IN THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY

WINIFRED SAMMONS,)
Plaintiff,)
V.) C.A. No. 09C-06-312 CLS
PENINSULA-DELAWARE CONFERENCE OF THE UNITED METHODIST CHURCH, a foreign corporation, et al.,))))
Defendants.	
Date Submitted:	November 21, 2012
Date Decided:	February 20, 2013

On Plaintiff's Motion to Compel Financial Records of Defendant, Edward Kang. **DENIED.**

ORDER

Thomas C. Crumplar, Esq., Raeann Warner, Esq., Two East Seventh Street, Suite 400, Wilmington, DE 19801. Attorneys for Plaintiff.

Stephen P. Casarino, Esq., 405 North King Street, Renaissance Suite 300, P.O. Box 1276, Wilmington, DE 19899. Attorney for Defendant Kang.

Introduction

Before this Court is Plaintiff's Motion to Compel Financial Records of Defendant, Edward Kang. For the reasons that follow, the Plaintiff's motion is **DENIED.**

Facts

Winifred Sammons ("Plaintiff") filed a complaint based on the Delaware Child Victim's Act of 2007¹ and Delaware common law, alleging, *inter alia*, that she was sexually abused by Defendant Edwin Kang ("Defendant") between the ages of 16-18 years old. Mr. Kang is a minister formerly employed by the other defendants in this case.

Defendant, born in Korea in 1934, had his first assignment after seminary school at the Asbury Methodist Church in Minquadale, Delaware in July 1967, where he served as Assistant Pastor. Plaintiff states that she was 16 years old when she became active in the Minquadale youth group. Plaintiff and Defendant entered into a sexual relationship late September 1967. Plaintiff stated in her deposition that she thought that she and Defendant were in love and that Defendant took her out on dates.² She further stated that she willingly had sex with Defendant and that there was

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¹ 10 Del. C. §8145.

² Sammons Dep., at 13, 14, 18 105, 116.

no force or threat associated with the sexual relationship.³ Although the parties dispute the number of occasions they had sex and plaintiff's age at the time they had sex, they both admit that they had at least one sexual encounter that resulted in Plaintiff's pregnancy. Plaintiff asserts that Defendant refused to answer questions relating to his financial status and seeks to compel Defendant to answer such questions.

Parties' Contentions

Plaintiff moved to compel discovery of Defendant's financial records, arguing that Plaintiff has met her *prima facie* claim for punitive damages. Defendant argues that Plaintiff is not entitled to punitive damages because there is no factual basis to support a claim of any ill-will, malice or intention to cause injury.

Discussion

Superior Court Rule 26(b)(1) permits discovery "regarding any matter, not privileged, *which is relevant* to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party..." Plaintiff asserts a civil cause of action under 10 *Del. C.* § 8145, which allows a "civil cause of action for sexual abuse of a minor . . . based upon sexual acts that would

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³ Sammons Dep., at 124.

⁴ Del. Super. Ct. Civ. R. 26(b)(1) (emphasis added).

constitute a criminal offense under the Delaware code" at the time of the sexual encounter.⁵ The criminal offense giving rise to the Plaintiff's civil claim is 11 *Del C*. §821, which imposes a fine or imprisonment on anyone who "takes, receives, employs, harbors or uses . . . a male or female under the age of 18 for sexual intercourse." This is a strict liability statute requiring only that the accused to have sexual intercourse with someone under the age of 18 and that the accused did, in fact, have sexual intercourse with the minor.⁷

Plaintiff need not make a *prima facie* showing sufficient to support an award for punitive damages, but she must lay a sufficient factual foundation that shows that it is "reasonably likely that a triable issue as to defendant's liability for punitive damages exists" before financial information is discoverable. "Punitive damages are awarded only where there is an element of ill-will, malice or intention to cause injury to the plaintiff." In order to form a sufficient basis for punitive damages, defendant's conduct, although unintentional, must have been "reckless or motivated by malice or

⁵ 10 Del. C. § 8145; Sheehan v. Oblates of St. Francis de Sales, 15 A.3d 1247, 1258 (Del. 2011).

⁶ 11 *Del C.1953*, § 821.

⁷ State v. Powell, 76 A. 601, 602 (Ct. Gen. Sess. 1905).

⁸ Bryan v. Thos. Best & Sons, Inc., 453 A.2d 107, 108 (Del. Super. 1982).

⁹ Bryan, 453 A.2d at107-08; Walbert v. C.F. Schwartz Motor Co., 1987 WL 9609 (Del. Super.).

fraud."¹⁰ Errors of judgment which amount to negligence are a not sufficient basis to award punitive damages.¹¹

The discovery of financial records for punitive damages is not appropriate at this stage, as there is no factual basis that defendant acted recklessly or was motivated by ill-will or malice. The harboring statute asserted by Plaintiff does not have a state of mind requirement; it only requires that the accused have sex with a minor under the age of eighteen. There are insufficient facts to show that he acted with malice, ill-will or recklessly. Plaintiff's deposition testimony reveals that she did not believe there were any threats or force associated with the relationship or any other facts that tend to prove recklessness, malice or fraud. Defendant's conduct, in having intercourse with Plaintiff without verifying her age may be characterized as an error in judgment, giving rise to negligence, but this is insufficient to support a showing that it is reasonably likely that Plaintiff would have sufficient evidence to support an award for punitive damages. As such, Plaintiff's motion to compel discovery of Defendant's financial records is **DENIED**.

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¹⁰ Jardel Co. v. Hughes, 523 A.2d 518, 529 (Del. 1987).

 $^{^{11}}$ Id.

Conclusion

Based on the forgoing, Plaintiff's motion to compel Defendant's financial records is **DENIED**.

IT IS SO ORDERED.

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