

STATE OF INDIANA)
) SS:
COUNTY OF DELAWARE)

IN THE DELAWARE CIRCUIT COURT 5
CAUSE NO. 18C05-0306-PL-0045

DEBRA TUCKER,)
)
Plaintiff,)
)
v.)
)
INDIANA ROMAN CATHOLIC)
DIOCESE OF LAFAYETTE-IN-INDIANA,)
MOST REVEREND WILLIAM L. HIGI,)
VERY REVEREND ROBERT SELL,)
and REVEREND DENNIS GOTH,)
)
Defendants.)

FILED
CLERKS OFFICE
DELAWARE CO., INDIANA

NOV 18 2004

Kate Dulik
CLERK

AMENDED COMPLAINT

Comes now the Plaintiff, Debra Tucker, by counsel, Adam M. Dulik, and for her Amended Complaint, filed pursuant to Ind. Trial Rule 6(C)(2), against the Defendants, Roman Catholic Diocese of Lafayette-in-Indiana, Most Reverend William L. Higi, Very Reverend Robert Sell, and Reverend Dennis Goth, would show the following:

FACTS COMMON TO ALL COUNTS

1. Upon reasonable information and belief, at all times relevant hereto, the Roman Catholic Diocese of Lafayette-in-Indiana was an unincorporated association with its principal offices located in Lafayette, Indiana, and is subject to suit under the common name the Roman Catholic Diocese of Lafayette-in-Indiana ("the Diocese"); doing business as an organized religion, which includes but is not limited to the ownership, management and operation of schools, parishes and other houses of worship, including the St. Lawrence Parish ("the Parish") in Muncie, Indiana.

2. That Defendant William L. Higi, Bishop of Lafayette-in-Indiana, is made a party hereto in his capacity as the Bishop of Lafayette-Indiana and his capacity as chief administrative

officer of the Diocese and successor to previous Bishops. The term "Bishop" as used herein shall mean Bishop Higi and/or his predecessors.

3. That Defendant Robert Sell, Monsignor of Lafayette-in-Indiana, is made a party hereto in his individual capacity and his capacity as administrative officer of the Diocese. The term "Monsignor" as used herein means Monsignor Sell.

4. That Defendant Dennis Goth is made a party hereto in his individual capacity and in his capacity as pastor in the St. Lawrence Parish of the Diocese.

5. That Harry Metzger was at all times relevant to this complaint employed by the Diocese and Bishop as a lay person serving a variety of functions at the Parish, including teaching CCD classes to children, instructing lectors, assisting with the direction of the children's choir instruction, lector instruction and serving as Extraordinary Eucharistic minister.

6. That Plaintiff, who resides at 8202 West Ashford, Muncie, Indiana, 47304, was baptized, received first communion, was confirmed, regularly attended Mass and received the sacraments through the Roman Catholic Church.

7. That in 1966, Plaintiff was a ten-year-old child who worshiped with her family at the Parish, where her family was seeking instructions into the Roman Catholic religion.

8. That Plaintiff also attended CCD classes at the Parish.

9. That beginning in 1966, Metzger sexually abused Plaintiff by forcing her to perform oral sex on him and engage in sexual intercourse approximately once every week.

10. That Metzger's sexual abuse of Plaintiff most often occurred at the Parish, where he would pull Plaintiff out of CCD class to perform sex acts with her. Occasionally, Metzger

would wait for Plaintiff in a nearby park where he would stop Plaintiff on her walk home to force her to submit to sex acts.

11. That Metzger told Plaintiff that he would have her parents kicked out of the Parish if she told anyone.

12. That in 1968, Plaintiff became pregnant, and Metzger took her to Dr. Richard Stump, a medical doctor, who performed an abortion on her. Plaintiff was unaware that she had had an abortion because Metzger told her that the procedure was simply a routine checkup. Metzger told Plaintiff that she would be taken away from her parents if she told anyone what had happened.

13. That after the abortion, Metzger continued to abuse Plaintiff sexually at the Parish approximately twice per month until Plaintiffs family moved to another parish in 1968.

14. That the Diocese and Bishop knew that Metzger sexually abused children but did not report that abuse to proper law enforcement authorities, parents of children who attended the Parish or the children themselves.

15. That during the time period of Metzger's ongoing sexual abuse of Plaintiff, Plaintiffs brother was attending St. Mary's Seminary with the goal of becoming a Roman Catholic priest.

16. That Plaintiff did not report Metzger's sexual abuse to anyone because Metzger threatened to keep Plaintiff's family from receiving their instructions in the Roman Catholic Church.

17. That Plaintiff also did not tell anyone about the sexual abuse because Metzger threatened to use his influence to have Plaintiff's brother removed from the seminary.

18. That Plaintiff further did not report the sexual abuse because Plaintiff's mother suffered from depression that required her to be in-and-out of the hospital during the time period of the ongoing sexual abuse.

