

IN THE
Supreme Court of the State of Delaware

CHRISTOPHER NAPLES,
Plaintiff-Below, Appellant,

v.

THE DIOCESE OF TRENTON, A NEW JERSEY CORPORATION,
AND ST. THERESA PARISH, A FOREIGN CORPORATION,
Defendants-Below, Appellees

No. 311, 2013

APPEAL FROM THE SUPERIOR COURT OF THE STATE OF DELAWARE, KENT COUNTY,
C.A. No. 09C-04-048 JTV

**ANSWERING BRIEF OF APPELLEES
THE DIOCESE OF TRENTON AND ST. THERESA PARISH**

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NATURE OF THE PROCEEDINGS

This matter arises under the Delaware Child Victims Act of 2007.¹ Appellant Christopher Naples (“Naples” or “Appellant”) filed suit in the Delaware Superior Court on April 29, 2009 against Father Terence McAlinden (“McAlinden”), The Diocese of Trenton (the “Diocese”), and St. Theresa Parish (the “Parish”) (together with the Diocese, the “Diocesan Defendants” or “Appellees”) alleging that McAlinden sexually abused Naples between 1985 and 1996, while Naples ranged from 13 to 25 years of age. Naples’ suit alleged claims for Assault and Battery, Negligence, Gross Negligence, Breach of Fiduciary Duty, Fraud, Breach of Contract / Breach of Implied Covenant of Good Faith and Fair Dealing, Conspiracy, and Aiding and Abetting against all defendants, stating that while “[m]ost [instances of abuse] occurred in New Jersey, [] several occurred at the Delaware beaches.” With his complaint, Naples served 28 interrogatories, 149 requests for production, and a request for admission, all directed to the merits of Naples’ claims, none related to jurisdiction.

On June 15, 2009, the Diocese and the Parish filed a Motion to Dismiss the complaint pursuant to Superior Court Civil Rule 12(b)(2) for lack of personal jurisdiction, and a motion to stay discovery pending resolution of the motion to dismiss. Naples responded by filing a motion to suspend briefing and to

¹ 10 *Del. C.* § 8145.

commence jurisdictional discovery. The Diocese and the Parish opposed Naples' motion to suspend briefing, and at a hearing on August 18, 2009 the Superior Court denied the motion and set a briefing schedule for all defendants' motions to dismiss.² After briefing and oral argument on March 5, 2010, the Superior Court granted the Diocesan Defendants' motion to dismiss for lack of personal jurisdiction, issuing its April 29, 2010 Order from which Naples now appeals.

Naples pursued his lawsuit against McAlinden. Naples served a subpoena on the Diocese for records and testimony related to McAlinden, and on April 29, 2011 the Diocese produced the non-privileged documents from the files maintained by the Diocese pertaining to McAlinden. The document production totaled 667 pages, and Naples agreed that, in exchange for the voluntary production of documents, Naples would not seek the deposition of any representative from the Diocese or the Parish. In the discovery period prior to Naples' scheduled trial against McAlinden, Naples took the depositions of Naples and McAlinden. On May 23, 2013, Naples and McAlinden settled prior to trial, and a final judgment was entered against McAlinden on the Superior Court docket.

On June 14, 2013, Naples commenced this appeal.

² Separately from the Diocese and the Parish, McAlinden filed a motion to dismiss Naples' complaint, which was briefed and argued separately though simultaneously with the motion to dismiss filed by the Diocese and the Parish. The Superior Court denied McAlinden's motion to dismiss on April 29, 2010. The Superior Court's order denying McAlinden's motion to dismiss is not at issue in this appeal.

SUMMARY OF THE ARGUMENT

1. The Superior Court properly held that Appellant's claims against the Diocese of Trenton and St. Theresa Parish must be dismissed because the Diocese and the Parish are not subject to the jurisdiction of the Delaware courts. Naples failed to allege facts sufficient to meet the requirements of either specific or general jurisdiction under the Delaware long-arm statute, or to satisfy Due Process. The Diocese and the Parish are separate religious corporations existing under the laws of the State of New Jersey, whose principal places of business are in New Jersey. Appellant points to no specific facts, but rather only to conclusory allegations, in support of his "agency" and "conspiracy" theories of personal jurisdiction, to attempt to link the Diocesan Defendants to McAlinden's tortious acts in Delaware. Delaware law requires Appellant to have alleged facts sufficient to support a finding that the Diocese and the Parish purposefully directed activities toward Delaware. Appellant has failed to meet this burden.
2. The Superior Court properly denied Appellant's request for jurisdictional discovery, because Appellant failed to make even a prima facie showing that the Diocese or the Parish are subject to the jurisdiction of the Delaware courts. Furthermore, at the hearing to consider Appellant's request for jurisdictional discovery, Appellant's counsel agreed to rest on the allegations

as pled in Appellant's complaint and agreed that the Superior Court should proceed with briefing on the Diocesan Defendants' motion to dismiss, rather than proceed with discovery.

STATEMENT OF FACTS

The Diocese of Trenton is a non-profit religious corporation incorporated and doing business in the State of New Jersey. St. Theresa's Catholic Church, commonly known as St. Theresa Parish, is a New Jersey religious corporation operating a church located and doing business in Little Egg Harbor, New Jersey. Neither the Diocese nor the Parish own any property in Delaware nor conduct any business in Delaware that would subject them to the jurisdiction of the Delaware courts. Neither the Diocese nor the Parish assigned McAlinden to work or conduct any activity in Delaware.

Terence O. McAlinden was ordained a priest by the Diocese of Trenton in 1967 and served until 2007, when he was removed from ministry. In 1971 McAlinden was assigned to the Catholic Youth Ministry, where he administered programs for the Diocese. In 1988 McAlinden was assigned to work at St. Theresa Parish. McAlinden was not assigned at any time to minister or otherwise serve as a priest in Delaware.

Christopher Naples, a resident of New Jersey, alleges that in his youth, he was active in diocesan youth programs in New Jersey, where he met McAlinden. Naples alleges that their relationship continued when McAlinden left his position with the Catholic Youth Ministry and began his assignment at the Parish, in New Jersey.

