

**SUPERIOR COURT, STATE OF ARIZONA, In and for the County of Cochise**

<p><b>JANE DOE I, et al.,</b></p> <p><b>Plaintiffs,</b></p> <p><b>and</b></p> <p><b>THE CORPORATION OF THE PRESIDENT OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, a Utah corporation sole, et al.,</b></p> <p><b>Defendants.</b></p>	<p><b>Case No. CV202000599</b></p> <p><b>UNDER ADVISEMENT RULING CHURCH DEFENDANTS' MOTION FOR SUMMARY JUDGMENT</b></p>	<p><b>file stamp only</b></p>
<p><b>HONORABLE TIMOTHY B. DICKERSON DIVISION FOUR</b></p>		<p><b>By: Lizette Castaneda-Arroyo Judicial Administrative Assistant</b></p>

This case is before the Court for a decision on the Church Defendants' Motion for Summary Judgment and their Motion for Partial Summary Judgment on Plaintiffs' Conspiracy Claim.

The Court has reviewed the Motion, Notice of Supplemental Authority in Support of the Motion, Plaintiff's Response, and Defendant's Reply, along with the Statements of Fact and exhibits. For the reasons stated below, the Court grants the Motions for Summary Judgment.

**I. Procedural History**

On October 26, 2021, Plaintiffs filed their First Amended Complaint (Complaint) against the Church of Jesus Christ of Latter-Day Saints (Church) and various individuals related to the Church including Defendants John and Sherrie Herrod (except as to Counts 5 and 6) and Kim and Michelle Morgan Mauzy. These defendants are collectively referred to as the "Church Defendants." The claims against the Church Defendants are Count One, Negligence; Counts Two and Three, Intentional Infliction of Emotional Distress; Count Three, Negligent Infliction of Emotional Distress; Count Four, Breach of Fiduciary Duty; Count Seven, Ratification; Count Eight, Civil Conspiracy; and Count Nine, Punitive Damages.

The Church Defendants filed their Motion for Summary Judgment on October 21, 2022, requesting dismissal of all claims except Count Eight for Civil Conspiracy and a Motion for Partial Summary Judgment on Count Eight. Plaintiffs filed their Responses to both motions on January 25, 2023, and a Replies were filed on February 14, 2023.

Oral argument was held on July 18, 2023, at which the Court stated that it would take the motions under advisement when it ruled on Plaintiffs' First Amended Motion for Ruling on Constitutionality of Certain Statutes and Notice of Claim of Unconstitutionality Under ARS §12-1841. A ruling was entered on the constitutionality motion on September 8, 2023, and the Church Defendants' Motions for Summary Judgment were taken under advisement on that date.

## **II. Facts**

This lawsuit arises from sexual abuse inflicted on the Plaintiffs over a period of seven years, when they were between the ages of six weeks and twelve years, by their father, Paul Adams. Plaintiffs' mother, Leizza Adams, was aware of the abuse and was charged and convicted for failing to protect the children. Paul Adams died by suicide.

The Church's clergy are called "bishops." An individual church unit is called a "ward," and each ward has a bishop. Bishops hear confessions from members of their ward. Church doctrine requires bishops to keep confessions confidential.

Plaintiffs' family were members of the Bisbee Ward. John Herrod (Herrod) was the bishop of the Bisbee Ward from 2009 through 2012.

Paul Adams confessed to Herrod that he had sexually abused Jane Doe I. Herrod had Ms. Adams attend a second session with Mr. Adams and Herrod had Mr. Adams tell Ms. Adams about the abuse. Herrod provided counseling to Mr. and Ms. Adams and either said that Mr. Adams should turn himself in to the authorities or he may have said Ms. Adams should turn him in. Herrod left his post in 2012 and he disclosed the abuse of Jane Doe I to the new bishop, Kim Mauzy (Mauzy). Mr. Adams was excommunicated from the Church in 2013 after a disciplinary council proceeding.

Herrod and Mauzy were interviewed by Homeland Security Investigations (HSI). Herrod said that sometime around 2010-2012, Mr. Adams told him that he was molesting his daughter. He contacted legal counsel for the Church and was advised that he could only encourage Mr. Adams to turn himself in and that it was illegal for him to report the abuse. Mauzy told HSI that, 1) Herrod briefed him what had been "going on" with the Adams family; 2) "Salt Lake," the main office of the Church, told him to hold a disciplinary council to decide what to do with Mr. Adams; 3) the result of the disciplinary council was to excommunicate Mr. Adams; 4) he could not remember exactly what Mr. Adams said to the council; 5) Ms. Adams was present at the council; and 6) he did not remember if there were notes or other record of the disciplinary council.

