

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION**

JOHN DOE,)	
)	
Plaintiff,)	
v.)	No. 13 L 9901
)	
)	
The CATHOLIC BISHOP OF CHICAGO,)	
a corporation sole, CARDINAL)	
FRANCIS GEORGE, and)	
DANIEL J. MCCORMACK)	
)	
Defendants.)	

ORDER

This cause comes before the Court on Plaintiff's Motion for Leave to Amend Complaint to Reflect a Prayer for Relief for Punitive Damages in Accordance with 735 ILCS 5/2-604.1. Section 2-604.1 prohibits a Plaintiff in a personal injury action based on negligence from seeking punitive damages in its initial complaint. *Id.* Instead, a plaintiff is required to file a motion asking the Court for leave to file an amended complaint that contains a prayer for relief seeking punitive damages. After a hearing, the "court shall allow the motion to amend the complaint if the plaintiff establishes at such hearing a reasonable likelihood of provide facts at trial sufficient to support an award of punitive damages." *Id.* In this matter, the Court finds the plaintiff has sufficiently established a reasonable likelihood of providing facts at trial that would support an award of punitive damages. As such, Plaintiff's motion is granted.

Background

On September 4, 2013, Plaintiff Doe brought an action against the Catholic Bishop of Chicago, Cardinal Francis George, and Daniel McCormick seeking to recover for injuries arising from the alleged sexual abuse committed by Defendant Daniel McCormick while he was employed as a Pastor. Specifically, Doe alleges the Defendants were negligent in the hiring, supervision, and retention of Daniel McCormick as a Pastor.

McCormack attended Niles Seminary College from 1986 to 1990 and then completed his masters' level theological training at the Mundelein Seminary from 1990-1994. After finishing his masters in 1994, Cardinal Bernadin ordained McCormack to priesthood and assigned him to St. Alibe's Parish as an Assistant Pastor. Later, on September 1, 2000, Cardinal George promoted McCormack to Pastor of St. Agatha's parish. In addition to the church, St. Agatha's also has a school encompassing grades K-8 over two campuses.

On September 5, 2000, Plaintiff Doe registered at St. Agatha's school. According to Doe's allegations, McCormack sexually abused him two separate occasions shortly after he registered at St. Agatha's. On September 29, 2000, Doe transferred out of St. Agatha's.

Doe brings this present motion seeking leave, pursuant to section 2-604.1 of the Illinois Code of Civil Procedure, to file an amended complaint that includes a prayer for relief of punitive damages.

Analysis

Our Supreme Court has continued to state that punitive damages may be awarded for gross negligence showing a wanton disregard for the rights of others. *Barton v. Chicago & N.W. Transportation Co.*, 325 Ill. App. 3d 1005, 1031 (1st Dist. 2001). Whether punitive damages can be awarded in an action is a matter of law, but the question of whether Defendants' conduct is sufficiently willful or wanton to justify the imposition of punitive damages is generally a question for the jury to decide. *Id.* As a result, the trial court must first determine whether the plaintiff has shown misconduct aggravated enough to present the issue of punitive damages to the jury. *Lipke v. Celotex Corp.*, 153 Ill. App. 3d 358, 138 (4th Dist. 1987); 734 ILCS 5/2-604.1.

There Is A Reasonable Likelihood Plaintiff Will Prove Facts At Trial That Will Support An Award Of Punitive Damages

Willful and wanton acts show actual or deliberate intent to harm or, if not intentional, show an utter indifference to or conscious disregard for a person's own safety or property of others. *Oelze v. Score Sports Venture, LLC*, 401 Ill. App. 3d 110, 122 (1st Dist. 2010). "A nonintentional willful or wanton act is committed under circumstances showing a reckless disregard for the safety of others such as...when a

party (a) fails, after knowledge of an impending danger, to exercise ordinary care to prevent the danger or (b) fails to discover the danger through recklessness or carelessness when it could have been discovered by the exercise of ordinary care.” *Id.*

There are two considerations that Plaintiff has shown at this stage that, when viewed together, make it reasonably likely that plaintiff will prove facts at trial that support an award of punitive damages: 1. That the Defendants knew that there was a widespread problem of Church personnel committing sexual abuse in their official capacity; and 2. That the actions of Dan McCormack and their surrounding circumstances, when viewed in their entirety and with knowledge of a widespread problem within the Church, could present a danger to others in his position of authority and that the Defendants did not respond accordingly. The Court notes that it is not determining the truth of these facts or the credibility of the witnesses, but rather that there is a reasonable likelihood that Plaintiff will be able to prove them to a jury.

First, Defendants knew there was an issue of sexual abuse being committed by Catholic Church personnel. On October 25, 1991, Cardinal Bernadin ordered the creation of the Commission on Clerical Sexual Misconduct. After studying multiple instances of sexual abuse within the Catholic Church, the Commission recommended procedures and rules the Church should implement to address the issue. On September 21, 1992, the Cardinal accepted the Commission’s findings and promulgated the “Clerical Misconduct with Minors: Policies for Education, Prevention, Assistance to Victims, and Procedures for Determining of Fitness for Ministry.” A portion of these policies included rules for documenting seminarians as they progressed in their studies. Furthermore, St. Alibe’s Parish, the church McCormack was first assigned to, was recovering from its own sex abuse scandal at the time he was appointed. As such, it is clear the Defendants knew and recognized that there was a serious issue of clerical misconduct and recognized that they needed to take active measures to prevent dangerous individuals from being placed in a position where they would be a threat to the wellbeing of others.