In 2007, Naples approached the police in New Jersey claiming that he was abused by McAlinden between 1985 and 1992. Bishop John Smith removed McAlinden from ministry in 2007 upon learning of Naples' report to the police; the Diocese was not aware of McAlinden's abuse of Naples until then.

Presumably, Naples did not file suit in New Jersey because he believed his claims to be time-barred by the applicable New Jersey statute of limitations.³ Instead Naples commenced this action on April 29, 2009 pursuant to the Delaware Child Victims Act of 2007, 10 *Del. C.* § 8145, which provided a two-year window of time between July 2007 and July 2009 to file previously time-barred claims of childhood sexual abuse which occurred in Delaware. The enactment of the Child Victims Act did not, however, alter Delaware's long-arm statute.

In his Complaint Appellant alleges that most of the acts of abuse occurred in New Jersey, though two instances allegedly occurred in Delaware. Plaintiff notes that in 1987/1988, McAlinden took him on an overnight trip to Rehoboth, Delaware, where McAlinden abused him. There is no allegation that McAlinden's acts of abuse in Delaware were directed or sponsored by the Diocese or the Parish. Furthermore, there is no allegation that either the Diocese or the Parish does or solicits business in Delaware, engages in a persistent course of conduct in Delaware, derives substantial revenue from services or things used in Delaware,

³ N.J.S. 2A:61B-1, et seq.

has an interest in, uses or possesses real property in Delaware, or acts as an insurer or surety in Delaware. Indeed, the sole connection to Delaware set forth in Naples' 180-paragraph Complaint is the allegation that Naples was abused by McAlinden in Delaware on two occasions.⁴ Despite Naples' allegations that trips to or through Delaware were part of McAlinden's job duties, as a matter of Delaware law the abuse of children cannot be within a priest's scope of employment.⁵

⁴ Complaint ¶¶ 56-59, A00022.

⁵*Dassen v. Boland*, 2011 Del. Super. LEXIS 137, *18 (Del. Super. Mar. 23, 2011) ("Even if [the accused abuser] had been the Diocese's agent at the time of the alleged abuse, case law has consistently held that a priest acts outside the scope of his authority when he abuses a parishioner."); *Tell v. Roman Catholic Bishop of Diocese of Allentown*, 2010 Del. Super. LEXIS 162, *18 (Del. Super. Apr. 26, 2010); *Voe #2 v. Archdiocese of Milwaukee*, 700 F. Supp. 2d 653, 659 (D. Del. 2010); *Elliott v. The Marist Bros. of the Schools*, 675 F. Supp. 2d 454, 459 (D. Del. 2009).

ARGUMENT

I. THE SUPERIOR COURT CORRECTLY CONCLUDED THAT THERE IS NO PERSONAL JURISDICTION OVER THE DIOCESE AND THE PARISH.

A. Question Presented.

Was the Superior Court correct to conclude that neither the Diocese nor the Parish are subject to the personal jurisdiction of the Delaware courts?

The Superior Court correctly concluded that neither the Diocese nor the Parish are subject to personal jurisdiction under Delaware's long arm statute, and that jurisdiction would offend Due Process. Delaware's law on personal jurisdiction is well-settled: a non-resident defendant will not be subject to the jurisdiction of the Delaware courts unless the case arises out of an act by the defendant in Delaware or the defendant has purposefully availed itself of Delaware's laws such that Due Process will permit the court's exercise of jurisdiction over the defendant.

Naples failed to make the required showing that Delaware's long-arm statute, 10 *Del. C.* § 3104, confers jurisdiction over the Diocese or the Parish.

B. Scope of Review.

On appeal, a trial court's decision on a motion to dismiss for lack of personal jurisdiction is reviewed under a *de novo* standard.⁶

⁶*AeroGlobal Capital Mgmt., LLC v. Cirrus Indus.*, 871 A.2d 428, 437 (Del. 2005).

While Appellant correctly recites Delaware law that, when considering a motion to dismiss for lack of personal jurisdiction pursuant to Delaware Superior Court Civil Rule 12(b)(2), the Court must accept as true the plaintiff's allegations of jurisdictional facts and resolve factual disputes in favor of the plaintiff, once a jurisdictional defense has been raised, the plaintiff bears the burden of establishing "with reasonable particularity that sufficient minimum contacts have occurred between the defendant and the forum state to support jurisdiction."⁷ Plaintiff may not rely on the bare pleadings alone in order to withstand a defendant's Rule 12(b)(2) motion to dismiss for lack of personal jurisdiction.⁸ Rather, "[p]laintiff is required to respond to a Rule 12(b)(2) motion to dismiss for lack of personal jurisdiction with actual proof, not mere allegations."⁹

In determining whether plaintiff has satisfied his burden, the Court applies a two-prong analysis. "To establish personal jurisdiction, plaintiff must show, by a preponderance of the evidence, that: (1) there is a statutory basis for jurisdiction under the forum state's long-arm statute; and (2) the exercise of jurisdiction

⁷ *Shoemaker v. McConnell*, 556 F. Supp. 2d 351, 353 (D. Del. 2008) (citing *Traynor v. Lui*, 495 F. Supp. 2d 444, 448 (D. Del. 2007)); see also *Benerofe v. Cha*, 1996 Del. Ch. LEXIS 115, *9 (Del. Ch. Sept. 12, 1996).

⁸ *Parker v. Learn the Skills, Corp.*, 530 F. Supp. 2d 661, 670 (D. Del. 2008).

