



STATE OF MINNESOTA
COUNTY OF POLK

IN DISTRICT COURT
NINTH JUDICIAL DISTRICT

Ronald Vasek,

Plaintiff,

**ORDER ON MOTION
TO DISMISS**

vs.

Diocese of Crookston,

Defendant.

File No. 60-CV-17-921

The above-entitled matter came on for hearing before the undersigned Judge of the District Court on September 20, 2017, at the Pennington County Courthouse, Thief River Falls, Minnesota, upon a motion by the Diocese of Crookston to dismiss the complaint for failure to state a claim.

Mr. Jeff Anderson, Mr. Michael Finnegan, and Ms. Elin Lindstrom, Attorneys at Law, St. Paul, Minnesota, appeared for and on behalf of Plaintiff, Ronald Vasek.

Mr. Steve Plunkett, Attorney at Law, Minneapolis, Minnesota, appeared on behalf of Defendant, Diocese of Crookston.

Based upon the contents of the file, argument of counsel, and being fully advised upon the premises, the Court makes the following:

ORDER

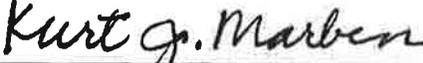
1. The Diocese of Crookston's motion to dismiss Plaintiff, Ronald Vasek's, negligence claims for failure to state a claim upon which relief can be granted is DENIED.

2. The Diocese of Crookston's motion to dismiss Plaintiff, Ronald Vasek's, private nuisance claim for failure to state a claim upon which relief can be granted is GRANTED.

3. The Diocese of Crookston's motion to dismiss Plaintiff, Ronald Vasek's, public nuisance claim for failure to state a claim upon which relief can be granted is **DENIED**.

4. The attached Memorandum is incorporated herein.

Dated this 8th day of December, 2017.



Kurt J. Marben
Judge of District Court

MEMORANDUM

Introduction

Ronald Vasek has sued the Diocese of Crookston (hereinafter "Diocese") and Bishop Michael Joseph Hoepfner for damages for sexual abuse. Vasek alleges that Monsignor Roger Grundhaus, a priest employed by the Diocese, sexually abused him in approximately 1971. Vasek makes claims against the Diocese for public nuisance, private nuisance, negligence, negligent supervision, and negligent retention. He makes claims against Bishop Hoepfner for coercion and intentional infliction of emotional distress. Vasek requests the Court order the Diocese to publicly release the names and other information of all its agents accused of child molestation; discontinue its current practice of dealing with allegations of sexual abuse by priests in secret; and work with civil authorities to implement a policy for dealing with such molesters to better protect children.

This case is now before the Court upon the Diocese's motion to dismiss Vasek's negligence and nuisance claims for failure to state a claim upon which relief can be granted. The Diocese argues that Vasek lacks standing to bring public and private nuisance claims against it and that his negligence claims are barred by the statute of limitations.

The Complaint

When considering a motion to dismiss for failure to state a claim, the Court accepts the allegations of the complaint as true. The allegations of the complaint in this case are as follows:

Ronald Vasek was sexually abused by Monsignor Roger Grundhaus when Vasek was approximately sixteen years old (Complaint, ¶ 8). This occurred in approximately 1971 when Vasek accompanied Monsignor Grundhaus to a meeting of canon lawyers in Columbus, Ohio (*Id.* ¶ 8). At the time, Vasek attended the Holy Trinity parish in Tabor, Minnesota, where he participated in youth and other church activities (*Id.* ¶ 5-6). Monsignor Grundhaus was a priest employed by the Diocese. Vasek claims the Diocese placed Monsignor Grundhaus in positions where he had access to and would work with

children (Id. ¶ 4). Vasek alleges that as a minor and vulnerable child, he was dependent on the Diocese and Monsignor Grundhaus (Id. ¶ 7).

