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Ramsey County Civil, MN

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT

File No.: 62-CV-13-4075

Doe 1,

Plaintiff,

v.

Archdiocese of St. Paul and Minneapolis, Diocese of Winona and Thomas Adamson,

Defendants.

ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTIONS TO DISMISS

This matter is before the Court following an August 22, 2013, hearing on the motions of Defendants Archdiocese of St. Paul and Minneapolis (Archdiocese) and Diocese of Winona (Diocese) to dismiss nuisance claims asserted in Doe 1's Complaint dated May 29, 2013.[1] The Archdiocese is represented by Thomas B. Wieser, Esq., and Jennifer R. Larimore, Esq. The Diocese is represented by Thomas R. Braun, Esq. Defendant Thomas Adamson (Father Adamson) has no counsel of record, and there was no appearance by Father Adamson or on his behalf. Doe 1 is represented by Jeffrey R. Anderson, Esq., Michael G. Finnegan, Esq., and Elin Lindstrom, Esq. The Court heard oral argument and has

[1] The Notices of Motions and Motions of the Archdiocese and Diocese do not mention the relief requested in their joint post-hearing Proposed Order, "to strike Paragraphs 28, 40, 48 (2) and (3), and 67 (2) and (3) . . ." This request is supported at Pages 9 and 10 of Defendants' Proposed Memorandum. This topic was addressed only briefly in pre-hearing memoranda and less at oral argument. On this record, the Court cannot deem such a motion to strike to be before the Court at this time; and, alternatively, if such a motion could be deemed to be before the Court, it is **DENIED**. It is not clear to the Court that the language sought to be stricken is so immaterial, impertinent, scandalous, offensive or irrelevant that it justifies its deletion pursuant to Rules 11 and 12.06 of the Minnesota Rules of Civil Procedure (especially as it may apply to Plaintiff's claims sounding in negligence). Similarly, whether this information may be discoverable and/or admissible at trial in connection with other claims has not been determined.

considered timely pre-hearing and post-hearing submissions. The Court took the matter under advisement on September 12, 2013.

Having considered the entire file, and being fully advised, the Court makes the following:

ORDER

1. The Archdiocese's motion for dismissal of Count II – Nuisance is **GRANTED** as to private nuisance and **DENIED** as to public nuisance.
2. The Diocese's motion for dismissal of Count VI – Nuisance is **GRANTED** as to private nuisance and **DENIED** as to public nuisance.
3. The attached Memorandum is incorporated herein by reference and contains the Court's findings of fact and conclusions of law.
4. Copies of this Order and attached Memorandum will be served upon counsel for the parties.

LET JUDGMENT OF DISMISSAL BE ENTERED ACCORDINGLY.

Dated: 12-10-13

BY THE COURT:

Honorable John B. Van de North, Jr.
Judge of the District Court
File No. 62-CV-13-4075

MEMORANDUM

File No. 62-CV-13-4075

PROCEDURAL HISTORY

Doe 1 commenced this action on or about May 29, 2013, based upon alleged sexual abuse by Father Adamson and an inadequate response to it by the Archdiocese and Diocese. In Counts II and VI of his May 2013 Complaint, Doe 1 alleges that the Archdiocese and Diocese (collectively, "the Dioceses") created and continue to create private and public nuisances by failing to disclose information about certain priests accused of sexually abusing minors. Doe 1's Complaint seeks only injunctive relief in the form of an order requiring the Dioceses to ". . . publicly release [their] list of credibly accused child molesting priests, each such priests [sic] history of abuse, each such priests [sic] pattern of grooming and sexual behavior, and his last known address." (See May 29, 2013, Complaint, p. 17.) Doe 1 clarified at oral argument that his nuisance claims seek only injunctive relief, not monetary damages. The Dioceses seek dismissal of Doe 1's nuisance claims under Rule 12.02(e) on grounds that they have been insufficiently pled and/or are untimely.[2]

APPLICABLE LEGAL STANDARD FOR RULE 12 MOTION

A motion to dismiss for failure to state a claim upon which relief may be granted is governed by Minn. R. Civ. P. 12.02(e). When considering a motion to dismiss, the district court must ask "whether the complaint sets forth a legally sufficient claim for relief." Hebert v. City of Fifty Lakes, 744 N.W.2d 226, 229 (Minn. 2008). To survive a motion to dismiss, a plaintiff

