

Catholic Church Tries to Stave Off Priest Abuse Lawsuits

Connecticut Supreme Court appeal focuses on statute of limitations

Christian Nolan, *The Connecticut Law Tribune*

September 19, 2014

After what seemed like a never-ending series of child sexual abuse scandals involving the Roman Catholic Church, lawmakers both nationally and in Connecticut sought ways to protect victims' rights.

Initially in Connecticut, people claiming they were sexually abused as children or teens by anyone had to file lawsuits within two years of turning 18. In 1991, state lawmakers extended the statute of limitations to allow alleged victims to bring civil sexual abuse claims until they were 35. Then in 2002, after a rash of claims were made against clergy in the Roman Catholic Diocese of Bridgeport, lawmakers again extended the age limit, giving potential plaintiffs until age 48 to file claims.

Since then, Connecticut plaintiffs lawyers have brought countless claims against priests and church officials, and have netted tens of millions of dollars in settlements and jury verdicts, damages that would not have been available if not for the extension of the statute of limitations. Now, in a case before the state Supreme Court that has captured the attention of trial lawyers, the Archdiocese of Hartford is trying to change the legal landscape.

Specifically, the church is challenging the constitutionality of the retroactive application of the state's civil sexual abuse statute. Both the 1991 and 2002 statutory changes gave alleged victims who were too old to file suit under the previous law the right to bring claims under the amended one.

Plaintiffs lawyers say the statute of limitations extensions were necessary because of how difficult it is for the child victims to come to grips with what happened to them and then come forward as adults. "For the children molested, it takes them years and years to come forward because of the unbelievable guilt and shame they feel," said Cindy Robinson, whose firm, Tremont & Sheldon in Bridgeport, filed many of the early claims in Connecticut.

Lawyers for the Archdiocese of Hartford, however, argue that key evidence becomes lost over the decades. Specifically, the clergy who allegedly molested the children and their supervisors are often deceased—and so, unavailable to testify—by the time the lawsuits are brought. This, they say, makes the cases more difficult to defend.

"The citizens of Connecticut can never move on unless this court acts," attorneys Wesley Horton and John "Jack" Sitarz wrote in their briefs to the state Supreme Court. "Any act they have ever

done, and any act they have ever failed to do, may come back to haunt them in a tort action long after the statute has run ... long after societal standards have changed, and long after the misconduct, if disclosed earlier, might have been directly addressed and remedied."

Horton, of Horton, Shields & Knox, and Sitarz, of Cooney, Scully & Dowling, declined interview requests for this article.

In their briefs, the attorneys for the Archdiocese of Hartford argue that case law is on their side when it comes to retroactive application of a statute change by lawmakers. Specifically, they say 12 of 17 such appeals in other states have been decided their way. They point to a 2009 Illinois Supreme Court ruling that reaffirmed that court's position that the expiration of a statute of limitations creates a vested right for the defendant that cannot be removed by the legislature. The court said that the legislature does not have the power to revive time-barred claims.

The Hartford Archdiocese's appeal comes in a case in which attorney Thomas McNamara, of McNamara & Goodwin in New Haven, obtained a \$1 million verdict in early 2012 against the church in a priest molestation case.

He said statute of limitations changes have cleared the way for dozens of civil sex abuse cases.

"That's what allows the lion's share of these cases to go forward and level out the playing field for these people who have suffered so much," said McNamara.

Appellate lawyer Hugh Hughes is handling the Sept. 22 state Supreme Court arguments for McNamara.

McNamara represented "Jacob Doe," a former altar boy who claims he and a friend were abused by a priest in the early 1980s. Doe alleged the archdiocese was negligent and reckless in placing the priest in a coed school in Derby despite his previously admitting to sexually abusing two other boys when he lived in a Simsbury rectory in 1979.

The priest, Ivan Ferguson, died in 2002. The lawsuit further accuses then-Archbishop John Francis Whealon of knowing that Ferguson was a pedophile and not taking reasonable action based on what church officials knew. Whealon died in 1991.

Ferguson was sent for alcohol treatment after admitting to sexually abusing the two boys in 1979. The psychiatrist/priest at Saint Luke Institute in Massachusetts wrote to Whealon in 1981 that: "As you are aware, it is my professional opinion that the other issues that brought Father Ferguson to us for treatment will be in control as long as the disease of alcoholism is in control."

For a time, Ferguson was placed at an all-girls school in Milford. But in a letter from Saint Luke's to Whealon, those treating Ferguson had indicated that his stated preference was to work at an all-boys school.

At the time of the 2012 trial, McNamara said he was unsure why the archdiocese opted to take the case to trial rather than settle. In 2005, the archdiocese agreed to a \$22 million settlement with 43 people who claim they were abused by Ferguson and 11 other priests since the 1960s.

Because the jury also found that the archdiocese's conduct was reckless, a judge later awarded attorney fees and other legal costs that raised the verdict to \$1,354,450.

McNamara said he has judgment liens on the archdiocese's chancery and other offices. If his client wins the appeal, and the archdiocese fails to pay the verdict, he can foreclose on the property.

In addition to its statutory argument, the Archdiocese of Hartford has stated several other grounds for its appeal.

One defense claim that has drawn the ire of the Connecticut Trial Lawyers Association is that an expert witness should be required to testify to help the jury understand the standard of care applicable during the period when the abuse allegedly occurred.

The Roman Catholic Church says that society's understanding of child sexual abuse has changed significantly over time. It says that absent expert testimony, a jury might not realize that in 1981 a reasonable person might not have known it was a bad idea to send priests who had received counseling for their pedophilia back into a school setting.

"You do not need an expert for a jury to fairly conclude that no one should allow a known pedophile unsupervised access to minor children," Brenden Leydon of Tooher, Wool & Leydon in Stamford wrote in an amicus brief for the CTLA. "Imposing an expert requirement in this case would oust the jury of its proper role as the conscience of the community in setting standards of reasonable care."

New London plaintiffs attorney Robert Reardon said he has handled more than 30 of these kinds of sexual abuse cases since 2000. He said in all of the cases he settled, the church did, in fact, try to argue that it was unconstitutional for the civil sex abuse statute retroactively.

"No trial level judge has agreed with the Catholic Church on the issue," said Reardon.

He said all of the cases he's brought were made possible by the lawmakers' extension of the statute of limitations.

"The vast majority of my cases have involved people over the age of 35, 40," said Reardon.

His clergy-related sex abuse cases typically involve the church bodies in Hartford and Norwich. He said he has more cases in the works, including one scheduled for trial in March.

Robinson, of Tremont & Sheldon, said she also has more clients coming forward with sexual abuse claims and she's hopeful public awareness from the cases eventually curtails pedophiles' access to children.

Robinson emphasized how difficult it is for the victims, no matter their age, to come forward and relive the abuse during litigation.

"I sure hope that ability for people to bring cases has a stifling effect on what happens into the future," she said. "Unfortunately, for children who are tragically abused presently, it still takes them time to come forward."

Christian Nolan can be contacted at CNolan@alm.com.

Read more: <http://www.ctlawtribune.com/id=1202670742146/Catholic-Church-Tries-to-Stave-Off-Priest-Abuse-Lawsuits#ixzz3DsoFPtT0>