

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

CHRISTOPHER NAPLES, )  
 )  
 Plaintiff, )  
 )  
 v. ) C.A. No. 09C-04-048 JTV  
 )  
 THE DIOCESE OF TRENTON, a )  
 foreign corporation; ST. )  
 THERESA’S PARISH, a foreign )  
 corporation; and Rev. TERENCE )  
 O. MCALINDEN, individually and )  
 in his official capacity, )  
 )  
 Defendants. )

On Defendants’ Motion to Dismiss for  
Lack of Personal Jurisdiction. **GRANTED.**

**ORDER**

Robert Jacobs, Esquire, Thomas. C. Crumplar, Esquire, and Jordan Ponzio, Esquire,  
Jacobs & Crumplar, P.A., Wilmington, Delaware, Attorneys for Plaintiff.

Thomas S. Neuberger, Esquire, Stephen J. Neuberger, Esquire, and Raeann Warner,  
Esquire, The Neuberger Firm, P.A., Wilmington, Delaware, Attorneys for Plaintiff.

Steven P. Goodell, Esquire, Herbert, Van Ness, Cayci & Goodell, PC, Princeton,  
New Jersey, Attorney for Defendants The Diocese of Trenton and St. Theresa parish

Anthony G. Flynn, Young Conaway Stargatt & Taylor, LLP, Wilmington, Delaware,  
Attorney for Defendants The Diocese of Trenton and St. Theresa Parish.

**SCOTT, J.**

## **Introduction**

Christopher Naples (“Naples” or “Plaintiff”) brought suit against The Diocese of Trenton (“Diocese”), St. Theresa’s Parish (“St. Theresa”), and Rev. Terence McAlinden (“Rev. McAlinden”) seeking monetary damages for personal injuries from childhood sexual abuse by Rev. McAlinden.<sup>1</sup> The Diocese and St. Theresa’s now seeks dismissal of the Complaint pursuant to Superior Court Civil Rule 12(b)(2) for lack of personal jurisdiction.

## **Background**

Naples filed the current action in April of 2009, after the enactment of the Delaware Child Victim’s Act.<sup>2</sup> Naples alleges that Rev. McAlinden abused him at least 200 times between the ages of 13 and 25, beginning in 1985 and continuing until 1996.<sup>3</sup> As the Director of Youth Ministry for the Diocese, Rev. McAlinden ran and directed all of the Catholic Youth Organization (“CYO”) programs in the Diocese.<sup>4</sup> Naples was active in CYO events and met Rev. McAlinden at a CYO leadership conference held in New Jersey in 1985.<sup>5</sup> The Complaint alleges that most of the acts of sexual abuse occurred in New Jersey, but several occurred in Delaware.<sup>6</sup> In 1987, Naples asserts that Rev. McAlinden took Naples on a ferry to Rehoboth, Delaware

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<sup>1</sup> Compl. ¶ 1.

<sup>2</sup> 10 *Del. C.* § 8145.

<sup>3</sup> Compl. ¶ 1.

<sup>4</sup> *Id.* at ¶ 46.

<sup>5</sup> *Id.* at ¶¶ 43, 47.

<sup>6</sup> *Id.* at ¶ 1.

for an overnight trip and sexually abused him in the hotel room.<sup>7</sup> Again in 1987 or 1988, Rev. McAlinden allegedly took Plaintiff on another overnight trip to Delaware and again sexually abused him in the hotel room.<sup>8</sup> Plaintiff asks the Court to infer that Rev. McAlinden took Plaintiff on trips to Delaware as part of his duties as Director of the Youth Ministry Services through Plaintiff's participation in the CYO.<sup>9</sup>

The Complaint states that Naples is not a resident of Delaware.<sup>10</sup> The Diocese is a New Jersey corporation doing business in the State of New Jersey.<sup>11</sup> St. Theresa's is a foreign corporation doing business in the State of New Jersey.<sup>12</sup>

Naples alleges an agency relationship existed between Rev. McAlinden and Defendants. Naples asserts that Rev. McAlinden was a Roman Catholic priest employed by the Diocese as an active priest from 1967 until 2007.<sup>13</sup> In his capacity as a priest, Rev. McAlinden was employed to operate in homes, hospitals, parishes, schools, and churches on behalf of the Diocese and St. Theresa's.<sup>14</sup> Naples asserts that Rev. McAlinden had the power to act on Defendants behalf and any acts done outside the scope of consent were ratified, affirmed, adopted, acquiesced in, and not

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<sup>7</sup> *Id.* at ¶¶ 56-57.

