

Kepler v. Roman Catholic Diocese of Burlington, Vt., No. S0930-05 CnC (Toor, J., Aug. 7, 2009)

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STATE OF VERMONT
CHITTENDEN COUNTY

MICHAEL KEPPLER
Plaintiff

v.

ROMAN CATHOLIC DIOCESE
OF BURLINGTON, VERMONT
Defendant

SUPERIOR COURT
Docket No. S0930-05 CnC

RULING ON MOTIONS FOR SUMMARY JUDGMENT

This is one of the many cases filed against the defendant in this case (“the Diocese”) in connection with allegations of past sexual abuse by priests employed by Defendant. Defendant has filed a motion for summary judgment (or partial summary judgment) arguing that (1) the First Amendment bars the claim of negligent hiring and supervision as an improper interference with religion, and (2) there is no evidence to support a claim for punitive damages, and allowing punitive damage awards against charitable or religious institutions is contrary to public policy.¹ Plaintiff has renewed a summary judgment motion, previously withdrawn, seeking summary judgment against the Diocese on the latter’s affirmative defense regarding the statute of limitations.

I. Defendant’s Motion

¹ While the Diocese adds a one-paragraph claim that punitive damages would be a due process violation, the argument is so lacking in explanation as to be virtually no argument.

Neither party has submitted any factual record at all beyond the complaint in connection with the Diocese's motion. The parties debate whether this is fatal to Plaintiff's claim or to Defendant's motion.

A. Negligent Hiring/Supervision

Defendant argues that allowing claims of negligent hiring and/or supervision in this case constitutes an interference with religion in violation of the First Amendment's "free exercise of religion" clause, particularly what is referred to as the "non-entanglement" clause. The Diocese also argues that the "religious autonomy" doctrine bars the court from ruling on issues relating to the selection and supervision of clergy.

The Diocese acknowledges the case law holding that "the right of free exercise [of religion] does not relieve an individual of the obligation to comply with a 'valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes).'" Employment Division, Dep't of Human Resources of Oregon v. Smith, 494 U.S. 872, 879 (1990)(citation omitted). What the Diocese argues is that this case is distinguishable from other cases in which tort claims have been allowed against religious institutions, because the nature of the claims inevitably requires an assessment of internal church policies and procedures regarding the hiring and supervision of priests. Thus, it argues, this is not a case of neutral laws of general applicability but is instead selectively imposing burdens on religious beliefs about how to handle straying priests.

The motion presumes certain facts about the evidence, and sets forth two and a half pages of factual history, without any affidavit or other evidentiary support. While the court can guess at the general nature of the facts that will be presented at trial from reading the complaint and from media reports about related cases, these are not adequate

bases on which to rest a summary judgment ruling. The party filing such a motion must attach a “separate, short, and concise statement of the material facts as to which the moving party contends that there is no genuine issue to be tried.” V.R.C.P. 56(c)(2). The only such statement here relevant to this issue is that “Plaintiff alleges a claim for negligent hiring and supervision of Fr. Paquette.” Defendant’s Separate Statement of Material Facts, ¶ 1. While this does appear undisputed, is supported by the record, and can be deemed true because of the lack of any denial in response to the motion, it is not a sufficient basis for the legal conclusions the Diocese asks the court to reach. The court has no details about how the hiring and firing process worked, what religious doctrines might have been in the minds of those involved in such decisions, what policies on such matters were in place and how they might have been connected to any religious doctrine, and so forth. Absent such facts the court would be ruling in a vacuum. The motion on this issue is therefore denied for failure to set forth sufficient undisputed material facts.

B. Punitive Damages

The motion regarding punitive damages is different from the First Amendment claim, in that Defendant argues that Plaintiff has insufficient facts to support the claim. When the moving party is arguing that the other side lacks any evidence to support a claim, the moving party “may satisfy its burden of production by showing the court that there is an absence of evidence in the record to support the nonmoving party’s case.” Ross v. Times Mirror, Inc., 164 Vt. 13, 18 (1995). The burden “then shifts to the nonmoving party to persuade the court that there is a triable issue of fact.” The question here is whether the moving party – Defendant – has sufficiently met its burden to trigger Plaintiff’s duty to come forward with some evidence to support the punitive damage claim.

Though not controlling because it is an unpublished three-justice decision, the court considers persuasive the analysis of this issue in In re Mode, 2002 WL 34422467 (Vt. 2002). As was true of the moving party in that case, the Diocese here “filed no affidavits or other evidentiary material to support the bare factual allegations in its pleading.” Id., * 2. “The moving party, however, must meet its burden of showing an absence of material facts *before* the opposing party is required to come forward with suitable opposing affidavits or other evidence.” Id. “Analytically, the burden does not shift to the nonmoving party until the court determines that the moving party has met its burden that there are no material facts which are in dispute between the parties.” Pierce v. Riggs, 149 Vt. 136, 138 (1987). This requires an affidavit or other admissible evidence. Alpstetten Ass’n, Inc. v. Kelly, 137 Vt. 508, 514 (1979) (party seeking summary judgment cannot “put his opponent to the choice of filing an opposing affidavit ... simply by the filing of a paper with the court.”). “Only a motion for summary judgment so supported will force an opposing party to go beyond his allegations and suffer an adverse judgment on the merits without having gone to trial.” Id.

Defendant “did not meet its burden of demonstrating an absence of genuine issues of material fact, and the burden did not, therefore, properly shift to defendant to adduce opposing evidence.” Mode, 2002 WL34422467, * 2. The motion for summary judgment on this issue is therefore denied.

The Diocese also argues that awarding punitive damages against a charitable or religious institution would be against public policy. The cases cited in support of this argument are based upon the idea that taxpayers should not have to foot the bill for wrongdoing by government employees. The court does not find those cases on point. The motion on that basis is also denied.

II. Plaintiff's Motion

Plaintiff has renewed a one-page motion filed in January and later withdrawn. The motion seeks partial summary judgment on the Diocese's affirmative defense based upon the statute of limitations. The sole factual support for the motion is the Plaintiff's allegation that he did not become "aware that the Diocese was negligent in its supervision of Fr. Edward Paquette until at least 2005." Plaintiff's Statement of Material Facts, ¶ 1. Nothing in the Statement of Material Facts or in Plaintiff's supporting affidavit addresses exactly when the abuse occurred (it mentions what grades he was in but not his current age), or when he discovered that he suffered from any injury as a result. Because his legal argument rests in part on the fact of discovery of this connection at a date after 1984, (a date made significant by 12 V.S.A. § 522 and the legislative history thereto), the absence of such evidence is fatal to his motion.²

Order

Defendant's motion for summary judgment or partial summary judgment is denied. Plaintiff's motion for partial summary judgment is denied.

Dated at Burlington this day of August, 2009.

Helen M. Toor
Superior Court Judge

² In any case, his admission to his sister, while somewhat ambiguous as to timing, is sufficient to establish a disputed fact with regard to the issue of when Plaintiff knew of the connection between the abuse and his claimed injuries.