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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0480**

John Doe 121,
Appellant,

vs.

Diocese of Winona,
Respondent,

St. Mary's Catholic Church,
Respondent.

**Filed September 24, 2018
Affirmed in part, reversed in part, and remanded
Jesson, Judge**

Winona County District Court
File No. 85-CV-16-16

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Considered and decided by Worke, Presiding Judge; Jesson, Judge; and Klaphake,
Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

JESSON, Judge

Appellant John Doe was a student at St. Mary's Catholic Church during the early 1960s, where he asserts he was sexually abused by Father Richard Hatch. In 2015, Doe sued respondents St. Mary's and the Diocese of Winona seeking relief under multiple theories of negligence, arguing that respondents should have foreseen, or known about, Father Hatch's sexually abusive tendencies toward children. The district court granted a motion to dismiss, and then a motion for summary judgment, which resulted in all of the claims being dismissed. Because we determine there is a genuine issue of material fact regarding whether the Diocese should have foreseen Father Hatch's sexually abusive tendencies, we affirm in part, reverse in part, and remand.

FACTS

In 1954, Richard Hatch was ordained to priesthood, and through 1962, he was assigned to three churches in Minnesota—St. Vianney's in Fairmont, St. Leo's in Pipestone, and St. James' in St. James. His now-released priest file shows that he was reprimanded several times during this period for a variety of conduct. Most of his transgressions involved the failure to pay debts he incurred. However, the letters also refer to "indiscretions" and "imprudence" other than a failure to pay debts.

The most concrete indication of these wrongdoings come from a 1961 letter to Father Hatch from the Bishop of Winona. This letter reprimanded Father Hatch for two independent reasons: his poor financial habits and the taking of two teenagers with him on vacation. The letter states:

I have spoken to you several times in regard to your apparent disregard and lack of concern for debts which you have and which you incur.

...

I regret very much that information has also come to me that you have apparently found it necessary to take a vacation to Florida. Certainly one who is deeply in debt is not justified in expending money in such a manner. In addition to that, reports have come to me that you have taken one or two teenagers with you in spite of the advice which I gave to you at the time of your retreat.

Since it seems impossible for me to impress fully upon you the seriousness of matters of this kind and also in regard to your finances, I shall find it necessary to suspend you from all priestly work if I receive any further reports concerning debts which are unpaid or the taking of teenagers with you on trips no matter what the objective may be.

I sincerely pray that you will realize the seriousness of all of these matters and readjust yourself so that you may continue to avoid being a source of scandal to others.

With knowledge of this warning of a potential suspension for additional misconduct, in addition to access to Father Hatch's personnel file containing the letters referring to indiscretions, the Diocese of Winona assigned him to St. Mary's Catholic Church in June 1962. Appellant John Doe was a student at St. Mary's from first through eighth grade. Doe regularly attended mass and served as an altar boy and would also visit Father Hatch alone in the priest's living quarters. It was during this time, in 1962 or early 1963, that Doe alleges Father Hatch sexually abused him on multiple occasions.

In June 1963, Father Hatch was removed from his position at St. Mary's and was sent to Via Coeli, a congregation of priests who provided care for other priests in need.

Troubled priests were sent to Via Coeli with the hope that their conduct would improve, and then they could return to assignments at churches. Although the record is unclear as to what behavior may lead to a priest being sent to Via Coeli, what is in the record are letters that Father Hatch wrote to the Bishop of Winona while at the facility. These letters apologized for hardships he caused through his “imprudent actions.” Father Hatch ultimately left Via Coeli within a year without the permission of the Bishop of Winona. He then voluntarily ceased any ministerial duties and ultimately passed away in 2005.

In 1996, it was reported to the Diocese of Winona that Father Hatch had sexually molested two boys while assigned to his duties and that he took pornographic pictures of a third boy. Then in 2013, the Diocese of Winona received another complaint of child sexual abuse by Father Hatch that occurred from 1959 to 1962.

In January 2016, Doe filed a complaint against the Diocese of Winona and St. Mary’s.¹ The complaint alleged that Doe was sexually abused by Father Hatch while he attended St. Mary’s and that the defendants knew of the dangers of Father Hatch, but failed to prevent the sexual abuse from occurring. The complaint set forth claims of general negligence, negligent supervision, and negligent retention against both St. Mary’s and the Diocese.

