



IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

JOHN COE #1)	
Plaintiffs,)	
)	
v.)	C.A. No. 08C-10-172 CLS
)	
CATHOLIC DIOCESE OF)	
WILMINTON, INC., et al.,)	
Defendants.)	
<hr/>		
JANE COE #1,)	
Plaintiff,)	
)	
v.)	C.A. No. 08C-10-121 CLS
)	
CATHOLIC DIOCESE OF)	
WILMINTON, INC., et al.,)	
Defendants.)	
<hr/>		
PAUL GERARD QUINN,)	
Plaintiff,)	
)	
v.)	C.A. No. 08c-10-046 CLS
)	
CATHOLIC DIOCESE OF)	
WILMINTON, INC., et al.,)	
Defendants.)	
<hr/>		

ORDER

Presently before the Court are Plaintiffs' Motion to Compel¹ and Motion for a Protective Order.² Because the issues presented in each of

¹ Pls. Mot. to Compel Def. Diocese to Respond to Pls. First Req. for Produc. of Docs. and First Set of Interrogs., D.I. 34.

² Pls. Mot. for Entry of a Protective Order Against the Diocese of Wilmington, D.I. 35.

these motions are intimately intertwined, the Court will address both motions in this Order.

The parties agree that a protective order should govern the discovery in all of the sexual abuse cases. They cannot agree, however, on the content of that protective order. Specifically, the parties dispute whether the following must be disclosed: (1) the identity of non-party victims that reported abuse to the Diocese, (2) the identity of anonymous plaintiffs and (3) the medical records of Father Clarahan. The Court will address these issues with the expectation that the parties will be able to forge a mutually acceptable protective order. Also, in their Motion to Compel, Plaintiffs argue that the Diocese's answers to Interrogatories #1-4 are deficient. At oral argument held on February 10, 2009, the Court ruled on Interrogatories #1 and 4. The Court will address Interrogatories #2 and 3 in this Order.

1. *Anonymous non-party victims and plaintiffs*

The Diocese does not have to disclose the names of non-party victims and anonymous plaintiffs. Individuals have a constitutionally protected interest in avoiding disclosure of personal matters.³ The right of privacy lies

³ See *Whalen v. Roe*, 429 U.S. 589 (1977); citing *Olmstead v. United States*, 277 U.S. 438, 478 (1928), (In his dissent, Justice Brandeis characterized “the right to be let alone” as “the right most valued by civilized men.”); *Griswold v. Connecticut*, 381 U.S. 479 (1965)(“The First Amendment has a penumbra where privacy is protected from governmental intrusion.”); *Stanley v. Georgia*, 394 U.S. 557 (1969).

with the individual and can be waived by express or implied consent.⁴ If the Court were to permit disclosure of the names of non-party victims, Plaintiffs intend to contact and question them about sexual abuse that they allegedly suffered as a child. For obvious reasons, many of these individuals may not want to be identified or contacted. They have not come forward to litigate their case nor have they attempted to contact any of the attorneys in order to contribute to the pending litigation. Therefore, the Court does not find that these individuals have expressly or impliedly waived their right to privacy. Given the highly sensitive nature of the allegations, the Court respects the decision of non-party victims to remain detached from the present litigation.

The Court acknowledges, however, that the right to privacy is not absolute.⁵ In regards to this case, the Court must balance the privacy rights of non-party victims against Plaintiffs' need to take adequate discovery. In doing so, the Court concludes that the Diocese must produce any reports of abuse that it received from non-party victims but the names of the victim must be redacted. This will provide Plaintiffs with information about the alleged abuse and how it was investigated while maintaining the privacy of non-party victims. Furthermore, the Court finds that the Diocese does not

⁴ *Continental Optical Co. v. Reed*, 86 N.E.2d 306 (Ind. Ct. App. 1949).