<sup>8</sup> *Id.* at ¶¶ 58-59.

<sup>9</sup> Pl.'s Reply Br. at 6.

<sup>10</sup> Compl. ¶ 2. The Complaint does not indicate the specific state where Naples resides.

<sup>11</sup> *Id.* at ¶ 3.

<sup>12</sup> *Id.* at ¶ 4.

<sup>13</sup> *Id.* at ¶ 5.

<sup>14</sup> *Id.* at ¶ 82.

repudiated by the Diocese and St. Theresa's and that such acts were enabled by the agency relationship.<sup>15</sup>

Naples further contends that the Diocese and St. Theresa's had actual and constructive knowledge of Rev. McAlinden's acts of sexual abuse and that efforts were made to cover up Rev. McAlinden's actions.<sup>16</sup> By failing to protect and supervise children in the Defendants' care, Defendants breached its duty it owed to Plaintiff. Naples now claims numerous damages as a result of this breach, including, but not limited to, physical problems, failure to trust anyone and to form relationships, shame, anger, guilt, anxiety, panic, depression, substance abuse, failure to maintain employment, PTSD, sexual dysfunction, lack of self confidence, and economic losses.

Defendants argue that no allegations were made that Rev. McAlinden ever took Naples to Delaware for trips sponsored by the Diocese or St. Theresa. Furthermore, Rev. McAlinden was not acting as the agent of the Diocese or of St. Theresa when he allegedly committed the acts of sexual abuse and, therefore, any acts of abuse were committed outside the scope of employment and cannot be a basis to assert jurisdiction over Defendants.

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<sup>15</sup> *Id.* at ¶¶ 83, 84.

<sup>16</sup> *Id.* at ¶¶ 22, 32.

## **Standard of Review**

In a motion to dismiss for lack of *in personam* jurisdiction, the plaintiff bears the burden of making a prima facie case to establish the basis for jurisdiction.<sup>17</sup> This burden is satisfied if Plaintiff shows that Delaware's long-arm statute confers jurisdiction.<sup>18</sup> The court first determines if jurisdiction is appropriate under the long-arm statute and, if it is, the court then determines if asserting such jurisdiction would offend the Due Process Clause.<sup>19</sup> In making its determination, the court must view all factual disputes in a light most favorable to the plaintiff.<sup>20</sup>

## **Discussion**

Analyzing personal jurisdiction over a defendant is a two-step process.<sup>21</sup> First, the court must determine whether the defendant's actions fall within any provisions of the long arm-statute and, second, the court must determine whether exercising jurisdiction is constitutionally permissible. Delaware's long-arm statute, 10 *Del. C.* § 3104, allows a court to exercise personal jurisdiction over any nonresident, or a personal representative, who in person or through an agent:

- (1) Transacts any business or performs any character of work or service in the State;
- (2) Contracts to supply services or things in this State;
- (3) Causes tortious injury in the State by an act or omission in this State;

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<sup>17</sup> *Greenly v. Davis*, 486 A.2d 669, 670 (Del. 1984).

<sup>18</sup> *Boone v. Oy partek Ab*, 724 A.2d 1150, 1154 (Del. Super. 1997).

<sup>19</sup> *Palmer v. Moffat*, 2001 WL 1221749, at \*1 (Del. Super. Oct. 10, 2001).

<sup>20</sup> *Id.*

<sup>21</sup> *Wright v. Am. Home Prods. Corp.*, 768 A.2d 518, 527 (Del. Super. 2000).

