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Abuse case against Vatican can go forward

Chaz Muth Catholic News Service | Dec. 1, 2008

WASHINGTON -- A federal appeals court ruled that a lawsuit can move forward against the Vatican involving three men who claimed to have been sexually abused when they were children by priests in the Archdiocese of Louisville, Ky.

However, the lead counsel to the Vatican in this case said the ruling handed down by the 6th U.S. Circuit Court of Appeals Nov. 24 also presents significant challenges for the attorneys representing the three men in proving the Vatican is liable for damages.

Louisville attorney William F. McMurry has brought what is believed to be the first clergy sexual abuse suit that names the Vatican as the sole defendant.

The lawsuit seeks unspecified damages, claiming a 1962 directive from the Vatican instructed church officials in Louisville to remain silent about sex abuse complaints against clergy in the archdiocese. The document became public in 2003 and the lawsuit asserts that it makes the Vatican responsible for crimes committed by clergy whose misdeeds were covered up because of the instruction.

McMurry was not available to comment to Catholic News Service Nov. 25, but told The Associated Press Nov. 24 that this ruling was a significant step forward in his case. "We're finally going to get to the root of the problem."

McMurry also represented 243 sex abuse victims who reached a settlement with the Louisville Archdiocese for $25.3 million in 2003.

Jeffrey S. Lena, the Berkeley, Calif., attorney representing the Holy See in this case, said the ruling also was in many respects a good decision for the Vatican.

"The plaintiffs can say they have prevailed, because they have survived to litigate another day," Lena told CNS Nov. 25. "But the basis for their jurisdictional claims is significantly narrowed and they lost all of their constitutional challenges that were on appeal."

The appeals court upheld a 2007 ruling by U.S. District Court Judge John G. Heyburn II that allows the three men to pursue a claim that church officials should have issued warnings that members of the clergy had been accused of sexual abuse.

But the court dismissed the portion of the lawsuit that challenged the constitutionality of the U.S. Foreign Sovereign Immunity Act, which grants immunity to foreign nations from nearly all civil lawsuits. The lawsuit claimed the Holy See was a religious institution that was separate from the Vatican City State, which is recognized by the U.S. as a country. The ruling holds that the Vatican is a country and not a separate religious institution.

"Because, what they claimed happened in Kentucky, now the plaintiff has to find a way to place the Holy See in the U.S.," Lena said.

The argument may be made that U.S. bishops who should have sounded the alarm about sexual abuse allegations are employees of the Vatican, but the defense could maintain they are employees of the Archdiocese of Louisville.

When he rendered his 2007 ruling, Heyburn acknowledged that whether the Holy See qualifies as an employer of U.S. clergy for the purposes of the case had not yet been fully tested.

"In (the Nov. 24) ruling the court adopted the ruling of the Supreme Court of Kentucky, that says sexual abuse is outside of the scope of the employment of the priest," Lena said. "Now that becomes the law of the case. When a priest is committing sexual abuse, it's outside of the scope of employment. That makes it difficult to move the case forward. The basis of the case is narrowed."

Cecilia Price, spokeswoman for the Louisville Archdiocese, told CNS Nov. 25 the archdiocese had nothing more to add to what Lena had already said about the ruling.

McMurry told AP he suspected this case could end up being heard by the U.S. Supreme Court, but Lena told CNS it was premature for him to make such a prediction.

Vatican spokesman Jesuit Father Federico Lombardi told CNS in Rome Nov. 25 that he did not expect Vatican officials to have any comment on the ruling.

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