[2] The Court has considered whether its December 3, 2013, Order in this case and in the related matter of John Doe 76C (District Court File No. 62-C9-06-396) requiring the disclosure of much of the information sought by Doe 1 has mooted his nuisance claims. However, that is not the case. First, he may wish to continue to argue that the relief ordered by the Court on December 3 is inadequate as to the information required to be disclosed therein; but, in addition, the December 3 Order does not address his request that the Archdiocese and Diocese be required to "each publicly release . . . each such priests [sic] history of abuse, each such priests [sic] pattern of grooming and sexual behavior, ..." (May 29, 2013, Complaint at Paragraph 86, page 17.)

must plead facts that "raise a right to relief above the speculative level." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007); Hebert, 744 N.W.2d at 235 (referencing Twombly standard). In considering a motion to dismiss a complaint, the Court presumes all the facts alleged in the complaint to be true. Loftus v. Hennepin County, 591 N.W.2d 514 (Minn. Ct. App. 1999); and it is immaterial whether it appears so early in the litigation that a plaintiff can prove facts alleged. Elzie v. Commissioner of Public Safety, 298 N.W.2d 29 (Minn. 1980). The issue is whether any set of facts could be introduced to support the claim as pled. Brenny v. Bd. Of Regents, 813 N.W.2d 417, 420 (Minn. Ct. App. 2012).

Rule 12 dismissals serve an important purpose by "eliminate[ing] actions which are fatally flawed in their legal premises and deigned to fail, thereby sparing litigants the burden of unnecessary pretrial and trial activity." Young v. City of St. Charles, Mo., 244 F.3d 623, 627 (8th Cir. 2001) (citing Neitzke v. Williams, 490 U.S. 319, 326-27 (1989)).

Rule 12 relief is properly invoked when claims are legally barred by an applicable statute of limitations, as is asserted here, and the facts are clear. Jacobson v. Board of Trustees of the Teachers Retirement Association, 627 N.W.2d 106 (Minn. Ct. App. 2001).

DISCUSSION

1. Doe 1's private nuisance claim under Minn. Stat. § 561.01 fails as a matter of law and is properly dismissed under Rule 12.

An action to abate a private nuisance is governed by Minn. Stat. § 561.01, which defines nuisance and prescribes remedies as follows:

> 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.[3]

In support of his request that the Court order the disclosure of information about "credibly accused child molesting priests," Doe 1 suggests that a plain reading of the referenced statute is sufficient to meet any pleading requirement with respect to his private nuisance claim. Specifically, he relies on the statutory language defining a nuisance as "Anything which is injurious to health, or indecent . . ., so as to interfere with the comfortable enjoyment of life . . . ." He suggests that this language defines nuisance in a manner that is independent of the references to "property" in the statute. This would include the limiting language with respect to available remedies which provides that, "An action may be brought by any person whose property is injuriously affected or whose personal enjoyment is lessened by the nuisance . . . ."

The statute is not a model of clarity, but nearly a century of Minnesota case law supports Defendants' position that the party seeking relief from a nuisance must demonstrate an adversely impacted property interest. Lead v. Inch, 134 N.W. 218 (Minn. 1912); Johnson v. Shiely, 155 N.W. 390 (1915); Roukovine v. Island Farm Creamery Co., 200 N.W. 350, 351 (Minn. 1924); Robinson v. Westman, 29 N.W.2d 1, 4 (Minn. 1947). More recently, in Anderson v. State Department of Natural Resources, 693 N.W.2d 181, 192 (Minn. 2005), the Minnesota Supreme Court held that the private nuisance claims of commercial beekeepers failed as a matter of law because they "lacked the requisite property interest to maintain a private nuisance claim." The Court addressed the very argument asserted by Doe 1 here and that a private nuisance claim could not be based upon

[3] As discussed above, Doe 1's counsel clarified during oral argument on August 22, 2013, that he is not seeking damages as a remedy for his nuisance claims, but only injunctive relief.

lessened enjoyment of business operations. In Anderson, the claimed nuisance was the spraying of pesticide by the DNR on fields where the bees were maintained by plaintiff. However, the plaintiff did not own the land. The beekeepers alleged a nuisance based on interference with the "use and enjoyment of their apiary operations." See Anderson v. State Dep't. of Natural Res., 674 N.W.2d 748, 759-60 (Minn. Ct. App. 2004), affirmed in part and reversed in part by Anderson, 693 N.W.2d 181. In its affirmance, the Supreme Court was clear: "Private nuisance is limited to real property interests." Anderson, 693 N.W.2d at 191-92. The Anderson plaintiffs asserted interest in "enjoyment of apiary operations" is akin to Doe 1's claimed interest in being free of stress caused by his concerns over sexual abuse and of "an obstruction to the full use of property by the general public [presumably including him]."

