

IN THE SUPREME COURT OF OHIO

JANE DOE, : Case No. 06 1155
: :
Plaintiff-Appellee, : On Appeal from the Hamilton
: County Court of Appeals,
: First Appellate District
v. : Case No. C050438
: :
: Trial Court No. A0409650
ARCHDIOCESE OF CINCINNATI, :
: :
Defendant-Appellant. :
:

MERIT BRIEF OF APPELLEE JANE DOE

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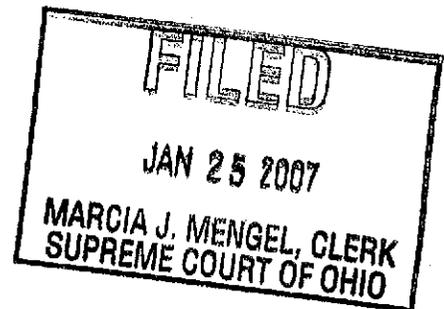


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INTRODUCTION

The touchstone of all three issues raised by the Archdiocese is the proper standard of review for a motion to dismiss a complaint pursuant Civ. R. 12(B)(6). The complaint at issue alleges that Defendant-Appellant, the Archdiocese of Cincinnati (“Archdiocese”), made misrepresentations of fact to Plaintiff-Appellant Jane Doe (“Ms. Doe”), a sixteen-year-old parishioner impregnated by one of its priests, for the purpose of coercing her into relinquishing her parental rights and forgoing any legal recourse – all for the secular purpose of protecting the Archdiocese’s finances and reputation. As the appeals court found, for the purposes of Civ. R. 12(B)(6), Ms. Doe need not – and without the benefit of discovery cannot – prove her allegations against the Archdiocese. She need only sufficiently state a claim for relief, which according to the unanimous decision of the appeals court, she did.

Applying the very same pleading requirements as this Court recently set forth in *Doe v. Archdiocese* (2006), 109 Ohio St.3d 491, 849 N.E.2d 273 (“*Doe*”), the appeals court held that the Complaint was “well-pleaded” and contained sufficient facts to support the reasonable inference that the doctrine of equitable estoppel may be applicable to overcome a statute of limitations defense to Ms. Doe’s claims of intentional infliction of emotional distress, tortious interference with familial relationships and breach of fiduciary duty. Specifically, the appeals court cited to the Archdiocese’s statements to Ms. Doe that that she alone was responsible for the pregnancy and that if she did not place her baby for adoption and remain silent about the baby’s parentage, the Church would not baptize her baby – the equivalent of telling Ms. Doe that should she reject the Church’s ultimatum, the Church would condemn her baby to hell. The Complaint further pled that the Archdiocese made these statements not only to convince

Ms. Doe to give up her baby, but also to prevent Ms. Doe from pursuing legal action against it. Under a Civ. R. 12(B)(6) analysis, the appeals court properly found that the facts as pled were sufficient to state a claim that the Archdiocese's conduct inequitably prevents Ms. Doe from timely bringing suit.

Although the Complaint necessarily contains religious references, the appeals court's decision did not run afoul of the Free Exercise Clause of the First Amendment. The mere fact that a clergy member utters a religious reference while committing a secular tort does not immunize him from liability. The Free Exercise Clause requires a court to examine whether a purportedly religious statement was grounded in sincerely-held religious beliefs and practices. At this pleadings stage of the legal process, the record is devoid of any evidence that would permit a court to infer, much less conclude, that the Archdiocese's statements to Ms. Doe were grounded in sincerely-held religious beliefs and practices. Where, as here, a complaint alleges that the religious institution's challenged conduct is secular, not religious, a court cannot properly determine the applicability of an affirmative defense under Free Exercise Clause under Civ. R. 12(B)(6); instead, the court is required to examine the evidence supporting or undermining that evidence under a Civ. R. 56 standard.

