

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

SHERYN SILVESTRE, f/k/a, SHARON SHELLEY, and
SHERYN SHELLEY,

Plaintiff,

v.

THE ROMAN CATHOLIC DIOCESE OF ROCKVILLE CENTRE,
NEW YORK; and ST. AGNES' ROMAN CATHOLIC CHURCH
AT ROCKVILLE CENTRE IN THE COUNTY OF NASSAU IN
THE STATE OF NEW YORK, d/b/a, ST. AGNES'
CATHEDRAL,

Defendants.

Index No.

COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Sheryn Silvestre, formerly known as Sharon Shelley and Sheryn Shelley, by her attorneys Simmons Hanly Conroy LLC and the Law Offices of Mitchell Garabedian, brings this action against The Roman Catholic Diocese of Rockville Centre, New York; and St. Agnes' Roman Catholic Church at Rockville Centre in the County of Nassau in the State of New York, doing business as St. Agnes' Cathedral, and alleges, on personal knowledge as to herself and on information and belief as to all other matters, as follows:

JURISDICTION AND VENUE

1. This Court has personal jurisdiction over the Defendants pursuant to CPLR 301 and 302, in that the Defendants reside in New York.

2. This Court has jurisdiction over this action because the amount of damages Plaintiff seeks exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

3. Venue for this action is proper in the County of Nassau pursuant to CPLR 503 in that one or more of the Defendants reside in this County and a substantial part of the events or omissions giving rise to the claims asserted herein occurred in this County.

PARTIES

4. Plaintiff Sheryn Silvestre, formerly known as Sharon Shelley and Sheryn Shelley ("Plaintiff") is an individual residing in Thurman, Warren County, New York.

5. Defendant The Roman Catholic Diocese of Rockville Centre, New York ("Diocese of Rockville Centre") is a religious corporation organized pursuant to the New York Religious Corporations Law, with its principal office at 50 North Park Avenue, Rockville Centre, Nassau County, New York. The Diocese of Rockville Centre is a Roman Catholic diocese. At all relevant times, the Diocese of Rockville Centre created, oversaw, supervised, managed, controlled, directed and operated parishes or churches of the Diocese of Rockville Centre, including during all relevant times, St. Agnes' Roman Catholic Church at Rockville Centre in the County of Nassau in the State of New York, doing business as St. Agnes' Cathedral.

6. Defendant St. Agnes' Roman Catholic Church at Rockville Centre in the County of Nassau in the State of New York, doing business as St. Agnes' Cathedral ("St. Agnes") is a Roman Catholic parish within and under the authority of the Diocese of Rockville Centre and is a religious corporation organized pursuant to the Religious Corporations Law with its principal office at 29 Quealy Place, Rockville Centre, Nassau County, New York. At all relevant times, the Diocese of Rockville Centre created, oversaw, supervised, managed, controlled, directed and operated St. Agnes.

FACTS COMMON TO ALL CLAIMS

7. Plaintiff and her family were parishioners of and attended St. Agnes when Plaintiff was a minor child. Plaintiff also attended the parochial elementary and high school affiliated with St. Agnes. When Plaintiff was a minor child, Plaintiff's mother worked as a secretary at St. Agnes.

8. During the times relevant to the allegations set forth herein, Father Robert L. Brown ("Father Brown") was assigned by Defendant Diocese of Rockville Centre to be a priest at St. Agnes, where Plaintiff's family were parishioners. Father Brown died in

1994.

9. Through his positions at, within, or for the Defendants, Father Brown was put in direct contact with members of the Plaintiff's family, including Plaintiff, a minor parishioner of the Diocese of Rockville Centre.

10. During the times relevant to the allegations set forth herein, Monsignor John R. McGann, later known as Bishop John R. McGann ("Bishop McGann") was assigned by Defendant Diocese of Rockville Centre to be Secretary to the Bishop, with his residence at St. Agnes, where Plaintiff's family were parishioners. Bishop McGann died in 2002.

