

SUPREME COURT OF VIRGINIA

Doe v. Baker

Doe · No. 200386 · Decided April 29, 2021

SUMMARY

The Supreme Court of Virginia reviewed the dismissal of Jane Doe’s amended complaint alleging that a former church pastor sexually battered her and that church defendants were liable under theories including negligent hiring or retention and vicarious liability. The court held that negligent hiring or retention claims based on the pastor’s original 1995 hiring were insufficient, but claims based on hiring or retention after his 2011 retirement were sufficiently pleaded. It also held that the allegations created a rebuttable presumption supporting vicarious-liability claims and remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of Virginia
WRITING FOR THE COURT	Justice Stephen R. McCullough; All the Justices
JURISDICTION	Virginia
DECIDED	April 29, 2021
DOCKET	200386
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from dismissal of an amended complaint on demurrer-like review of the pleadings, including a motion styled as summary judgment. The Supreme Court of Virginia affirmed in part, reversed in part, and remanded.
STANDARD OF REVIEW	Because the circuit court effectively treated the motion for summary judgment as a demurrer and dismissed the complaint based on its allegations, the court accepted expressly pleaded facts as true, construed them in the claimant's favor, disregarded unreasonable inferences and legal conclusions, and reviewed legal conclusions de novo.
PRECEDENTIAL VALUE	Published opinion; binding Virginia Supreme Court precedent.
PARTIES	Jane Doe, by and through her father and next friend, Jack Doe v. Michael L. Baker, et al.

TOPICS

negligence

negligent hiring

negligent retention

vicarious liability

motions to dismiss

PRACTICE AREAS

torts

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether negligent hiring or retention claims remain viable when the alleged tort occurs after the tortfeasor has retired from the position for which he was originally hired.
2. Whether the complaint sufficiently alleged that King remained an employee or agent, or was rehired or retained in such a role, at the time of the alleged sexual battery.
3. Whether the complaint sufficiently pleaded negligent hiring based on King's original hiring in 1995.
4. Whether individual church officials could be liable for negligent hiring or retention when they were not alleged to be King's employer.
5. Whether the allegations sufficiently pleaded vicarious liability and that King's conduct occurred within the scope of employment.
6. Whether the complaint stated a claim based on apparent authority for a sexual battery committed by King.
7. Whether the allegations stated claims for gross or willful and wanton negligence.
8. Whether the complaint sufficiently pleaded negligent infliction of emotional distress.
9. Whether the complaint sufficiently pleaded intentional infliction of emotional distress.
10. Whether the complaint stated a fraud-by-nondisclosure claim.
11. Whether the circuit court abused its discretion by denying further leave to amend.

HOLDINGS

1. A negligent hiring or negligent retention claim is not viable for conduct committed after the alleged employee is no longer retained by the defendant employer. Termination of the employment relationship is the boundary of employer liability for these torts.
2. The complaint sufficiently stated negligent hiring or retention claims to the extent they were based on the church hiring or retaining King as an employee or agent after he retired as pastor in 2011.
3. The allegations did not sufficiently state a negligent hiring claim based on King's original hiring in 1995 because they did not allege facts showing that the defendants knew or should have known of a risk that the specific danger—a sexual battery—would occur.
4. The individual church officials could not be liable for negligent hiring or retention because those torts are claims against an employer, and the complaint did not allege that the individual officials were King's employer.

5. The allegations that King acted as an employee or agent, provided spiritual advice and comfort, and committed the sexual touching under that guise were sufficient to withstand demurrer on vicarious liability and scope of employment.
6. The complaint did not state a claim that King acted with apparent authority when he committed the alleged sexual battery because no reasonable person would believe that the church authorized him to engage in sexual battery.
7. The complaint did not state a claim for gross or willful and wanton negligence based on the church defendants' response to reports of King's conduct.
8. The complaint sufficiently stated a negligent infliction of emotional distress claim because it alleged emotional disturbance, physical injury, and a clear and unbroken causal connection, subject to proof of an underlying tort duty and breach.
9. The complaint did not state a claim for intentional infliction of emotional distress because the alleged failure to take measures stronger than counseling did not constitute conduct sufficiently outrageous and intolerable.
10. The complaint did not state a fraud-by-nondisclosure claim because it did not allege intentional concealment and the defendants owed no duty to disclose the complaints about King to Jane or other congregants.
11. The circuit court did not abuse its discretion by denying further leave to amend.

KEY QUOTATIONS

"A claim for negligent hiring or a negligent retention claim ceases to be viable for conduct committed after the employee is no longer retained by the employer." (7-8)

"The tort of negligent hiring or retention is available against an employer, not individuals who played a role in hiring or retaining an employee." (13)

"Here, the act in question is a sexual battery. No reasonable person would believe that the church vested King with the authority to engage in such an act." (18)

"The judgment of the circuit court is affirmed in part and reversed in part and the case is remanded to the circuit court for further proceedings not inconsistent with this opinion." (24-25)

FACTUAL BACKGROUND

Jonathan Eugene King served as a Church of God pastor from 1967 until 2011 and allegedly remained active in a church-related spiritual or leadership role after retiring as pastor. The complaint alleged that church officials had received numerous reports of King's inappropriate and increasingly sexual conduct toward women and girls, including reports in 2005 that he attempted unwanted sexual contact and provided a woman with a sexual instrument, yet the church did not remove him and instead directed him to counseling. In 2016, when Jane Doe was a minor, King invited or met with her at his home under the guise of spiritual advice and comfort and sexually touched her and kissed her without consent. Jane alleged that King was an employee, agent, or volunteer of the church at the time of the incident.

