

IN THE IOWA DISTRICT COURT IN AND FOR CLINTON COUNTY

DONALD J. GREEN,)
)
 Plaintiff,)
)
 vs.)
)
 FATHER JAMES JANSSEN AND)
 THE DIOCESE OF DAVENPORT,)
)
 Defendants.)

Law No. LA 29990

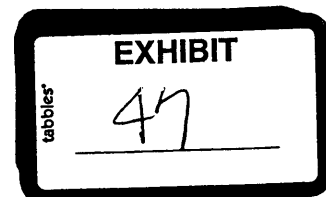
PETITION AT LAW

MAINTENANCE STUFF
CLINTON DISTRICT COURT
CLINTON COUNTY, IOWA
2003 NOV 17 AM 8:45
FILED

COMES NOW, Plaintiff, Donald J. Green, by and through his attorneys, Betty, Neuman & McMahon, L.L.P., and for his Petition at Law against the Defendants, states as follows:

COMMON ALLEGATIONS

1. Plaintiff Donald Green is now a resident of Clinton County, Iowa, and at all times material herein was a minor and resident of Clinton County, Iowa.
2. Plaintiff was a baptized and confirmed member of SS Philip & James Parish in the Davenport Diocese. He attended catechism classes and served for many years as an altar boy and with his family, attended weekly mass.
3. Defendant Diocese of Davenport is an Iowa corporation duly organized under the laws of the State of Iowa.
4. Defendant Father James Janssen (hereinafter "Janssen") is an ordained Roman Catholic priest. At all times material, Defendant Janssen was under the authority, direct supervision, employ and control of the Diocese of Davenport.



5. As a priest and spiritual advisor, Defendant Janssen was a person of great influence and persuasion as a holy man and authority figure. Plaintiff, therefore, developed great admiration, trust, reverence and respect for the Roman Catholic Church and its agents.

6. Defendant Janssen has been assigned to and held the following positions in the Diocese of Davenport:

- A. Assistant Pastor at St. Bridget Victor;
(1948)
- B. Assistant Pastor at St. Paul Parish in Burlington, Iowa;
(1948-1950)
- C. Assistant Pastor at St. Irenaeus Parish in Clinton, Iowa;
(1950-1953)
- D. Leave of Absence (August-December, 1953);
- E. Assistant Pastor at St. Joseph Parish in East Pleasant Plain;
(1953)
- F. Assistant Pastor at Sacred Heart Parish in Newton, Iowa;
(1953-1956)
- G. Leave of Absence (1956-1958);
- H. Substitute Pastor at St. Michael Parish in Holbrook;
(1958)
- I. Administrator at St. Patrick's Parish, Delmar, Iowa;
(1959)
- J. Assistant Pastor at St. Mary's Parish in Davenport, Iowa;
(1959-1961)
- K. Assistant Pastor at St. Joseph Parish in Fort Madison, Iowa;
(1961-1967)

- L. Pastor at St. Joseph Parish in Sugar Creek, Iowa;
(1967-1979)
- M. Pastor at St. Mary Parish in Bryant, Iowa;
(1972-1979)
- N. Co-Pastor at St. Anthony Parish in Davenport, Iowa; and
(1979-1980)
- O. Pastor at Ss. Philip & James Parish in Grand Mound, Iowa
(1980-1990)

7. That at all times material herein, Defendant Janssen was under the direct supervision, employ and control of the Defendant Diocese of Davenport.

8. Defendant Janssen identified Plaintiff's family as one with a young male child, sought and gained the trust and confidence of Plaintiff's parents as friends, spiritual guides, pastors, confessors and priests; sought and gained parental consent for Plaintiff to participate in counseling and other activities and to spend time alone with him; and sought and gained parental directive to Plaintiff that he respect Janssen's authority and guidance and comply with his instructions. Janssen also sought and gained Plaintiff's trust, friendship, admiration and obedience. As a result, Plaintiff was conditioned to comply with Janssen's direction and to look to him as an authority on matters spiritual, moral, ethical and temporal.

9. Beginning in 1982, while the Pastor at SS Philip & James Parish in Grand Mound, Iowa, Defendant Janssen, while using his position of authority, trust, reverence and control as a Roman Catholic Priest, engaged in harmful and illegal sexual contact with Plaintiff when Plaintiff was a minor child and a member of the parish.