- (4) Causes tortious injury in the State or outside of the State by an act or omission outside the State if the person regularly does or solicits business, engages in any other persistent course of conduct in the State or derives substantial revenue from services, or things used or consumed in the State;
- (5) Has an interest in, uses or possesses real property in the State; or
- (6) Contracts to insure or act as surety for, or on, any person, property, risk, contract, obligation or agreement located, executed or to be performed within the State at the time the contract is made, unless the parties otherwise provide in writing.<sup>22</sup>

Subsections (c)(1), (c)(2), (c)(3), (c)(5), and (c)(6) of the statute require a showing of specific jurisdiction, where the cause of action arises from acts or omissions taking place in Delaware.<sup>23</sup> Subsection (c)(4), however, requires a showing of general jurisdiction, where Plaintiff's claims are unconnected with the nonresidents' activities.<sup>24</sup> General jurisdiction requires more than minimum contacts with the forum state, a showing that defendant or its agent is "generally present" in the forum state is sufficient.<sup>25</sup>

If Defendants are found to be within the reach of the long-arm statute, the court must determine whether exercising personal jurisdiction comports with due process. The Due Process clause of the Fourteenth Amendment requires that a nonresident defendant have such minimum contacts with the forum state so that "maintenance of

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<sup>22</sup> 10 *Del. C.* § 3104(c).

<sup>23</sup> *Boone*, 724 A.2d at 1155.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

the suit does not offend traditional notions of fair play and substantial justice.”<sup>26</sup>

Defendants’ conduct and connection with the forum state must be such that

Defendants should “reasonably anticipate being haled into court there.”<sup>27</sup>

In the current case, Plaintiff alleges jurisdiction in Delaware is proper based on the alleged agency relationship that existed between Defendants and Rev.

McAlinden. Specifically, Plaintiff alleges that the Diocese and St. Theresa’s have acted within the forum state via its agent, Rev. McAlinden, for purposes of the long arm statute.<sup>28</sup> Defendants contend that Rev. McAlinden was not acting as the agent of the Diocese or of St. Theresa’s when he allegedly committed the acts of abuse.

Pursuant to the agency theory of personal jurisdiction, “only acts of the agent that are directed by the principal may serve as a basis to assert jurisdiction over the principal.”<sup>29</sup> In applying the long-arm statute, the court “may consider the acts of an agent to the extent that these actions were directed and controlled by the principal.”<sup>30</sup>

Therefore, the acts must have occurred within the scope of Rev. McAlinden’s employment, and the Diocese and St. Theresa’s must have directed the acts.<sup>31</sup>

In *Elliot v. The Marist Brothers of the Schools, Inc.*, the District Court of Delaware granted Defendants’ Motion to Dismiss finding that Plaintiff failed to assert facts to support a finding that the Archdiocese of New York and the Church of the

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<sup>26</sup> *Int’l Shoe Co. v. State of Washington*, 326 U.S. 310, 316 (1945).

<sup>27</sup> *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980).

<sup>28</sup> Pl.’s Reply Br. at 5-6.

<sup>29</sup> *Computer People, Inc. v. Best Intern. Group, Inc.*, 1999 WL 288119, \*8 (Del. Ch. Apr. 27, 1999).

<sup>30</sup> *Applied Biosystems, Inc. v. Cruachem, Ltd.*, 772 F.Supp. 1458, 1465-66 (D. Del. 1991) (citing *Sears, Roebuck and Co., v. Sears PLC*, 752 F. Supp. 1223, 1225 (D. Del. 1990)).

<sup>31</sup> *Elliot v. The Marist Bros. of the Schools, Inc.*, C.A. No. 09-611, 10 (D. Del. Dec. 21, 2009).

Nativity of our Blessed Lady (“moving defendants”) knew of, directed, or authorized the travel to and/or through Delaware or knew of, directed, or authorized the alleged sexual acts that were committed in Delaware by Brother Damien Galligan.<sup>32</sup>

Therefore, the Court did not find the long-arm statute reached the moving defendants. The Court also noted that Plaintiff failed to assert facts that the moving defendants purposefully directed activities toward Delaware or otherwise engaged in conduct such that they would reasonably have anticipated being haled into court in Delaware and, therefore, held that exercising jurisdiction over Defendants would not comport with due process.