The Minnesota Court of Appeals rejected a private nuisance claim because no property interest was alleged in N. Star Legal Found. v. Honeywell Project, 355 N.W.2d 186, 188-89 (Minn. Ct. App. 1984). Anderson and N. Star defeat the plain language arguments being asserted by Doe 1.

Doe 1 cites to Randall v. Village of Excelsior, 103 N.W.2d 131, 134 (Minn. 1960), for his position that he need not plead a real property interest. In Randall, which predates N. Star and Anderson by over 20 years, the Minnesota Supreme Court noted, in dicta, that:

> It is elementary that 'nuisance' denotes the wrongful invasion or infringement of a legal right or interest and comprehends not only such invasion of property but of personal rights and privileges and includes intentional harms and harms caused by negligence, reckless or ultra-hazardous conduct.

Randall is unpersuasive for several reasons. First, the claim in Randall was one for public nuisance—not private. See Randall, supra, at

133 n.1 & 2. In addition, the New York case cited by the Minnesota Supreme Court for the dicta relied upon by Doe 1, Sweet v. State, 89 N.Y.S.2d 506, 511 (Ct. Cl. 1949), involved facts markedly different from those involved in the present case. The decision turned on the New York Court's discussion of similarities and differences between nuisance and negligence causes of action. What is important here, but not essential to the outcome in Sweet, is the fact that New York has interpreted its private nuisance law to have a property requirement, and its courts have held that private nuisances must be established by "proof of intentional action or inaction that substantially and unreasonably interferes with other people's use and enjoyment of their property. (Emphasis added.) 81 N.Y.Jur.2d Nuisances § 6 (2013) (quoting Nemath v. K-Tooling, 955 N.Y.S.2d 419 (3d. Dep't. 2012).)

Finally, the Archdiocese and Diocese persuasively point to Restatement (Second) of Torts § 822 ("One is subject to liability for a private nuisance if, but only if, his conduct is a legal cause of an invasion of another's interest in the private use and enjoyment of land . . ."); and, 4 Lee & Barry A. Lindahl, Modern Tort Law, Liability and Litigation, § 35:4 (2d ed. 2003), ("A property interest is essential to maintain the action") quoted in Anderson, 693 N.W.2d at 192.

The only property interest that Doe 1 has pled, in paragraphs 49 and 68 of his complaint, is that the Archdiocese's and Diocese's failure to publish the list was "injurious to the health and/or indecent or offensive to the senses and/or an obstruction to the free use of property by the general public." This allegation regarding general-public property does not meet the property-interest standard discussed in Anderson, and therefore this Court dismisses Doe 1's private nuisance cause of action pursuant to Rule 12.

2. Doe 1's common law public nuisance claim survives Rule 12.

Public nuisance has been defined as "unreasonable interference with a right common to the general public" and has historically been reserved to governmental entities to initiate suit. Restatement (Second) of Torts, § 821B (1979); Minn. Prac., Business Law Deskbook 25:3 (2012); see also Aldrich v. City of Minneapolis, 52 Minn. 164, 168, 53 NW. 1072, 1073 (1983) (noting that "[t]he public wrong must be redressed by a prosecution in the name of the state; the private injury by private action."). For private parties to initiate suit for public nuisance, the Minnesota Supreme Court has held that they must allege some special or peculiar injury:

> The general rule, upon which there is no conflict, is that a private action may be maintained to redress an injury of this character [public nuisance] where the plaintiff has suffered some special or peculiar damage not common to the general public, and in such cases only.

Viebahn v. Bd. Of Comm'rs of Crow Wing Cnty., 96 Minn. 276, 280, 104 N.W. 1089, 1091 (1905), cited with approval in N. Star Legal Found. v. Honeywell Project, 355 N.W.2d 186, 189 (Minn. Ct. App. 1984). The Restatement (Second) of Torts discusses the rule similarly:

> . . . [I]t is uniformly agreed that a private individual has no tort action for the invasion of the purely public right, unless his damage is to be distinguished from that sustained by other members of the public. It is not enough that he suffers the same inconvenience or is deprived of the same enjoyment or is exposed to the same threat of injury as everyone else who may be exercising the same public right.