⁹ *Id.*; *Hurley v. Cancun Playa Oasis Int'l Hotels*, 1999 U.S. Dist. LEXIS 13718, *2 (E.D. Pa. Aug. 31, 1999) ("General averments in an unverified complaint or response without the support of 'sworn affidavits or other competent evidence' are insufficient to establish jurisdictional fact." (quoting *Time Share Vacation Club v. Atl. Resorts, Ltd.*, 735 F.2d 61, 66 n.9 (3d Cir. 1984)).

comports with defendant's right to Due Process."¹⁰ "The jurisdictional analysis 'must not be collapsed into a single constitutional inquiry.'"¹¹ The Superior Court applied the required two-prong analysis and correctly concluded that Appellant had not met either the statutory or the constitutional requirements for the exercise of jurisdiction.¹²

C. Delaware Courts Cannot Exercise General Personal Jurisdiction Over Either the Diocese or the Parish.

Appellant appears to have conceded that the Superior Court correctly concluded that the Diocese and the Parish are not subject to the general jurisdiction of the Delaware courts. Neither the Diocese nor the Parish is generally present in Delaware, and neither solicits business in Delaware, engages in a persistent course of conduct in Delaware, or derives substantial revenue from services or things used in Delaware.¹³ There is no general personal jurisdiction over either, nor has Appellant argued to the contrary.

¹⁰ *Thompson v. Roman Catholic Archbishop of Washington*, 735 F. Supp. 2d 121, 127(D. Del. 2010) (citing *L'Athene, Inc. v. EarthSpring LLC*, 570 F. Supp. 2d 588); see also *Elliot*, 675 F. Supp. 2d 454; *Brewer v. Peak Performance Nutrients, Inc.*, 2012 Del. Super. LEXIS 406, *2 (Del. Super. Aug. 16, 2012) ("Plaintiff must satisfy both the statutory and constitutional requirements of jurisdiction.").

¹¹ *Elliot*, 675 F. Supp. 2d. at 458 (quoting *Power Integrations, Inc. v. BCD Semiconductor Corp.*, 547 F. Supp. 2d 365, 370 n.3 (D. Del. 2008)).

¹² Order at 9-10.

¹³ 10 *Del. C.* § 3104(c)(4).

D. Appellant Cannot Meet His Burden to Establish the Minimum Contacts Necessary to Justify the Delaware Court's Exercise of Specific Personal Jurisdiction Over the Diocese or the Parish.

Appellant argues two avenues of specific personal jurisdiction over the Diocese and the Parish: “agency jurisdiction” under subsection (c)(3) of the Delaware long-arm statute and “conspiracy jurisdiction.”¹⁴ But, under Delaware law, specific personal jurisdiction may only arise out of tortious actions taken or directed by the Diocese or the Parish in Delaware; Appellant has not alleged any action taken or directed by either the Diocese or the Parish in Delaware. Instead, Appellant relies on the tortious acts of McAlinden, *i.e.*, his alleged abuse of Appellant in Delaware, which Appellant asks this Court to attribute to the Diocese and the Parish, in contravention of established Delaware law.

1. There was no agency relationship between McAlinden and the Diocese or the Parish for McAlinden's acts in Delaware.

While there is no question that McAlinden is subject to the jurisdiction of the Delaware courts because he is alleged to have committed tortious acts in Delaware, Appellant's theory that McAlinden was acting as the “agent” of the Diocese and the Parish while committing those acts must fail. The Superior Court properly found that no agency relationship existed between McAlinden and the Diocese or Parish for the abuse of Appellant because the abuse did not occur

¹⁴ Opening Brief at 20, 28.

within the scope of McAlinden's employment, nor were the alleged acts directed by either the Diocese or the Parish.

In order for a plaintiff to establish specific personal jurisdiction under 10 *Del. C.* § 3104(3), plaintiff "must assert facts sufficient to establish that moving defendants should be accountable for [the priest's] alleged tortious conduct in Delaware by virtue of the relationship that existed between them."¹⁵ Appellant's "conclusory allegations that [the priest] was employed by moving defendants during the time periods of the alleged abuse are an insufficient basis for exercising personal jurisdiction when such assertions have been challenged," and "[i]t is not enough to merely prove that the priest was an agent of his Diocese; the plaintiff must also prove that the priest was acting within the scope of that agency when he committed the assaults."¹⁶

This Court has looked to the Restatement Second of Agency for guidance on what falls within the "scope of employment":

Conduct is within the scope of employment if (i) it is of the kind he is employed to perform; (ii) it occurs within the authorized time and space limits; (iii) is activated, at

¹⁵ *Voe* #2, 700 F. Supp. 2d at 658.

¹⁶ *Tell*, at *32; *Computer People, Inc. v. Best Int'l Grp., Inc.*, 1999 Del. Ch. LEXIS 96, *27 (Del. Ch. Apr. 17, 1999) ("Only the acts of the agent that are directed by the principal may serve as a basis to assert jurisdiction over the principal."); *Applied Biosystems, Inc. v. Cruachem, Ltd.*, 772 F. Supp. 1458, 1465-66 (D. Del. 1991) ("In applying the [long-arm] statute, we may consider the acts of an agent to the extent that these actions were directed and controlled by the principal.")

least in part, by a purpose to serve the master; and (iv) if force is used, the use of force is not unexpected.¹⁷

All four factors must be met. Within the context of priest abuse cases, the courts “which have considered the issue have uniformly rejected the contention that a priest is acting within the scope of his employment when he sexually abuses a minor because the priest was not hired to engage in such conduct and because the abuse is not motivated by a purpose to serve the church.”¹⁸

Outside the context of priest abuse cases, in *Simms v. Christina School District*, the Superior Court applied the Restatement to hold that the sexual abuse of a residential student by his counselor was outside the scope of employment even though the abuse occurred during the advisor’s work day.¹⁹ The *Simms* court found that the advisor’s conduct did not meet any of the four factors. As in *Simms*, Appellant here cannot meet the four factors required to establish that McAlinden’s abuse of Appellant was within his scope of employment such that the abuse should be attributable to the Diocese and the Church for the purpose of establishing the personal jurisdiction of the Delaware courts. Abuse is not “of the kind [of work McAlinden] was employed to perform,” nor were McAlinden’s trips to Delaware

¹⁷ *Doe v. State*, 2013 Del. LEXIS 469, *4 (Del. Sept. 12, 2013); *see also Tell*, at *33; *see also Simms v. Christina School District*, 2004 Del. Super. LEXIS 43, *16 (Del. Super. Jan. 30, 2004).