¹ Doe was able to timely file this matter approximately 50 years after Father Hatch’s assignment at St. Mary’s because of the Child Victims Act. This statute states that “[n]otwithstanding any other provision of law, in the case of alleged sexual abuse of an individual under the age of 18, if the action would otherwise be time-barred under a previous version of [the Child Victims Act], or other time limit, an action for damages against a person . . . may be commenced no later than three years following May 25, 2013.” 2013 Minn. Laws ch.89, § 1 at 729.

In July 2016, the district court granted rule 12.02(e) motions to dismiss the general negligence claims. The court noted the general rule that a person does not owe another individual a duty to protect him from the harm caused by a third person, unless there is a special relationship between the parties and the harm is foreseeable. Here, the court determined that no special relationship existed as there were no facts to suggest the plaintiff was in the custody or control of St. Mary's or the Diocese.

In November 2017, the district court granted motions for summary judgment on the remaining counts—negligent supervision and negligent retention. In regard to the negligent-supervision claims, the district court determined that there were no facts in the record to suggest Father Hatch's sexual abuse of Doe was foreseeable or that it was foreseeable that Father Hatch had sexually abusive tendencies. In regard to the negligent-retention claims, the court determined that there was no evidence suggesting that the respondents knew of, or should have known of, Father Hatch's sexually abusive conduct.

Doe appeals.

D E C I S I O N

In its simplest terms, negligence consists of “a departure from a standard of conduct required by the law for the protection of others against unreasonable risk of harm.” *Seim v. Garavalia*, 306 N.W.2d 806, 810 (Minn. 1981) (quotations omitted). And this standard of conduct is traditionally the standard of a reasonable individual of ordinary prudence. *Id.* While a plaintiff may bring a general negligence claim against another individual under this basic standard of reasonable care, negligence actions typically take a different shape when brought against an entity for the conduct of its employees. These different forms of

negligence against an employer for injuries caused by an employee are negligent hiring, negligent supervision, and negligent retention. *M.L. v. Magnuson*, 531 N.W.2d 849, 856 (Minn. App. 1995), *review denied* (Minn. July 20, 1995). But when there is a “special relationship” between two parties and the harm is foreseeable, then a general-negligence claim can be brought against an entity for the conduct of its employees. *Doe 169 v. Brandon*, 845 N.W.2d 174, 177-78 (Minn. 2014).

Here, Doe brought claims of general negligence, as well as claims of negligent supervision and negligent retention, against St. Mary’s and the Diocese. Each of these claims was dismissed, and Doe now appeals. We first address the general-negligence claims against St. Mary’s and the Diocese, and then turn to the negligent-supervision and negligent-retention claims.

I. The district court did not err in dismissing the general-negligence claims.

Doe contends that the district court erred when it granted the respondents’ motion to dismiss the general-negligence claims pursuant to Minn. R. Civ. P. 12.02(e)—failure to state a claim upon which relief can be granted.² “On appeal from the district court’s dismissal of a complaint for failure to state a claim on which relief can be granted, we review de novo the claim’s legal sufficiency.” *Leonard v. Nw. Airlines, Inc.*, 605 N.W.2d 425, 428 (Minn. App. 2000).

² The Diocese also argues that a general-negligence claim is not recognized in Minnesota against an employer for the harm of its employees. Because we determine the general-negligence claims lack merit, we decline to reach this issue.

Minnesota law follows the general common-law rule that a person does not owe a duty of care to another if the harm is caused by a third party's conduct. *Doe* 169, 845 N.W.2d at 177-78. One exception to this general rule is when there is a special relationship between a plaintiff and a defendant, and the harm to the plaintiff is foreseeable. *Id.* at 178. Here, Doe contends both that there was a special relationship and that the harm was foreseeable to meet this exception. We affirm the district court's order dismissing the general-negligence claims because: (1) there is no evidence of a special relationship between Doe and the Diocese; and (2) because there is no evidence that St. Mary's could foresee the harm to Doe.