⁵ *Martin v. Widener University School of Law*, 1992 WL 153540, at *18 (Del. Super. June 4, 1992) citing *Guthridge v. Pen-Mod, Inc.*, 239 A.2d 709, 714 (Del. Super. Nov. 2, 1967).

have to produce the names of anonymous plaintiffs in other priest abuse cases because Plaintiffs has the ability to obtain this information elsewhere.⁶

2. *Medical Records*

Plaintiffs seek production of Father Clarahan's medical records. The medical records are privileged under D.R.E. 503(b):

“A patient has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of diagnosis or treatment of the patient's physical, mental or emotional condition ... among the patient, the patient's mental health provider, physician or psychotherapist...”

Pursuant to D.R.E. 503(d)(3), this privilege does not apply to communications relevant to “the physical, mental or emotional condition of the patient in any proceeding in which...any party relies upon the condition as an element of the party's claim or defense.”⁷ This exception does not apply here because neither party has relied on Father Clarahan's physical or mental condition as an element of their claim or defense.⁸

⁶ See *Favalora v. Sidaway*, 996 So.2d 895 (Fla. Dist. Ct. App. 2008)(finding that defendant archbishop need not reveal the names of anonymous plaintiffs because plaintiff can review the court files and contact the attorneys who represented the parties to make the determinations he deems necessary to his cause of action).

⁷ D.R.E. 503(d)(3). Father Clarahan died in 1999. Thus, either party's reliance on Father Clarahan's medical or physical condition as an element of their case triggers the exception to this privilege.

⁸ The exception under D.R.E. 503(d)(7) also does not apply to this case. That section provides: Appointment of guardian; child abuse cases. There is no privilege under this rule for a communication relevant to a proceeding *brought pursuant to* 12 Del. C. § 3901 or 16 Del. C., Chapter 9.” (emphasis added). The physician/psychotherapist –patient

Plaintiffs argue that the physician/psychotherapist-patient privilege is abrogated by 16 *Del. C.* § 909 because the requested medical records pertain to an accused child abuser. The Court agrees to a limited extent. Section 909 is part of the Child Abuse Prevention Act.⁹ It provides:

No legally recognized privilege, except that between attorney and client and that between priest and penitent in a sacramental confession, shall apply to situations involving known or suspected child abuse, neglect, exploitation or abandonment and shall not constitute grounds for failure to report as required by § 903 of this title or to give or accept evidence in any judicial proceeding relating to child abuse or neglect.

Section 909 does not provide for a blanket abrogation of the privilege rather it applies in only two limited situations: (1) reporting under section 903 and (2) in any judicial proceeding relating to child abuse or neglect. The latter applies to this case. To the extent that the Catholic Diocese are accused of knowing about child abuse and reassigning priests instead of removing them, this case has the potential to encourage a more stringent screening process and reporting procedures in order to prevent further abuse by priests

privilege applicable to this case is not limited by this exception because the action is not brought pursuant to 16 *Del. C.*, Chapter 9.

⁹ The purpose of this Act is to provide comprehensive protective services for abused and neglected children and to promote the safety and best interests of abused children. See 16 *Del. C.* § 901.

employed by the Diocese.¹⁰ Accordingly, the Court finds that Father Clarahan's medical records are discoverable pursuant to 16 *Del. C.* § 909.

While the medical records are not privileged in this case, they are still entitled to protection. The records will be marked as confidential. The disclosure of any materials designated as "confidential" to the public or any third party not previously approved by both parties or by Order of this Court is prohibited.

3. *Interrogatories #2 and 3*

Plaintiffs' Interrogatories #2 and 3 request all tests, questionnaires or studies conducted during the hiring process of Father Clarahan and other priests. Pursuant to the findings above, the Diocese must answer Interrogatory #2. The Diocese does not have to answer Interrogatory #3 because it is unduly burdensome pursuant to Superior Court Civil Rule 26.

IT IS SO ORDERED.

/s/ Calvin L. Scott

Judge Calvin L. Scott, Jr.

¹⁰ But see *Law v. Developmental Child Care Inc.*, 523 A.2d 557 (Del. Super. 1987).