PROCEDURAL HISTORY

Jane Doe initially sued Pastor Jonathan Eugene King and later amended her complaint to add church officials, the Virginia Church of God, and the national Church of God denomination. She asserted claims including negligent hiring or retention, negligence, negligent and intentional infliction of emotional distress, fraud by nondisclosure, and vicarious liability. The circuit court dismissed the case in its entirety based on the pleadings and denied further leave to amend. Jane appealed; she later nonsuited her claims against King and conceded that her failure-to-warn and failure-to-protect claims were inadequately pleaded under *A.H. v. Church of God in Christ, Inc.*

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for further proceedings not inconsistent with the opinion. The negligent hiring or retention counts remain viable only to the extent based on hiring or retention of King as an employee or agent after his retirement as pastor; the vicarious liability and negligent infliction of emotional distress claims are reinstated. The circuit court must further develop the factual record concerning King's status as an employee or agent at the time of the alleged tort. The affirmed dismissals remain in place, including the claims for gross or willful and wanton negligence, intentional infliction of emotional distress, fraud, failure to warn, failure to protect, apparent authority, and negligent hiring or retention against individual defendants.

CASES CITED

- *Parker v. Carilion Clinic*, 296 Va. 319, 330, 333 n.6, 338-41
- *Coward v. Wellmont Health Sys.*, 295 Va. 351, 358-59, 367
- *A.H. v. Church of God in Christ, Inc.*, 297 Va. 604, 613 n.1, 614 n.3, 627, 629, 633-34
- *Interim Personnel of Cent. Va., Inc. v. Messer*, 263 Va. 435, 440, 442
- *Southeast Apartments Mgmt. v. Jackman*, 257 Va. 256, 260-61
- *Malicki v. Doe*, 814 So. 2d 347, 362
- *N.H. v. Presbyterian Church (U.S.A.)*, 998 P.2d 592, 600
- *Rehm v. Lenz*, 547 N.W.2d 560, 567
- *O'Rourke v. McIlvaine*, 19 N.E.3d 714, 725
- *Phillips v. TLC Plumbing, Inc.*, 91 Cal. Rptr. 3d 864, 870
- *Abrams v. Worthington*, 861 N.E.2d 920, 924
- *Marquay v. Eno*, 662 A.2d 272, 281
- *McGuire v. Arizona Prot. Agency*, 609 P.2d 1080, 1081-82
- *Coath v. Jones*, 419 A.2d 1249, 1252
- *Andrews v. Commonwealth*, 280 Va. 231, 252
- *Majorana v. Crown Cent. Petroleum Corp.*, 260 Va. 521, 526 n.2

- Giant of Md., Inc. v. Enger, 257 Va. 513, 516
- Our Lady of Peace, Inc. v. Morgan, 297 Va. 832, 837, 849-50
- Plummer v. Center Psychiatrists, Ltd., 252 Va. 233, 235, 237
- Abernathy v. Romaczyk, 202 Va. 328, 331-34
- Kern v. J.L. Barksdale Furniture Corp., 224 Va. 682, 685
- Neff Trailer Sales, Inc. v. Dellinger, 221 Va. 367, 368, 370-71
- Wright v. Shortridge, 194 Va. 346, 353
- Cowan v. Hospice Support Care, Inc., 268 Va. 482, 486-87
- Etherton v. Doe, 268 Va. 209, 213-14
- Elliott v. Carter, 292 Va. 618, 622-23
- Hughes v. Moore, 214 Va. 27, 34
- Delk v. Columbia/HCA Healthcare Corp., 259 Va. 125, 137-38
- Dudley v. Offender Aid & Restoration of Richmond, Inc., 241 Va. 270, 277
- Harris v. Kreutzer, 271 Va. 188, 203-04
- Russo v. White, 241 Va. 23, 27
- Womack v. Eldridge, 215 Va. 338, 342
- Yuzefovsky v. St. John's Wood Apartments, 261 Va. 97, 111
- Allen Realty Corp. v. Holbert, 227 Va. 441, 450
- Lambert v. Downtown Garage, Inc., 262 Va. 707, 714
- Norris v. Mitchell, 255 Va. 235, 240-41
- Bank of Montreal v. Signet Bank, 193 F.3d 818, 827
- Jane Doe 43C v. Diocese of New Ulm, 787 N.W.2d 680, 687
- Richfield Bank & Trust Co. v. Sjogren, 244 N.W.2d 648, 650
- L & H Airco, Inc. v. Rapistan Corp., 446 N.W.2d 372, 380
- Kimble v. Carey, 279 Va. 652, 662
- Ogunde v. Prison Health Servs., Inc., 274 Va. 55, 67
- Griffin v. Shively, 227 Va. 317, 320