UNFORESEEABLE MOLESTATION BY VOLUNTEER COACH
DOE v. CHURCH OF ST. CHRISTOPHER

SUPREME COURT OF NEW YORK, NASSAU COUNTY
October 10, 2006

[Note: Attached opinion of the court has been edited and citations omitted.]

This action arises out of the sexual molestation of the infant plaintiff, then thirteen years of age, by defendant Brian Schlacter, a volunteer basketball coach and coordinator of the Catholic Youth Organization basketball program at defendant Church of St. Christopher located at 11 Gale Avenue, Baldwin, New York. Defendant Schlacter, who coached at both St. Christopher's Church and the Baldwin PAL since 1977/1978, is presently incarcerated at Dannemora State Prison, having pled guilty to the crime of second degree sodomy against the infant plaintiff, a participant in the parish CYO basketball program at St. Christopher's.

According to the complaint, defendant Schlacter, during his tenure as a coordinator of the CYO program and a basketball coach at St. Christopher's Church, sexually abused and sodomized the infant plaintiff, in a room described as an office/equipment room adjacent to the gymnasium, causing the infant severe psychological and emotional injury. Defendant Schlacter testified at his deposition that he was present at St. Christopher's gymnasium almost every night doing paper work or watching teams practice. He did not, however, coach the infant plaintiff's CYO basketball team, and the molestation did not take place during a practice session or in connection with a CYO game in which the infant participated. Rather, defendant Schlacter would pick up the infant plaintiff at his home on Thursday evenings and take him to watch a PAL basketball game. After the game, they would go to Burger King and then to St. Christopher's where the sexual encounters occurred. The complaint alleges causes of action predicated on the negligence of the Church defendants in failing to properly safeguard the infant plaintiff as well as negligent retention and supervision of defendant Schlacter for which plaintiffs seek punitive damages.

It is well established under the doctrine of respondeat superior that an employer will be vicariously liable for the tortious acts of an employee or agent only if those acts were committed within the scope of employment and in furtherance of the employer's business. Pursuant to the doctrine, the employer may be liable when the employee acts negligently or intentionally as long as the tortious conduct is generally foreseeable and a natural incident of the employment. If, however, the employee or agent departs from the line of his duty--for his own purposes--such that his acts constitute an abandonment of his service the employer will not be liable. An act of sexual assault by an employee has been held to be a clear departure from the scope of employment, committed solely for personal reasons, and unrelated to the furtherance of the employer's business.

As plaintiffs recognize, since the sexual molestation perpetrated against the infant plaintiff by defendant Schlacter was clearly outside the scope of his duties as a CYO volunteer, there is no basis to hold the Church defendants, who may fairly be characterized as either employers or principals vis a vis defendant Schlacter, liable under this theory. Furthermore, defendant Schlacter's intentional conduct could not have reasonably been expected by his employer.

In instances where an employer cannot be held vicariously liable for torts of an employee, the employer can still be held liable under theories of negligent hiring, negligent retention and negligent supervision. However, a necessary element of such a cause of action is that the employer knew, or should have known, of an employee's propensity to commit the acts which caused the injury. Significantly, there is no common law duty to institute specific procedures for hiring employees unless the employer knows of facts that would lead a reasonably prudent person to investigate the prospective employee.

With respect to negligent supervision, a non parent may be held responsible for negligent supervision of a child when the non-parent undertakes the care and supervision of a child, the child is injured and the injuries are foreseeably related to the absence of adequate supervision. Although persons to whom the care of children is entrusted are not the absolute insurers of their safety, they are charged with the highest degree of care. The question is whether the third party acts could reasonably have been anticipated and whether the church defendants had sufficiently specified knowledge or notice of the dangerous conduct, which caused the injury As with any liability in tort however, the scope of defendants' duty is circumscribed by those risks that are reasonably foreseeable.

In the view of this court, the defendants have submitted sufficient proof of the lack of notice, either actual or constructive, to demonstrate their prima facie entitlement to judgment as a matter of law. In response, plaintiffs have failed to submit evidence sufficient to raise a triable issue of fact vis a vis whether said defendants were aware of any behavior on the part of the individual defendant which demonstrated a propensity for the type of conduct alleged against him in this action.

Defendant Schlacter's pedophiliac tendencies were neither known nor foreseeable prior to his molestation of the infant plaintiff. There is nothing in the record to indicate that anything transpired during his twenty years of service which would have alerted the Church defendants to the possibility that said defendant posed a danger of sexual assault to the children with whom he was in contact. This is not a case in which the Church defendants actually observed, or unreasonably ignored, incidents or complaints preceding the misconduct which indicated that defendant Schlacter represented a threat to the children in the CYO program thereby triggering the need for some protective action by the Church defendants.

The general proposition that, tragically, sexual abuse of children is a pervasive problem in society today does not constitute a factual basis upon which to charge the Church defendants with notice that defendant Schlacter posed a danger as a sexual predator to the children involved in the basketball program. There must be some foundation upon which the question of foreseeability of harm may be predicated, i.e., at best a minimal showing as to the existence of actual or constructive notice. Such a showing is absent here.

With respect to the notice issue, the Church defendants rely on the deposition testimony of the infant plaintiff wherein he states that he never told his parents or anyone else about the inappropriate physical contact between him and defendant Schlacter. In fact, the first time he told any adult about the abuse committed against him was when detectives came to his house to question him regarding defendant Schlacter's arrest. The infant plaintiff is unaware of anyone

else who was molested by defendant Schlacter and, in fact, it appears that no one else has come forward to assert such a claim.

Three non-party witnesses, parishioners at St. Christopher's Church, who were also involved in the CYO Program, either as parents and/or coaches, were unaware of any complaints made against or about defendant Schlacter prior to his arrest. The affidavit of a retired Captain of the Nassau County Police Department, who was associated with the Nassau County Police Activity League (PAL) for approximately eighteen years prior to his retirement in 2001, states that defendant Schlacter had been a PAL volunteer for approximately twenty years. The only claim against defendant Schlacter, of which the Captain is aware, is that made by the infant plaintiff herein.

Based on the foregoing proof, movants have met their burden of establishing that they cannot be held liable to plaintiffs for defendant Schlacter's tortious acts under the doctrine of negligent hiring, retention and/or supervision, or failure to safeguard the infant plaintiff, since the evidence in support of the motion establishes that they neither knew nor should have known about his propensity for abusive behavior.

While plaintiffs maintain that the Church defendants "should have known what was occurring in their buildings," after extensive disclosure there is no evidence that the Church defendants had reason to suspect, or had ever been alerted to the possibility, that defendant Schlacter would molest the infant plaintiff. Indeed, it is undisputed that defendant Schlacter served for approximately twenty years as a CYO volunteer at St. Christopher's Church without incident or complaint and that the infant plaintiff's mother herself permitted her son to spend time with him.

Plaintiffs have failed to counter the Church defendants' showing with evidence that they were aware of a propensity on defendant Schlacter's part to commit the alleged acts or any evidence that said defendants knew--or should have known--of such a propensity. In essence, there is nothing in the record to demonstrate that the Church defendants breached a duty to protect the infant plaintiff from foreseeable harm.

Accordingly, motion by Church defendants for summary judgment dismissing the complaint as to Church of St. Christopher and Roman Catholic Diocese of Rockville Centre is granted.