IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

JOHN ND DOE, *Plaintiff/Appellant*,

v.

THE ROMAN CATHOLIC CHURCH OF THE DIOCESE OF PHOENIX, et al., *Defendants/Appellees*.

No. 1 CA-CV 22-0463
FILED 8-8-2023

Appeal from the Superior Court in Maricopa County
No. CV2020-016768
The Honorable Joan M. Sinclair, Judge

REVERSED AND REMANDED

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MEMORANDUM DECISION

Vice Chief Judge Randall M. Howe delivered the decision of the court, in which Presiding Judge Samuel A. Thumma and Judge Kent E. Cattani joined.

H O W E, Judge:

¶1 Plaintiff John ND Doe challenges the trial court's dismissal of his first amended complaint ("FAC") against defendants The Roman Catholic Church of the Diocese of Phoenix ("Diocese"), The Society of the Divine Savior USA Province ("Salvatorians"), and St. Mark Roman Catholic Parish Phoenix (collectively "Defendants") on his claims of negligence, negligent training and supervision, and negligent retention of Henn, a priest who allegedly sexually abused him as a minor in the late 1970s.

¶2 Ordinarily, personal injury claims, including those involving sexual contact with or conduct against a minor, have a two-year statute of limitations. A.R.S. § 12–542(1). Claims for "[a]n injury that a minor suffers as a result of another person's negligent or intentional act if that act is a cause of sexual conduct or sexual contact committed against the minor" must be filed within 12 years of the minor turning 18 years old. A.R.S. § 12–514(A)(1). In 2019, the Arizona legislature passed "window"

legislation that revived otherwise time-barred claims under this statute if filed before December 31, 2020. 2019 Ariz. Sess. Laws, ch. 259, § 3(B) (1st Reg. Sess. 2019) (H.B. 2466). To file a claim against non-perpetrators under this legislation, however, a plaintiff must allege that the non-perpetrators "knew or otherwise had actual notice of any misconduct that creates an unreasonable risk of sexual conduct or sexual contact with a minor by an employee, a volunteer, a representative or an agent." Chapter 259 § 3(C).

¶3 The trial court erred in granting Defendants' motions to dismiss because Doe sufficiently pleaded the allegations in his FAC to timely bring it under the revival window of A.R.S. § 12–514 and to survive Defendants' motions to dismiss. For the following reasons, we reverse and remand.

FACTS AND PROCEDURAL HISTORY

¶4 In December 2020, Doe sued the Defendants for negligence, negligent training and supervision, and negligent retention of Henn, based on Henn's misconduct in 1978, 1979, and 1980. Doe alleged that when he was 11, 12, and 13 years old and participating in youth activities at St. Mark Parish—under the Diocese's control and authority—Henn, one of the priests, sexually abused him. He alleged that Henn worked at St. Mark from 1978 through 1982 and was criminally indicted in 2003 for molesting children at St. Mark. Doe also alleged that the Defendants knew of clergy misconduct against minors at the time Henn sexually abused Doe and transferred perpetrators to other assignments to cover up the abuse. He also alleged that the Defendants placed Henn in positions of trust where he had access to children and "failed to warn [Doe and Doe's] family of the risk that Fr. Henn posed and the risks of child sexual abuse in Catholic institutions."

¶5 The Defendants moved to dismiss the complaint. They argued that Doe's complaint did not allege sufficient facts demonstrating that Henn committed prior misconduct to create an unreasonable risk to a child. They also argued that the complaint did not allege sufficient facts demonstrating that they had actual knowledge that Henn presented a risk of harm such that his claims would be timely under A.R.S. § 12–514. They also argued that even if A.R.S. § 12–514 did not bar his claim, the complaint failed to state any claim upon which relief could be granted because the allegations were entirely conclusory. *See* Ariz. R. Civ. P. 12(b)(6).

