

Counts revived in pastor sex abuse suit

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Rita B. Garman

SPRINGFIELD — The Illinois Supreme court revived counts of negligent retention in a lawsuit against a West Dundee church and its lead pastor over sex abuse that happened in the church at the hands of a convicted youth pastor.

The opinion offered a distinction between the torts of negligent supervision and negligent hiring. To prove negligent hiring, or negligent retention, a plaintiff must show the employer knew or should have known about an employee's unfitness. On the other hand, negligent supervision only requires an allegation that an injury was foreseeable.

The suit was originally dismissed in its entirety by a Kane County judge. The 2nd District in 2017 revived several counts alleging negligent hiring and negligent supervision. Last week's high court ruling restored two more counts. Now, the case will return to Geneva with all the counts against the church and lead pastor reinstated.

In 2015, the parents of the plaintiff Jane Doe sued the First Congressional Church of Dundee (FCCD) and its lead pastor, Aaron James, after their daughter was sexually assaulted by Chad



Local news outlets in April 2018 reported Coe pleaded guilty to criminal charges of inappropriate contact with a minor. He received a seven-year sentence. The state Corrections Department's records indicate he's behind bars at the Taylorville Correctional Center until at least September 2021.

Kane County Circuit Judge James R. Murphy dismissed the initial complaint. Doe filed an amended complaint alleging negligent supervision, negligent retention, willful and wanton failure to protect and willful and wanton retention and failure to supervise against both FCCD and James and one count of negligent hiring against FCCD.

Murphy granted a motion to strike "irrelevant or cumulative paragraphs" from Doe's complaint, but allowed the plaintiffs to replead negligence claims.

The plaintiffs filed a second amended complaint including the previously stricken counts. Murphy dismissed all 22 counts with prejudice.

In August 2017, The 2nd District Appellate Court reversed part of Murphy's ruling. Both sides appealed different parts of the 2nd District decision, placing all 22 counts before the high court for review.

Chief Justice Lloyd Karmeier did not participate in the ruling, but the remainder of the court was unanimous.

In the opinion penned by Justice Rita B. Garman, the high court agreed that allegations against FCCD and James in Doe's first complaint were properly stricken because they were irrelevant or cumulative.

The 21-page opinion cited *People v. Pawlaczyk*, IL 87260, which said that a fact is only relevant "if it tends to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."

The plaintiffs alleged that the defendants' actions after Coe assaulted Doe demonstrated an ongoing indifference for Doe's welfare and a pattern of misconduct. But the high court disagreed, explaining that the post-assault actions by the defendants did not make it any more or less probable that they were negligent prior to the assault.

Addressing whether the defendant had a duty to the plaintiff, Garman wrote that an employer has a duty to employ only "competent individuals" and that this duty is to "all foreseeable individuals who might be impacted by the employee or his employment, such as a customer or a defendant business or a member of a defendant church."

As long as the plaintiff can prove at an eventual trial that FCCD or James hired, retained and supervised Coe, they properly pleaded the defendants had a reasonable duty to Doe.

Garman noted that the church's self-imposed safety measures did not create any additional legal duty and are unenforceable by the law. Doing otherwise would "discourage employers from creating policies intended to protect their employees or the public," she wrote.



injury foreseeable.

On the counts of negligent supervision, Garman explained that only a general foreseeability is required to impose a duty to supervise in an employer-employee relationship.

Finding the count should have survived a motion to dismiss, the justices found that a fact-finder could determine the FCCD and James breached their duty to supervise Coe “by failing to monitor his conduct and that the breach proximately caused their injuries.”

On the counts of negligent retention, the high court explained that the plaintiff needed to prove the same elements as a negligent hiring complaint. The 2nd District found that because James was not Coe’s employer, he could not be held responsible for negligent retention. The high court reversed the appellate court’s decision.

“Plaintiffs have alleged that Coe engaged in conduct with underage girls that a reasonably person might consider, especially cumulatively, to be inappropriate or sexual in nature,” Garman wrote. “They have also alleged that FCCD and James had constructive or actual knowledge by way of witnessing the conduct or receiving reports from volunteers who witnessed it, which, they further alleged, was sufficient to put them on notice of Coe’s sexual interest in children. Accepting those well-pled allegations as true, we cannot say that no set of facts can be proved that would entitle plaintiffs to recovery.”

Kevin M. Lyons of Lyons Law Group, LLC argued the case on behalf of Doe.

“It clarifies a body of law that protects victims of child abuse and requires organizations entrusted with the care of children in Illinois to take reasonable steps to protect them,” he said. “Jane Doe’s courage got us here today. And it is such courage from young women like her that enables the Illinois Supreme Court to render a decision that protects all victims of child abuse.”

Michael L. Resis of SmithAmundsen LLC represented the defendants. He declined to comment.

This case is *Jane Doe, et al., v. Chad Coe, et al.*, 2019 IL 123521.