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Dismissal of case against Kansas City priest lets SNAP off hook

Joshua J. McElwee | Oct. 30, 2012
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The Survivors Network of those Abused by Priests is off the legal hook -- for now.

For months, the leading advocacy group for U.S. clergy sex abuse victims has been part of a legal saga in county court here after a judge ordered the group to give access to 23 years of internal documents and files to lawyers defending priests accused of abuse.

The case, which centers around a Kansas City-St. Joseph, Mo., diocesan priest accused of abuse, sparked the possibility that the group and its executive director, David Clohessy, might be found in contempt for withholding some of the requested documents.

On Tuesday, however, lawyers for both the plaintiff and the man he accuses of abuse, Fr. Michael Tierney, announced in Jackson County, Mo., Circuit Court they had agreed to dismiss the case pending an appeal to higher courts on other issues.

"SNAP isn't off the hook by this," said Rebecca Randles, the attorney for the person accusing Tierney, following Tuesday's ruling. "It's a reprieve. It isn't a [stay]."

The dismissal puts on hold the issues surrounding SNAP and its documents until Missouri's Court of Appeals or its Supreme Court decides on the other issues.

The appeal is expected to center on a July 20 decision from Jackson County Judge Ann Mesle that dismissed the Kansas City diocese as a co-defendant in the case. Mesle ruled that because Tierney is accused of abusing the plaintiff off diocesan property, the diocese cannot be assumed liable for the priest's actions.

Prior to Tuesday's dismissal, Tierney's lawyers had asked Mesle [1] to find SNAP in contempt of court for not fulfilling the judge's previous orders for access to its documents.

Randles said her client, who has chosen to remain anonymous, decided to dismiss the case to immediately appeal Mesle's ruling on the Kansas City diocese's involvement in the case, not because of the issues involving SNAP.

The agreement between the alleged victim's lawyers and Tierney's lawyers allows Randles to file an appeal on the ruling regarding the Kansas City diocese, then to re-file the case in Jackson County Circuit Court once those appeals are exhausted.

That agreement, Randles said, was "developed over months." The timing with regard to SNAP's issues in the case, she said, was "fortuitous" and "not planned."

Brian Madden, an attorney representing Tierney, said he and his client "have no say in this."

"The plaintiff can decide to dismiss ... and re-file once, so long as it's not made it to trial," Madden said.

The lawsuit, first filed in September 2010, states that in 1971, Tierney invited a then-13-year-old to Tierney's mother's house to help Tierney move boxes. Once there, Tierney wrestled with him and touched him sexually, the plaintiff alleges in the suit.

Mesle said in her July order that she "struggled" with the ruling to dismiss the diocese from the case, but previous rulings by Missouri's Supreme Court and its Court of Appeals effectively tied her hands.

One case Mesle cited specifically was the Supreme Court's 1997 decision in *Gibson* v. *Brewer*. In that case, an alleged abuse victim brought suit against the St. Louis archdiocese, claiming the diocese acted negligently in its supervision and retention of the priest accused of abuse.

While the high court agreed in its decision that the archdiocese was not immune from civil liability stemming from acts by its clergy, it ruled that questions of hiring and retaining clergy "necessarily involve interpretations of religious doctrine, policy and administration."

"Such excessive entanglement between church and state has the effect of inhibiting religion, in violation of the First Amendment," the justices wrote. In order to prove negligent supervision of the priest by the archdiocese, the justices added, the abuse would have to occur "upon the premises in possession" of the diocese.

Because of that ruling, Mesle said in her July decision the plaintiff "would face the insurmountable obstacle that the alleged incident happened off the premises of Defendant Diocese."

With Randles' forthcoming filing for appeal in the Kansas City case, which she said she is considering filing directly to the state's Supreme Court, the justices will have to decide whether to readdress the issue of priest supervision.

As for SNAP, things remain on hold.

Madden said once the case against Tierney is dismissed, the court loses jurisdiction over the motions filed in front of it, including his motion to hold the victims' advocacy group in contempt.

The documents already obtained from the group "are under a protective order, so they're confidential. They will be held in confidence," he said.

Mesle approved the confidentiality agreement regarding SNAP's documents in April [2] and mandated that documents defense lawyers had access to should be marked as confidential and kept in the possession of one of SNAP's lawyers, and notes of all access to the documents should be kept in a log.

The files requested from SNAP [3] included all correspondence with members of the press that mention Tierney or the diocese; all documents that refer to priests currently or formerly associated with the diocese; and all correspondence with members of the public "that discusses or relates to repressed memory in conjunction with cases involving" the Kansas City diocese.

Tierney's defense lawyers had argued [4] that SNAP could be inappropriately coaching victims it helps regarding issues of repressed memory.

SNAP previously had filed appeals to prevent the handover of documents to Missouri's Court of Appeals and its Supreme Court to stop the document request, which it lost [5].

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