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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-1054

Filed: 20 November 2018

Mecklenburg County, No. 17-CVS-2059

KATHLEEN BOURQUE, ANN BOURQUE and PETER BOURQUE, Plaintiffs,

v.

ROMAN CATHOLIC DIOCESE OF CHARLOTTE, NC, BISHOP PETER J. JUGIS and JOHN BRIAN KAUP, Defendants.

Appeal by defendants from an order entered 15 June 2017 by Judge Hugh B. Lewis in Mecklenburg County Superior Court. Heard in the Court of Appeals 7 March 2018.

Copeley Johnson Groninger PLLC, by Leto Copeley, and Pierce Herns Sloan & Wilson LLC, by Gregg Meyers, pro hac vice, for plaintiff-appellee.

McGuire Woods LLP, by Joshua D. Davey, for defendant-appellant.

BERGER, Judge.

On February 2, 2017, Kathleen Bourque ("Plaintiff"), Ann Bourque and Peter Bourque (collectively "Plaintiffs") filed a complaint against the Roman Catholic Diocese of Charlotte, NC (the "Diocese"), Bishop Peter J. Jugis ("Bishop Jugis"), and Brian Kaup ("Defendant") (collectively "Defendants"). On April 20, 2017, Defendants

filed an amended motion to dismiss the complaint pursuant to Rules 12(b)(1), 12(b)(6), and 9(k) of the North Carolina Rules of Civil Procedure. Defendants' motion to dismiss was denied on June 15, 2017.

On appeal, Defendants argue the trial court should not have denied their motion to dismiss because Plaintiffs' claims violate the First Amendment of the United States Constitution by seeking to entangle the court in an ecclesiastical controversy concerning the relationship between the Bishop of the Diocese and those men who, under his religious authority, are pursing ordination as Catholic priests. We disagree.

Facts and Procedural Background

On February 2, 2017, Plaintiffs filed a complaint against Defendants alleging Defendant sexually assaulted Plaintiff for the first time on Christmas Eve 2013 and then repeatedly between the summer and fall of 2014. According to the complaint, Plaintiff and Defendant became acquainted in December 2010 when Plaintiff, then fourteen years old, was encouraged to seek counsel from Defendant about her being bullied in high school. In 2010, Defendant was a seminary student and had been retained by Bishop Jugis and the Diocese to serve as an instructor and advisor for the church youth.

On December 24, 2013, Defendant was invited to attend Christmas dinner at Plaintiffs' home. After dinner, Defendant asked Plaintiff if "she would like to go

somewhere and talk." Defendant drove her to an isolated field behind the Sacred Heart Church, where Plaintiffs' attended and where Defendant worked with the youth group. Defendant then told Plaintiff that "no one would be able to see or hear them," and that she should "trust him" and that "no one would find out." In fear, Plaintiff "became very still while [Defendant] raped her." Plaintiff began to have severe anxiety immediately after she was raped, and she had the first of many panic attacks shortly thereafter.

Defendant left the seminary in May 2014. While he decided what to do next, Mr. and Mrs. Bourque invited Defendant to stay in their home. While staying in Plaintiffs' home, Defendant repeatedly raped Plaintiff from the summer of 2014 until the fall of 2014 when Plaintiff left home to go to college. According to the complaint, shortly after Defendant had first begun sexually assaulting Plaintiff, she had "suffered the effects of severe emotional distress, including weight loss, sleeplessness, anxiety, nightmares, low grades, feelings of worthlessness, and suicidal thoughts."

On February 2, 2017, Plaintiffs filed their complaint, asserting claims for negligence, negligent infliction of emotional distress, assault, battery, and loss of services for which they sought punitive damages. On April 20, 2017, Defendants filed an amended motion to dismiss Plaintiffs' claims for negligence, negligent infliction of emotional distress, loss of services, and punitive damages, pursuant to Rules 12(b)(1),

12(b)(6), and 9(k) of the North Carolina Rules of Civil Procedure. On June 15, 2017, the trial court denied Defendants' motion. It is from this order Defendants' appeal.