With regard to the evidence of a special relationship between Doe and the Diocese, here that evidence focuses on faith-based instruction. And this court has held that faith-based advice or instruction, without more, does not create a special relationship. *Meyer v. Lindala*, 675 N.W.2d 635, 640 (Minn. App. 2004). True, a special relationship also may exist when "an individual, whether voluntarily or as required by law, has custody of another person under circumstances in which that other person is deprived of normal opportunities of self-protection." *Bjerke v. Johnson*, 742 N.W.2d 660, 665 (Minn. 2007) (internal quotation marks omitted). But our review of the pleadings does not reveal any facts that suggest the Diocese had any custody or control over Doe. While Doe points to caselaw suggesting that schools have custody over students, this is only significant in determining whether St. Mary's—not the Diocese—had custody over Doe. Because Doe failed to plead any facts suggesting the Diocese had a special relationship with Doe, we affirm the district court's dismissal of the general-negligence claim against the Diocese.

We further affirm the district court's order dismissing the general-negligence claim against St. Mary's. While St. Mary's, based on the pleading, had a special relationship with Doe because of its custody over students, that alone is insufficient. There must also be harm to Doe that was foreseeable to St. Mary's. *See Wood on behalf of Doe v. Astleford*, 412 N.W.2d 753, 755 (Minn. App. 1987); *review denied* (Minn. Nov. 24, 1987). Here, there is no evidence that St. Mary's could foresee the harm to Doe. The evidence that could suggest Father Hatch's harm was foreseeable was the letters in his personnel file, but the record does not establish that St. Mary's had access to these letters. And at oral argument, counsel for Doe conceded that there was no evidence in the record that suggests Father Hatch's conduct was foreseeable to St. Mary's. Because Father Hatch's harm was not foreseeable to St. Mary's, the general-negligence claim fails, regardless of whether a special relationship existed.

We affirm the district court's order dismissing the general-negligence claim against the Diocese because there is no evidence of a special relationship present. We further affirm the court's order dismissing the general-negligence claim against St. Mary's because the harm to Doe was not foreseeable.

II. Genuine issues of material fact exist as to whether Father Hatch's sexually abusive tendencies were foreseeable to the Diocese.

Doe argues the district court erred when it granted summary judgment on the counts of negligent supervision and negligent retention. "Summary judgment is appropriate when there is no genuine issue of material fact and a party is entitled to judgment as a matter of law," and this court reviews a district court's grant of summary judgment de novo "to

determine whether there are any genuine issues of material fact and whether the court erred in its application of the law.” *Senogles v. Carlson*, 902 N.W.2d 38, 42 (Minn. 2017) (internal citations omitted). Furthermore, this court views “the evidence in the light most favorable to the party against whom summary judgment was granted.” *Id.*

Here, the district court granted summary judgment on Doe’s claims of negligent supervision and negligent retention against both St. Mary’s and the Diocese. “To make out a successful claim for negligent supervision, the plaintiff must prove (1) the employee’s conduct was foreseeable; and (2) the employer failed to exercise ordinary care when supervising the employee.” *C.B. ex rel. L.B. v. Evangelical Lutheran Church in Am.*, 726 N.W.2d 127, 136 (Minn. App. 2007) (internal quotation marks omitted). Negligent retention requires that: (1) “the employer becomes aware or should have become aware of problems with an employee that indicated his unfitness;” and (2) “the employer fails to take further action such as investigating, discharge, or reassignment.” *Yunker v. Honeywell, Inc.*, 496 N.W.2d 419, 423 (Minn. App. 1993) (citation omitted), *review denied* (Minn. Apr. 20, 1993). The district court determined that there was insufficient evidence to create a genuine issue of material fact regarding whether Father Hatch’s sexual tendencies toward children were foreseeable or whether the respondents should have become aware of his sexual tendencies. We disagree in regard to the counts against the Diocese, but not St. Mary’s, as the letter referencing teenagers—to which the Diocese had access—is sufficient to create a dispute of material fact as to the Diocese.

