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.	)	

ORDER

AND NOW, TO WIT, this **29th** day of **April, 2010**, **IT IS HEREBY ORDERED** as follows:

Background

Plaintiff Christopher Naples ("Naples") filed the current action in April of 2009 after the enactment of the Delaware Child Victim's Act.[1] Naples brought suit against The Diocese of Trenton ("Diocese"), St. Theresa

[1] 10 *Del. C.* § 8145.

Parish ("St. Theresa"), and Terence O. McAlinden ("Rev. McAlinden"),[2] seeking monetary damages for personal injuries arising from childhood sexual abuse by Rev. McAlinden.[3] Naples alleges Rev. McAlinden abused him at least 200 times between the ages of 13 and 25, beginning in 1985 and continuing until 1996.[4] Most of the acts of sexual abuse occurred in New Jersey, but Naples alleges several acts of sexual abuse occurred in Delaware.[5]

Naples is not a resident of Delaware. Rev. McAlinden is a resident of New Jersey. The Diocese is a foreign corporation authorized to do business in New Jersey as a private religious organization that operates a church.[6] Rev. McAlinden was employed by the Diocese as an active priest from 1967 until 2007.[7] Beginning in approximately 1985 and continuing until 1988, Rev. McAlinden worked as the Director of Youth Ministry Services for the Diocese and was in charge of running and directing the CYO programs.[8] The Diocese was allegedly responsible for the management and control of

[2] McAlinden is being sued as an individual and in his official capacity. *Id.* at ¶ 5.
[3] Compl. ¶ 1.
[4] *Id.*
[5] *Id.*
[6] *Id.* at ¶ 4.
[7] *Id.* Rev. McAlinden was then transferred to inactive ministry, but continued to receive monetary compensation from the Diocese. *Id.*
[8] *Id.* at. ¶¶, 24,46.

all of its parishes, including St. Theresa's, and for employing McAlinden to perform priestly functions at St. Theresa's.[9]

On June 15, 2009, in response to the Complaint filed against him, Rev. McAlinden filed a Motion to Dismiss pursuant to the doctrine of *forum non conveniens*. Rev. McAlinden argues that New Jersey is a more appropriate forum and, therefore, the case pending before this Court should be dismissed. Specifically, Rev. McAlinden argues that New Jersey is a more proper forum because: (1) the Diocese and St. Theresa's originate out of New Jersey; (2) 98% of the alleged incidents of abuse took place in New Jersey; (3) the majority of the potential witnesses are located in New Jersey; (4) the majority of evidence which exists or may be offered at trial originates out of New Jersey; and (5) it would be an overwhelming hardship for the Defendant at age 68 to defend this matter in Delaware.

Naples opposes the Motion arguing that Rev. McAlinden has failed to satisfy his burden of showing that litigating in Delaware would impose and "overwhelming hardship." Oral arguments on this matter were heard before this Court on March 3, 2010. Based on the record before the Court, the Court is not convinced that Defendant's burden is satisfied and, therefore, the Motion is denied.

[9] *Id.* at ¶¶ 7-8

Discussion

The standard governing a motion to dismiss on the grounds of *forum non conveniens* is well-settled in Delaware law.[10] The burden rests on Defendant to show that litigating in Delaware would impose an "overwhelming hardship."[11] This creates a heavy burden for Defendant and only in a rare case will a complaint be dismissed on the grounds of *forum non conveniens.*[12] Plaintiffs seeking to litigate in Delaware are afforded the presumption that its forum is proper and even more weight is given to Plaintiff's choice of forum where, as here, there are no other previously filed actions pending.[13] Furthermore, whether there is an alternative forum that would be a more appropriate or convenient location for the litigation is not part of the analysis.[14]

The Court's analysis to determine whether the defendant has met his burden relies on the consideration of the six factors set forth by the Delaware

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[10] *Chrysler First Bus. Credit Corp. v. 1500 Locust Ltd. P'ship*, 669 A.2d 104, 107 (Del. 1995) (noting that the factors considered in deciding whether the doctrine of *forum non conveniens* should be applied have been reaffirmed and consistently applied over the past 30 years).
[11] *Mar-Land Indus. Contractors v. Caribbean Petroleum Ref., L.P.*, 777 A.2d 774, 778 (Del. 2001).
[12] *Id.*
[13] *Id.*
[14] *Ison v. E.I. Dupont de Nemours & Co.*, 729 A.2d 832, 835 (Del. 1999) (holding that "a trial court, in applying the doctrine of *forum non conveniens*, may not rest its analysis on the conclusion that 'there is a better forum.'").

