

FILED

STATE OF MINNESOTA
COUNTY OF MAHNOMEN

AUG 13 2015

MAHNOMEN COUNTY DISTRICT COURT

IN DISTRICT COURT
NINTH JUDICIAL DISTRICT

Doe 19,

Plaintiff,

vs.

**ORDER GRANTING IN PART
AND DENYING IN PART
PLAINTIFF'S MOTION
TO COMPEL DISCOVERY**

Diocese of Crookston, Missionary
Oblates of Mary Immaculate,
Missionary Oblates of Mary Immaculate
United States Province, Oblate Fathers of
Mary Immaculate Central Prov., Oblates
of Mary Immaculate, Oblates of Mary
Immaculate United States Province,

File No. 44-CV-14-140

Defendants.

The above-entitled matter came on for hearing on June 9, 2015, before the undersigned Judge of the District at the Mahnomen County Courthouse in Mahnomen, Minnesota, on Plaintiff's motion to compel discovery.

Ms. Elin Lindstrom, Attorney at Law, St. Paul, Minnesota, appeared on behalf of the Plaintiff.

Ms. Susan Gaertner, Attorney at Law, Minneapolis, Minnesota, appeared on behalf of the Defendants.

Based upon all the files, records, and argument of counsel, the Court makes the following:

ORDER

1. Plaintiff's motion to compel discovery is **GRANTED** in part.
2. Plaintiff is entitled to all information sought in his discovery requests related to alleged abuse of children under the age of 18 by clergy, reports of such abuse, and priests accused of such abuse, occurring prior to 1985. This shall include all information in Defendants' possession concerning child sexual abuse by priests prior to 1985, including, but not limited to, information related to all priests employed by, or

arguably under the supervision and control of any Defendant, or present at any facility owned, operated, controlled, or supervised by a Defendant with a Defendant's knowledge and consent. For purposes of discovery, the document need only relate to incidents or information concerning abuse of children before 1985.

3. Defendants shall supplement their discovery responses to comply with this Order on or before September 1, 2015.

4. Plaintiff's motion to compel discovery of information outside the scope stated in paragraph 2 is **DENIED**.

5. The attached memorandum is incorporated herein.

Dated this 12th day of August, 2015

Kurt J. Marben

Kurt J. Marben
Judge of District Court

MEMORANDUM

Statement of Facts

Plaintiff, Doe 19, has sued the Defendants, Diocese of Crookston (hereafter "Diocese") and the Oblates of Mary Immaculate (hereafter "Oblates"), for damages for sexual abuse. Plaintiff alleges that he was sexually abused when he was a minor by Father James Vincent Fitzgerald, a priest employed by the Defendants. He alleges that the Defendants were negligent in failing to exercise reasonable care to prevent the sexual abuse from happening.

Plaintiff has now filed a motion to compel discovery. He has served a demand for production of documents and interrogatories upon the Diocese seeking information about the Diocese's awareness of child sexual abuse and its awareness about priests accused of child sexual abuse. The demand for production of documents seeks:

- (1) All documents relating to or referring to the Diocese's awareness or knowledge about child sexual abuse;
- (2) All documents relating to the Diocese's awareness or knowledge of alleged child sexual abuse by its agents;
- (3) All documents identifying, referring or relating to any and all priests who have worked or continue to work in the Diocese who have been accused of sexually molesting minors; and,
- (4) All electronic discovery regarding the priests accused of sexually molesting minors.

Plaintiff's demand for production of documents includes a request for documents concerning six priests that the Diocese disclosed as having been credibly accused of child sexual abuse.

Plaintiff's interrogatories ask:

- (1) Whether Defendant Diocese has ever had or currently has any claims, complaints and/or allegations against it regarding sexual abuse of minors, other than the allegations which are the subject matter of this litigation;
- (2) Identify all priests who have worked or continue to work in the Diocese who have been accused of sexually molesting minors; and,
- (3) Whether Defendant Diocese has knowledge of any facts or allegations made against any of its agents, or people working within the Diocese, including, but not limited to, priests (including Fr. Fitzgerald), for sexual misconduct, attempted sexual misconduct, or misconduct with any individual, including the

Plaintiff, before, during or after the incidents which are the subject matter of this action.