19. That Plaintiff did not have any contact with Metzger but for seeing him at her parents' funerals in 1981 and 1993. At each funeral, Plaintiff did not speak with Metzger or have any other contact with him.

20. That in July 1994, Plaintiff and other Parish members, including Metzger painted the Plaintiff's home.

21. That at all times relevant to this action Father William Grady was the Dean of the Deanery of the Parish.

22. That Plaintiff submitted to counseling with Father Grady, which continued through September 2002.

23. That Plaintiff, as a child, repressed her memory of the sexual abuse that she suffered at the hands of Metzger.

24. That Plaintiff has been in ongoing therapy with Dr. Tom Murray.

25. That through the course of her therapy with Dr. Murray and her counseling with Father Grady, Plaintiff began to recover memories of Metzger's sexual abuse of her, which recovery continued during the course of her therapy and counseling.

26. That in June 1999, Plaintiff met with Metzger's daughter Donna Young, Donna's husband Jack Young, Father Grady and Plaintiff's brother. At that meeting, Donna admitted that Metzger had sexually abused all three of his daughters when they were under eighteen years of age and stated that she loved her father nonetheless.

27. That in the Spring of 2000, Plaintiff saw Metzger at a Parish function. Metzger approached Plaintiff while she sat in a pew during Mass and said, "You won't even look at me? You won't speak in public?" Also in the Spring of 2000, Metzger cornered Plaintiff at a Parish function. Metzger continued to antagonize Plaintiff by parking his car in front of her home when he would visit the Parish.

28. That Plaintiff has incurred expenses for psychological care and treatment and will continue to do so.

COUNT I: BREACH OF CONTRACT

Comes now Plaintiff and for Count I of her Amended Complaint against Defendants named above, states as follows:

29. Plaintiff incorporates herein by reference the allegations set forth in paragraphs 1 through 28 of her Amended Complaint as though fully set forth below.

30. That Plaintiff contacted Dave Wilson, the Director of Social Concerns for the Parish with offices in Kokomo, Indiana, and arranged a meeting.

31. That a meeting was held in July 2000 between Monsignor Sell, Father Grady, Plaintiffs therapist Dr. Tom Murray, Plaintiff and Plaintiff's brother, Father Rick Tucker, who was a priest employed by the Diocese.

32. That at the meeting Monsignor Sell promised to ensure that Metzger would not have any contact whatsoever with children at the Parish and that the Parish would strip Metzger of his duties as a CCD and lector instructor and Extraordinary Eucharistic minister.

33. That Plaintiff, in turn, did not to pursue legal action against the Parish, the Diocese, the Bishop, the Monsignor, Metzger, and/or any other related entity.

34. That Monsignor Sell's promise to Plaintiff in mutual consideration for Plaintiff's not seeking legal recourse constituted a binding contract between the parties.

35. That Monsignor Sell instructed Father Dennis Goth to enforce the promise made to Plaintiff.

36. That Monsignor Sell told Plaintiff in July 2000 that "everything was taken care of."

37. That Father Goth, Monsignor Sell, the Bishop, Father Grady and every other representative of the Diocese and Parish took no action whatsoever to enforce its promise to Plaintiff.

38. That upon learning that the Diocese and Bishop broke its promise to her, Plaintiff suffered severe emotional distress.

39. That Plaintiff complied with all the terms of the agreement with Defendants.

40. That Defendants materially breached the terms of their agreement with Plaintiff, and Plaintiff has been damaged as a proximate result of that breach.

41. That as a proximate result of Defendants' refusal to carry out the terms of their agreement with Plaintiff, Plaintiff was denied the rights which the agreement intended to confer upon her and suffered the infliction of an unjust and unconscionable injury and loss.

WHEREFORE, Plaintiff requests judgment against Defendants and asks this Court to award (1) an amount reasonable to reimburse Plaintiff for her damages; (2) her attorney

fees; (3) costs of this action; and (4) for all other relief deemed just and proper in the premises.

COUNT II: PROMISSORY ESTOPPEL

Comes now Plaintiff and for Count II of her Amended Complaint against Defendants named above, states as follows:

42. Plaintiff incorporates herein by reference the allegations set forth in paragraphs 1 through 41 of her Amended Complaint as though fully set forth below.

43. That Defendants made a promise to Plaintiff.

44. That Defendants' promise to Plaintiff was made with the expectation that Plaintiff would rely on it.

45. That Plaintiff, in fact, relied on Defendants' promise to her and sought no legal action against them.

46. That Plaintiff's reliance on Defendants' promise was reasonable.

47. That Plaintiff's reliance, further, was of a definite and substantial nature.

48. That as a result of Plaintiff's reliance on Defendants' promise to her, her claims against them were not filed within the time period established by the statute of limitation.

