

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY**

JOHN DOE, B.P., an individual,)	
)	
Plaintiff,)	
vs.)	Case No. 1016-CV29995
)	Division 7
)	
FATHER MICHAEL TIERNEY, et al.,)	
)	
Defendants.)	

**ORDER GRANTING DEFENDANT THE CATHOLIC DIOCESE OF KANSAS CITY –
ST. JOSEPH’S MOTION TO DISMISS**

This case comes before the Court on Defendant the Catholic Diocese of Kansas City – St. Joseph’s (“Diocese”) Motion to Dismiss, filed herein on June 20, 2012. Defendant Diocese seeks dismissal of the remaining three counts of Plaintiff’s Third Amended Petition (incorrectly named) as alleged against Defendant Diocese. The three remaining counts against the Diocese are Counts III (Failure to Supervise Children), IV (Fraud), and V (Fraudulent Misrepresentation). After consideration of the motion, applicable law, oral argument, and prior rulings by this Court, the Court now enters the following findings and orders:

Count III – Failure to Supervise Children

Per this Court’s May 24, 2012 Order, Plaintiff was granted leave to file a claim of Failure to Supervise Children against Defendant Diocese based only on allegations of *intentional* conduct by Defendant Diocese. The Court limited this claim to *intentional* conduct because controlling Missouri precedent does not recognize a failure to supervise clergy claim based on *negligent* conduct by Defendant Diocese. *See Gibson v. Brewer*, 952 S.W.2d 239 (Mo. 1997; *Mary SN Doe v. Roman Catholic Diocese of St. Louis*, 311 S.W.3d 818 (Mo. App. E.D. 2010). However, from further review of the law and the oral arguments on the motion, the Court also DISMISSES Plaintiff’s claim of intentional failure to supervise children as alleged against Defendant Diocese.

From a review of Missouri case law, courts have recognized the failure to supervise children cause of action only under narrow circumstances constituting negligence. *See, e.g. O.L. v. R.L.*, 62 S.W.3d 469 (Mo. App. 2001); *A.R.H. v. W.H.S.*, 876 S.W.2d 687 (Mo. App 1994); *Rogger v. Voyles*, 797 S.W.2d 844 (Mo. App. 1990); *Smith v. Archbishop of St. Louis*, 632 S.W.2d 516 (Mo. App. 1982). Missouri courts have not explicitly recognized nor prohibited a claim for *intentional* failure to supervise children. Given this silence by Missouri appellate courts, this Court, without any sort of guidance on elements or standards, feels compelled to avoid creating a cause of action for purposes of this litigation. *See Overlap Inc. v. A.G. Edwards & Sons, Inc.* 318 S.W. 3d 219, 227-8 (Mo. App. W.D. 2010), in which the appellate court stated that “no matter how laudable and omnipotent its (circuit court’s) recommendations may have been” they are constitutionally bound to follow the law as it is at the time of trial.

Furthermore, if this Court were to undertake the role of determining the proper elements for this new cause of action, it would likely adopt elements from similar recognized causes of action that, together with *Gibson* and its progeny, still would preclude this Plaintiff from recovering from Defendant Diocese. For example, if this Court applied similar elements as those set forth in *Gibson* for intentional failure to supervise clergy, this Court expects this Plaintiff would face the insurmountable obstacle that the alleged incident happened off the premises of Defendant Diocese and that any predicated “grooming” is not enough to satisfy an on-premises element. *See Gibson* at 248; *John Doe AP v. Roman Catholic Archdiocese of St. Louis*, 347 S.W.3d 588, 593 (Mo. App. E.D. 2011) (“The so-called ‘grooming’ cited by John Doe does not qualify as sexual abuse, and, as such, does not satisfy the [the element]... which requires the sexual abuse to occur on property possessed by the church”).

As a final note, the Court has struggled with its decision to dismiss Defendant Diocese from all such liability in this case. However, as stated in *Mary SN Doe v. Roman Catholic Archdiocese of St. Louis*, “a Missouri Supreme Court interpretation of federal constitution law

constitutes the controlling law within our state until either the Missouri Supreme Court or the United States Supreme Court declares otherwise.” 311 S.W.3d at 823 (Mo. App. E.D. 2010).

Counts IV and V – Fraud and Fraudulent Misrepresentation

Per this Court’s May 24, 2012 Order, Plaintiff was not granted leave to amend his petition to add any claims based on fraud because any fraud claim would be barred by the statute of limitations and applicable law related to tolling. Therefore, because of this Court’s order denying leave to amend the petition to add any claims based on fraud, Defendant Diocese’s Motion as to Counts IV and V is GRANTED.

IT IS NOW HEREBY ORDERED that Defendant the Catholic Diocese of Kansas City – St. Joseph’s Motion to Dismiss is GRANTED.

IT IS FURTHER ORDERED that Counts III, IV, and V of Plaintiff’s Third Amended Petition are DISMISSED as alleged against the Catholic Diocese of Kansas City – St. Joseph.

IT IS SO ORDERED.

July 20, 2012
Date
Circuit Judge

Ann Mesle
Ann Mesle

I certify that a copy of this order has been mailed/faxed
on 7/20, 2012, to:

Brian Madden, 816-531-2372
Rebecca Randles, 816-931-0134
Jonathan Haden/Mara Cohara, 816-292-2001
Gerald McGonigal, 816-221-2245
John Gates, 816-531-7201
Joseph Fridkin, 913-248-9111

[Signature] Judicial Administrative Assistant