

Kepler v. Roman Catholic Diocese of Burlington, Vt., No. S0930-05 CnC (Toor, J., Sept. 25, 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

PAUL MANGAN
Plaintiff

v.

ROMAN CATHOLIC DIOCESE
OF BURLINGTON, VERMONT
Defendant

SUPERIOR COURT
Docket No. S1153-05 CnC

SCOTT REDFIELD
Plaintiff

v.

ROMAN CATHOLIC DIOCESE
OF BURLINGTON, VERMONT
Defendant

SUPERIOR COURT
Docket No. S1228-05 CnC

SECOND RULING ON MOTIONS IN LIMINE

The court previously issued a ruling on multiple motions in limine, but reserved ruling on several issues. This ruling addresses those issues (other than those the court has indicated it will address at the time of trial).

1. Testimony by Other Alleged Victims of Abuse by Paquette

The Diocese moves, in a very brief motion, to exclude the testimony of other alleged victims of abuse by Father Paquette as improper “prior bad act” evidence and because it is more prejudicial than probative. Plaintiff argues, in an equally brief response, that such testimony is admissible because the quantity of events shows greater recklessness and greater negligence by the Diocese. In addition, Plaintiff argues that harm to others is admissible with regard to punitive damages.¹

The court concludes that evidence of other abuse by Father Paquette is admissible where there is evidence that reports were made to the Diocese about those events. If there was such notice of other alleged abuse by Father Paquette, it is highly relevant to whether the Diocese acted with reasonable care and/or recklessly in its supervision of Father Paquette. While prejudicial, its probative value with regard to such key issues outweighs the prejudice. Both the evidence that it was reported and the victims’ testimony about what occurred will be admitted.

With regard to other abuse that was *not* reported to the Diocese,² the court concludes that the evidence is not particularly probative as to the substantive claims in

¹ Given the dearth of argument or authority submitted by both parties in connection with this motion, the court is tempted to give an equally cursory response. However, given the apparent significance of the issue in this case, the court has looked beyond the filings to analyze the issue.

² It is not clear from the motion whether Plaintiff seeks to offer testimony about any such unreported incidents.

this case. The causes of action asserted turn on allegations of a failure to use reasonable care, or reckless disregard of the probability of causing severe emotional distress. Other events occurring behind closed doors and not within the knowledge of the Diocese do not assist the jury in deciding these issues. It is not the fact of their occurrence, but whether the Diocese should have seen the risk of such incidents occurring, that matters. Kennedy v. Roman Catholic Diocese of Burlington, 921 F. Supp. 231, 234 (D. Vt. 1996) (“foreseeability of risk remains a key consideration” in negligent supervision claims). On the other hand, due to the emotional weight attached to the sexual abuse of children, descriptive testimony by victims of such abuse is perhaps one of the most prejudicial kinds of evidence there is.

Thus, testimony related to other incidents of abuse by Father Paquette that were not reported to the Diocese will be excluded under V.R.E. 403 because its probative value is substantially outweighed by the dangers of unfair prejudice and confusion of the issues for the jury. Although Plaintiff also argues that such evidence is relevant to punitive damages under the “actual harm to others” analysis, such damages cannot be used “to punish a defendant for injury that it inflicts upon nonparties.” Philip Morris USA v. Williams, 549 U.S. 346, 353 (2007). Although actual harm to others may be relevant to the issue of how reprehensible the Defendant’s conduct was, id. at 355, that does not mean such evidence is necessary. As the court in Philip Morris noted, the likelihood of a jury using the harm to non-parties as a basis of an award to punish for that harm is high. “[W]here the risk of that misunderstanding is a significant one--because, for instance, of the sort of evidence” at issue, “a court, upon request, must protect against that risk.” Id. at 357. The United States Supreme Court has directed that “courts cannot authorize

procedures that create an *unreasonable and unnecessary risk* of ... confusion occurring” such that the jury awards punitive damages to punish for the acts against others. *Id.* (emphasis added). Given the emotional nature of the issues, the court concludes that presentation of evidence about the unreported abuse of other children would create an “unreasonable and unnecessary risk” of the jury making an award on an improper basis. It is unnecessary for two reasons. First, if the substantive elements of Plaintiff’s case are established – as the jury must find before it considers punitive damages – the risk to other children is obvious without any need for such specific and emotionally charged evidence related to particular children. Second, based upon other filings in this case there appear to be a number of incidents that *were* reported to the Diocese and will already be before the jury.