No one affiliated with the Church reported Mr. Adams' misconduct to law enforcement. Mr. Adams continued to abuse Plaintiffs after his confession to Herrod and after he was excommunicated. Ms. Adams and the children remained active in the Church after Mr. Adams was excommunicated. Mr. Adams continued to reside with Ms. Adams and their two daughters after the confession and the excommunication.

## **III. Discussion of Contested Issues**

### **A. Positions of the Parties**

The Church Defendants contend that 1) the only basis for holding them liable for the harm inflicted on Plaintiffs is A.R.S. § 13-3620 (Mandatory Reporting Statute); 2) they were not required by that statute to report to authorities the statements made by Plaintiffs' father to Church officials due to the clergy-penitent privilege contained in the statute; and 3) they did not otherwise owe a duty to protect Plaintiffs and therefore all claims against them must fail.

Plaintiffs allege that Church Defendants did owe a duty under the Mandatory Reporting Statute to report their knowledge or suspicion of the abuse because Mr. Adams sexual deviance and child abuse was notorious within the community; they failed to report Leizza Adams' neglect of the children; they abused the clergy-penitent privilege in various ways and therefore cannot use it to shield their failure to

report; and Church Defendants had knowledge child abuse separate from the statements made by Mr. Adams.

## **B. Standard of Review**

A court shall grant summary judgment if the moving party shows that there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. Rule 56(a), Arizona Rules of Civil Procedure. In determining whether there are any factual disputes to resolve, the court is to view matters of record in the light most favorable to the party opposing summary judgment. *Normandin v. Encanto Adventures, LLC*, 246 Ariz. 458, 460 (2019). Summary judgment should be granted if no reasonable jury would find facts, directly or by inference, that would justify judgment in favor of the party opposing summary judgment. *Orme School v. Reeves*, 166 Ariz. 301, 310 (1990). Even when the facts are undisputed, a genuine dispute as to conflicting inferences to be drawn from them precludes an award of summary judgment. *Northern Contracting Co. v. Allis-Chambers Corp.*, 117 Ariz. 374, 376 (1977).

## **C. Discussion**

### **1. Duty In General**

Under Arizona law, 1) “duty is not presumed; in every negligence case, the plaintiff bears the burden of proving the existence of a duty;” 2) “foreseeability is not a factor in determining duty;” 3) “duty is based on either special relationships recognized by the common law or relationships created by public policy;” and 4) “in the context of duty, the primary sources for identifying public policy are state and federal statutes. In the absence of such legislative guidance, duty may be based on the common law—specifically, case law or Restatement sections consistent with Arizona law.” *Quiroz v. ALCOA Inc.*, 243 Ariz. 560, 563, ¶ 2 (2018) (internal citations omitted).

The existence of a duty “is a legal matter to be determined before the case-specific facts are considered.” *Quiroz*, 243 Ariz. at 563 ¶ 7.

### **2. Duty Based on Special Relationship**

Duties of care may arise from special relationships based on contract, family relations, or conduct undertaken by the defendant. *Gipson v. Kasey*, 214 Ariz. 141, 145 ¶ 18 (2007). Relationships held to create a duty include landowner-tenant, tavern-owner-patron, and “special relationships” recognized by § 315 of the Restatement of (Second) of Torts (1965) that create a duty to control the actions of another. *Id.*, at 145 ¶ 19. *Quiroz* provides that the Restatement of (Second) of Torts §§ 314A, 316-19, also recognizes relationships that create a duty. People do not generally have a duty to protect others from harm. *Dinsmoor v. City of Phoenix*, 251 Ariz. 370, 373 ¶ 15 (2021). Where the law in Arizona has found duty based on special relationships, it has limited the duty to “risks that arise within the scope of the relationship,” and “bounded by geography and time.” *Id.* at 374 ¶ 17 (citations omitted).

Plaintiffs argue that Paul Adams’ sexual deviance and abuse of his family was “well known within the community, ...both beyond and within the LDS Church.” Plaintiffs’ Response, page 2. The Court agrees with Church Defendants; Plaintiffs have not shown admissible evidence that the Church or other

Church Defendants had knowledge of Paul Adams abuse of Plaintiffs outside of Paul Adams' confession to Herrod and the disciplinary council. (The Court will discuss the declarations of Plaintiffs Jane Doe I and John Doe separately.)

But assuming for the sake of this decision that Plaintiffs have admissible evidence, the Court has not been made aware of any legal authority holding that a church or church community has a special relationship with its members which creates a duty to report suspected child abuse, separate from the Mandatory Reporting Statute.