Analysis

"Typically, the denial of a motion to dismiss is not immediately appealable to this Court because it is interlocutory in nature." *Chastain v. Arndt*, ___ N.C. App. ___, ___, 800 S.E.2d 68, 71 (2017) (citation omitted). "An interlocutory order is one made during the pendency of an action, which does not dispose of the case, but leaves it for further action by the trial court in order to settle and determine the entire controversy." *Britt v. Cusick*, 231 N.C. App. 528, 530-31, 753 S.E.2d 351, 353 (2014) (citation omitted). "The denial of a motion to dismiss [for lack of subject matter jurisdiction] pursuant to Rule 12(b)(1) is interlocutory." *Davis v. Williams*, 242 N.C. App. 262, 263, 774 S.E.2d 889, 891 (2015) (citations and brackets omitted). "Where, as here, the trial court's denial of a Rule 12(b)(1) motion to dismiss could result in the trial court becoming entangled in ecclesiastical matters, such an interlocutory order is immediately appealable." *Id.* at 263, 774 S.E.2d at 891.

"A ruling denying a motion to dismiss [for failure to state a claim upon which relief can be granted] pursuant to N.C.G.S. § 1A-1, Rule 12(b)(6) is ordinarily a nonappealable interlocutory order." *Doe v. Diocese of Raleigh*, 242 N.C. App. 42, 46, 776 S.E.2d 29, 34 (2015) (citation omitted). Therefore, we will not address the sufficiency of Plaintiffs' complaint and whether it stated claims for which relief may

be granted. *See Lake v. State Health Plan for Teachers & State Employees*, 234 N.C. App. 368, 370-71, 760 S.E.2d 268, 271 (2014) (dismissing defendants' "appeal as to any issues related to the trial court's Rule 12(b)(6) ruling . . . and address[ing] only those issues related to . . . a substantial right and are immediately appealable.").

"This Court reviews Rule 12(b)(1) motions to dismiss for lack of subject matter jurisdiction de novo and may consider matters outside the pleadings." *Davis*, 242 N.C. App. at 264, 774 S.E.2d at 892 (citation omitted). "[T]he court need not confine its evaluation of a Rule 12(b)(1) motion to the face of the pleadings, but may review or accept any evidence, such as affidavits, or it may hold an evidentiary hearing. If the evaluation is confined to the pleadings, the court must accept the plaintiff's allegations as true, construing them most favorably to the plaintiff." *Smith v. Privette*, 128 N.C. App. 490, 493, 495 S.E.2d 395, 397 (1998) (citations, quotation marks, and brackets omitted).

"The First Amendment of the United States Constitution prohibits a civil court from becoming entangled in ecclesiastical matters." *Johnson v. Antioch United Holy Church, Inc.*, 214 N.C. App. 507, 510, 714 S.E.2d 806, 810 (2011) (citation omitted). Our state courts "have no jurisdiction over disputes which require an examination of religious doctrine and practice in order to resolve [those] matters at issue." *Doe*, 242 N.C. App. at 47, 776 S.E.2d at 34-35 (citations and quotation marks omitted).

> An ecclesiastical matter is one which concerns doctrine, creed, or form of worship of the church, or the adoption and

> enforcement within a religious association of needful laws and regulations for the government of membership, and the power of excluding from such associations those deemed unworthy of membership by the legally constituted authorities of the church; and all such matters are within the province of church courts and their decisions will be respected by civil tribunals.
>
> This Court has previously explained that the prohibition on judicial cognizance of ecclesiastical disputes is founded upon both establishment and free exercise clause concerns because (1) by hearing religious disputes, a civil court could influence associational conduct, thereby chilling the free exercise of religious beliefs; and (2) by entering into a religious controversy and putting the enforcement power of the state behind a particular religious faction, a civil court risks establishing a religion.

Id. at 47-48, 776 S.E.2d at 35 (citations, quotation marks, and brackets omitted).

"The dispositive question is whether resolution of the legal claim[s] requires the court to interpret or weigh church doctrine. If not, the First Amendment is not implicated and neutral principles of law are properly applied to adjudicate the claim." *Id.* at 49, 776 S.E.2d at 36 (citations omitted).

I. Negligence Claims

Defendants first argue that Plaintiffs' negligence claim is based on an alleged failure to exercise religious authority, and, therefore, cannot be adjudicated under neutral principles of law. We disagree.

The elements for a cause of action for negligent supervision against an employer include:

> (1) the specific negligent act on which the action is founded ... (2) incompetency, by inherent unfitness or previous

> specific acts of negligence, from which incompetency may be inferred; and (3) either actual notice to the master of such unfitness or bad habits, or constructive notice, by showing that the master could have known the facts had he used ordinary care in oversight and supervision, ...; and (4) that the injury complained of resulted from the incompetency proved.

Id. at 50, 776 S.E.2d at 36 (citation omitted). "Our Supreme Court has recognized that with regard to such claims, the employer's liability for the injury caused by his employee is entirely independent of the employer's liability under the doctrine of *respondeat superior*." *Id.* (citation and quotation marks omitted).