2. Motions Related to Punitive Damages Evidence

a. *Motion to Preclude Evidence Regarding Punitive Damages because of Prior Verdicts*

The Diocese moves to bar all evidence regarding punitive damages because such awards have already been made in other cases. While phrased as a motion to preclude evidence, the motion really seeks to entirely eliminate all claims for punitive damages in this case. While there is some facial logic to the Diocese’s point – essentially a “how much can you punish us for the same thing” argument – the Diocese cites no authority to support the proposition that an award in other cases bars all consideration of punitive damages in this case. The court denies the motion.

b. *Evidence as to Diocese Actions to Create Safe Environment*

Evidence of actions taken by the Diocese to address the issues of sexual abuse by priests is relevant to punitive damages. Because one of the goals of punitive damages is

deterrence of similar behavior, it follows that efforts to address the problem between the time of the allegedly wrongful conduct and the time of trial are relevant to whether deterrence is necessary. *Accord, Swinton v. Potomac Corp.*, 270 F. 3d 794, 814 (9th Cir. 2001) (allowing such evidence in connection with punitive damages in a discrimination case). Thus, such evidence will be permitted. Although Plaintiff argues that any remedial measures here were not “prompt,” the court sees promptness as going to the weight rather than the admissibility of the evidence. *Id.* at 815 (“The plaintiff can, of course, make arguments about prejudice, too little too late, and relevance of remedial conduct.”).

c. Motion Regarding Certain Assets

The Diocese seeks to exclude all reference to certain properties that are (a) subject to other pending litigation over whether they are owned by the Diocese, although titled in others’ names, and (b) currently subject to writs of attachment in other cases.

The court grants the motion as to the assets as to which ownership is currently in dispute in other litigation, but denies it as to assets that are merely subject to writs of attachment. As to the former, the issue of ownership is not one that should be tried in this case, and would be a confusing sideshow on a collateral matter. As to the latter, the fact that properties are subject to writs of attachment does not mean that they will ultimately be subject to judgment liens.

d. Other Verdicts

Plaintiff seeks to bar Defendant from referring in any way to other verdicts that have been issued against it in earlier cases. The Diocese responds that if the court allows punitive damages to be considered by the jury they should be able to consider the fact that other punitive damage verdicts have already been imposed.

Punitive damages are designed to punish and deter. If a defendant has already had other punitive damage awards designed to punish and deter the same conduct – the alleged negligent hiring and supervision of Father Paquette – that is highly relevant to the jury’s determination of whether such punishment and deterrence is necessary, and if so, how much is an appropriate amount. The motion to exclude such evidence is denied.

e. Defendant’s Financial Condition

Plaintiff asks the court to exclude any evidence related to the Diocese’s financial condition on the grounds that there is no valid evidence with regard to the monetary value of the Diocese’s real estate holdings. The Diocese responds that it has the right to present evidence about its assets if the jury is going to consider a punitive damages award, citing Parker v. Hoefler, 118 Vt. 1, 20-21 (1953). Plaintiff does not dispute this general proposition. *See also*, Shahi v. Madden, 2008 VT 25, ¶11, 183 Vt. 320 (proof of defendant’s financial condition is “relevant to the calculation of punitive damages”).

Under Vermont law, owners of real estate are considered competent to offer evidence as to value. 12 V.S.A. § 1604. This includes corporations. State Housing Authority v. Town of Northfield, 2007 VT 63, ¶ 10, 182 Vt. 90. Assuming the witness can establish sufficient knowledge of the property, see id., the evidence is admissible. Plaintiff’s other objections go to the weight of the evidence rather than its admissibility.

Dated at Burlington this 25th day of September, 2009.

Helen M. Toor
Superior Court Judge