[ing]" a pastor, Beach does not appear to allege that this standard was violated. The district court would lack subject-matter jurisdiction over a negligent-hiring claim. *See J.M. v. Minn. Dist. Council of Assemblies of God*, 658 N.W.2d 589, 594-95 (Minn. App. 2003) (holding that, while determination of whether statutorily required inquiries were made of pastor-candidate's former employers does not involve church doctrine, determination of how that information should be used in hiring decisions would violate the Establishment Clause by forcing the court to examine church doctrine governing pastor qualifications).

retention' into a single doctrine, Minnesota caselaw refers to them separately, suggesting that they are related, but distinct theories of recovery."), *review denied* (Minn. Apr. 20, 1993). Second, both Beach and the Conference refer to claims for negligent supervision as well as negligent retention. The district court did not address whether it had subject-matter jurisdiction over Beach's negligent-supervision claim. Because subject-matter jurisdiction cannot be waived and can be addressed at any time, we exercise our discretion under Minn. R. Civ. App. P. 103.04 to review whether the district court has subject-matter jurisdiction over Beach's claim for negligent supervision in addition to Beach's claim for negligent retention. *See* Minn. R. Civ. App. P. 103.04 (appellate courts "may review any other matter as the interest of justice may require"); *Tischer v. Hous. & Redevelopment Auth. of Cambridge*, 693 N.W.2d 426, 430 (Minn. 2005) ("Subject matter jurisdiction cannot be conferred by consent of the parties, it cannot be waived, and it can be raised at any time in the proceeding."); *In re Welfare of M.J.M.*, 766 N.W.2d 360, 364 (Minn. App. 2009) ("[L]ack of subject-matter jurisdiction may be raised at any time by the parties or sua sponte by the court, and cannot be waived by the parties."), *review denied* (Minn. Aug. 26, 2009). We consider each of the employment-related claims in turn.

1. Negligent retention

"Generally, an employer has the duty to refrain from retaining employees with known dangerous proclivities." *J.M.*, 658 N.W.2d at 597 (quotation omitted). A claim for negligent retention arises "when, during the course of employment, the employer becomes aware or should have become aware of problems with an employee that

indicated his unfitness, and the employer fails to take further action such as investigating, discharge or reassignment." *L.M. v. Karlson*, 646 N.W.2d 537, 545 (Minn. App. 2002) (quotation omitted). The district court concluded that it had subject-matter jurisdiction over Beach's negligent-retention claim because the claim could be resolved according to neutral principles of law and Beach had identified an expert witness who would testify as to a neutral standard of care. We agree.

In *Odenthal II*, we held that, by applying the tort standard of whether the employer was aware or should have been aware of problems indicating an employee's unfitness and failed to take further action, a claim for negligent retention could be made against a church conference according to neutral principles of law and thus fell within the subject-matter jurisdiction of the district court. *Odenthal v. Minn. Conference of Seventh-Day Adventists*, 657 N.W.2d 569, 575 (Minn. App. 2003) (*Odenthal II*). We have also observed that the district court

> need not investigate the role of pastor within church hierarchy or the nature of [the pastor's] employment with the church in order to resolve a claim of negligent retention. The unfitness alleged is the secular act of sexually violating a parishioner, not any alleged unfitness that relates to [the pastor's] duties as a pastor. The court only need evaluate what the church knew or should have known about [the pastor's] propensity to sexually violate parishioners with whom he was counseling, and, if there was such knowledge, whether the church's actions were reasonable considering the problem.

J.M., 658 N.W.2d at 597-98; *see also Olson*, 661 N.W.2d at 264 (standards used to evaluate negligent-retention claim when alleged unfitness is an act of sexual penetration are based on neutral principles of law and do not require examination of church doctrine

or practice). Beach's negligent-retention claim is not related to Budd's spiritual advice; rather, the issue is whether the Conference acted reasonably after it became aware of or should have been aware of any issues with Budd sexually touching individuals. Contrary to the Conference's assertion that Beach is "seeking secular review of the Conference's internal response to her complaints," Beach's negligent-retention claim can be evaluated according to neutral principles of law and, therefore, there is no entanglement problem. *See Olson*, 661 N.W.2d at 264; *J.M.*, 658 N.W.2d at 597-98; *Odenthal II*, 657 N.W.2d at 575.