¶6 Doe opposed the motion, arguing that he sufficiently pleaded his claims and, in the alternative, requested leave to amend his complaint

to cure any deficiencies. Before the court ruled on Defendants' motions or Doe's request, he filed his FAC to include allegations that Defendants had specific knowledge or notice about Henn. Doe alleged that the Defendants "maintained a culture of secrecy and concealment in all matters involving the sexual misdeeds of priests and clerics." Doe alleged that the Defendants employed practices to conceal the abuse, including employing poorly trained investigators, using euphemisms to describe misbehavior, recommending treatment for perpetrators, and transferring perpetrators to new assignments. Doe alleged facts about other priests and bishops under the Diocese who were accused of sexual abuse. He further alleged that "Defendants knew or otherwise had actual notice of any misconduct by its bishops, priests, brothers, clerics, volunteers, agents, and or employees working in and for Defendants, including Fr. [] Henn, SDS, that created an unreasonable risk of sexual conduct or sexual contact with a minor by a bishop, priest, brother, cleric, volunteer, agent, representative and or employee of Defendants." He also alleged that, before "the sexual abuse of [Doe], Defendants knew, had actual notice, attempted to cover-up or should have known that Fr. Henn was not fit to work with children."

¶7 The Salvatorians and the Diocese separately moved to dismiss the FAC under Arizona Rule of Civil Procedure ("Rule") 12(b)(6) for the same reasons they had presented in their initial motion to dismiss. They argued that the FAC "did not identify any prior misconduct" from Henn. Doe responded that he was not required to "plead or prove that Defendants had knowledge or actual notice that Fr. Henn specifically was a child molester." Rather, he argued, "knowledge of any misconduct that creates an unreasonable risk of sexual conduct or sexual contact with a minor is sufficient."

¶8 The court granted Defendants' motions to dismiss the complaint and denied Doe's motion for leave to amend. The court determined that Doe did not meet his burden to allege sufficient facts to show that the legislation reviving his otherwise time-barred claims under A.R.S. § 12–514 applied. The court found that the legislation's plain language "requires that the priest previously engaged in misconduct and that the non-perpetrator defendant had knowledge or actual notice of that previous misconduct." Doe did not, however, present facts to "support[] the idea that the Defendants knew or had actual notice that Fr. Henn posed an unreasonable risk to children before 1978 to 1980." Doe made "considerable allegations in the complaint that relate[d] to other victims, other wrongdoers, or other entities, that occurred after the alleged incidents here." Given that Doe had filed the FAC, the court also denied any request to further amend his pleadings. Doe moved for a new trial and attached

exhibits as evidence, including deposition testimony from a bishop and a vicar provincial. The court denied the motion. After entry of a final judgment, Doe timely appealed.

DISCUSSION

¶9 Doe argues that the trial court erred in dismissing his FAC because the well-pled facts alleged sufficiently established that the Defendants knew and had actual notice that the Defendants' employees—including Henn—created an unreasonable risk of sexual conduct or sexual contact with Doe before the 1978–1980 timeframe.[1] He also argues that the Defendants are vicariously liable for Henn's misconduct against Doe, and that the window legislation permits vicarious liability claims against non-perpetrators.

¶10 Contrary to Doe's argument, vicarious liability is a claim separate from his negligence claims in the FAC. *See e.g.*, *Kopp v. Physician Grp. of Ariz.*, 244 Ariz. 439, 441 ¶¶ 10–12 (2018) ("Plaintiffs' claims for negligent credentialing, hiring, and supervision are based on the Hospital's independent negligence," releasing "the Hospital only from claims based on vicarious liability."). Although he argued at oral argument before this court that he alleged vicarious liability throughout his complaint, the record does not support that assertion. Doe's argument is brought for the first time on appeal and is therefore waived. *See Odom v. Farmers Ins. Co. of Ariz.*, 216 Ariz. 530, 535 ¶ 18 (App. 2007) ("Generally, arguments raised for the first time on appeal are untimely and deemed waived."). Even if his argument were not waived, however, it fails because Doe's allegations of sexual abuse were not within the course and scope of Henn's employment under the Defendants. *See Doe v. Roman Cath. Church*, No. 1 CA-CV 22-0143, 2023 WL 4241197, at *7 ¶¶ 36–37 (Ariz. App. June 29, 2023). Nevertheless, because Doe also challenges the court's ruling about the insufficiency of his FAC, we will review it.

