

IN THE SUPREME COURT OF TEXAS

No. 04-0692

GUIDEONE ELITE INSURANCE CO. F/K/A
PREFERRED ABSTAINERS INSURANCE CO., PETITIONER,

v.

FIELDER ROAD BAPTIST CHURCH, RESPONDENT

ON PETITION FOR REVIEW FROM THE
COURT OF APPEALS FOR THE SECOND DISTRICT OF TEXAS

Argued October 20, 2005

JUSTICE HECHT, joined by JUSTICE WAINWRIGHT, JUSTICE BRISTER and JUSTICE WILLETT, concurring in the judgment.

Fielder Road Baptist Church and its insurer, GuideOne Elite Insurance Co., have reached a stipulation about the nature and duration of the Church's relationship with a former youth worker, Charles Patrick Evans, alleged to have sexually abused Jane Doe. GuideOne argues that the stipulation should be considered in determining whether it has a duty to defend the Church against Doe's lawsuit, and the Court rejects that argument. The Church argues that even if the stipulation were considered, Doe's pleadings would still invoke GuideOne's duty to defend. Because the Church is correct, the Court's discussions of the so-called "eight-corners rule", and whether there

should ever be exceptions to it, is unnecessary. I would not address these difficult issues in a case in which they cannot affect the result. Accordingly, I join only in the Court's judgment.

Doe sued the Church and Evans, alleging in her petition the following:

At all times material herein, Charles Patrick Evans was an associate youth minister. At all times material herein, Charles Evans remained under the retention, direct supervision, agency and control of Defendant Church.

From approximately early 1992 to 1994, Defendant Evans was an associate youth minister at Fielder Road Baptist Church in Arlington, Texas. During this period Fielder Road knew or should have known that Evans engaged in forbidden sexual conduct which was both actually and potentially damaging to other persons including Plaintiff. . . . Fielder Road had knowledge that Evans had made inappropriate sexual advances to other young girls in the church. Despite these reports, Fielder Road continued to place Evans in a position as a youth minister with access and authority over young girls.

From approximately 1992 to 1994, Evans sexually molested Jane Doe at church functions and church sponsored trips, as well as at her own home.

* * *

Despite allegations of previous incidents, Fielder Road failed to warn parents of the children in the church youth ministry of the sexual tendencies of Defendant Evans.

* * *

At all times material herein from 1992 to 1994, Evans was employed as an associate youth minister and was under Fielder Road's direct supervision and control when he sexually exploited and abused Plaintiff. Defendant Evans came to know Plaintiff and gained access to her because of his status as a youth minister. Defendant Evans engaged in this wrongful conduct while in the course and scope of his employment with Defendant Fielder Road. Therefore, Defendant Fielder Road is liable for the wrongful conduct of Defendant Evans. Plaintiff therefore pleads *Respondeat Superior*, agency, apparent agency and agency by estoppel, vicarious and derivative liability.

Defendant Fielder Road negligently selected, hired and/or continued the employment of Defendant Evans in a position of trust, confidence and authority as a youth minister in direct contact with minors when it knew or should have known of his dangerous sexual propensities.

Fielder Road failed to warn Plaintiff or her family of Evans' dangerous sexual propensities.

Fielder Road failed to provide reasonable supervision of Evans.

Fielder Road, as a religious organization, is granted special privileges and immunities by society and is in a special fiduciary relationship with Plaintiff. Defendant owed Plaintiff the highest duty of trust and confidence and is required to act in Plaintiff's best interest. Defendant knowingly violated the relationship. Defendant knowingly breached Plaintiff's trust when Fielder Road failed to act with the highest degree of trust and confidence to protect Plaintiff from its sexually predatory minister. This knowing breach of fiduciary duty proximately caused injury to Plaintiff.

* * *

Fielder Road also committed fraud by misrepresentation that proximately caused Plaintiff's damages. Fielder Road committed fraud when it represented that Evans was sexually safe, when it knew or should have known of his pedophilic tendencies.

* * *

Plaintiff alleges that the actions of these Defendants have inflicted emotional distress upon Plaintiff.

Plaintiff alleges that the negligence of Fielder Road resulted in bodily injury to Plaintiff.

The Church has stipulated that the petition's allegation that "Evans was an associate youth minister" at the Church from "approximately early 1992 to 1994" is false. Specifically, the Church has stipulated:

Charles Patrick Evans became a part-time intern in the youth department of Defendant FRBC on November 14, 1991. On January 1, 1992, Charles Patrick Evans was hired as a part-time associate in the youth department of Defendant FRBC. Charles Patrick Evans left employment with Defendant FRBC on or about December 15, 1992. Charles Patrick Evans never served, nor was he ever authorized to so act, as an officer or director of Defendant FRBC. Charles Patrick Evans did not serve, nor was he ever authorized to act, as an employee, or volunteer of Defendant FRBC at any time after December 1992. Charles Patrick Evans was officially removed as a member of Defendant FRBC in February of 1993.

From March 31, 1993, to March 31, 1994, GuideOne insured the Church against “legal liability for damages because of bodily injury . . . to any person arising out of sexual misconduct which occurs during the policy period” and agreed to “defend any suit brought against [the Church] seeking damages, even if the allegations of the suit are groundless, false or fraudulent”. GuideOne argues that because the Church did not employ Evans or authorize him to act on its behalf during that period, Doe’s accusations are not covered by the policy. That is simply incorrect.

Doe alleges that Evans’ sexually molested her “[f]rom approximately 1992 to 1994” — within the policy period. Doe further alleges that she suffered bodily injury because of Evans’ sexual misconduct, for which the Church is liable. If the Church is correct that it did not employ Evans within the policy period, then Doe’s claim against the Church for vicarious liability would fail. But that is clearly not Doe’s only claim. She claims that the Church knew or should have known of Evans’ sexual misconduct from “approximately early 1992 to 1994” and should have warned her and her family. She also claims that Evans was the Church’s apparent agent, that the Church breached its fiduciary duty to her, and that the Church made misrepresentations to her. Whether those and other claims have merit, legally or factually, they assert liability against the Church that may not depend on the period of Evans’ association with the Church and thus invoke the duty to defend.

GuideOne concedes that if it has a duty to defend any of Doe’s claims, it has a duty to defend them all.¹

The “eight-corners” rule applies whether the Church’s stipulation is considered or not. Thus, we have no need to consider what exceptions the rule might have, and given the importance of this difficult issue, I would express no opinion on it.

Accordingly, I concur only in the judgment.

Nathan L. Hecht
Justice

Opinion delivered: June 30, 2006

¹ *Maryland Cas. Co. v. Moritz*, 138 S.W.2d 1095, 1097 (Tex. Civ. App.—Austin 1940, writ ref’d).