The Archdiocese's final argument concerning public policy surrounding adoption proposes blanket immunity for any individual or entity involved in an adoption proceeding, however tangential their involvement or tortious their conduct. This argument was never raised before either the trial court or the appeals court and has been waived. Yet even if this public policy argument could be properly considered, the so-called policy upon which it rests is nothing more than two wholly unrelated laws – neither of which indicate a defined and dominant public policy so as to confer immunity

upon a third-party for tortious conduct. Moreover, the Archdiocese's entire argument on this issue is premised upon a version of the facts that contradicts those set forth in the Complaint. Indeed, the Archdiocese's argument assumes it is a disinterested third party that merely advised Ms. Doe that adoption was the best option for her and her child. At the same time, the Archdiocese ignores express allegations in the Complaint that it threatened, intimidated and coerced Ms. Doe into placing her baby for adoption to protect the church's reputation and finances. Looking only at the face of the Complaint as required under Civ. R. 12(B)(6), Ms. Doe's Complaint is hardly a referendum on adoption as the Archdiocese suggests; rather, through her Complaint, Ms. Doe seeks to hold the Archdiocese accountable for the harm it caused her as result of its tortious conduct.

To credit the Archdiocese's arguments requires this Court to ignore Civ. R. 12(B)(6) by accepting facts not in the record and by denying Ms. Doe the benefit of reasonable inferences to which she is entitled. Because the appeals court properly analyzed the Complaint under Civ. R. 12(B)(6) standards, its decision should be affirmed.

STATEMENT OF THE CASE AND FACTS

Ms. Doe was a sixteen-year-old girl from a devout Catholic family. (Complaint ¶ 1). In 1965, her parish priest, Father Normal Heil, induced her to enter into an illicit sexual relationship, a relationship of which other employees of the Archdiocese knew. (Complaint ¶ 10). A few months into their relationship, Fr. Heil impregnated Ms. Doe. (Complaint ¶ 12).

When the Archdiocese learned of Ms. Doe's pregnancy, she was expelled from her Catholic high school. (Complaint ¶ 13). The Archdiocese arranged for Ms. Doe to

spend her pregnancy at a private institution, Maple Knoll Hospital and Home. (Complaint ¶ 14). While Ms. Doe was at Maple Knoll, she was required to work in the laundry, the kitchen and in the nursery taking care of the newborn babies. (Complaint ¶ 15). She was not permitted to leave the facility and was allowed visitors only on the weekends. (Complaint ¶ 15).

Before, during, and after her stay at Maple Knoll, Ms. Doe was subjected to intense pressure from the Archdiocese to relinquish her parental rights and never reveal the identity of her baby's father (Complaint ¶ 16). Agents of the Archdiocese, including Fr. Heil and Ms. Doe's former teacher, Sister Mary Patrick, told Ms. Doe that the pregnancy was her fault alone and that she must remain forever silent about the identity of her baby's father. (Complaint ¶¶ 17-22). Sr. Mary Patrick threatened that the Church would not baptize Ms. Doe's baby if Ms. Doe refused to relinquish her parental rights, which, based upon the tenets of Ms. Doe's Catholic faith, was the equivalent of telling Ms. Doe that the Church would condemn her baby to hell if she did not place the baby for adoption. (Complaint ¶ 17). Fr. Heil told Ms. Doe that she must give their child up for adoption because he could not remain a priest if the Archdiocese had to pay child support. (Complaint ¶ 19). As result of these factual misstatements and direct threats to the well-being of her child, Ms. Doe succumbed to intense intimidation and pressure and relinquished her parental rights after the birth of her baby. (Complaint ¶ 22). Ultimately, the baby was placed for adoption through the Archdiocese. (Complaint ¶ 22).

The trial court's decision dismissing Ms. Doe's Complaint was reversed by the appeals court, which unanimously held: (1) that Ms. Doe sufficiently pled claims of intentional infliction of emotional distress, tortious interference with familial

relationships, and breach of fiduciary duty; and (2) that as result of the conduct attributed to the Archdiocese in the Complaint, the Archdiocese may be equitably estopped from asserting a statute of limitations defense barring these claims.

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

Proposition of Law No. I: Where a complaint alleges facts sufficient to establish an equitable estoppel theory barring the assertion of the statute of limitations, the complaint cannot be dismissed for timeliness under Civ. R. 12(B)(6).