Second, the actions of the Defendants, when taken in their entirety, could allow a jury to find that the defendants acted in a manner that disregarded the safety of others. Plaintiff has submitted evidence regarding the Defendants’ behavior that occurred prior to McCormack’s ordination at St. Agatha’s. Rather than recite the entirety of the

testimony presented by Doe in the briefs and attached exhibits, the Court will sum up the testimony. The testimony comes from multiple sources regarding multiple incidents that occurred before McCormack was placed at St. Agatha's where McCormack engaged in sexual acts after drinking and that there were communications with different officials regarding these incidents. Furthermore, based on this testimony presented by Doe, a jury could reasonably conclude that the sexual conduct was not consensual. Some of these incidents involved McCormack being in a position of authority and the consumption of alcohol prior to the sexual acts. In some instances, the other individual testified to passing out after consuming alcohol and waking up while McCormack was "fondling them". See *Plaintiff's Motion*, Ex. 3 – Discovery Deposition of [REDACTED] at 27-28, 38. Furthermore, according to the testimony, individuals who observed the incidents or were told about the incidents informed Church officials, such as Father Kincanas or Father Canary, about their concerns.

Defendant argues that the Court should deny Plaintiff's motion because there is no evidence the Defendants Cardinal George and The Catholic Bishop of Chicago had actual knowledge of a particular unfitness, to wit; that McCormack was at risk to commit an intentional tort. However, this standard does not apply to the present motion because the Plaintiff is seeking to add punitive damages for the alleged negligence in the hiring, supervision, and retention of McCormack. As such, the appropriate standard for punitive damages in this action is the "utter disregard" test for nonintentional willful and wanton acts. See *Oelze*, at 122.

Based on the foregoing considerations, Doe has presented sufficient facts that could allow a jury to reasonably find that the Defendants showed an utter indifference to the rights and safety of others in ordaining Defendant McCormack. The Defendants possessed first-hand knowledge that there was a widespread problem of Priests abusing parishioners in their official capacity within the Catholic Church. Despite this knowledge, the Defendants did not further investigate or document the instances involving McCormick, despite many individuals within the Catholic Church knowing about allegations of misconduct. A jury could find that the Defendants were aware that there was a problem of priests and pastors abusing individuals in their official capacity, and yet were reckless in investigating an individual who was training to become a priest

when questionable circumstances, some involving borderline-consensual sexual activity, kept occurring.

Defendants argue that each event raised by the Plaintiff does not, by itself, give notice to the Defendants that McCormack was a pedophile and additionally, that the Defendants did not have a duty to further investigate because the sexual acts were consensual. This argument is unpersuasive because it attempts to isolate each incident in a vacuum. Rather, Plaintiff's argument that the cumulative impact of all the events is more persuasive based on the underlying cause of action against Cardinal George and The Catholic Church. The Defendants, in assessing whether McCormack was fit to be ordained as a priest, would look at the entirety of his conduct. Plaintiff's argument is that the continual pattern of McCormack's behavior, the lack of investigation, and the failure of communication after each incident makes Defendants' actions rise to the level of wanton conduct.


Also, the Defendants argument that there was no duty to investigate because the acts were consensual is also not persuasive. The testimony of Father Hickey states that even if the sexual activity was perceived as consensual, it would have still been investigated. *Plaintiff's Motion*, Ex. 15, at 24:16-25:6, 27:3-27:21; 62:1-62:21; 63:17-64:14; 65:1-65:9. However, no such investigation was attempted or documented.

The Defendants next argue that there are problems with the deposition testimony Plaintiff relies on because the Plaintiff misrepresents what the testimony stands for, what witnesses actually said in context, and that the witnesses' testimony is purely subjective, rather than objective, in reporting what occurred. However, these are issues of fact and credibility that must be determined by the jury. *See Maple v. Gustafson*, 151 Ill. 2d 445, 452 (1992) ("Unquestionably, it is the province of the jury to resolve conflicts in the evidence, to pass upon the credibility of witnesses, and to decide what weight should be given to witnesses' testimony"). Issues as to the weight of those facts and the credibility of the witnesses providing those facts is for the jury to decide when determining whether to award Doe punitive damages. *See* 735 ILCS 5/2-604.

For the foregoing reasons, IT IS HEREBY ORDERED:

Plaintiff's Motion for Leave to File an Amended Complaint reflecting a prayer of relief for Punitive damages is granted. Plaintiff shall file said Amended Complaint *instanter* and the Defendant is granted 14 days to Answer. Trial date of 7/22/16 to stand.

JUDGE CLARE E. McWILLIAMS

FEB 09 2016 

Circuit Court - 1889

Honorable Clare E. McWilliams