¹⁸ *Tell*, at *33.

¹⁹ 2004 Del. Super. LEXIS 43.

with Naples “within the authorized time and space limits.”²⁰ It is not enough, as Appellant argues, to allege that the Diocesan Defendants “authorized or at the very least failed to stop McAlinden from taking these trips” to Delaware, or to conclude that because the Diocesan Defendants allegedly knew of “suspicions and concerns regarding McAlinden’s sexual interest in boys” (which they did not), the abuse was within the scope of employment.²¹ As the *Tell* court concluded, “it is difficult, if not impossible, to envision how the assaults by [the priest] furthered the church’s purpose. Sexual abuse by a priest “represents the paradigmatic pursuit of some purpose unrelated to his master’s business.”²² As the *Tell* court observed, “unlike the situation where a servant performs the master’s work poorly or misunderstands what the master wants done, the molestation of children is a total abdication of the master’s work so that the pedophile priest can satisfy personal lust.”²³

Appellant relies on this Court’s recent ruling in *Doe v. State* to attempt to overcome the shortcomings in his argument. But in *Doe*, this Court held that “no one would argue that beatings, stabbings, shootings or sexual assaults are incidental to almost any form of employment. Wrongful conduct, by definition, is

²⁰ *Elliott*, 675 F. Supp. 2d at 459 n.4 (citations omitted) (“To the extent that plaintiff may be urging upon the court the theory that priests are never “off-duty” (i.e., that priests do not have personal lives and, therefore, the scope of their employment is coexistent with all other their conduct), that theory is rejected.”); *Thompson*, 735 F. Supp. 2d at 17 n.14 (same).

²¹ Opening Brief at 23-24.

²² *Tell*, at *34-35.

²³ *Id.*, at *36 (citing *Nelligan v. Norwich Roman Catholic Diocese*, 2006 Conn. Super. LEXIS 1848 (Conn. Super. Ct. June 15, 2006)).

not within the scope of employment in the sense that it is not conduct the employee was hired to perform.”²⁴ Instead, the relevant test “is whether the employee was acting in the ordinary course of business during the time frame within which the tort was committed.”²⁵ Unlike the police officer in *Doe*, McAlinden was not “on-duty” at the time of the alleged sexual assault of Appellant, nor does Appellant allege in his Complaint that he was.²⁶ Neither the Diocese nor the Parish has ever sponsored a trip to Delaware, or conducted any business in Delaware. Naples has never alleged that McAlinden took plaintiff to Delaware for Diocese or Parish sponsored trips. Any travels to Delaware were on McAlinden’s own time and were not within the authorized time and space limits of his position either with the Diocese or the Parish.²⁷ Applying the relevant test set forth in *Doe*, McAlinden taking Naples from Little Egg Harbor, New Jersey to Rehoboth Beach, Delaware, simply was not within the ordinary course of business of the Diocese or the Parish.

Finally, even if this Court were to find that Appellant has satisfied all four elements required to establish that McAlinden’s abuse of Naples in Delaware should be considered within the scope and course of his employment, the personal jurisdiction analysis does not stop there. For Appellant to be entitled to argue that

²⁴ *Doe*, at *6-7; see also *Hutchinson by Hutchinson v. Luddy*, 683 A.2d 1254, 1256 (Pa. Super. Ct. 1996) (“That such nefarious conduct falls outside the scope of [a priest’s] employment as an ordained servant of the Roman Catholic Church is a conclusion which may readily be derived from a mere application of common sense.”).

²⁵ *Doe*, at *7

²⁶ See *id.*; Complaint ¶¶56-59, A00022.

²⁷ *Elliott*, 675 F. Supp. 2d at 459 n.4; *Thompson*, 735 F. Supp. 2d. at 17 fn14.

such abuse is a basis for the Delaware court's jurisdiction over the Diocesan Defendants, Appellant must establish that the Diocesan Defendants "directed or controlled" these actions.²⁸ Appellant has not and cannot do so. Instead, without articulating any reason why this Court should abandon its well-developed precedent on the scope of employment and the limitations on the exercise of personal jurisdiction, Appellant argues that the alleged "ratification" of McAlinden's abuse by the Diocesan Defendants should be enough. But that is not Delaware law. The Superior Court correctly articulated and applied Delaware law to find that Appellant failed to allege facts sufficient to establish that McAlinden's alleged abuse of Appellant in Delaware could serve as the basis for specific personal jurisdiction over the Diocesan Defendants under an agency theory.

2. A non-existent "conspiracy" between the Diocesan Defendants and McAlinden cannot serve as the basis for jurisdiction.

Appellant did not brief, and therefore the Superior Court did not address, Appellant's new argument that a conspiracy between the Diocesan Defendants and McAlinden is sufficient to permit a Delaware court to exercise jurisdiction over the non-resident institutional defendants against whom Appellant has alleged not a single action taken in Delaware. Even if the issue of conspiracy jurisdiction were preserved for appeal to this Court – which it was not – Appellant's arguments are

²⁸ *Computer People*, 1999 Del. Ch. LEXIS 96, at *27.

unavailing.

Appellant relies primarily on this Court's ruling in *Istituto Bancario Italiana SpA v. Hunger Eng'g Co., Inc.*, which held that

Under certain circumstances, the voluntary and knowing participation of an absent nonresident in a conspiracy with knowledge or reason to know of an act or effect in the jurisdiction can be sufficient to supply or enhance the contacts required with the jurisdiction for jurisdictional purposes (emphasis added).²⁹

The non-resident conspirator “is subject to the jurisdiction of the court . . . if the plaintiff can make a factual showing” of five factors, namely that (1) a conspiracy to defraud existed; (2) the defendant was a member of that conspiracy; (3) a substantial act or substantial effect in furtherance of the conspiracy occurred in the forum state; (4) the defendant knew or had reason to know of the act in the forum state or that acts outside the forum state would have an effect in the forum state; and (5) the act in, or effect on, the forum state was a direct and foreseeable result of the conduct in furtherance of the conspiracy.³⁰ To succeed in establishing conspiracy jurisdiction over the Diocesan Defendants in Delaware, Appellant must present facts (as distinguished from bare allegations) to satisfy all five prongs of this Court's test. Appellant cannot come close to doing so.