“A defendant/wrongdoer cannot take affirmative steps to prevent a plaintiff from bringing a claim and then assert the statute of limitations as a defense.” *Doe*, Ohio St.3d at 502, 849 N.E.2d at 279; *citing Zumpano v. Quinn* (N.Y. 2006), 6 N.Y.3d 666, 849 N.E.2d 926. The traditional elements necessary to apply the doctrine equitable estoppel are: (1) that the defendant made a factual misrepresentation; (2) the misrepresentation was misleading; (3)the misrepresentation induced actual reliance which was reasonable and in good faith; and (4) the reliance caused detriment to the relying party. *Livingston v. Diocese of Cleveland* (1998), 126 Ohio App.3d 299, 315, 710 N.E.2d 330, 339.

The doctrine of equitable estoppel is properly employed to prevent a defendant from asserting an otherwise valid right so as to prevent actual or constructive fraud and to promote the ends of justice. *Id.*; *citing Lewis v. Motorist Ins. Co.* (1994), 96 Ohio App.3d 575, 645 N.E.2d 784. It is available as a defense of a legal and equitable right or claim made in good faith and should not be used to uphold crime, fraud or injustice. *Ohio State Board of Pharmacy v. Frantz* (1990), 51 Ohio St.3d 143, 145, 555 N.E.2d 630, 633. “In its most general sense, [equitable estoppel] embraces all acts, omissions or concealments which involve a breach of legal and equitable duty, trust or confidence justly reposed, which are injurious to another, or by which an undue and

unconscientious advantage is taken of another.” *Hanes v. Giambrone* (1984), 14 Ohio App.3d 400, 405, 471 N.E.2d 801, 807; *citing* 1 Bouvier’s Law Dictionary (1914) 1306.

As this Court recently stated in *Doe*, where a plaintiff can establish that “subsequent and specific actions by defendants somehow kept them from timely bringing suit,” the doctrine of equitable estoppel defeats a statute of limitations defense. *Doe*, 109 Ohio St.3d at 502, 849 N.E.2d at 273. Actions by a defendant which can give rise to equitable estoppel can include: (1) a statement that the statutory period was larger than it actually was; (2) a promise to make a better settlement if plaintiff did not bring the suit; or (3) similar representations or conduct by the defendant. *Livingston v. Diocese of Cleveland* (1998), 126 Ohio App.3d 299, 315, 710 N.E.2d 330, 339; *citing Cerney v. Norfolk & Western Railway Co.* (1995), 104 Ohio App.3d 482, 488, 662 N.E.2d 827, 830.

In the present case, the appeals court adhered to the same analysis that this Court employed in *Doe*, but determined that, unlike the insufficient pleadings in that case, this Complaint was “well-pleaded” and contained allegations that “adequately allege that the Archdiocese’s conduct was motivated by a desire to prevent the plaintiff in *Doe* from bringing suit.” (Opinion at ¶¶ 16-17). Specifically, the appeals court cited allegations that the Archdiocese’s representations to Ms. Doe during her pregnancy were made “with the sole purpose and intent to coerce Ms. Doe to forgo the best legal interests of her and of her child” and “calculated to, and resulted in, Ms. Doe’s relinquishment of her parental rights and forbearance from any legal action.” (Opinion at ¶¶ 15-16). The appeals court found that these statements were sufficient to support the proposition that the Archdiocese “utilized ‘similar misrepresentations or conduct’ to prevent [Ms. Doe]

from filing suit.” (Opinion at ¶¶ 15-16 citing Complaint at ¶¶ 20, 25 and *Livingston*, 126 Ohio App.3d 299, 315, 710 N.E.2d 330, 339).