The Conference relies on the unpublished case of *Mulinix v. Mulinix*, No. C2-97-297, 1997 WL 585775 (Minn. App. Sept. 22, 1997), *review denied* (Minn. Nov. 18, 1997), asserting that claims for negligent retention and supervision are fundamentally connected to issues of church governance and are thus barred by the First Amendment. The Conference is correct that the *Mulinix* court concluded that such claims were barred by the First Amendment because they were "fundamentally connected to issues of church governance," and "[a]djudication of these claims would necessitate inquiry into the church's motives for not discharging [the pastor], as well as how the church investigates and resolves complaints concerning clergy misconduct." *Id.* at *6. *Mulinix*, however, is an unpublished decision and therefore not precedential. *See* Minn. Stat. § 480A.08, subd. 3 (2010) ("Unpublished opinions of the Court of Appeals are not precedential."). Furthermore, more recent caselaw specifically holds that such claims are permissible. *See Olson*, 661 N.W.2d at 264-65 (claims against church for negligent retention and supervision of pastor can be evaluated according to neutral principles of law and thus not

barred by First Amendment); *J.M.*, 658 N.W.2d at 598 ("evaluation of the negligent retention claim can be accomplished using neutral standards, without regard to religious doctrines"); *Odenthal II*, 657 N.W.2d at 575-76 (district court has subject-matter jurisdiction to address claims for negligent retention, supervision, and training against church). We affirm the district court's conclusion that it had subject-matter jurisdiction over Beach's negligent-retention claim against the Conference.

2. Negligent supervision

"Negligent supervision is the failure of an employer to exercise ordinary care in supervising the employment relationship so as to prevent foreseeable misconduct of an employee from causing harm to others." *Olson*, 661 N.W.2d at 264-65. "Negligent supervision is derived from the doctrine of respondeat superior and, therefore, in order to successfully make out a claim for negligent supervision, a party must show that the employee's actions occurred within the scope of employment." *L.M.*, 646 N.W.2d at 545 (quotation omitted).[7] "The basis of liability is that the tortious act is committed in the scope of employment; whether the employer is at fault is immaterial." *Oslin v. State*, 543 N.W.2d 408, 414 (Minn. App. 1996), *review denied* (Minn. Apr. 1, 1996).

"The supreme court has previously determined that sexual relations are a well-known hazard of a secular counseling relationship," and that the only inquiry in a negligent-supervision claim is "the reasonableness of the employer's supervision to

[7] Beach has not brought a claim under the doctrine of respondeat superior. While Beach appears to suggest that these two claims are one and the same, they are not. *See C.B. ex rel. L.B. v. Evangelical Lutheran Church in Am.*, 726 N.W.2d 127, 133-36 (Minn. App. 2007) (discussing separate claims for respondeat superior and negligent supervision); *Olson*, 661 N.W.2d at 263-65 (same).

prevent a cleric's sexual penetration of persons who are receiving ongoing, private spiritual advice, aid, or comfort from a cleric." *Olson*, 661 N.W.2d at 265. Just as a negligent-counseling claim against a pastor can be evaluated according to neutral statutory standards governing unlicensed mental-health professionals, a claim for negligent supervision can be analyzed under neutral standards of care for supervising such professionals. *Odenthal II*, 657 N.W.2d at 576. Because a claim for negligent supervision can be evaluated according to neutral principles of law, the district court has subject-matter jurisdiction to address this claim.

3. Other issues

The Conference raises three additional issues with regard to Beach's employment-related negligence claims: (1) the Conference was not Budd's employer; (2) a statutory violation cannot satisfy the requirement of an underlying intentional tort committed by the employee; and (3) the Conference had no knowledge of any "red flags," suggesting that Budd had dangerous proclivities. Resolution of these issues is not necessary to answer the question of subject-matter jurisdiction and therefore they are not properly before us. *See Swint*, 514 U.S. at 51, 115 S. Ct. at 1212. Furthermore, the Conference's liability as Budd's alleged employer and any claims arising from that relationship can be reviewed effectively on appeal from a final judgment. *See id.* at 43, 115 S. Ct. at 1208 ("An erroneous ruling on liability may be reviewed effectively on appeal from final judgment.").