The District Court of Delaware reached a similar holding in *Voe #2 v. The Archdiocese of Milwaukee*.<sup>33</sup> In *Voe #2*, Plaintiff asserted an agency relationship existed between moving defendants and Brother David Nickerson (“Nickerson”) and, based on this relationship, moving defendants should be held accountable for Nickerson’s alleged tortious conduct in Delaware.<sup>34</sup> The Court held that Plaintiff failed to assert facts to establish this relationship because he was not employed by moving defendants.<sup>35</sup> The Court continued its rational and held that even if an employment relationship existed, Plaintiff failed to show how Nickerson’s conduct related to his employment and failed to assert specific facts that moving defendants

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<sup>32</sup> Plaintiff alleges that Brother Damien Galligan sexually abused him in Delaware when they took overnight trips. *Id.* at 3.

<sup>33</sup> C.A. No. 09-543 (D. Del. Mar. 31, 2010).

<sup>34</sup> Nickerson allegedly sexually abused Plaintiff between 1974 and 1982 each time he visited a mutual friend in Delaware. *Id.* at 3.

<sup>35</sup> *Id.* at 8.

knew of, directed or authorized the tortious conduct that allegedly was committed by Nickerson in Delaware.<sup>36</sup> Furthermore, the Court held that exercising personal jurisdiction over moving defendants did not comport with due process because no facts suggested that moving defendants purposefully directed activities toward Delaware or engaged in conduct such that they would reasonably have anticipated being haled into court in Delaware.<sup>37</sup>

The facts of *Elliot* and *Voe #2* are similar to the current case and this Court follows the reasoning of those prior Opinions in granting the Motion before the Court. To satisfy Delaware's long-arm statute, pursuant to 10 *Del. C.* § 3104(c)(3), Naples must establish that an agency relationship existed between Rev. McAlinden and the Diocese and St. Theresa's in order to hold Defendants accountable for the alleged tortious conduct that occurred in Delaware. Based on the record before the Court, Plaintiff has failed to do so. Plaintiff alleges that the Diocese employed Rev. McAlinden during the relevant time period, however, employment alone does not establish an agency relationship for personal jurisdiction purposes. As noted above, Delaware law requires that the act must have occurred within the scope of the agent's employment and the principal must have directed the act. Naples fails to assert facts that demonstrate the Diocese and St. Theresa's knew of, directed, or authorized the travel to and/or through Delaware. Furthermore, Naples fails to allege any facts that the Diocese and St. Theresa's knew of, directed, or authorized the tortious conduct

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<sup>36</sup> *Id.* at 9.

<sup>37</sup> *Id.* at 9-10.

that allegedly was committed in Delaware. Therefore, this Court finds that the long-arm statute does not reach defendants.

Even if an agency relationship did exist, the Court finds that exercising personal jurisdiction over Defendants would not comport with due process. Plaintiff has failed to assert facts supporting a finding that Defendants purposefully directed activities toward Delaware or engaged in conduct such that they would reasonably have anticipated being haled into court in Delaware. As noted in *Elliot*, the acts of the Diocese, not the acts of the priest, are considered when deciding if the Diocese purposefully availed itself of the protections of the forum state's laws or if it could reasonably anticipate being haled into court in the forum state.<sup>38</sup> In the current case, of the numerous alleged acts of abuse, the Complaint only alleges two occurred in Delaware. Additionally, the Diocese and St. Theresa's are incorporated in New Jersey and do business in New Jersey. There is no indication that Defendants could have reasonably anticipated being haled into court in Delaware or that suit in Delaware would be fair and reasonable. Accordingly, the Court does not find that due process is satisfied. Therefore, Defendants' Motion is granted.

**IT IS SO ORDERED.**

/S/ CALVIN L. SCOTT  
Judge Calvin L. Scott, Jr.

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<sup>38</sup> *Elliot*, C.A. 09-611, at 11 (citing *Doe v. Roman Catholic Diocese of Boise, Inc.*, 918 P.2d 17, 23 (N.M. App. 1996)).