11. Through his positions at, within, or for the Defendants, Bishop McGann was put in direct contact with members of the Plaintiff's family, including Plaintiff, a minor parishioner of the Diocese of Rockville Centre.

12. During the times relevant to the allegations set forth herein, Monsignor Edward L. Melton ("Monsignor Melton") was assigned by Defendant Diocese of Rockville Centre to be the Administrator of St. Agnes, where Plaintiff's family were parishioners. Monsignor Melton died in 1994.

13. Through his positions at, within, or for the Defendants, Monsignor Melton was put in direct contact with members of the Plaintiff's family, including Plaintiff, a minor parishioner of the Diocese of Rockville Centre.

Abuse Committed by Father Brown

14. From approximately 1961 when Plaintiff was approximately five years of age, to approximately 1968 when Plaintiff was approximately twelve years of age, Father Brown would encounter Plaintiff in the St. Agnes rectory, the St. Agnes sacristy, and in Plaintiff's home in Rockville Centre, Nassau County, New York.

15. Father Brown used such encounters, gained through his position at St. Agnes which granted him access to Plaintiff when Plaintiff was approximately five to twelve years of age, to sexually assault, sexually abuse, and have sexual contact with the

Plaintiff on at least twelve occasions in violation of the laws of the State of New York.

16. On at least one occasion in approximately 1967 when Plaintiff was approximately eleven years of age, Plaintiff attended an event at the St. Agnes rectory, where Plaintiff encountered Father Brown, Monsignor Melton, and Bishop McGann. At this event, a number of priests were seated around a table, including, but not limited to, Father Brown, Monsignor Melton, and Bishop McGann. At some point during this event, Plaintiff was seated on Father Brown's lap. Father Brown sexually assaulted, sexually abused, and/or had sexual contact with Plaintiff while Plaintiff was seated on Father Brown's lap, while other priests, including, but not limited to, Monsignor Melton and Bishop McGann, were present.

Abuse Committed by Bishop McGann

17. From approximately 1966 when Plaintiff was approximately ten years of age, to approximately 1971 when Plaintiff was approximately fifteen years of age, Bishop McGann would encounter Plaintiff in the St. Agnes rectory, in the St. Agnes basement, and in Plaintiff's homes in Rockville Centre, Nassau County, New York and Hampton Bays, Suffolk County, New York.

18. Bishop McGann used such encounters, gained through his position at St. Agnes which granted him access to Plaintiff when Plaintiff was approximately ten to fifteen years of age, to sexually assault, sexually abuse, and have sexual contact with the Plaintiff on at least fifteen occasions in violation of the laws of the State of New York.

Abuse Committed by Monsignor Melton

19. From approximately 1967 when Plaintiff was approximately eleven years of age, to approximately 1971 when Plaintiff was approximately fifteen years of age, Monsignor Melton would encounter Plaintiff in the St. Agnes rectory, and in Plaintiff's homes in Rockville Centre, Nassau County, New York and Hampton Bays, Suffolk County, New York.

20. Monsignor Melton used such encounters, gained through his position at

St. Agnes which granted him access to Plaintiff when Plaintiff was approximately eleven to fifteen years of age, to sexually assault, sexually abuse, and have sexual contact with the Plaintiff on at least six occasions in violation of the laws of the State of New York.

21. On the occasion in approximately 1967, described in paragraph 16 above, when Plaintiff was approximately eleven years of age, Plaintiff attended an event at the St. Agnes rectory, where Plaintiff encountered Monsignor Melton, Father Brown, and Bishop McGann. At this event, a number of priests were seated around a table, including, but not limited to, Monsignor Melton, Father Brown, and Bishop McGann. At some point during this event, Plaintiff was seated on Monsignor Melton's lap. Monsignor Melton sexually assaulted, sexually abused, and/or had sexual contact with Plaintiff while Plaintiff was seated on Monsignor Melton's lap, while other priests, including, but not limited to, Bishop McGann and Father Brown, were present.