²⁹ 449 A.2d 210, 225 (Del. 1982).

³⁰ *Id.* (emphasis added).

This case differs greatly from the circumstances this Court confronted in *Istituto Bancario*, where an “essential step” in the defendants’ conspiracy was the filing of an amendment to a Delaware corporation’s certificate of incorporation to increase the number of authorized shares, which directly benefited the non-resident defendant’s interest in the corporation. The parties stipulated that the amendment was filed with the Delaware Secretary of State, and the Court recognized that the act of filing the amendment “had to take place in Delaware and nowhere else.”³¹ This Court found that the parties’ “stipulation [of facts] paint[ed] a picture of a voluntary and knowing participation by [the non-resident defendant] in a conspiracy which resulted in a direct benefit to [him].”³² In this case, however, the only “facts” (if any of Naples’ legal conclusions can be considered to contain facts) pertaining to the Diocese and the Parish point to New Jersey, not Delaware. Furthermore, Appellant does not argue (and it would be absurd to do so) that the Diocese or Parish voluntarily and knowingly participated in “a conspiracy to use the laws of Delaware to achieve the purpose of the [alleged] conspiracy,” to abuse Naples in Delaware.³³

Appellant also ignores two recent rulings by the Delaware Superior Court, in factually similar cases, which rejected the same arguments Appellant makes here

³¹ *Istituto Bancario*, 449 A.2d at 226-27 (“Indeed Delaware is the only jurisdiction necessarily involved in the conspiracy.”).

³² *Id.* at 227.

³³ *Id.*

to apply *Istituto Bancario*, and also ignores the pertinent portions of the Delaware Court of Chancery’s opinion in *Computer People, Inc. v. Best Int’l Grp., Inc.*, which specifically notes the limitations of conspiracy jurisdiction.³⁴ A conspiracy theory of jurisdiction is not “an independent jurisdictional basis, but rather, is a shorthand reference to an analytical framework where a defendant’s conduct that either occurred or had a substantial effect in Delaware is attributed to a defendant who would not otherwise be amenable to jurisdiction in Delaware.”³⁵ Jurisdiction under a conspiracy theory is to be narrowly construed.³⁶ Otherwise, the theory “would become a facile way for a plaintiff to circumvent minimum contacts requirement.”³⁷ In *Toe #2 v. Blessed Hope Baptist Church*, the Superior Court declined to find conspiracy jurisdiction where the plaintiff argued, similarly to the arguments advanced here by Naples, that a conspiracy arose from the non-resident defendant’s alleged knowledge of an abuser’s history of abuse.³⁸ The *Toe #2* court distinguished *Istituto Bancario*, noting that case’s conspiracy in the corporate context was “not even close to the issue at hand.”³⁹ Likewise, in *Dassen v. Boland*, the Superior Court found plaintiff’s “argument for a finding of conspiracy

³⁴ *Toe #2 v. Blessed Hope Baptist Church, Inc. of Harford County*, 2012 Del. Super. LEXIS 599 (Del. Super. Jan. 31, 2012); *Dassen*, 2011 Del. Super. LEXIS 137; *Computer People*, 1999 Del. Ch. LEXIS 96.

³⁵ *Computer People*, at *17.

³⁶ *Id.*, at *19.

³⁷ *Id.*

³⁸ *Toe #2*, at *12.

³⁹ *Id.*, at *13.

jurisdiction completely without merit for a plethora of reasons,” including that, even assuming a conspiracy between the non-resident diocese and the abuser, there was “no evidence [] that the Diocese knew or had any reason to know that any act in Delaware or that acts outside Delaware would have an effect in Delaware.”⁴⁰ Furthermore, “abuse in Delaware was not a ‘direct and foreseeable result of the conduct in furtherance of the conspiracy,’” nor was there any “clear connection between that alleged conspiracy and the State of Delaware.”⁴¹

There was no conspiracy between the Diocese or Parish and McAlinden. In his Complaint, Appellant alleges that the Diocese and the Parish “conspired with McAlinden and agreed not to punish him for sexually abusing numerous children; ...to enable him to continue sexually abusing children; ...to cover up his history of sexually abusing young children; ... to hide and actively suppress and intentionally misrepresent;...to induce plaintiff and others to engage and associate with McAlinden; and, conspired among themselves.”⁴² Appellant’s complaint includes no facts in support of these conclusory allegations, and more importantly, does not even allege that the Diocesan Defendants conspired with McAlinden to abuse Appellant, in Delaware or anywhere else.⁴³

⁴⁰ *Dassen*, at *22-24.

⁴¹ *Id.*, at *24.

⁴² Complaint ¶¶ 166-176, A00035-36.

⁴³ “Plaintiff cannot rely on conclusory allegations in his pleading that are unsupported by evidence. Such allegations will not be sufficient to overcome a motion to dismiss for lack of personal jurisdiction.” *Computer People*, at *19.

Appellant's Opening Brief on appeal attempts to lend "factual" support to bolster his legal conclusions, arguing that "the Diocese conspired with the Church to keep McAlinden's abuse of children a secret," and "the Diocese and the Church[] deci[ded] not to exercise proper care to keep Plaintiff and other children safe from McAlinden."⁴⁴ Appellant also argues that the Diocese and Parish knew that McAlinden was abusing children and taking Appellant on overnight trips, and therefore the sexual abuse was a foreseeable result of the alleged conduct in furtherance of the alleged conspiracy.⁴⁵ But even these allegations are legal conclusions, not facts, and even if true (which they are not) would not provide a basis for a finding that the Diocese or Parish agreed to work together with McAlinden to perpetrate the abuse against Appellant, in Delaware or anywhere.⁴⁶ The suggestion that the Diocese or the Parish would conspire with McAlinden to permit the abuse of Naples or any other person "defies logic."⁴⁷

Appellant's allegations about what the Diocese and the Parish knew or should have known about McAlinden's abuse of Appellant and his trips to Delaware cannot be stretched to satisfy the requirements set forth by this Court in *Istituto Bancario* to support a finding of jurisdiction based on conspiracy. It simply does not follow, as Appellant argues, that the Diocesan Defendants' alleged

⁴⁴ Opening Brief at 30.