49. That injustice could be avoided only by the enforcement of Defendants' promise to Plaintiff.

50. That Plaintiff's reliance to her detriment on Defendants' promise, which Defendants subsequently broke, proximately caused Plaintiff to suffer an unjust and unconscionable injury.

WHEREFORE, Plaintiff requests judgment against Defendants and asks this Court to award (1) an amount reasonable to reimburse Plaintiff for her damages; (2) her attorney fees; (3) costs of this action; and (4) for all other relief deemed just and proper in the premises.

COUNT III: NEGLIGENCE

Comes now Plaintiff and for Count III of her Amended Complaint against Defendants named above, states as follows:

51. Plaintiff incorporates herein by reference the allegations set forth in paragraphs 1 through 50 of her Amended Complaint as though fully set forth below.

52. That while employed at the Parish, Metzger engaged in a pattern of sexually abusing children under the age of eighteen, and that conduct was known by agents, servants and employees of the Diocese and Bishop, creating a duty pursuant to Indiana Code section 31-6-11-3 (replaced by Indiana Code section 31-33-5-1) to report Metzger's criminal child abuse to law enforcement authorities.

53. That at all relevant times the Diocese and Bishop's failure to report said child abuse to law enforcement authorities constituted an act of fraudulent concealment under Indiana Code section 34-11-5-1 and/or mislead and/or engaged in obstructive conduct thereby tolling the statute of limitations.

54. That as a direct and proximate result of Defendants' breach of duty, Plaintiff suffered damages.

55. That at all relevant times hereto the Diocese and Bishop acted negligently and/or grossly negligently by failing to take appropriate disciplinary action against Metzger, failing to

warn children, including Plaintiff, and their parents, and failing to report Metzger's criminal acts as required by state law.

56. That at all times relevant hereto the Diocese and Bishop engaged in negligence and/or gross negligence by hiring Metzger, failing to supervise a known and/or suspected child sexual predator and maintaining the employment of his services.

57. That as a direct and proximate result of the conduct of the Diocese, Bishop, Monsignor, and Father Goth as set forth herein, Plaintiff has suffered severe mental distress, physical pain and injury, mental pain and injury, trauma and suffering, including but not limited to lupus, clinical depression, post-traumatic stress disorder, the loss of her livelihood, and will continue to suffer serious mental distress, physical injury and pain, mental pain and lost livelihood for the remainder of her life.

WHEREFORE, Plaintiff Debra Tucker demands judgment against Defendants for compensatory and punitive damages, for her costs expended, for attorneys' fees, for a trial by jury of all issues so triable, and for all other relief deemed just and proper under the premises.

COUNT IV: NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

Comes now Plaintiff and for Count IV of her Amended Complaint against Defendants named above, states as follows:

58. Plaintiff incorporates herein by reference the allegations set forth in paragraphs 1 through 57 of her Amended Complaint as though fully set forth below.

59. That as a proximate result of the negligence of the Diocese, Bishop Higi, Monsignor Sell and Father Goth, Plaintiff sustained an emotional trauma that is serious in nature and of a kind and extent normally expected to occur in a reasonable person.

60. That Plaintiff was directly involved in the incidents that gave rise to her emotional trauma.

WHEREFORE, Plaintiff Debra Tucker demands judgment against Defendants for compensatory and punitive damages, for her costs expended, for attorneys' fees, for a trial by jury of all issues so triable, and for all other relief deemed just and proper under the premises.

COUNT V: INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

Comes now Plaintiff and for Count V of her Amended Complaint against Defendants named above, states as follows:

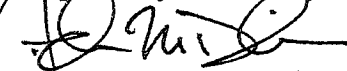
61. Plaintiff incorporates herein by reference the allegations set forth in paragraphs 1 through 60 of her Amended Complaint as though fully set forth below.

62. That the actions of the Diocese, Bishop, Monsignor, and Father Goth were taken intentionally and/or recklessly and constitute extreme and outrageous conduct.

63. That as a proximate result of Defendants' intentional, extreme and outrageous conduct, Plaintiff suffered severe emotional distress.

WHEREFORE, Plaintiff Debra Tucker demands judgment against Defendants for compensatory and punitive damages, for her costs expended, for attorneys fees, for a trial by jury of all issues so triable, and for all other relief deemed just and proper under the premises.

Respectfully submitted,



Adam M. Dulik
Attorney No. 21605-02
Attorney for Plaintiff Debra Tucker

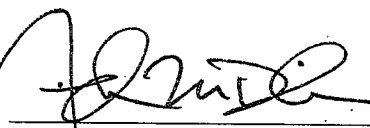
225 North Delaware Street
Indianapolis, Indiana 46204
Telephone: (317) 269-3422

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document has been duly served upon the following counsel of record by First Class United States Mail, postage prepaid on this 18th day of November, 2004:

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