Defendants' Responsibility for the Abuse Committed by Father Brown, Bishop McGann, and Monsignor Melton

22. At all times material hereto, Father Brown, Bishop McGann, and Monsignor Melton were under the management, supervision, employ, direction and/or control of the Defendants.

23. Through their positions at, within, or for the Defendants, Father Brown, Bishop McGann, and Monsignor Melton were put in direct contact with Plaintiff.

24. Father Brown, Bishop McGann, and Monsignor Melton used their positions at, within, or for the Defendants and the implicit representations made by the Defendants about their characters that accompanied those positions, to gain Plaintiff's trust and confidence and to create opportunities to be alone with, and to sexually touch, Plaintiff.

25. Defendants had the duty to reasonably manage, supervise, control and/or direct priests who served or resided at St. Agnes, and specifically, had a duty not to aid pedophiles such as Father Brown, Bishop McGann, and Monsignor Melton by assigning,

maintaining, and/or appointing them to positions with access to minors.

26. Defendants knew and/or reasonably should have known, and/or knowingly condoned, and/or covered up, the inappropriate and unlawful sexual activities of Father Brown, Bishop McGann, and Monsignor Melton, who sexually abused Plaintiff.

27. Defendant Diocese of Rockville Centre had a duty to the Plaintiff to properly supervise Diocese of Rockville Centre priests to ensure that priests did not use their positions with the Diocese of Rockville Centre as a tool for grooming and assaulting vulnerable children. Defendant Diocese of Rockville Centre knew or should have known that Father Brown, Bishop McGann, and Monsignor Melton used their positions with the Diocese of Rockville Centre to sexually abuse minor children, including the Plaintiff.

Consequences of the Abuse

28. Plaintiff suffered personal physical and psychological injuries and damages as a result of Father Brown's, Bishop McGann's, and Monsignor Melton's actions, as well as other damages related thereto, as a result of the childhood sexual abuse Plaintiff sustained.

29. As a direct result of the Defendants' conduct described herein, Plaintiff suffered and will continue to suffer great pain of mind and body, severe and permanent emotional distress, and physical manifestations of emotional distress. Plaintiff was prevented from obtaining the full enjoyment of life; has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling; and has incurred and will continue to incur loss of income and/or loss of earning capacity. As a victim of Father Brown's, Bishop McGann's, and Monsignor Melton's sexual abuse, Plaintiff is unable at this time to fully describe all of the details of that abuse and the extent of the harm she suffered as a result.

CAUSES OF ACTION**FIRST CAUSE OF ACTION****Negligent Hiring/Retention/Supervision/Direction**

30. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 29 as if fully set forth herein.

31. Defendants owed a duty of care to all minor persons, including Plaintiff, who were likely to come within the influence or supervision of Father Brown, Bishop McGann, and Monsignor Melton in their roles as priest, counselor, trustee, director, officer, employee, agent, servant and/or volunteer, to insure that Father Brown, Bishop McGann, and Monsignor Melton did not use their assigned positions to injure minors by sexual assault, sexual abuse, or sexual contact in violation of the laws of the State of New York.

32. Defendant Diocese of Rockville Centre at all relevant times held the parishes of the Diocese of Rockville Centre out to be safe places for minors to attend, and its priests as individuals to whom it was safe to entrust the care of minor children. Defendant Diocese of Rockville Centre entered into an express and/or implied duty to safely treat Plaintiff and assumed the duty to protect and care for her.

33. Father Brown, Bishop McGann, and Monsignor Melton sexually assaulted, sexually abused, and/or had sexual contact with Plaintiff when Plaintiff was a minor in New York.

34. Defendants negligently hired, retained, directed, and supervised Father Brown, Bishop McGann, and Monsignor Melton, though they knew or should have known that Father Brown, Bishop McGann, and Monsignor Melton posed a threat of sexual abuse to minors.