The Court concludes that if any of the Church Defendants owed a duty to Plaintiffs to report suspected child abuse, that duty must arise from the Mandatory Reporting Statute.

### **3. Duty Based on A.R.S. § 13-3620A (Mandatory Report Statute)**

Paragraph A.2 of the Mandatory Report Statute requires the following persons who reasonably believe a minor is a victim of abuse to report their suspicions to proper authorities: "Any peace officer, child welfare investigator, child safety worker, member of the clergy, priest or Christian Science practitioner."

The Mandatory Report Statute makes the following exception for clergy (clergy-penitent exception):

"A member of the clergy, a Christian Science practitioner or a priest who has received a confidential communication or a confession in that person's role as a member of the clergy, as a Christian Science practitioner or as a priest in the course of the discipline enjoined by the church to which the member of the clergy, the Christian Science practitioner or the priest belongs may withhold reporting of the communication or confession if the member of the clergy, the Christian Science practitioner or the priest determines that it is reasonable and necessary within the concepts of the religion. This exemption applies only to the communication or confession and not to personal observations the member of the clergy, the Christian Science practitioner or the priest may otherwise make of the minor."

Church Defendants agree that the Mandatory Reporting Statute creates a duty owed by clergy as a matter of public policy, but they argue that Herrod and Mauzy, and therefore the Church, are protected by the clergy-penitent exception from liability for not reporting.

Before considering Plaintiffs arguments as to why the clergy-penitent exception does not protect Church Defendants from liability, the Court finds that the original confession made by Paul Adams to Herrod, the communications made by Mr. Adams and Ms. Adams at the counseling sessions, and the communications at the disciplinary council were "a confidential communication or a confession," were received by Herrod and Mauzy in their role as members of the clergy, and Herrod and Mauzy determined that not reporting the communications was "reasonable and necessary within the concepts of the [Church's] religion." There is not a genuine dispute as to these facts. This finding is also consistent with this Court's finding in its order dated August 8, 2022, as noted in Church Defendants' Reply, page 1. The Court will refer to these communications collectively as the "confidential communications."

The court will now examine the Plaintiffs arguments why the clergy-penitent exception does not shield the Church Defendants.

## **Herrod And Mauzy Knew of The Abuse Because the Community Knew Of The Abuse**

Plaintiffs contend that the community knew that Paul Adams abused his family and therefore they want the opportunity to convince a jury that Herrod and Mauzy knew of the abuse and as clergy were required to report it. Plaintiffs have not shown admissible evidence that Herrod or Mauzy had knowledge of abuse outside of the confidential communications.

## **The Church Defendants Abused the Clergy-Penitent Exception and Therefore May Not Claim Its Protection From Liability**

The Court rejects Plaintiffs' argument that the clergy-penitent exception to the Mandatory Reporting Statute can be abused and thereby not available to protect an otherwise qualifying communication. Authorities cited by Plaintiffs in support of this argument are not persuasive. The Court also finds not persuasive Plaintiffs argument and authority that the "abuse" claim is a jury issue. The Mandatory Reporting Statute provides that the clergyman makes the decision as to whether the concepts of their religion make it "reasonable and necessary" to not make a report. It is not for a Court or a jury to tell a clergyman that he is wrong about the concepts of his religion.

The Court will briefly address the ways in which Plaintiffs claim the Church Defendants abused the clergy-penitent exception.

### **Help Line**

Plaintiffs argue that the Church's instruction that clergy call the "help line" before contacting the authorities is evidence of abuse of the privilege is without merit. The clergy-penitent exception to the Mandatory Reporting Statute either applies or it does not apply. The Court has found that the exception applies to the confidential communications. It is not relevant that Herrod or Mauzy called the Help Line for advice.

The Court also finds it not relevant that Herrod said the Help Line told him he was not *allowed* to report the child abuse, instead of advising him he was not *required* to report it. Plaintiffs are correct that it would not have been illegal under Arizona law for Herrod to report the abuse, but it would have violated Church doctrine, therefore he was not required to make a report. The precise wording of the legal advice received cannot create an abuse of the exception which nullifies its application.

### **Failure To Report Immediately Was An Abuse Of The Exception.**

The clergy-penitent exception applied when the confidential communications were made and Herrod and Mauzy were not required to make a report. The word "immediately" in the Mandatory Reporting Statute does not in some manner negate the clergy-penitent exception.