Courts in Minnesota have consistently stated that in “close cases,” foreseeability is an issue for the jury to resolve.³ See, e.g., *Astleford*, 412 N.W.2d at 755; *Larson v. Larson*, 373 N.W.2d 287, 289 (Minn. 1985). Here, the Diocese had a letter that reprimanded Father Hatch for taking teenagers with him on a vacation. This letter noted this was not an incident that came out of nowhere: “reports have come to me that you have taken one or two teenagers with you *in spite of the advice which I gave to you at the time of your retreat.*” (Emphasis added.) And the letter underscored the seriousness of the misconduct as it threatened a potential suspension for further similar conduct. While there are several reasonable interpretations of this letter, one interpretation is that Father Hatch was chastised for taking teenagers with him because he had prior inappropriate conduct with teenagers or was suspected of having done so. And because this is a reasonable inference a jury could make, it is a close call whether this letter is sufficient to determine that it was foreseeable that Father Hatch had sexually abusive tendencies toward children.⁴

The Diocese contends that the letter referencing teenagers reprimands Father Hatch solely for his lack of financial responsibility relating to the vacation. We agree that the letter reprimands Father Hatch for the financial aspect of taking a vacation. But viewing

³ The Minnesota Supreme Court has recently reaffirmed the standard that in close cases, foreseeability is for a jury to determine. See *Senogles*, 902 N.W.2d at 43 (“As we reaffirmed recently, when the issue of foreseeability is clear, the court, as a matter of law, should decide it, but in close cases, the issue of foreseeability is for the jury.”); see also *Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 629 (Minn. 2017).

⁴ While the letter referencing the teenagers is sufficient on its own to create a genuine issue of material fact as to whether Father Hatch’s sexually abusive tendencies were foreseeable to the Diocese, it is bolstered by Father Hatch’s letters apologizing for his “imprudent actions” written after he was removed from his position at St. Mary’s.

the letter in a light most favorable to Doe, the letter makes it clear that the allegation regarding teenagers is a separate issue from Father Hatch's misbehaviors concerning financial responsibility. For example, after discussing the financial misconduct, the letter states "[i]n addition to that," and then mentions teenagers for the first time. Similarly, directly after discussing the conduct with the teenagers, the letter refers the taking of teenagers as a distinct issue from the financial concerns: "seriousness of matters of this kind *and* also in regard to your finances." (Emphasis added.)

The Diocese further argues that even if the letter referencing teenagers reprimands Father Hatch for something other than financial misconduct, this second allegation is too vague and amounts to nothing more than speculation. The Diocese is correct that speculation alone is not enough to avoid summary judgment. *See Osborne v. Twin Town Bowl, Inc.*, 749 N.W.2d 367, 371 (Minn. 2008) ("Mere speculation, without some concrete evidence, is not enough to avoid summary judgment." (Alterations omitted)). But here the letter referencing misconduct with teenagers is concrete enough to rise above mere speculation—it chastises a priest for misconduct with teenagers and threatens him with a suspension—which makes the issue of foreseeability a close call appropriate for the jury to determine. Because the Diocese—but not St. Mary's—had access to this letter prior to assigning Father Hatch to serve in Winona, we reverse and remand the district court's order granting summary judgment regarding the negligent supervision and retention counts against the Diocese, but affirm the order regarding the counts against St. Mary's.

In sum, the Diocese had access to Father Hatch's personnel file prior to assigning him to St. Mary's. Inside this file were numerous letters reprimanding Father Hatch for

his financial misconduct, but one letter contained a separate allegation—misconduct with teenagers. The letter referenced previous “advice” from the Bishop to Father Hatch on this topic and stated that he would be suspended if he took teenagers with him on trips, “no matter what the objective may be.” With this knowledge—that Father Hatch was not allowed to have youth with him on trips, that the Bishop was concerned about the “seriousness of matters of this kind,” and that the Bishop stated that it seemed “impossible” for him to convey to Father Hatch the significance of the matter—a reasonable jury could find that it was foreseeable to the Diocese that Father Hatch may have sexually abusive tendencies towards children. We therefore reverse the grant of summary judgment on the negligent-supervision and negligent-retention claims against the Diocese and remand for trial. We affirm the district court’s dismissal of the general negligence claims and affirm the summary judgment on the claims against St. Mary’s.

Affirmed in part, reversed in part, and remanded.