¶11 "We review de novo an order granting a motion to dismiss for failure to state a claim." *Abbott v. Banner Health Network*, 239 Ariz. 409, 412 ¶ 7 (2016). In reviewing a Rule 12(b)(6) motion to dismiss, we take as

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[1] The parties have conflicting arguments whether the window legislation requires pleading knowledge or actual notice of the specific perpetrator's propensity for misconduct or whether any of the non-perpetrator's employee's propensity for misconduct sufficed. We need not reach that argument because we find that Doe sufficiently pleaded his claims.

true the well-pleaded facts alleged in the FAC and "indulge all reasonable inferences therefrom." *Cullen v. Auto-Owners Ins. Co.*, 218 Ariz. 417, 419 ¶ 7 (2008).

¶12 To satisfy Arizona's liberal notice pleading standard, a pleading must include "a short and plain statement of the claim," Rule 8(a)(2); *Doe v. Roman Cath. Church of Dioceses of Phx.*, 254 Ariz. 522, 530–31 ¶ 31 (App. 2023), but must not include mere conclusory statements, *Cullen*, 218 Ariz. at 419 ¶ 7. The standard is intended "to avoid technicalities" while "giv[ing] the opposing party notice of the basis for the claim and of its general nature." *Verduzco v. Am. Valet*, 240 Ariz. 221, 225 ¶ 11 (App. 2016) (quoting Daniel J. McAuliffe & Shirley J. McAuliffe, Ariz. Civil Rules Handbook at 144 (2015 ed.)). The complaint need not "allege the evidentiary details of plaintiff's claim for relief." *Id.* at 225 ¶ 9. "The test is whether enough is stated to entitle the pleader to relief on some theory of law susceptible of proof under the allegations made." *Doe*, 254 Ariz. at 531 ¶ 31.

¶13 The court erred in dismissing the FAC because the well-pleaded factual allegations provided the Defendants sufficient notice of the basis for the claim and its general nature. Doe alleged that sexual misconduct was widespread in the Roman Catholic Church and that the Defendants "maintain[ed] a culture of secrecy and concealment in all matters involving the sexual misdeeds of priests and clerics." He alleged that "Defendants knew or otherwise had actual notice of any misconduct by its bishops, priests, brothers, clerics, volunteers, agents, and or employees working in and for Defendants, including Fr. [] Henn, SDS, that created an unreasonable risk of sexual conduct or sexual contact with a minor." Doe alleged that other priests and bishops under the Diocese were accused of sexual abuse and that the Defendants employed practices to conceal the abuse. He added that before "the sexual abuse of [Doe], Defendants knew, had actual notice, attempted to cover-up or should have known that Fr. Henn was not fit to work with children," placed him in positions where he had access to children, and "failed to warn [Doe and Doe's] family of the risk that Fr. Henn posed."

¶14 Under Arizona's liberal notice pleading standard, these alleged facts, when assumed true, support a finding that Doe sufficiently pleaded his claims. *See Doe*, 254 Ariz. at 531 ¶ 32 (holding that plaintiff sufficiently pleaded her claims in alleging the non-perpetrator "knew . . . that [the perpetrators] sexually abused young Catholic children" and "allowed priests under their supervision and control to have contact with minors after becoming aware of allegations of sexual misconduct"); *see also*

Doe v. Byzantine Cath. Diocese of Parma, No. CV-21-01424-PHX-JJT, 2022 WL 1664282, *4 (D. Ariz. May 25, 2022) (denying motion to dismiss after considering the plaintiff's "allegations regarding widespread sexual misconduct and a culture of secrecy in the Catholic church, the amount of time that has passed since the alleged sexual abuse of Plaintiff, and the fact that Plaintiff was a child at the time of the alleged misconduct"). The court erred in dismissing the FAC. The case may move forward to discovery to determine the nature and timing of the Defendants' knowledge or notice of Henn's misconduct.

CONCLUSION

¶15 For the foregoing reasons, we reverse and remand. Doe requests his costs incurred on appeal in accordance with A.R.S. §§ 12–331, 12–341, and 12–342. Because Doe is the successful party on appeal, we award him his reasonable costs upon compliance with Arizona Rule of Civil Appellate Procedure 21.

AMY M. WOOD • Clerk of the Court
FILED: AA