10. In fostering and developing trust to enable him to carry out his ongoing wrongful sexual contacts, Defendant Janssen committed the following acts with Plaintiff while Plaintiff was a minor:

- a. Engaged in improper, illegal and immoral sexual contacts with a minor child;
- b. Fondling Plaintiff's genitalia;

11. During the time that Defendant Janssen was molesting the Plaintiff, Defendant Diocese of Davenport either knew, or should have known, of the improper sexual abuse perpetrated by Defendant Janssen. Defendant Diocese of Davenport intentionally or negligently failed to take action against Defendant Janssen, including, but not limited to, investigating his actions, defrocking him, reporting him to law enforcement, warning members of the Diocese about him, disciplining him, documenting and maintaining records of his abuse and taking all reasonable steps to insure such actions, while under the Church's authority, control and employ, would not occur again.

12. Defendant Diocese of Davenport, rather than properly investigating and taking reasonable steps to prevent further action, placed Defendant Janssen in a position of power and authority within the Diocese, including permitting him to serve in the Priest Senate and also placing him on the Priest Personnel Board from 1976-1989. He was also permitted to serve as Boy Scout Chaplain from 1980 to 1990.

13. The sexual abuse of the Plaintiff and the concealment of the wrongful nature of it by the Defendant Diocese of Davenport injured Plaintiff. Further, Plaintiff was unable to discover wrongful conduct and the sexual abuse, the damages and the

causal relationship between the damages and the abuse perpetrated upon him by the Defendants until approximately 2003.

COUNT I

ASSAULT AND BATTERY BY DEFENDANT JANSSEN

1. Plaintiff incorporates Paragraphs 1-13 of the Common Allegations as if fully set forth herein.

2. In 1982, Defendant Janssen engaged in wrongful sexual conduct and contact upon the person of the Plaintiff.

3. Plaintiff did not consent to the acts of assault and battery committed against him by Defendant Janssen.

4. As a result of the above described conduct, Plaintiff has suffered, and continues to suffer, severe and permanent emotional distress, physical manifestations of emotional distress, embarrassment, loss of self esteem, loss of enjoyment of life, was and is permanently prevented from performing his normal daily activities and obtaining the full enjoyment to life, has and will continue to incur expenses for medical and psychological treatment, therapy and counseling.

5. The acts of assault and battery committed by Defendant Janssen are a proximate cause of the injuries suffered by the Plaintiff.

6. Defendant Janssen acted willfully and recklessly and with intentional and willful disregard for the rights of the Plaintiff. Plaintiff is therefore entitled to punitive damages.

WHEREFORE, Plaintiff demands judgment against Defendant Janssen for assault and battery in an amount that will fully and fairly compensate him for his injuries and damages, and for punitive damages in an amount sufficient to deter others and punish Defendant Janssen, and for any other relief the Court deems appropriate.

COUNT II
CHILDHOOD SEXUAL ABUSE BY DEFENDANT JANSSEN
(IN VIOLATION OF IOWA CODE SECTION 709.1(3))

1. Plaintiff incorporates Paragraphs 1-13 of the Common Allegations in this Petition as if set forth herein.

2. In 1982, Defendant Janssen engaged in unlawful sexual abuse with the person of the Plaintiff in violation of Iowa Code Section 709.1(3).

3. As a result of the above described conduct, Plaintiff has suffered, and continues to suffer, severe and permanent emotional distress, physical manifestations of emotional distress, embarrassment, loss of self esteem, loss of enjoyment of life, was and is permanently prevented from performing his normal daily activities and obtaining the full enjoyment to life, has and will continue to incur expenses for medical and psychological treatment, therapy and counseling.

4. The sexual abuse committed by Defendant Janssen are a proximate cause of injuries suffered by the Plaintiff.

WHEREFORE, Plaintiff demands judgment against Defendant Janssen for sexual abuse pursuant to Iowa Code Section 709.1(3) in an amount that will fully and fairly compensate him for his injuries and damages, and for punitive damages in an amount

sufficient to deter others and punish Defendant Janssen, and for any other relief the Court deems appropriate.