The Diocese objects to these discovery requests on grounds that the information requested by the Plaintiff is irrelevant to his claims against Father Fitzgerald, that the requests are overly broad, and that producing the information would be unduly burdensome.

Analysis

Minn. R. Civ. P. 26.02(b) states that parties "may obtain discovery regarding any matter, not privileged, that is relevant to a claim or defense of any party". Relevant information is information that has some bearing on the determination of the action on its merits. Jeppesen v. Swanson, 243 Minn. 547, 562, 68 N.W.2d 649, 658 (1955). The scope of discovery includes any type of trial evidence, including impeachment information and any sources or leads about potential trial evidence. Boldt v. Sanders, 111 N.W.2d 225, 228 (1961). The information sought need not be admissible at trial if it "appears reasonably calculated to lead to the discovery of admissible evidence". Minn. R.Civ.P. 26.02(b).

In deciding if the information requested by Doe 19 is relevant, the Court must examine his claims against the Diocese. Minnesota recognizes three causes of action under which a plaintiff may sue an employer for negligence for injuries caused by one of its employees: negligent hiring, negligent retention, and negligent supervision. M.L. v. Magnuson, 531 N.W.2d 849, 856 (Minn. 1995). Negligent hiring is the negligence of an employer in placing an employee with known propensities, or propensities which should have been discovered by reasonable investigation, in a position where the employee posed a threat of injury to others. Id. at 857. Negligent retention arises when, during the course of employment, the employer becomes aware or should have become aware of problems with an employee that indicate his unfitness and the employer fails to take appropriate action. Id. Finally, negligent supervision is a failure by the employer "to exercise reasonable care in supervising the employment relationship, so as to prevent the foreseeable misconduct of an employee from causing harm to other employees or third persons". Id. at 858. Negligent supervision arises from the doctrine of respondeat

superior, so the plaintiff must prove that the employee's actions occurred within the scope of his employment. Id.

Doe 19 argues that his discovery requests are relevant to his claim of negligence against the Diocese for three reasons. First, the information could help determine if Father Fitzgerald's abuse of him was foreseeable. Second, the information could help determine if the Diocese intentionally concealed child sexual abuse allegations against priests. Third, the information could help establish his punitive damage claim because it may show that the Diocese acted in deliberate disregard of the rights of others.

The Diocese argues that Doe 19's discovery requests are an attempt to turn the case into a referendum on all the actions the Diocese took in response to allegations of child sexual abuse involving priests. It argues that the only material issue is the foreseeability of sexual abuse by Father Fitzgerald. Thus, the only information relevant to Doe 19's claim is what the Diocese knew before his alleged abuse occurred. The Diocese contends that any general knowledge of child sexual abuse by priests or specific allegations against other priests is irrelevant to this claim.

Doe 19's argument in support of his motion to compel discovery relies on L.M. ex rel. S.M. v. Karlson, 646 N.W.2d 537 (Minn. App. 2002). In Karlson, the parents of children who had been sexually abused by a day-care center worker sued the day-care center alleging that it was negligent in employing the worker. Id. at 541. The day-care center moved for summary judgment on grounds that there was no evidence to establish that the sexual abuse to the children was foreseeable. Id. The plaintiffs responded to the motion with an affidavit from an expert stating that the sexual abuse of children is a paramount concern for child-care providers. Id. at 543. The trial court granted the day-care center's motion for summary judgment and plaintiff appealed. Id. at 541. The Court of Appeals reversed the trial court, stating that the expert's affidavit was sufficient "to establish a question of material fact on the issue of foreseeability, making summary judgment inappropriate on plaintiff's respondeat superior claim". Id. at 544. Like the plaintiffs in Karlson, Doe 19 argues that his discovery requests are relevant to show that sexual abuse of children was, or should have been, a known concern of the Diocese and that the abuse by Father Fitzgerald was foreseeable.

The Court concludes that Doe 19 is entitled to discover the information the Diocese possesses about child sexual abuse committed by priests before the incident in question, but not after it. Reports and information about abuse that occurred before the incident would help determine if safeguards needed to be implemented by the Diocese to avoid child sexual abuse by priests and if the alleged sexual abuse in this case was foreseeable.