⁴⁵ Opening Brief at 30-31.

⁴⁶ *Dubroff v. Wren Holdings, LLC*, 2009 Del. Ch. LEXIS 89, *26 (Del. Ch. May 22, 2009).

⁴⁷ *Dassen*, at *22.

knowledge of McAlinden's abuse of Appellant, coupled with the Diocesan Defendants' alleged knowledge that McAlinden traveled with Appellant to Delaware, means that the Diocesan Defendants conspired with McAlinden to take Appellant to Delaware to abuse him, or that it was reasonably foreseeable to the Diocesan Defendants that McAlinden would do so.⁴⁸ Appellant's arguments fail to show the "voluntary and knowing participation" by the Diocesan Defendants in any conspiracy, and Appellant's arguments in support of his "conspiracy theory of jurisdiction" extend far beyond the narrow construction articulated by this Court.⁴⁹

E. Due Process Is Not Satisfied by the Exercise of Jurisdiction Over the Diocesan Defendants.

The Superior Court correctly ruled that "exercising personal jurisdiction over [the Diocese and the Parish] would not comport with due process[.]" because "[p]laintiff has failed to assert facts supporting a finding that [the Diocese or the Parish] purposefully directed activities toward Delaware or engaged in conduct such that they would reasonably have anticipated being haled into court in Delaware."⁵⁰

Every Delaware court that has addressed the same jurisdictional issue under analogous facts now before this Court has rejected Appellant's argument, and essential to each of these rulings was the court's holding that the exercise of

⁴⁸ See Opening Brief at 30-31; *Dassen*, at *23-24.

⁴⁹ See *Toe #2*, at *13.

⁵⁰ Order at 10; see also *In Re Chambers Dev. Co. S'holders Litig.*, 1993 Del. Ch. LEXIS 79, *15 (Del. Ch. May 20, 1993).

personal jurisdiction in Delaware over non-residential institutional defendants did not comport with due process.⁵¹ “For the Court to exercise specific personal jurisdiction consistent with due process, plaintiff’s cause of action must have arisen from the defendant’s activities within the forum state.”⁵² “Plaintiffs may not base their jurisdictional claims on the conduct of [the priest]. They are therefore required to show that because of the conduct of the moving defendants themselves, those defendants are subject to the personal jurisdiction of the Delaware courts.”⁵³ Plaintiff must demonstrate that the Diocese and the Parish have had continuous and systematic contacts such that “the defendant[s] ‘purposely avail[ed] [themselves] of the privilege of conducting activities in the forum state, thus invoking the benefits and protections of its laws.’”⁵⁴ “Purposeful availment” ensures that a defendant will not be forced to defend an action as a result of “random, fortuitous, or attenuated contacts” or because of “the unilateral activity of another party or a third person.”⁵⁵ There must be a “substantial connection” between the non-resident

⁵¹ *Toe #2*, at *11; *Dassen*, at *24-25; *Tell*, at *56-59; *Losten v. Ukrainian Catholic Diocese of Philadelphia*, 2010 Del. Super. LEXIS 200, *12 (Del. Super. May 13, 2010); *Voe #2*, 700 F. Supp. 2d at 658; *Elliott*, 675 F. Supp. 2d at 459.

⁵² *Voe #2*, 700 F. Supp. 2d at 658.

⁵³ *Tell*, at *44.

⁵⁴ *Boone v. Oy Partek AB*, 724 A.2d 1150, 1159 (Del. Super. 1997) (quoting *Hanson v. Denkla*, 357 U.S. 235 (1958)).

⁵⁵ *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475-76 (1985) (internal citations omitted).

defendant and the forum state, which “must come about by *an action of the defendant purposefully directed toward the forum state.*”⁵⁶

There is no connection between the Diocese or Parish and Delaware. Neither defendant has the “deliberate, significant activities” or “continuing obligations” in Delaware necessary to establish that either has purposely availed itself of the benefits and protections of Delaware’s laws.⁵⁷ Furthermore, it is not enough for Appellant to allege that the Diocese and the Parish “allowed or failed to stop” McAlinden from traveling to Delaware with Appellant, because it is the acts of the Diocesan Defendants, not the priest, which must be considered for the due process analysis.⁵⁸ Accordingly, the Superior Court ruled that even if an agency relationship did exist, the Due Process Clause precluded the Delaware court from exercising jurisdiction over the Diocese and the Parish.

There is no allegation in the Complaint, nor is there any evidence in the “factual record” developed after the Diocesan Defendants were dismissed from the case, that either the Diocese or the Parish took any action at all in Delaware, let

⁵⁶ *Outokumpu Eng’g Enters. v. Kvaerner Enviropower*, 685 A.2d 724, 731 (Del. Super. 1996) (quoting *Asahi Metal Ind. v. Sup. Ct. of Cal.*, 480 U.S. 102, 112 (1987)) (emphasis in original).

⁵⁷ *Boone*, 724 A.2d at 1159.

⁵⁸ Order at 10; *see also Elliott*, 675 F. Supp. 2d at 458-59 (citing *Doe v. Roman Catholic Diocese of Boise, Idaho*, 918 P.2d 17, 23 (N.M. Ct. App. 1996) (“It is the acts of the Boise Diocese, not the acts of Father Garcia, that must provide the basis for this state exercising personal jurisdiction over the Boise Diocese.”)); *Losten*, at *11; *Tercero v. Roman Catholic Diocese of Norwich*, 48 P.3d 50, 59 (N.M. 2002); *Archdiocese of Detroit v. Green*, 899 So.2d 322, 325 (Fl. Dist. Ct. App. 2004) (no personal jurisdiction over Detroit Archdiocese because priest “moved to Florida unilaterally”).

alone that there was any “substantial connection” to Delaware. Absent such allegations or evidence, the Diocesan Defendants cannot be sued in Delaware, consistent with Due Process, for the tortious misconduct of McAlinden here.

