

10-10-07 - R.I.Lawyer's Weekly: 1st Amendment won't bar priest molestation lawsuit
By Eric T. Berkman

'Church law' not subject of case against hierarchy

A plaintiff's priest-abuse lawsuit aimed at hierarchy members of the Roman Catholic Church was not barred by the free exercise and establishment clauses of the First Amendment, a Superior Court judge has ruled.

The defendant hierarchy members, accused of negligently enabling a priest to sexually molest the plaintiff as a minor, argued that the suit should be dismissed because it would require the judge to examine the validity of religious beliefs and interfere with clerical counseling in violation of the First Amendment.

But Judge Netti C. Vogel disagreed.

"[The plaintiff's] claims that the church hierarchy negligently hired, supervised and retained a pedophile priest are not deeply rooted in religious belief or practices," wrote Vogel, denying the defendants' motion to dismiss. "Contrary to [the defendants'] contentions, this case can be determined based upon neutral principles of law and will not involve inquiry into church law."

The 12-page decision is *Young v. Gelineau, et al.*, Lawyers Weekly No. 61-108-07.

Subscribers who have registered for our Internet Archives can find the full text of the ruling on our website, www.rilawyersweekly.com.

Timothy J. Conlon of Providence and Carl P. DeLuca of Warwick represented the plaintiff. William T. Murphy, Thomas R. Bender and James T. Murphy, all of Providence, were counsel for the defendants.

Alleged abuse The plaintiff, Christopher Young, filed suit against the Rev. John Petrocelli and various members of the hierarchy under the Roman Catholic bishop of Providence in 2003.

According to the plaintiff, Petrocelli had molested him as a minor, and members of the hierarchy had been negligent in failing to prevent the abuse.

Specifically, the plaintiff claimed that the hierarchy had allowed Petrocelli to have contact with him and other children despite being known to them as a child molester. The plaintiff also maintained that the hierarchy knew that many priests in the diocese had sexually abused children but that the church had a policy of hiding their identities in order to prevent bad publicity that might result in a decrease in revenues collected from parishioners.

According to the plaintiff, the church had a practice of sending offending priests away for church-run treatment and misrepresenting the reason for their absences. Upon their return, the plaintiff alleged, the hierarchy would either return them to their prior assignments or assign them to new parishes with a new pool of potential victims, making potential further abuse foreseeable to the hierarchy.

The defendants denied the allegations and filed a motion to dismiss based on lack of subject-matter jurisdiction.

According to the defendants, by hearing the plaintiff's claims, the state court would be forced to regulate the manner in which the bishop selects, assigns, supervises and disciplines clergy. This would constitute an unconstitutional entanglement in religious doctrine, religious practice and religious polity, in violation of the First Amendment's free establishment and establishment clauses, the defendants contended.

No constitutional barrier Vogel was unmoved by the defendants' argument that, in hearing this case, the court would have to determine the proper standard of care for a bishop or other member of a church hierarchy.

In making their arguments, the defendants had relied on the dissenting opinion from a 2005 Mississippi Supreme Court case, *Roman Catholic Diocese v. Morrison*, where a dissenting judge likened claims like the plaintiff's to claims of "clergy malpractice," involving ecclesiastical questions inappropriate for a secular court to address.

"The court rejects this reasoning and finds the reasoning set forth in the majority opinion in *Morrison*, and in cases from other jurisdictions, more persuasive," said Vogel.

With respect to the establishment clause, the *Morrison* majority found that neither sexual abuse of children nor providing relief to victims was remotely related to ecclesiastical rules or religion itself. Thus, if a court failed to provide relief, it would essentially be imposing less-stringent standards on religious institutions in terms of protecting children from abuse than on the rest of society, said Vogel, quoting *Morrison*.

Turning to the free exercise clause, Vogel referenced the U.S. Supreme Court's 1990 decision in *Employment Div. Dep't of Human Res. v. Smith*, where the court stated that the clause does not permit reliance on religious motivation as an excuse for violating generally applicable laws.

"The conduct sought to be regulated in [this] case ... is not rooted in religious belief," said the judge, denying the defendants' motion to dismiss. "As such, the Free Exercise Clause is not implicated and will not bar civil litigation of Young's claims."

CASE: *Young v. Gelineau, et al.*, Lawyers Weekly No. 61-108-07

COURT: Superior Court

ISSUE: Was a plaintiff's lawsuit accusing church hierarchy members of negligently enabling a Roman Catholic priest to sexually molest him as a minor barred by the free exercise and establishment clauses of the First Amendment?

DECISION: No, because the case could be determined based on neutral principles of law without delving into religious doctrine.

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