35. Defendants knew or should have known of Father Brown's, Bishop McGann's, and Monsignor Melton's propensities for the conduct which caused Plaintiff's injuries prior to, or at the time of, the injuries' occurrence.

36. Defendants were negligent in failing to properly supervise Father Brown, Bishop McGann, and Monsignor Melton.

37. The sexual abuse of children by adults, including priests, is a foreseeable result of negligence.

38. At all times material hereto, Defendants' actions were willful, wanton, malicious, reckless, negligent and/or outrageous in their disregard for the rights and safety of Plaintiff.

39. As a direct and proximate result, Plaintiff has suffered and will continue to suffer the injuries described herein.

40. By reason of the foregoing, the Defendants are liable to the Plaintiff, jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

SECOND CAUSE OF ACTION

Negligence/Gross Negligence

41. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 29 as if fully set forth herein.

42. Defendants knew, or were negligent in not knowing, that Father Brown, Bishop McGann, and Monsignor Melton posed a threat of sexual abuse to children.

43. The acts of Father Brown, Bishop McGann, and Monsignor Melton described hereinabove were undertaken, and/or enabled by, and/or during the course, and/or within the scope of their respective employment, appointment, assignment, and/or agency with Defendants.

44. Defendants owed Plaintiff, a minor at the relevant times of abuse, a duty to protect her from Father Brown's, Bishop McGann's, and Monsignor Melton's sexual deviancy and the consequential damages, both prior to and/or subsequent to Father Brown's, Bishop McGann's, and Monsignor Melton's misconduct.

45. Defendants' willful, wanton, grossly negligent and/or negligent act(s) of

commission and/or omission, resulted directly and/or proximately in the damage set forth herein at length.

46. Defendants:

- a. gave improper or ambiguous orders or failed to make proper regulations, and/or employed improper persons or instrumentalities in work involving risk of harm to others;
- b. failed adequately to supervise the activities of Father Brown, Bishop McGann, and Monsignor Melton;
- c. permitted, and/or intentionally failed and/or neglected to prevent, negligent and/or grossly negligent conduct and/or allowed other tortious conduct by persons, whether or not their servants and/or agents and/or employees, upon premises or with instrumentalities under their control; and
- d. allowed the acts of omission and/or commission and/or any or all of the allegations set forth in this Complaint to occur.

47. At all times material hereto, with regard to the allegations contained herein, Father Brown, Bishop McGann, and Monsignor Melton were under the supervision, employ, direction and/or control of Defendants.

48. At all times material hereto, Defendants' actions were willful, wanton, malicious, reckless, negligent and outrageous in their disregard for the rights and safety of Plaintiff, which amounted to conduct equivalent to criminality.

49. As a direct and/or indirect result of said conduct, Plaintiff has suffered and will continue to suffer the injuries and damages described herein.

50. By reason of the foregoing, the Defendants are liable to the Plaintiff, jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

THIRD CAUSE OF ACTION
Breach of Non-Delegable Duty

51. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 29 as if fully set forth herein.

52. Plaintiff, when she was a minor, was placed in the care and supervision of the Defendants for the purposes of, *inter alia*, providing Plaintiff with a safe environment in which to participate in religious, educational, youth and recreational activities. There existed a non-delegable duty of trust between Plaintiff and the Defendants.

53. Plaintiff was a vulnerable child when placed within the care of the Defendants.

54. As a consequence, Defendants were in the best position to prevent Plaintiff's abuse, to learn of Father Brown's, Bishop McGann's, and Monsignor Melton's repeated sexual abuse of Plaintiff, and to stop it.

55. By virtue of the fact that Plaintiff was sexually abused as a minor child entrusted to the care of the Defendants, Defendants breached their non-delegable duty to Plaintiff.