Supreme Court in *General Foods Corp. v. Cryo-Maid, Inc.*[15] ("*Cryo-Maid* factors"). These factors are:

> (1) The relative ease of access to proof;
>
> (2) The availability of compulsory process for witnesses;
>
> (3) The possibility of the view of the premises, if appropriate;
>
> (4) Whether the controversy is dependent upon application of Delaware law which the courts of this State more properly should decide than those of another jurisdiction;
>
> (5) The pendency or nonpendency of a similar action or actions in another jurisdiction; and
>
> (6) All other practical problems that would make trial of the case easy, expeditious, and inexpensive.[16]

Defendant must show that one ore more of these factors imposes an "overwhelming hardship" on the defendant.[17] It is not enough that the *Cryo-Maid* factors favor Defendant, instead, the trial court must weigh the factors in the particular case to determine whether any or all of them "truly cause both inconvenience and hardship."[18]

In the current case, McAlinden continuously argues that New Jersey is the more convenient and appropriate forum for litigating the current case, however, the Delaware Supreme Court has explicitly held in *Ison* that this

[15] 198 A.2d 681, 684 (Del. 1964).
[16] *Warburg, Pincus Ventures, L.P. v. Schrapper*, 774 A.2d 264, 267 (Del. 2001).
[17] *Ison*, 729 A.2d at 838.
[18] *Id.*

Court may not rest its analysis on the finding of a more appropriate forum. Accordingly, that argument is irrelevant to the current issue before the Court.

After reviewing the record before the Court and hearing oral arguments from both parties, the Court does not find that dismissal is warranted on *forum non conveniens* grounds. Defendant has failed to show, based on the *Cryo-Maid* factors, that requiring litigation to proceed in Delaware will result in overwhelming hardship.

The first *Cryo-Maid* factor, dealing with the relative ease of proof, does not support dismissal. Although some potential witnesses and evidence may be located in New Jersey, McAlinden fails to show how the distance between New Jersey and Delaware creates an undue hardship. Witnesses can be subpoenaed to attend Court in Delaware and evidence can be transported to this State. Additionally, at least some witnesses and evidence are already located in Delaware based on the allegation that several acts of abuse occurred locally.

The second *Cryo-Maid* factor is closely related to the first. The Court acknowledges that some potential witnesses may be required to travel from out of state if the suit proceeds in Delaware, however, Defendant has failed

to prove that an overwhelming hardship exists if the case remains in Delaware.

The third factor, the possibility of a view of the premises, does not weigh in favor of dismissal. Although most alleged acts of abuse occurred in New Jersey, an actual viewing of where these acts occurred is unnecessary. Pictures and diagrams of the different locations of the alleged abuse are likely sufficient.

The fourth *Cryo-Maid* factor concerns the application of Delaware law. McAlinden argues that the application of Delaware law is limited because 98% of the alleged incidents of abuse took place in New Jersey. However, the Delaware Supreme Court has noted that it is not unusual for courts to "wrestle with open questions of the law of sister states or foreign countries" and has repeatedly held that "the application of foreign law is not sufficient reason to warrant dismissal under the doctrine of *forum non conveniens*."[19] Therefore, this argument does not persuade the court that this case warrants dismissal.

The fifth factor concerns the pendency or nonpendency of a similar action in another jurisdiction. It is the Court's understanding that no other action is pending between the same parties in another jurisdiction. In the

[19] *Taylor v. LSI Logic Corp.*, 689 A.2d 1196, 1200 (Del. 1997).

absence of a prior pending action in another jurisdiction, this fact weighs heavily against dismissal.[20]

Lastly, the sixth *Cryo-Maid* factor considers all other practical problems that would make the trial easy, expeditious, and inexpensive. The only additional argument McAlinden makes in support of his Motion is that he would suffer overwhelming hardship due to his age and financial status if he has to defend in Delaware. However, McAlinden fails to provide any support for this argument, besides making this general claim. Although proceeding in Delaware may be more inconvenient for McAlinden, the Court must find an overwhelming hardship exists to warrant dismissal of the case.

The Delaware Supreme Court in *Kolber v. Holyoke Shares, Inc.*[21] reversed the decision to grant dismissal pursuant to *forum non conveniens* despite a showing that all parties, all potential witnesses, and all events relating to the allegations of the complaint were located in New York City.[22] Although none of the *Cryo-Maid* factors favored plaintiff's choice of forum, the Court did not find that the combination and weight of the factors balanced overwhelmingly in favor of the defendant to justify dismissal.[23]

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[20] *In re Asbestos Litig.*, 929 A.2d 373, 387 (Del. Super. Ct. 1990).
[21] 213 A.2d 444 (Del. 1965).
[22] *Id.* at 445.
[23] *Id.* at 447.

Unlike in *Kolber*, at least some of the *Cryo-Maid* factors favor Plaintiff's choice of forum in the current case, which makes an even stronger finding in favor of Plaintiff to deny this Motion.

Because McAlinden has failed to show that the *Cryo-Maid* factors establish that he would suffer overwhelming hardship or inconvenience if forced to litigate in Delaware, Plaintiff's choice of forum must be honored and the Motion denied.

IT IS SO ORDERED.

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