The Ramsey County District Court reached the same conclusion in Doe 30 v. Diocese of New Ulm, et al, Order Granting and Denying Plaintiff's Motion to Compel Discovery pg. 5-6 (Ramsey Co. Dist. Ct. Jan. 27, 2015). Doe 30 sought to hold the defendant liable for the sexual abuse of one of its priests and sought discovery of information the Diocese had about child sexual abuse involving other priests. Id. at 5. The Ramsey County District Court ruled that any reported priest abuse before the abuse experienced by the plaintiff "arguably placed the archdiocese on notice that a priest may be engaged in such abuse despite any vow he took" and that "prior abuse and any ensuing investigation may have provided information to the archdiocese regarding the circumstances under which the abuse took place". Id. Similar to the discovery requests in Doe 30, information of alleged sexual abuse by priests prior to the alleged abuse of Doe 19 may have informed the Diocese about the danger posed by Father Fitzgerald. Id. at 6. While some or all of the information requested by Doe 19 may be inadmissible at trial, this does not make it immune from discovery.

Doe 19, however, is not entitled to information about child sexual abuse committed by other priests after the alleged abuse in this case. Claims or reports of abuse involving other priests after the incident are not relevant to whether the Diocese knew or should have known that Father Fitzgerald presented a foreseeable risk of harm to children. The foreseeability of the abuse by Father Fitzgerald turns on what the Diocese knew or should have known before the alleged incident, not after it.

Finally, Doe 19 argues that the information he seeks regarding sexual abuse by other priests is relevant to his punitive damages claim. Minn. Stat. § 549.20 allows plaintiffs to make a claim for punitive damages if there is "clear and convincing evidence that the acts of the defendant show deliberate disregard for the rights or safety of others." Minn. Stat. § 549.20, subd. 1 (2014). Punitive damages can be awarded

against a master and principal for acts done by an agent if "the agent was unfit and the principal deliberately disregarded a high probability that the agent was unfit." Minn.Stat. § 549.620, subd. 2 (2014). A court has upheld an award of punitive damages against a diocese for the sexual abuse of a child by a priest when the diocese knew the priest had previously abused boys and then allowed him to have contact with youth. Mrozka v. Archdiocese of St. Paul and Minneapolis, 482 N.W.2d 806 (Minn.App. 1992).

Here, however, Doe 19 has not shown how other reports of sexual abuse by other priests after the incident involving him is relevant to the issue of punitive damages. Evidence relevant to his claim would be the Diocese's awareness of the danger of sexual abuse to Doe 19 before the abuse happened, its response to such a known danger, and any subsequent efforts it made to conceal the incident. All of this information is discoverable based on the Court's analysis above. Information concerning reports of sexual abuse by priests after the alleged incident involving Doe 19 are not relevant to his claim for punitive damages and therefore are not discoverable.

Conclusion

Plaintiff's discovery requests related to information about sexual abuse committed by priests against children prior to 1985 are relevant to his claims and are therefore discoverable. Plaintiff's discovery requests related to information about alleged sexual abuse by priests committed after 1985 are irrelevant to this case and are not discoverable.

KJM

State of Minnesota
Mahnomen County

District Court
Ninth Judicial District

Court File Number: **44-CV-14-140**
Case Type: Personal Injury

Notice of Filing of Order

MICHAEL G FINNEGAN
366 JACKSON ST
STE 100
ST PAUL MN 55101

Doe 19 vs Diocese of Crookston, Missionary Oblates of Mary Immaculate, Missionary Oblates of Mary Immaculate United States Province, Oblate Fathers of Mary Immaculate Central Prov, Oblates of Mary Immaculate et. al.

You are notified that on August 13, 2015, the following was filed:

Order Granting in Part and Denying in Part Plaintiff's Motion
to Compel Discovery (copy enclosed)

Dated: August 19, 2015

Camille Bessler
Court Administrator
Mahnomen County District Court
311 North Main - PO Box 459
Mahnomen MN 56557
(218) 935-2251

cc: SUSAN E GAERTNER
ANDREW T SHERN
JOY REOPELLE ANDERSON
CARRIE K HUFF

A true and correct copy of this notice has been served pursuant to Minnesota Rules of Civil Procedure, Rule 77.04.