"[W]e recognized the distinction between (1) a claim seeking to impose liability for a church's decisions to hire or discharge a cleric, which we recognized as 'inextricable from religious doctrine and protected by the First Amendment'; and (2) an assertion that the church was civilly liable for a minister's wrongful conduct because it knew or had reason to know of his proclivity for sexual misconduct." *Doe*, 242 N.C. App. at 53, 776 S.E.2d at 38 (citing *Smith*, 128 N.C. App. at 495, 495 S.E.2d at 398). A plaintiff's complaint does not need to "contain allegations of actual knowledge by the church or other sexual wrongdoing by the cleric in order for a religious entity to be held liable under a negligent supervision theory consistent with First Amendment limitations." *Id.* at 54, 776 S.E.2d at 39. Therefore, the First Amendment is not implicated and does not bar a plaintiff's claim against a defendant when it is not necessary "for the court to interpret or weigh church doctrine in its

adjudication" of a claim for negligent supervision. *Smith*, 128 N.C. App. at 495, 495 S.E.2d at 398.

In the present case, Plaintiffs' complaint contended that Defendant would not have had access to Plaintiff had Bishop Jugis and the Diocese not each been "negligent, reckless, willful and wanton in . . . supervising [Defendant]." Plaintiffs alleged that Bishop Jugis and the Diocese had "negligently supervised [Defendant] in representing him as a person who could be trusted to be around children and adolescents, in placing him in a position of authority without adequate supervision . . . and [a]s a result of the Defendants' conduct, that [Plaintiff] was sexually assaulted." Plaintiffs further asserted that "[i]t was reasonably foreseeable to [Bishop Jugis] and the Diocese that Defendant had a sexual interest in children and that he posed a danger to Plaintiff;" "[Bishop Jugis] and [the] Diocese knew, or should have known, that children including teenage children, needed to be protected from [Defendant] by supervising his activities . . . [because] [e]ach had the authority and ability to do so[; and] [e]ach knew that [Defendant] had ready access to children."

Plaintiffs' claim is not barred by the First Amendment because determining whether Bishop Jugis and the Diocese knew or had reason to know of Defendant's proclivities for sexual wrongdoing requires only the application of neutral principles of tort law, and "the application of a secular standard to secular conduct that is tortious is not prohibited by the Constitution." *Doe*, 242 N.C. App. at 53, 776 S.E.2d

at 38 (citation omitted). Because neutral principles of law apply to adjudicate a negligent supervision claim, subject matter jurisdiction exists, and the trial court properly denied Defendants' motion to dismiss.

II. Negligent Hiring

Defendants next allege that the court's examination of how the Diocese educates its parishioners and what guidelines it sets would impermissibly entangle the court in a religious controversy. We agree.

"[T]he decision to hire or discharge a minister is inextricable from religious doctrine and protected by the First Amendment from judicial inquiry." *Smith*, 128 N.C. App. at 495, 495 S.E.2d at 398. Additionally, "civil courts cannot decide disputes involving religious organizations where the religious organizations would be deprived of interpreting and determining their own laws and doctrine." *Id.* at 494, 495 S.E.2d at 397. The First Amendment does "not permit a civil court to dictate the content of guidelines issued by [a diocese] that relate to ecclesiastical matters. *But* such an intrusion on First Amendment principles does not exist where, as here, a court is simply asked to adjudicate a claim that a church knew or should have been aware that one particular cleric posed a danger to a plaintiff based on his sexual interest in children." *Doe*, 242 N.C. App. at 55 n.7, 776 S.E.2d at 39-40 n.7. (emphasis added).

In the present case, Plaintiffs' complaint did reference a lack of "insufficient guidelines," Defendant's discharge from the armed forces, and the lack of education

regarding "proper boundaries" between a seminarian and children. To the extent that any of these references attempted to raise a cause of action for negligent hiring, Plaintiffs are not permitted to proceed on a claim for negligent hiring because it would require the trial court to impermissibly interpret and determine religious doctrine.

However, Plaintiffs can proceed on a claim of negligent supervision because the trial court has subject matter jurisdiction to adjudicate the issue of whether Bishop Jugis or the Diocese knew or had reason to know of Defendant's propensity to engage in sexual misconduct, and whether they acted reasonably, independent of ecclesiastical doctrine, to protect Plaintiff. Because neutral laws exist to adjudicate a negligent supervision claim, the trial court properly denied Defendants' motion to dismiss.