In approximately 2009 or 2010, Vasek disclosed to a priest in another diocese that he had been sexually abused by Monsignor Grundhaus. At the time Vasek was considering becoming a member of the diaconate program in the Diocese of Crookston (Id. ¶ 9). The priest reported the abuse to the Vicar General of his diocese, who then contacted Bishop Hoepfner (Id. ¶ 9). Bishop Hoepfner then scheduled a meeting with Vasek (Id. ¶ 10). At this meeting, Vasek told Bishop Hoepfner that Monsignor Grundhaus had sexually abused him in Ohio when Vasek was a minor (Id. ¶ 10). Bishop Hoepfner asked Vasek how he was going to proceed with the accusation and if Vasek intended to formally report the abuse or press charges against Monsignor Grundhaus (Id. ¶ 10). Bishop Hoepfner indicated to Vasek that it would be detrimental to Monsignor Grundhaus and his reputation in the Diocese if the accusations were made public (Id. ¶ 10). Throughout their meeting, Bishop Hoepfner told Vasek not to tell anyone about the abuse (Id. ¶ 11). When Vasek asked how his diaconate program would be impacted by the incident of abuse, Bishop Hoepfner said it would not be a problem so long as Vasek did not mention the abuse to anyone (Id. ¶ 11).

On July 10, 2010, Vasek's son was ordained as a priest for the Diocese of Crookston (Id. ¶ 13). In approximately 2011, Vasek entered the diaconate program in the Diocese (Id. ¶ 12).

On October 21, 2015, Vasek received a phone call from Bishop Hoepfner inviting him to the Bishop's residence for a meeting (Id. ¶ 14). When Vasek arrived for the meeting, Bishop Hoepfner told him that Monsignor Grundhaus was unable to minister in another diocese because they had Vasek's report of abuse in their files (Id. ¶ 14). Bishop Hoepfner handed Vasek a letter authored by Monsignor Michael Foltz, Vicar General of the Diocese of Crookston, for Vasek to sign (Id. ¶ 14). The letter essentially retracted Vasek's report concerning his abuse by Monsignor Grundhaus and indicated that the abuse in Ohio never happened (Id. ¶ 14). Bishop Hoepfner told Vasek that he should sign the letter and that it was needed for the Diocese's files. Bishop Hoepfner told Vasek that if he refused to sign the letter, the Bishop would have difficulty ordaining him as a deacon for the Diocese of Crookston and that Vasek's son's priesthood in the Diocese

would be negatively impacted. Vasek took this as a threat by Bishop Hoepfner against both his career as a deacon and his son's priesthood in the Diocese of Crookston (Id. ¶ 14).

Vasek alleges that because of Bishop Hoepfner's threats to Vasek's participation and success in the diaconate program and to his son's priesthood, and the coercion in obtaining his signature on the letter retracting the report of abuse, he was prevented from reporting the abuse by Monsignor Grundhaus to civil authorities and from obtaining legal counsel to file a timely civil claim under the Minnesota Child Victims Act (Minn. Stat. § 541.073, subd. 5(b) (3-year provision) (Id. ¶ 17).

The complaint also alleges that the Diocese learned or should have learned prior to Vasek being sexually abused that Monsignor Grundhaus was not fit to work with children (Id. ¶ 18). Vasek alleges that the Diocese knew about the risk of harm that Monsignor Grundhaus posed to him (Id. ¶ 25). He also alleges that the Diocese held itself out as able to provide a safe environment for children and accepted this position of power (Id. ¶ 23). Vasek alleges the Diocese's position of power prevented him from protecting himself and, therefore, the Diocese entered into a fiduciary relationship with him (Id. ¶ 23). As a result of this special relationship, Vasek alleges that the Diocese owed him a duty of reasonable care to protect him from harm (Id. ¶ 26).

Vasek's complaint alleges both public and private nuisance claims against the Diocese. Vasek alleges that the Diocese engaged in and continues to engage in efforts to: 1) conceal from the general public the sexual assaults committed by, the identities of and the pedophilic/ephebophilic tendencies of Monsignor Grundhaus and the Diocese's other priests; and/or 2) conceal from proper civil authorities sexual assaults and abuse committed by Monsignor Grundhaus and the Diocese's other agents against minor children; and/or 3) attack the credibility of victims of the Diocese's agents; and/or 4) protect the Diocese's agents from criminal prosecution for their sexual assaults and abuse against children; and/or 5) allow known child molesters to live freely in the community without informing the public.