B. Sexual exploitation

The Conference and Budd both contend that the district court lacks subject-matter jurisdiction over Beach's statutory sexual-exploitation claims. *See* Minn. Stat. § 604.201 (liability of psychotherapist for sexual exploitation), .202 (liability of psychotherapist's employer for sexual exploitation) (2010). We agree with the district court's conclusion that it has subject-matter jurisdiction over these claims because they too can be resolved according to neutral principles of law.

In *J.M.*, we considered whether a claim for sexual exploitation would create an excessive entanglement with religion under the predecessor chapter, Minn. Stat. ch. 148A (2002). 658 N.W.2d at 596-97. Similar to the Conference's argument in this case that the *Book of Discipline* sets the applicable standard of care, the *J.M.* church "argue[d] that application of the [sexual-exploitation] statute would amount to a substitution of the state's view of reasonable conduct for the church's view of reasonable conduct, amounting to an interference with church governance." *Id.* at 597. Likening the sexual-exploitation claim to a claim for sexual harassment under the Minnesota Human Rights Act, we rejected the church's argument given the similar duty of the employer to take reasonable action in response. *Id.* (citing *Black*, 471 N.W.2d at 721 (stating act's incidental burden on religious activity or belief is overcome by state's compelling interest in eliminating workplace harassment)). Beach therefore is correct that "[t]he only inquiry is whether the Conference took reasonable action when learning of Budd's sexual contact with Beach." The fact that Beach's complaint was made after the relationship ended is neither dispositive of what the Conference knew or had reason to know nor relevant to

whether the district court has subject-matter jurisdiction to adjudicate Beach's sexual-exploitation claims. Similarly, simply because Budd's criminal conviction arose out of the same events underlying Beach's civil claim does not divest the district court of subject-matter jurisdiction over the civil claim. *See* Minn. Stat. § 609.345, subd. 1(l)(ii) (including as elements of the offense that the actor was or purported to be a member of the clergy and that the conduct occurred in the context of meeting for religious or spiritual advice, aid, or comfort); *Doe v. F.P.*, 667 N.W.2d 493, 499-500 (Minn. App. 2003) ("Like sexual abuse committed by members of . . . other groups, sexual abuse committed by clerics during the course of their ministry is treated according to neutral principles of law."), *review denied* (Minn. Oct. 21, 2003). The district court did not err in concluding that it had subject-matter jurisdiction over Beach's sexual-exploitation claims, and we therefore affirm on this issue.

III. The district court erred in concluding that a genuine issue of material fact existed as to whether a special relationship was formed between the Conference and Beach because the Conference did not assume a duty to protect Beach as a matter of law.

Because of the limited nature of interlocutory appeals regarding subject-matter jurisdiction, we generally decline to address issues not intertwined with the jurisdictional question. *Swint*, 514 U.S. at 51, 115 S. Ct. at 1212. However, the jurisdictional issue here is constitutional and "[c]onstitutional questions should not be decided unless doing so is necessary to dispose of the case at bar." *Meyer*, 675 N.W.2d at 639 (quotation omitted). Because the question of whether the Conference owed a duty to protect Beach is resolvable as a matter of law, we do not reach the constitutional entanglement issue.

The Conference contends that it owed no duty to investigate Beach's claim of sexual abuse. We agree. Beach's negligence claim against the Conference is premised on the idea that, by voluntarily undertaking an investigation of her complaint, the Conference assumed a duty to protect her. "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). "A defendant in a negligence suit is entitled to summary judgment when the record reflects a complete lack of proof on any of the four essential elements of the negligence claim . . . ." *Funchess v. Cecil Newman Corp.*, 632 N.W.2d 666, 672 (Minn. 2001).

"A person generally has no duty to act for the protection of another person, even if he realizes or should realize that action on his part is necessary." *Donaldson v. Young Women's Christian Ass'n of Duluth*, 539 N.W.2d 789, 792 (Minn. 1995). Whether a legal duty exists "depends on the relationship of the parties and the foreseeability of the risk." *Id.* The existence of a legal duty is a question of law, which this court reviews de novo. *Bjerke*, 742 N.W.2d at 664.