Restatement (Second) of Torts § 821C (1979) cmt. a.

Doe 1 alleges that the refusal of the Archdiocese and Diocese to disclose identities (and arguably other information) about priests credibly

accused of sexually abusing minors constitutes a public nuisance. He argues this is so because (a) this active concealment creates "a danger for the communities in which the priests live" and (b) he personally has suffered some special or peculiar damage not common to the general public because he was a survivor of priest sex abuse. He appears to contend that he suffers more emotional distress than other members of the public because, as a victim of abuse, he feels a heightened duty to warn others about molesters, a duty he cannot discharge if he does not know who or where the molesters are.

The parties do not seriously disagree that, at least for Rule 12 purposes, the specter of unidentified pedophiles living at undisclosed locations in the community could create a cognizable public nuisance claim which may be prosecutable by the government. (Although, the Court has been unable to uncover any Minnesota case holding that concealment of suspected molester identities and locations is sufficient to state a cognizable public nuisance claim.)

It is the issue of whether Doe 1 has sufficiently pled damages unique to him which creates a particularly close call for the Court. Given the very early stage of the litigation; the long tradition of notice pleading under Minnesota law; the deference given Doe 1 with respect to assuming facts pled and their inferences to be true; and an equally well-established bias to resolve disputes on their merits, it is plausible that Doe 1 may be able to demonstrate the uniqueness of his claimed damages at trial. Doe 1 has alleged that he suffers mental and emotional distress for feeling as though he is unable to protect the public from the undisclosed Priests. See May 29, 2013, Complaint at Paragraph 51. Although members of the general public may feel discomfort at the thought of undisclosed child molesters living in the community, a psychiatrist or psychologist may testify that Doe 1 has a qualitatively different and unique response to this undisclosed list

because he is victim of sexual abuse. Such a hypothesis may be a bit of a stretch, but at this pre-discovery stage of the case, the Court cannot rule out such a scenario, or perhaps others, as a matter of law.

3. The record does not support barring Doe 1's nuisance claims under Minn. Stat. § 541.05 (2012) as a matter of law.

Minn. Stat. § 541.05 (2012) gives nuisance claims a six-year statute of limitations. Citizens for a Safe Grant v. Lone Oak Sportsman's Club, Inc., 624 N.W.2d 796, 803 (Minn. Ct. App. 2001) (finding a nuisance claim was governed by Minn. Stat. § 541.05, subd. 1(2)). The parties agree that the running of the six-year statute was triggered at least once when the Archdiocese and Diocese made the existence of the list a public fact in 2004. Doe 1, however, contends that his claim is timely and has been revived by the Minnesota Child Victims Act or, alternatively, that the ongoing concealment by the Archdiocese and Diocese constitutes a continuing nuisance such that each date of concealment is a distinct act, which restarts the clock.

The Court agrees with the Archdiocese and Diocese that claim revival allowed by the Child Victims Act does not permit previously time-barred nuisance claims. Minn. Stat. § 541.073 subd. 5(b) (2013). On its face, the reviver statute is limited to actions "for damages against a person." Id. The three-year window allows victims of sex abuse to come forward and seek damages. There is nothing in the record to suggest that the Legislature intended the new law to be used for injunctive relief, such as the production of the information sought by Doe 1—the admitted sole purpose of his nuisance claims.

However, Doe 1's claim that the continuing nature of the alleged nuisance tolls the six-year statute of limitations is a matter that is not

susceptible to a Rule 12 disposition. The continuing violation doctrine in Minnesota has been summarized as follows:

> Under the continuing tort doctrine, the final act is used to determine when the statute of limitation period begins for the entire course of conduct. However, a plaintiff who is merely "feeling the present effects" of a past wrongful act may not avoid the statute of limitations.

20A2 Minn. Prac., Business Law Deskbook § 34:136 (2012 ed.).

Stated another way, to take advantage of the continuing violation doctrine, there must be new distinct acts, not simply the continuation of a prior act. Here, the parties agree that an initial offending act of concealment occurred in 2004 but disagree as to whether subsequent acts of concealment were a mere continuation of the original nuisance or separate acts supporting a more recent and timely claim of public nuisance. As with the viability of the public nuisance theory, this is a close call for the Court; but, again, one that needs further investigation. After some discovery, it might be an appropriate issue to revisit on summary judgment.