### **A "Game Of Telephone" About Child Abuse Breaks The Privilege**

Other Church officers learned of the communications because of Herrod and Mauzy called the Help Line, seeking advice from Church authorities, and from the disciplinary council. Plaintiffs argue that too many persons were informed of the communications for the law to continue to protect the non-reporting of the abuse. The Court rejects this argument.

Plaintiffs offer no evidence that the sharing of the confidential communications between Church officials was not done within the context of concepts of the Church.

## **Leizza Adams' Neglect Of Plaintiffs**

The clergy knew of the abuse by Paul Adams through the confidential communications and knew Leizza Adams still supervised the children and knew a report of the abuse of Jane Doe I had not been made to the authorities; Plaintiffs argue this chain of facts results in the bishops having a reasonable belief that Ms. Adams was neglecting the children by exposing them to further abuse by their father. This chain of logical reasoning begins with the confidential communications which the Court has held fall within the clergy-penitent exception. When the confidential communications are removed from Plaintiffs' chain of facts, there remains no admissible evidence that the bishops had reason to believe the children were being abused.

## **Emily Reynolds' Testimony That Paul Adams' Abuse Of Plaintiffs Was Known By The Bishops Of The Bisbee Ward**

This argument is the same as the Plaintiffs' argument that the bishops must have known of the child abuse, outside of the confidential communications, because the church community knew about it. The Court reviewed the portions of the Reynolds deposition transcript supplied with the Response and Reply and finds that Ms. Reynolds' testimony does not provide admissible evidence that Herrod or Mauzy were aware of the sexual abuse of Plaintiffs other than by the confidential communications. Ms. Reynolds offers no firsthand testimony but rather provides information concerning rumors told her by individuals at Relief Society meetings, individuals who she is unwilling or unable to name, except for Ms. Linda Drake, who in her depositions denies hearing discussions of the Adams family at Relief Society meetings and testified Ms. Reynolds was not attending Church services during the time relevant to this case.

## **Declaration Of Jane Doe I And John Doe**

On April 30, 2023, Plaintiff Jane Doe I signed a declaration in which she makes the following statements relevant to this motion:

1. The people from the LDS Church, including Bishops Herrod and Mauzy, were very involved in her family's life.
2. Bishop Herrod came to her home.
3. She believes that "many people" in the ward knew about the sexual abuse.
4. She knew by the way he treated her that Bishop Mauzy had learned of the abuse from Bishop Herrod.
5. She and her siblings were called into Bishop Mauzy's office, usually one at a time. He asked her how she was doing. She could not meet his eyes. His expression would change when he asked how things were going at her home. She told him "many times," "I'm scared to go home. I don't want to go home." He sent her home.
6. Anyone visiting their home could not miss the lubricant and porn magazines lying throughout the house in plain view.

On April 24, 2023, Plaintiff John Doe signed a declaration in which he says:

1. People would see his father hitting and kicking him and his siblings.
2. He remembers going into Herrod and Mauzy's office and they would ask him how he was.
3. Everyone there [the Bishops and Church people] knew his dad was different, weird, and dangerous.

Jane Doe I's and John Doe's statements concerning what they believed to be true, and their conclusions based on how they believe people treated them are not admissible evidence and therefore cannot be considered. John Doe's declaration does not provide admissible evidence that Herrod and Mauzy had reason to suspect child abuse other than the confidential communications.

Church Defendants filed an Objection on June 2, 2023, arguing that the Court should not consider Plaintiffs' Supplemental Separate Statement of Facts because they claim it was filed untimely and because the information contained in the declarations was not previously disclosed. Plaintiffs, in their Response to the Objection, do not deny that their Supplemental Separate Statement of Facts was filed late, nor do they assert that the information in the declarations was timely disclosed. The Court notes that the allegation that Jane Doe I told Mauzy many times that she was scared to go home is not stated in factual allegations of the Amended Complaint. The factual allegations do contain all the other ways in which Plaintiffs contend that the Church Defendants were placed on notice of the child abuse. The Court will focus on the disclosure issue.

Rule 26.1(a)(3) requires that a party disclose in writing each witness the party intends to call at trial and "a description – and not merely the subject matter – of the testimony sufficient to fairly inform the other parties of each witnesses' expected testimony." Plaintiffs do not claim that the facts in the declarations were disclosed under Rule 26.1, rather they argue that Church Defendants could have taken the deposition of Jane Doe I and learned of the facts by that method. "A party need only disclose the "substance" of the witness's expected testimony, not the details." *Jimenez v. Wal-Mart Stores, Inc.*, 206 Ariz. 424, 426 ¶ 5 (App.2003). Jane Doe I's statement that she told Mauzy "many times" that she was scared to go home is not a mere detail and it should have been disclosed in Plaintiffs' description of Jane Doe I's expected testimony. Disclosing this information 18 months after the Amended Complaint was filed and well after the disclosure deadline is an egregious violation of Rule 26.1. The argument that the Church Defendants should have taken Jane Doe I's deposition to learn that she told Mauzy she was scared to go home and the Plaintiffs' theory that this triggered a duty for him to report, goes against the purpose of Rule 26.1, to "fairly expose the facts and issues to be litigated, as well as the witnesses and exhibits to be relied upon." *Reyes v Town of Gilbert*, 247 Ariz. 151, 158, ¶25.