II. THE SUPERIOR COURT PROPERLY DENIED NAPLES' REQUEST FOR JURISDICTIONAL DISCOVERY.

A. Question Presented.

Where Naples alleged no facts, either in his Complaint or by affidavit, to suggest that the Diocese or Parish could be subject to the personal jurisdiction of the Delaware courts, was the Superior Court's denial of Naples' request for jurisdictional discovery within the Superior Court's discretion?

At an August 18, 2009 hearing, the Superior Court denied Naples' motion to suspend briefing pending jurisdictional discovery. Instead, and with the agreement of Naples' counsel, the Superior Court set a briefing schedule for disposition of the motion to dismiss filed by the Diocese and Parish. The Superior Court's determination to decide the motion to dismiss without jurisdictional discovery was correct under Delaware law and squarely within its discretion.

B. Scope of Review.

On appeal, a trial court's decision on a motion concerning discovery is reviewed under an abuse of discretion standard.⁵⁹ "[W]hen an act of judicial discretion is under review the reviewing court may not substitute its own notions of what is right for those of the trial judge, if his [or her] judgment was based upon conscience and reason, as opposed to capriciousness or arbitrariness."⁶⁰

⁵⁹ *Dann v. Chrysler Corp.*, 166 A.2d 431, 432 (Del. Ch. 1960); *Mann v. Oppenheimer & Co.*, 517 A.2d 1056, 1061 (Del Ch. 1986).

⁶⁰ *Coleman v. PriceWaterhouseCoopers, LLC*, 902 A.2d 1102, 1106 (Del. 2006).

Explaining the standard of review with respect to pretrial discovery rulings, this Court has stated:

Judicial discretion is the exercise of judgment directed by conscience and reason, and when a court has not exceeded the bounds of reason in view of the circumstances and has not so ignored recognized rules of law or practice so as to produce injustice, its legal discretion has not been abused.⁶¹

As plaintiff correctly notes in his Opening Brief, whether to permit jurisdictional discovery is within the discretion of the trial court.⁶²

C. Appellant Agreed to Rest on the Allegations in His Complaint and for the Superior Court to Set a Briefing Schedule on the Motion to Dismiss.

In response to the Motions to Dismiss filed by the Diocesan Defendants and McAlinden, Appellant filed his Motion to Suspend Briefing on Defendants' Motions to Dismiss and Initiate Discovery on the Issues of Jurisdiction and Venue, seeking several depositions, including that of McAlinden and representatives of the Diocese "with regard [sic] McAlinden's activities within the State of Delaware."⁶³ Appellant did not submit an affidavit or otherwise supplement the allegations pled in his Complaint. Rather, Appellant stated that "[d]iscovery needs to be taken

⁶¹ *Id.*

⁶² Opening Brief at 9; *see Tell*, 2010 Del. Super. LEXIS 162; *Metro. Life Ins. Co. v. Tremont Grp. Holdings, Inc.*, 2012 Del. Ch. LEXIS 287 (Del. Ch. Dec. 20, 2012); *Hartsell v. Vanguard Grp., Inc.*, 2011 Del. Ch. LEXIS 89 (Del. Ch. June 15, 2011).

⁶³ D.I. 23 at ¶ 5, A00043-44.

before plaintiff can properly respond to either defendant's motions."⁶⁴ At the hearing initially scheduled for consideration of the Diocesan Defendants' motion to dismiss, the Superior Court addressed Naples' motion to suspend briefing in favor of jurisdictional discovery. Naples' attorney led off by stating that he was "positive, based on the face of the Complaint [] there is jurisdiction under 3104(c)(3)."⁶⁵ In response to the Superior Court's suggestion that the parties go ahead with briefing rather than pursue discovery, Naples' counsel agreed:

Your Honor, looking at it from that point of view, if we're taking all the allegations to be true, I guess you're correct, we should go ahead with full briefing.⁶⁶

Despite Appellant's assertion that the allegations in the Complaint were enough to establish the personal jurisdiction of the Delaware courts over the Diocese and the Parish, and despite Appellant's agreement that the Court could decide the motion to dismiss without discovery, Appellant now seeks to challenge the Court's denial of jurisdictional discovery.

D. Appellant Failed to Allege Any Facts in Support of Jurisdiction Prior to Requesting Jurisdictional Discovery; Therefore, the Superior Court Properly Denied the Request.

Appellant failed to present any facts, either in his Complaint, or by affidavit, which could have demonstrated even the possibility that personal jurisdiction might exist over the Diocese or the Parish; therefore, the trial court properly denied

⁶⁴ *Id.* at ¶ 3, A00043.

⁶⁵ Transcript of August 18, 2009 hearing at 4:21-23, Appellees' Appendix at B-4.

⁶⁶ *Id.* at 6:21-7:1, B-6-7.

Appellant's request to conduct jurisdictional discovery. For a plaintiff to be entitled to jurisdictional discovery, there must be at least "some indication that this particular defendant is amenable to suit in this forum."⁶⁷ Appellant was required to set forth "some competent evidence to demonstrate that personal jurisdiction over the defendant might exist before allowing discovery to proceed."⁶⁸ A plaintiff may not "sue first and ask questions later."⁶⁹

The Superior Court is "not bound to accept as true the allegations in plaintiff's complaint for the purposes of determining whether plaintiff has made a minimal showing so as to entitle him to discovery on the issue of personal jurisdiction."⁷⁰ Facts establishing jurisdiction are required, because "a plaintiff may not rely on the bare allegations on his complaint to warrant further discovery."⁷¹ "Where the facts alleged in the complaint make any claims of personal jurisdiction over the defendant frivolous, the court may preclude discovery in aid of establishing personal jurisdiction."⁷²

⁶⁷ *Am. Int'l Grp., Inc. v. Greenberg*, 965 A.2d 763, 816 (Del. Ch. 2009).

⁶⁸ *Hansen v. Neumueller*, 163 F.R.D. 471, 475-76 (1995) (holding that "a complete absence of jurisdictional facts by the plaintiff is insufficient for discovery to proceed").