"A legal duty to act for the protection of another person arises when a special relationship exists between the parties." *Donaldson*, 539 N.W.2d at 792. A special relationship can exist (1) between parents and children, masters and servants, land owners and licensees, and common carriers and their customers; (2) when a person has custody of another person under circumstances in which that other person is deprived of the normal opportunities for self-protection; and (3) when a person assumes responsibility for a duty owed by another person to a third individual. *Bjerke*, 742 N.W.2d at 665. "To

reach the conclusion that a special relationship exists, it must be assumed that the harm to be prevented by the defendant is one that the defendant is in a position to protect against and should be expected to protect against." *Donaldson*, 539 N.W.2d at 792. "Ultimately, whether a special relationship and its concomitant duty exist is a question of policy." *Funchess*, 632 N.W.2d at 673.

In *Meyer*, we held that "[p]roviding faith-based advice or instruction, without more, does not create a special relationship." 675 N.W.2d at 640. We rejected the argument that church doctrine requiring "members to bring complaints exclusively to the attention of [the] elders" created a special relationship and amounted to a voluntary undertaking by the church of an affirmative duty to investigate allegations of wrongdoing and protect members from future wrongful acts. *Id.* at 640-41. Affirming the district court's conclusion that no special relationship existed between the church and its members, we stated:

> Annandale Congregation and Watchtower espoused religious faith and doctrine and, according to Meyer and Doe, threatened excommunication for failure to adhere to that doctrine. By doing so, Annandale Congregation and Watchtower did not assume a duty owed to Meyer and Doe but rather acted within their constitutional right to religious freedom, which includes the authority to independently decide matters of faith and doctrine and to believe and speak what it will.

Id. at 641 (quotation omitted).

Furthermore, special relationships are generally found when a party is somehow deprived of the normal opportunities for self-protection. *Harper v. Herman*, 499 N.W.2d 472, 474 (Minn. 1993). "Typically, the plaintiff is in some respect particularly

vulnerable and dependent on the defendant, who in turn holds considerable power over the plaintiff's welfare." *Donaldson*, 539 N.W.2d at 792; *see Laska v. Anoka Cnty.*, 696 N.W.2d 133, 138 (Minn. App. 2005) ("A special relationship may arise when one individual's safety has in some way been entrusted to another and the other has accepted that entrustment."), *review denied* (Minn. Aug. 16, 2005). The district court concluded that the bishop's testimony that she believed she had a responsibility to investigate claims of sexual abuse created a genuine issue of material fact as to whether a special relationship existed between the Conference and Beach, and therefore whether a duty existed. While Beach's faith may have compelled her to use the Conference's process and while she may have felt that the Conference discouraged her from pursuing secular help, the Conference did not deprive Beach of her ability to report Budd's conduct to the police, which she ultimately did. Assuming the bishop's statement in the light most favorable to Beach, we conclude that the district court erred in stating that a genuine issue of material fact existed as to the presence of a special relationship between the Conference and Beach because the Conference did not assume a duty to protect Beach as a matter of law. *See Donaldson*, 539 N.W.2d at 793 (where organization did not have care and control over individual and did nothing to deprive individual of normal opportunities for self-protection, relationship "lacked the degree of dependence and control necessary to form a special relationship"); *Delgado v. Lohmar*, 289 N.W.2d 479, 483 (Minn. 1979) ("Ordinarily, there is no duty to control the conduct of a third person to prevent him from causing physical harm to another unless a special relationship exists, either between the actor and the third person which imposes a duty to control, or between

the actor and the other which gives the other the right to protection."); *see also Meyer*, 675 N.W.2d at 640 ("[M]ere knowledge coupled with power is insufficient to impose a duty."). Because the Conference owed no duty to protect Beach or to investigate her complaint apart from its obligations as Budd's employer, the district court erred in denying the Conference's motion for summary judgment on Beach's negligent-investigation claim and we reverse and remand in part for entry of summary judgment in favor of the Conference on this claim.

Affirmed in part, reversed in part, and remanded.