The Court finds that the declarations do not contain admissible evidence, appropriate for it to consider in ruling on this Motion.

If the Court did consider the Jane Doe I's declaration, it would find it inadequate to create a genuine dispute of fact. Plaintiff Jane Doe I's statement that she told Bishop Mauzy that she was scared to return home, if offered at trial, is not hearsay as she would be present and subject to cross examination. The question is, does this statement provide a genuine dispute of a material fact, to wit: Did her statement cause Bishop Mauzy to reasonably believe that Jane Doe I was being abused, separate from his knowledge of past abuse gained from the confidential statements made by Paul Adams? The Court answers this question in the negative. A child saying, "I'm scared to go home," is as a matter of law not sufficient to create a duty for Mauzy to report Jane Doe I's fear to the authorities. Plaintiffs' argument is that Jane Doe I telling Mauzy that she is scared to go home removed the confidential nature of Mauzy's knowledge that Jane Doe I's father had sexual abused her in the past. Plaintiffs are correct that conversations between Jane Doe I and Mauzy are not covered by the clergy-penitent exception, but Plaintiffs' contention is that somehow the statements "I am scared to go home," removes the clergy-penitent exception protection from the confidential information. Plaintiffs offer no legal authority to support this contention. To honor the clergy-penitent exception to Mandatory Reporting Statute, the Court must view the statements "I am scared to go home," in a vacuum, without reference to the knowledge Mauzy obtained from the confidential communications.

#### **4. Conspiracy**

The parties in their pleadings seem to agree that if the Court grants in full the Church Defendants' main Motion for Summary Judgment, the conspiracy claim fails as well. Plaintiffs in their Opposition state that the Motion concerning the conspiracy claim should be stricken, "as these matters are already addressed in Defendants' concurrently filed summary judgment motion." Therefore, the Court will not address in detail the Motion for Partial Summary Judgment on Plaintiffs' Conspiracy Claim.

"To establish liability on the basis of conspiracy, a plaintiff must show by clear and convincing

evidence that the defendant and at least one other person agreed to accomplish an unlawful purpose or a lawful purpose by unlawful means, and accomplish the underlying tort, which in turn caused damages.” *Dawson v. Withycombe*, 216 Ariz. 84, 103 ¶ (2007).

The Court agrees with the arguments stated in Church Defendants’ Motion. Assuming for purposes of this decision that the Herrod and Mauzy could be both agents of the Church and form a conspiracy with the Church, Plaintiffs have not shown sufficient admissible evidence for any reasonable jury to conclude by the standard of clear and convincing evidence that Herrod and Mauzy and the Church or Church officials had the intention, as part of an express or implied agreement, to not report the abuse of Plaintiffs by their father and by not reporting the abuse intended for the abuse to continue.

### **Dispositive Findings and Orders**

Based on the foregoing,

**THE COURT FINDS** that 1) there is not a genuine dispute as to any material fact relevant to the question of duty; 2) Church Defendants were not required under the Mandatory Reporting Statute to report the abuse of Jane Doe I by her father because their knowledge of the abuse came from confidential communications which fall within the clergy-penitent exception in the Mandatory Reporting Statute; and 3) Church Defendants did not breach a duty owed to Plaintiffs that could form the basis for liability for the harm to Plaintiffs.

**THE COURT FURTHER FINDS** that 1) there is not a genuine dispute as to any material fact relevant to the count alleging conspiracy; and 2) there is neither an “unlawful purpose” to support the conspiracy count nor evidence from which a reasonable jury could conclude that there was a conspiracy to hide the abuse suffered by Plaintiffs.

**IT IS ORDERED GRANTING** Church Defendants’ Motion for Summary Judgment and dismissing the First Amended Complaint as to the Church Defendants.

Counsel for Church Defendants is directed to provide a form of judgment in accordance with this decision.



eSigned by TIMOTHY DICKERSON 11/03/2023 15:48:50 oecrREMu

**mailed/distributed:**

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