COUNT III
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
(AGAINST ALL DEFENDANTS)

1. Plaintiff incorporates Paragraphs 1-13 of the Common Allegations in this Petition as if set forth herein.

2. In 1982, Defendant Janssen willfully and intentionally engaged in wrongful sexual conduct with Plaintiff, then a minor.

3. Defendant Diocese of Davenport either knew or should have known of Defendant Janssen's conduct and purposely and intentionally failed to take action against him or to prevent further abuse of the Plaintiff.

4. The conduct of the Defendants toward the Plaintiff was so outrageous as to go beyond all possible bounds of decency, and is to be regarded as atrocious and utterly intolerable in a civilized community.

5. Defendants did, and intended to inflict, emotional distress upon Plaintiff.

6. The outrageous conduct of the Defendants was a proximate cause of the severe emotional distress suffered by Plaintiff.

7. As a result of the above described conduct, Plaintiff has suffered, and continues to suffer, severe and permanent emotional distress, physical manifestations of emotional distress, embarrassment, loss of self esteem, loss of enjoyment of life, was and is permanently prevented from performing his normal daily activities and

obtaining the full enjoyment to life, has and will continue to incur expenses for medical and psychological treatment, therapy and counseling.

8. Defendants acted willfully and recklessly and with intentional and willful disregard for the rights of the Plaintiff. Plaintiff is, therefore, entitled to punitive damages.

WHEREFORE, Plaintiff prays for judgment against Defendants in an amount that will fully and fairly compensate him for his injuries and damages, and for punitive damages, in an amount sufficient to deter others and punish Defendants, and for any other relief the Court deems appropriate.

COUNT IV
BREACH OF FIDUCIARY DUTY
(AGAINST ALL DEFENDANTS)

1. Plaintiff incorporates Paragraphs 1-13 of the Common Allegations in this Petition as if set forth herein.

2. By holding themselves out as qualified Roman Catholic clergy, representatives of the Roman Catholic Church, priests, religious instructors, counselors and holy individuals, and by undertaking the religious instruction and spiritual and emotional counseling of Plaintiff, Defendants entered into a fiduciary relationship with the minor Plaintiff.

3. Defendants breached their fiduciary duty to the Plaintiff by engaging in intentional, negligent and unlawful conduct described herein.

4. As a result of Defendants' breach of their fiduciary duties, Plaintiff has suffered, and continues to suffer, severe and permanent emotional distress, physical

manifestations of emotional distress, embarrassment, loss of self esteem, loss of enjoyment of life, was and is permanently prevented from performing his normal daily activities and obtaining the full enjoyment to life, has and will continue to incur expenses for medical and psychological treatment, therapy and counseling.

WHEREFORE, Plaintiff prays for judgment against Defendants in an amount that will fully and fairly compensate him for his injuries and damages, and for punitive damages in an amount sufficient to deter others and punish Defendants, and for any other relief the Court deems appropriate.

COUNT V
FIDUCIARY FRAUD AND CONSPIRACY TO COMMIT FIDUCIARY FRAUD
(AGAINST ALL DEFENDANTS)

1. Plaintiff incorporates Paragraphs 1-13 of the Common Allegations in this Petition as if set forth herein.

2. By holding themselves out as qualified Roman Catholic clergy, representatives of the Roman Catholic Church, priests, religious instructors and counselors, and by undertaking the religious instruction and spiritual and emotional counseling of Plaintiff, Defendants entered into a fiduciary relationship with the minor Plaintiff.

3. As fiduciaries to Plaintiff, Defendants had a duty to obtain and disclose information relating to sexual misconduct of Defendant Janssen.

4. Defendants misrepresented, concealed or failed to disclose information relating to the sexual misconduct of Defendant Janssen.

5. Defendants knew that they misrepresented, concealed or failed to disclose information relating to the sexual misconduct of Defendant Janssen.

6. Plaintiff justifiably relied upon Defendants for information relating to sexual misconduct of Defendant Janssen.

7. Upon information and belief, Defendants, in concert with each other and with the intent to conceal and defraud, conspired and came to a meeting of the minds whereby they would misrepresent, conceal or fail to disclose information relating to the sexual misconduct of Defendant Janssen.