Vasek alleges that the negligence, deception and concealment by the Diocese resulted in a condition which unreasonably endangers the safety and health of members of the public, including, but not limited to, children and residents in the Diocese and other

members of the general public who live in communities where the Diocese's agents who molested children live (Id. ¶ 50). Vasek contends that this negligence, deception and concealment by the Diocese was specially injurious to him because he was sexually assaulted by Monsignor Grundhaus. Vasek alleges that he has suffered and continues to suffer special, particular, and peculiar psychological and emotional harm and/or peculiar pecuniary harm, different in kind from the general public, after he learned of the Diocese's concealment of names and information about priests accused of sexually molesting minors (Id. ¶ 53). He claims that his injuries are particular to him and different from other members of the public who have been harmed by the nuisance complaint (Id. ¶ 55).

Standard for Granting a Motion to Dismiss for Failure to State a Claim

When considering whether to dismiss a complaint for failure to state a claim, the Court accepts the facts alleged in the complaint and construes all reasonable inferences in favor of the nonmoving party. Baker v. Best Buy Stores, LP, 812 N.W.2d 177, 180 (Minn. Ct. App. 2012); Bodah v. Lakeville Motor Express, Inc., 663 N.W.2d 550, 553 (Minn. 2003). Dismissal of a claim is proper if it appears to a certainty that no facts, consistent with the pleading, exists which would support granting the relief requested. Scheffler v. City of Anoka, 890 N.W.2d 437, 449 (Minn. Ct. App. 2017).

Statute of Limitations

The first argument made by the Diocese is that Vasek's negligence claims are barred by the statute of limitations. In 2013, the legislature enacted the Child Victim Act, which opened a three-year window for sexual abuse actions involving children that were previously barred. This Act provided:

Notwithstanding any other provision of law, in the case of alleged sexual abuse of an individual under the age of 18, if the action would otherwise be time barred under a previous version of Minnesota Statutes section 541.073, or other time limit, an action for damages against a person, as defined in Minnesota Statutes section 541.073, subdivision 1, clause (2), may be commenced no later than three years following May 25, 2013. This paragraph does not apply to a claim for vicarious liability or respondeat superior, but does apply to other claims, including negligence.

Minn. Stat. § 541.073 (2013). The Diocese contends that Vasek's claims are barred under this statute because they were not brought prior to May 25, 2016.

Vasek acknowledges that he did not sue the Diocese by the statute's deadline, but argues that it would be inequitable for the Diocese to assert a statute of limitations defense. He argues that Bishop Hoepfner's threat that the Bishop would have difficulty ordaining him as a deacon and that his son's priesthood could be negatively impacted if he did not sign a letter withdrawing his earlier abuse report prevented him from obtaining legal counsel and filing a claim.

Minnesota has applied the doctrine of equitable estoppel to toll the statute of limitations when inequitable circumstances prevented the plaintiff from bringing suit within the required time. Equitable estoppel "comes into play if the defendant takes active steps to prevent the plaintiff from suing in time, as by promising not to plead the statute of limitations." Cada v. Baxter Healthcare Corp., 920 F.2d 446, 450-51 (7th Cir. 1990). Minnesota has applied equitable estoppel to toll the statute of limitations in a situation where a building contractor promised to repair a construction defect and the contractor's promise caused the plaintiff to let the statute of limitations run. Bethesda Lutheran Church v. Twin City Const., 356 N.W.2d 344, 349 (Minn. Ct. App. 1984); Ree v. Golden Home Builders, Inc., 617 N.W.2d 618, 621 (Minn. Ct. App. 2000).