⁶⁹ *Picard v. Wood*, 2012 WL 2865993, *2 (Del. Ch. July 12, 2013).

⁷⁰ *Hansen*, 163 F.R.D. at 476.

⁷¹ *Id.*

⁷² *Ruggiero v. Futuragene, PLC*, 948 A.2d 1124, 1139 (Del. Ch. 2008); *see also Tell*, at *23 ("It is true that in an appropriate case, perhaps even in most cases, a court may allow limited discovery before resolving a motion to dismiss for lack of personal jurisdiction. On the other hand, when a plaintiff offers only speculation or conclusory assertions about contacts within a forum state, a court is within its discretion in denying jurisdictional discovery."); *Picard*, at *2 (quoting *Hart Holding Co. v. Drexel Burnham Lambert, Inc.*, 593 A.2d 535 (Del. Ch. 1991) ("[A] plaintiff is *not* entitled to 'jurisdictional' discovery 'where the facts alleged in the

Appellant did not present any facts, at all, either in his Complaint or by affidavit, to establish a prima facie showing that the Delaware courts could permissibly exercise personal jurisdiction over the Diocesan Defendants. As in the *Hansen* case, Appellant relied on the bare allegations in his Complaint, which are completely devoid of facts.⁷³ To the extent that Appellant did not have a factual basis for the allegations pled in his Complaint sufficient to be able to provide a sworn affidavit when faced with a Rule 12(b)(2) motion to dismiss, he should not have been permitted to attempt to cure this deficiency by subjecting the Diocese or the Parish to discovery (which would have led nowhere) in his quest to establish personal jurisdiction over them in Delaware.⁷⁴

Appellant's reliance on *Thompson v. Roman Catholic Archbishop* is misplaced. The critical distinction between Appellant's unsuccessful quest for jurisdictional discovery in this case and the request granted by the District Court in *Thompson* is the sworn affidavit provided by the plaintiff in *Thompson* alleging

complaint make any claim of personal jurisdiction over defendant frivolous', and where the 'plaintiff's assertion of personal jurisdiction lack[s] th[e] minimal level of plausibility needed to permit discovery to go forward.' The Plaintiff cannot establish a right to jurisdictional discovery simply by alleging that the defendant 'might' have engaged in the activities enumerated in the long-arm statute or that 'it is possible' that the Defendant has sufficient minimum contacts in Delaware. Such allegations are mere speculation and could be leveled at virtually every person living in the United States. The Plaintiff has not, by affidavit, allegation, or other means, established a plausible basis for personal jurisdiction sufficient to justify the discovery he seeks.") (emphasis in original).

⁷³ See *Hansen*, 163 F.R.D. at 476.

⁷⁴ *Am. Int'l Grp.*, 965 A.2d at 816 ("It is also not appropriate to give the [] Plaintiffs the benefit of jurisdictional discovery so they can fish for a possible basis for this court's jurisdiction.").

specific facts which, if proven, would have supported the Delaware court's jurisdiction over the out-of-state institutional defendants.⁷⁵

In his Complaint Naples did not allege that anyone at the Diocese or Parish was aware that he was traveling to Delaware with McAlinden, that anyone from the Diocese or the Parish saw Naples and McAlinden together in Delaware, or that McAlinden was performing priestly duties while in Delaware. Nor did Naples submit any factual affidavit to supplement his Complaint and support such allegations. Therefore, unlike the plaintiff in *Thompson*, Naples did not satisfy the pleading requirements to enable him to pursue jurisdictional discovery against the Diocese or the Parish.

Appellant attempts to demonstrate that jurisdiction over the Diocese or the Parish might exist by pointing to the allegations that Appellant met McAlinden through the Catholic Youth Organization and that McAlinden was pastor of the St. Theresa Parish; that Appellant's father "had a conversation with a Diocese official expressing his concerns"; that the Diocese had received a report that McAlinden was abusing children; and, that the Diocese reassigned McAlinden rather than remove him.⁷⁶ These facts, and all of the facts alleged against the Diocese and the Parish, even if true, do not support a finding of personal jurisdiction over the

⁷⁵ *Thompson*, 735 F. Supp. 2d. 121; Affidavit of George A. Thompson, B-14-16.

⁷⁶ Opening Brief at 12. Naples' Complaint generally alleges that the Diocese and Parish negligently hired and supervised McAlinden, that they had actual and constructive knowledge of the abuse, that that they took no action when Naples' father informed them of McAlinden's transgressions, and that they failed to warn parishioners of McAlinden's predilections.

Diocese or the Parish in Delaware, because they occurred in New Jersey, not Delaware.⁷⁷ Appellant has not and cannot make the necessary preliminary showing that the Diocese and Parish are subject to personal jurisdiction of the Delaware courts. Neither Naples' Complaint nor his motion for jurisdictional discovery set forth any facts which could demonstrate that personal jurisdiction over Diocese or Parish might exist in Delaware.⁷⁸

Finally, it is important to note that even if the Superior Court had granted Appellant's request for jurisdictional discovery, it would have led nowhere. Appellant sought and received discovery (667 non-privileged documents produced from the Diocese's files pertaining to McAlinden) from the Diocese while pursuing his case against McAlinden. Nothing in these documents demonstrates that either the Diocese or the Parish took any action in Delaware or directed McAlinden's actions in Delaware, which is the pertinent inquiry in order to establish the jurisdiction of Delaware's courts. In this case, hindsight really is 20/20. The Superior Court did not abuse its discretion and correctly denied Appellant's request for jurisdictional discovery.

⁷⁷ See *Tell*, at *24.


⁷⁸ See *Hansen*, 163 F.R.D. at 475.

CONCLUSION

For the foregoing reasons, Appellees Diocese of Trenton and St. Theresa Parish respectfully request that this court affirm the rulings of the Superior Court dismissing Appellant's complaint against Appellees pursuant to Delaware Superior Court Rule 12(b)(2) for lack of personal jurisdiction.

Respectfully submitted,

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