8. By so concealing, Defendants committed at least one act in furtherance of the conspiracy.

9. As a direct result of the Defendants' fraud and conspiracy, Plaintiff has suffered, and continues to suffer, severe and permanent emotional distress, physical manifestations of emotional distress, embarrassment, loss of self esteem, loss of enjoyment of life, was and is permanently prevented from performing his normal daily activities and obtaining the full enjoyment to life, has and will continue to incur expenses for medical and psychological treatment, therapy and counseling:

WHEREFORE, Plaintiff prays for judgment against Defendants in an amount that will fully and fairly compensate him for his injuries and damages, and for punitive damages in an amount sufficient to deter others and punish Defendants, and for any other relief the Court deems appropriate.

COUNT VI
NEGLIGENT HIRING, SUPERVISING, WARNING, DOCUMENTING
AND RETAINING BY DEFENDANT DIOCESE

1. Plaintiff incorporates Paragraphs 1-13 of the Common Allegations in this Petition as if set forth herein.

2. Upon information and belief, Defendant Diocese of Davenport, by and through their agents, servants and employees, knew, or should have known, of Defendant Janssen's harmful and unlawful conduct.

3. Defendant Diocese of Davenport had a duty to exercise reasonable care in the hiring, supervising, documenting and retaining Defendant Janssen and to use reasonable care to provide adequate warning to Plaintiff, his family and parishioners of Defendant Janssen's harmful and unlawful conduct.

4. The failure of Defendant Diocese of Davenport to properly hire, supervise, warn third parties, document wrongs and discharge their employees, include, but are not limited to, the following acts and omissions:

- a. Failure to prevent Defendant Janssen from engaging in sexual abuse;
- b. Failure to reprimand or take preventative action against Defendant Janssen;
- c. Failure to supervise and/or control Defendant Janssen to ensure sexual abuse did not occur;
- d. Failure to document and/or maintain documents about Defendant Janssen's activities;
- e. Failure to conduct a proper and thorough investigation into Defendant Janssen's improper sexual contacts;
- f. Failure to provide adequate warning to Plaintiff, his family and parishioners of Defendant Janssen's harmful and unlawful conduct.

5. The failure of Defendant Diocese of Davenport to properly hire, supervise, warn third parties, document wrongs and discharge Defendant Janssen manifests a deliberate indifference to the rights of the Plaintiff.

6. The negligent hiring, supervising, warning, documenting and retaining Defendant Janssen by Defendant Diocese of Davenport was a proximate cause of Plaintiff's injuries.

7. As a direct result of Defendant Diocese of Davenport's negligent hiring, supervising, warning, documenting and terminating Defendant Janssen, Plaintiff has suffered, and continues to suffer, severe and permanent emotional distress, physical manifestations of emotional distress, embarrassment, loss of self esteem, loss of enjoyment of life, was and is permanently prevented from performing his normal daily activities and obtaining the full enjoyment to life, will incur expenses for medical and psychological treatment, therapy and counseling.

WHEREFORE, Plaintiff prays for judgment against Defendants in an amount that will fully and fairly compensate him for his injuries and damages, and for punitive damages, in an amount sufficient to deter others and punish Defendants, and for any other relief the Court deems appropriate.

COUNT VII
RESPONDEAT SUPERIOR AS TO DEFENDANT DIOCESE OF DAVENPORT

1. Plaintiff incorporates Paragraphs 1-13 of the Common Allegations in this Petition as if set forth herein.


2. When committing the acts alleged herein, Defendant Janssen was a representative, agent and/or employee of Defendant Diocese of Davenport and was acting within the scope of his representative agency and/or employment.

WHEREFORE, Plaintiff prays for judgment against Defendants in an amount that will fully and fairly compensate him for his injuries and damages, and for punitive damages, in an amount sufficient to deter others and punish Defendants, and for any other relief the Court deems appropriate.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants in an amount in excess of the jurisdictional amount that is fair and reasonable to compensate him for the damages resulting from the sexual abuse inflicted upon him and for punitive damages in an amount sufficient to deter others and punish Defendants for their wrongful conduct.

BETTY, NEUMAN & McMAHON, L.L.P.

By  _____

Craig A. Levien
SC00003129

600 Union Arcade Building
111 E. Third Street
Davenport, IA 52801
(563) 326-4491
(563) 326-4498 - Fax

ATTORNEYS FOR PLAINTIFF
DONALD J. GREEN