III. Negligent Infliction of Emotional Distress

Defendants contend that Plaintiffs' negligent infliction of emotional distress claim cannot be adjudicated under neutral principles of law. We disagree.

A claim for negligent infliction of emotional distress requires a plaintiff to allege that: "(1) the defendant negligently engaged in conduct, (2) it was reasonably foreseeable that such conduct would cause the plaintiff severe emotional distress (often referred to as 'mental anguish'), and (3) the conduct did in fact cause the plaintiff severe emotional distress." *Id.* at 57, 776 S.E.2d at 40 (citation and quotation marks omitted). "Because [negligent infliction of emotional distress] claims are

premised upon negligent conduct by the defendants, a determination that the underlying negligence claim is subject to dismissal will result in the dismissal of the corresponding [negligent infliction of emotional distress] claim as well." *Id.* at 57, 776 S.E.2d at 40.

In the present case, Plaintiffs' negligent infliction of emotional distress claim is premised on their claim that Bishop Jugis and the Diocese negligently supervised Defendant, and as a result of their negligent supervision, Defendant sexually assaulted Plaintiff. Consequently, neutral laws can determine whether or not it was reasonably foreseeable that their conduct would result in Plaintiff's severe emotional distress. Because neutral laws can be used to adjudicate Plaintiffs' underlying claim of negligence, neutral principles of law can also be applied to adjudicate their corresponding negligent infliction of emotional distress claim. Thus, the trial court has subject matter jurisdiction to adjudicate this claim, and the trial court did not err in denying Defendants' motion to dismiss.

IV. Loss of Services

Defendant next argues that Plaintiffs' loss of services claim is not a separate cause of action under North Carolina law. We disagree.

"In North Carolina, two independent causes of action arise when an unemancipated minor is injured through the negligence of another: (1) a claim on behalf of the child for her losses caused by the injury, and (2) a claim by the parent

for loss of services during the child's minority and for medical expenses to treat the injury." *Moquin v. Hedrick*, 163 N.C. App. 345, 349, 593 S.E.2d 435, 438 (2004) (citations omitted). A claim for loss of services is a common law cause of action and damages may be recovered for "humiliation, . . . mental suffering and anguish, destruction of his household, sense of dishonor, as well as expenses incurred and for loss of services." *N. Carolina Farm Bureau Mut. Ins. Co., Inc. v. Phillips*, ___, N.C. App. ___, ___, 805 S.E.2d 362, 366 (2017), *disc. review denied*, 370 N.C. 580, 809 S.E.2d 594 (2018). Thus, the resolution of a claim for loss of services requires the court to neither interpret nor weigh church doctrine, and it can be adjudicated with neutral principles of law.

In the present case, Plaintiff's parents are asserting a loss of services claim as to their child for the personal injuries she has suffered and for the medical expenses Plaintiff's parents have incurred as a direct result of Defendants' negligence. Because a claim for loss of services can be adjudicated with neutral principles of law, subject matter jurisdiction exists in the trial court as to this claim. Therefore, the trial court did not err in denying Defendants' motion to dismiss.

V. Punitive Damages

Finally, Defendants contend that Plaintiffs' claim for punitive damages should be dismissed because it is not a stand-alone cause of action. We agree it is not a

stand-alone cause of action, but it may be included with Plaintiffs' claims for which compensatory damages may be awarded.

"As a rule you cannot have a cause of action for punitive damages by itself. If the complainant fails to plead or prove his cause of action, then he is not allowed an award of punitive damages because he must establish his cause of action as a prerequisite for a punitive damage award." *Oestreicher v. Am. Nat'l Stores, Inc.*, 290 N.C. 118, 134, 225 S.E.2d 797, 808 (1976) (citations omitted). "Punitive damages may be awarded only if the claimant proves that the defendant is liable for compensatory damages and that [fraud, malice, or willful or wanton conduct] . . . was present [by clear and convincing evidence] and was related to the injury for which compensatory damages were awarded." N.C. Gen. Stat. § 1D-15(a), (b).

In the present case, Plaintiffs' underlying causes of action, for which subject matter jurisdiction exists, may support the claim for punitive damages if the jury finds not only negligence, but also fraud, malice, or willful or wanton conduct. Plaintiffs' request that punitive damages be awarded is a question for the jury when the underlying claims are adjudicated.

Conclusion

For the reasons stated above, we affirm the trial court's order denying Defendants' motion to dismiss.

AFFIRMED.

Judges ELMORE and INMAN concur.

Report per Rule 30(e).