56. At all times material hereto Father Brown, Bishop McGann, and Monsignor Melton were under the supervision, employ, direction and/or control of the Defendants.

57. As a direct result of said conduct, Plaintiff has suffered and will continue to suffer the injuries and damages described herein.

58. By reason of the foregoing, the Defendants are liable to the Plaintiff, jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

FOURTH CAUSE OF ACTION
Breach of Fiduciary Duty

59. Plaintiff repeats and re-alleges each and every allegation set forth in

paragraphs 1 through 29 as if fully set forth herein.

60. There exists a fiduciary relationship of trust, confidence, and reliance between Plaintiff and Defendants. This relationship is based on the entrustment of the Plaintiff while she was a minor child to the care and supervision of the agent or servant of the Defendants. This entrustment of the Plaintiff to the care and supervision of the Defendants, while the Plaintiff was a minor child, required the Defendants to assume a fiduciary relationship and to act in the best interests of the Plaintiff, as well as to protect her while she was a minor and vulnerable child.

61. Pursuant to their fiduciary relationship, Defendants were entrusted with the well-being, care, and safety of Plaintiff.

62. Pursuant to their fiduciary relationship, Defendants assumed a duty to act in the best interests of Plaintiff.

63. Defendants breached their fiduciary duty to Plaintiff.

64. At all times material hereto, the actions and/or inactions of Defendants were willful, wanton, malicious, reckless, negligent and outrageous in their disregard for the rights and safety of Plaintiff.

65. As a direct result of said conduct, Plaintiff has suffered and will continue to suffer the injuries and damages described herein.

66. By reason of the foregoing, the Defendants are liable to the Plaintiff, jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

FIFTH CAUSE OF ACTION

Negligent Infliction of Emotional Distress

67. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 29 as if fully set forth herein.

68. As described above, the actions of Defendants, their agents, servants, and/or employees were conducted in a negligent and/or grossly negligent manner.

69. Defendants' actions endangered Plaintiff's safety and caused her to fear for her own safety.

70. As a direct and proximate result of Defendants' actions, which included but were not limited to negligent and/or grossly negligent conduct, Plaintiff suffered and will continue to suffer the severe injuries and damages described herein, including but not limited to, mental and emotional distress.

71. By reason of the foregoing, the Defendants are liable to the Plaintiff, jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

SIXTH CAUSE OF ACTION

Breach of Duty *in Loco Parentis*

72. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 29 as if fully set forth herein.

73. While she was a minor, Plaintiff was entrusted by her parents to the control of the Defendants, as well as directly to Father Brown, Bishop McGann, and Monsignor Melton, agents or servants of Defendants, for the purposes of *inter alia*, providing Plaintiff with appropriate guidance and an opportunity to enjoy educational and youth activities under responsible adult supervision. These Defendants owe — and owed — a duty to children entrusted to them to act *in loco parentis* and to prevent foreseeable injuries.

74. Defendants breached their duty to act *in loco parentis*.

75. At all times material hereto, Defendants' actions were willful, wanton, malicious, reckless, negligent, grossly negligent and/or outrageous in their disregard for the rights and safety of Plaintiff.

76. As a direct result of Defendants' conduct, Plaintiff has suffered and will continue to suffer the injuries and damages described herein.

77. By reason of the foregoing, the Defendants are liable to the Plaintiff, jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and

for punitive damages, together with interest and costs.

WHEREFORE Plaintiff, demands judgment against the Defendants on each cause of action as follows:

- A. Awarding compensatory damages in an amount to be proved at trial, but in any event in an amount that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction;
- B. Awarding punitive damages to the extent permitted by law;
- C. Awarding prejudgment interest to the extent permitted by law;
- D. Awarding costs and fees of this action, including attorneys' fees, to the extent permitted by law; and
- E. Awarding such other and further relief as to this Court may seem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Dated: October 22, 2019
New York, New York

Respectfully Submitted,

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