Besides equitable estoppel, some courts recognize the doctrine of estoppel by duress as grounds for tolling the statute of limitations. Estoppel by duress applies to toll the statute of limitations when a defendant has exercised mental or physical coercion over a plaintiff that causes the plaintiff to act contrary to his free will and refrain from timely filing suit. Doe v. Catholic Diocese of El Paso, 362 S.W.3d 707, 719 (Tex. Civ. App. El Paso 2011); Ateeq v. Najor, 15 Cal. App. 4th 1351, 1357, 19 Cal. Rptr. 2d 320, 324 (4th Dist. 1993). Courts that have applied the doctrine of estoppel by duress have required that the plaintiff prove that the duress by the defendant was continuous. See, e.g. Doe v. Catholic Diocese of El Paso, 362 S.W.3d 707, 719 (Tex. Civ. App. El Paso 2011); Zoe G. v. Frederick F.G., 208 A.D.2d 675, 675 N.Y. App. Div. 2d Dep't. 1994). No Minnesota court has considered whether to recognize this doctrine.

A motion to dismiss for failure to state a claim should only be granted if it appears to a certainty that no facts consistent with the complaint would support it. The Diocese

argues that this is the case with Vasek's claim. It maintains that even if Minnesota recognized estoppel by duress, that this doctrine would not apply to Vasek's claim because the duress was not continuous or the kind the law recognizes as sufficient to overcome a person's free will. Vasek, on the other hand, argues that Bishop Hoepfner's statements effectively prevented him from bringing suit within the required time period because of his fear that a suit would negatively impact both his and his son's career. While it may be difficult for Vasek to establish estoppel by duress or coercion, the Court cannot conclude that no facts could be established to support the claim that Bishop Hoepfner's statements overcame Vasek's free will and effectively prevented Vasek from timely bringing suit. Further development of the record is necessary to determine if there is an issue of material fact for trial.

Private Nuisance Claim

The Diocese also asks the Court to dismiss Vasek's private nuisance claim. A private nuisance claim is defined as "a nontrespassory invasion of another's interest in the private use and enjoyment of land." Restatement (Second) Torts Section 821D (1979). Vasek alleges that the Diocese created a nuisance by concealing from the public the sexual assaults committed by Monsignor Grundhaus and other priests. He alleges that this concealment and deception by the Diocese was specially injurious to him because he was sexually assaulted by Monsignor Grundhaus. The Diocese argues that private nuisance claims are limited to nuisances that harm real property.

Private nuisance claims in Minnesota are governed by Minn. Stat. § 561.01 (2016), which states:

Anything which is injurious to health, or indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, is a nuisance. An action may be brought by any person whose property is injuriously affected or whose personal enjoyment is lessened by the nuisance, and by the judgment the nuisance may be enjoined or abated, as well as damages recovered.

Vasek argues that the plain language of this statute allows his claim because the Diocese's concealment was injurious to the health of the general public and indecent or offensive to their senses.

Vasek's interpretation of the private nuisance statute has been specifically rejected by the Minnesota Supreme Court. In Anderson v. State Dep't. of Natural Resources, 693 N.W.2d 181 (Minn. 2005), the court held that commercial beekeepers did not have a private nuisance claim against the Department of Natural Resources for applying a pesticide to land that resulted in the killing of the beekeepers' bees. In rejecting the beekeeper's claim, the court stated that the term "nuisance" denotes an infringement or interference with the free use of property and that a property interest is essential to maintain the action. Id. at 192.

Vasek's private nuisance claim does not identify real property interest that may have been affected by the Diocese's concealment from the general public of sexual assaults committed by Monsignor Grundhaus and other priests. Because Vasek has suffered no discernible harm to an interest in real property, his claim for private nuisance must be dismissed.

Public Nuisance Claim

The Diocese also contends that Vasek has failed to state a claim for public nuisance. "Unlike a private nuisance, a public nuisance does not necessarily involve interference with the use and enjoyment of land." Restatement (Second) Torts Section 821B(1) (1979). A public nuisance is defined as "an unreasonable interference with a right common to the general public." Id. It encompasses conduct that "involves a significant interference with the public health, the public safety, the public peace, the public comfort, or the public convenience." Id. Section 821B(2)(a). Examples of public nuisances include the keeping of diseased animals, the maintenance of a pond breeding malarial mosquitoes, keeping a house of prostitution, and the storage of explosives within a city. Id. cmt. a.

In Minnesota, an individual can bring a private action for a public nuisance. Robinson v. Westman, 224 Minn. 105, 29 N.W.2d 1 (1947) (private individual brought action for the abatement of a horse riding academy as a public nuisance). But, in order to recover damages for a public nuisance, the plaintiff must allege a special or peculiar injury that is not common to the general public. North Star Legal Foundation v. Honeywell Project, 355 N.W.2d 186, 189 (Minn. Ct. App. 1984) (nuisance action by taxpayers

seeking damages and injunctive relief against protesters was dismissed for failure to allege special or peculiar injury). The injury alleged by the plaintiff must be different in kind or nature, and not merely in degree from that sustained by the general public. Restatement (Second) Torts Section 821C (1979), cmt. b.

The Diocese makes two arguments for why Vasek has failed to state a claim for public nuisance. First, as with a private nuisance claim, the Diocese argues that damages for a public nuisance cannot be recovered absent harm to real property and Vasek has suffered no such harm. Second, the Diocese argues that even if damages were recoverable for harm to non-property interests, Vasek has failed to allege damages different in kind from those suffered by other members of the public.

Damages from a public nuisance usually involve damage to a business or real property interest affected by the nuisance. Robinson v. Westman, 224 Minn. 105, 29 N.W.2d 1 (1947) (plaintiffs alleged that their personal and property rights were affected by a riding academy stable). Hanson v. Hall, 279 N.W. 227 (Minn. 1938) (the owner of a truck that sustained damage when the driver swerved to avoid protestors had a private action against the protestors for public nuisance). But, as recognized by the Restatement (Second) of Torts, public nuisances can include conduct or activity that affects or harms public health and safety. As stated by Judge John B. Van de North, Jr., in Doe v. Archdiocese of St. Paul and Minneapolis, et al., (62-CV-13-4075), "failing to disclose information about an accused priest is akin to, and conceivably more offensive and dangerous than other acts that have been considered public nuisances" (Order Denying Summary Judgment, September 2, 2014). It would be incongruous to allow a person to recover monetary damages for harm to his land or personal property, but not allow him to recover damages to his person caused by the nuisance. See Anderson v. W.R. Grace and Co., 628 F. Supp. 1219 (Dist. Ct. Mass. 1986) (plaintiffs had standing to maintain a public nuisance action for damages after they became seriously ill from groundwater contamination). Vasek's failure to allege damage to a business or real property interest is not a prerequisite for a public nuisance claim.

While Vasek's failure to allege harm to a real property interest is not fatal to his public nuisance claim, he must still allege facts showing that the harm he suffered is different in kind from that suffered by the general public. He argues that his allegations meet this burden. First, he appears to allege that his sexual abuse arose from the Diocese's concealment and failure to disclose to the general public that Monsignor Grundhaus and other priests in the Diocese had been credibly accused of sexual abuse. Second, he alleges that he suffered emotional harm from the Diocese's continuing failure to disclose to the general public that Monsignor Grundhaus had been accused of sexual abuse. He alleges that this caused him to experience mental, emotional, and physical distress and pecuniary loss, which included medical and wage loss.

The damage that Vasek allegedly suffered as a direct result of his sexual assault is a harm different in kind from that suffered by the general public because it involved an actual physical assault that other members of the general public did not suffer. But, the emotional harm that Vasek suffered following his sexual assault caused by the continued concealment by the Diocese of priests accused of sexual abuse was not different in kind from the emotional harm suffered by the general public. In both instances, the emotional harm was the result of the public not being able to trust the Diocese to protect children. While the harm Vasek suffered by the Diocese's continued concealment may have been greater in degree than that suffered by other members of the public because of his past sexual assault, the harm from the continued concealment did not differ in kind from that suffered by the general public.

Conclusion

The Diocese's motion to dismiss Vasek's negligence claims on grounds that the statute of limitations has run is DENIED. Further development of the facts is required to determine if the Diocese is estopped from asserting the statute of limitations.

The Diocese's motion to dismiss Vasek's private nuisance claim is GRANTED because Vasek has failed to allege harm to any real property interest.

The Diocese's motion to dismiss Vasek's public nuisance claim is DENIED. But, Vasek's damage claim for public nuisance is confined to those damages that were a direct result of his sexual assault.

KJM