For the purposes of determining whether a plaintiff has stated a claim for equitable estoppel under Civ. R. 12(B)(6), the court must accept all factual allegations as true, draw all reasonable inferences in favor of the plaintiff and having done so, determine beyond doubt from the face of the complaint that no provable set of facts warrant relief. *State ex rel. Williams Ford Sales, Inc. v. Connor* (1995), 72 Ohio St.3d 111, 113, 646 N.E.2d 804, 806. The Archdiocese’s assertion that the appeals court misapplied the doctrine of equitable estoppel largely ignores the fact that the Complaint must be analyzed under a Civ. R. 12(B)(6) standard. To compound its erroneous analysis of the appeals court’s opinion, the Archdiocese advances two arguments that rely upon alleged facts not found in the Complaint and inferences from those alleged facts to which it is not entitled, specifically: (1) that the Archdiocese’s statements and conduct did not prevent Ms. Doe from filing suit; and (2) that the Archdiocese’s statements were not based upon fact, but pure opinion. (Appellant’s Merit Brief at 7, 16-17).

For its first argument, the Archdiocese contends that the Complaint does not set forth any allegations that Archdiocese’s conduct toward Ms. Doe prevented her from filing suit against it. (Appellant’s Merit Brief at 7). At best, this argument ignores the allegations set forth in the Complaint. The Archdiocese repeatedly told a sixteen-year-old girl impregnated by its priest, expelled from its high school and placed in a convalescent home at its direction and expense that if she did not place her child up for adoption and remain silent about its parentage, the Church would not baptize her baby – the equivalent of telling her that the Church would condemn her baby to hell.

(Complaint ¶ 17). The appeals court found that these statements, coupled with the express allegations that the Archdiocese acted “with the sole purpose and intent to coerce Ms. Doe to forgo the best legal interests of her and her child” and “were calculated to, and resulted in, Ms. Doe’s relinquishment of her parental rights and forbearance from any legal action” were sufficient to meet the pleading requirement that the Archdiocese’s conduct toward Ms. Doe prevented her from timely filing suit.

As the appeals court noted, the facts alleged by Ms. Doe are readily distinguishable from the facts alleged in *Livingston*. (Opinion ¶ 12). In *Livingston*, the plaintiff claimed that he failed to bring suit because priests told him “not to tell” anyone about the alleged sexual abuse because it would “bring down the church.” *Livingston*, 126 Ohio App.3d at 315; *see also A.S. v. Fairfield School Dist.*, 12th App. No. 03-04-088, 2003-Ohio-6260 at ¶ 5, 2003 WL 22764383 at *1 (plaintiff attributed his delay in filing suit to a teacher’s statement that no one would believe him). The appeals court found that Ms. Doe alleged not only that she was told to remain silent, but also that she alone was responsible for her pregnancy and that her child would not be baptized if she did not place it for adoption. (Opinion ¶ 12).

Unlike the defendants in *Livingston* and *A.S.*, the Archdiocese directly threatened harm – eternal harm – to Ms. Doe’s child if she disclosed the parentage of her child in any way. (Complaint ¶ 17). The Archdiocese’s conduct was tantamount to placing a gun to Ms. Doe’s head and telling her to give the Archdiocese her baby and remain quiet about the matter. Having done so, equity does not permit the Archdiocese – having effectively received exactly what it demanded in Ms. Doe’s silence – to now shield itself behind the statute of limitations. *Doe*, 109 Ohio St.3d at 502, 849 N.E.2d at 279; *citing Zumpano* 6 N.Y.3d at 666, 849 N.E.2d at 926.

The second argument advanced by the Archdiocese is that its statements to Ms. Doe were merely statements of opinion. (Appellant's Merit Brief at 16-17). This Court has held that whether a statement is fact or opinion can only be determined upon "[c]onsideration of the totality of the circumstances" including (1) the specific language used; (2) whether the statement is verifiable; (3) the general context of the statement; and (4) the broader context in which the statement appeared. *Scott v. News-Herald* (1986), 25 Ohio St.3d 243, 250, 496 N.E.2d 699, 706. This standard is "fluid" and while each of the four factors should be considered, the appropriate weight assigned to any particular factor depends on the circumstances presented. *Vail v. The Plain Dealer Publishing Co.* (1995), 72 Ohio St.3d 279, 282, 649 N.E.2d 182, 185.

While in limited circumstances a pleading contains the entire text of a statement so as to permit proper consideration of the "totality of the circumstances," see *Vail*, 72 Ohio St. at 279, 649 N.E.2d at 185 (full text of newspaper column set forth in complaint), the totality of the circumstances relating to the Archdiocese's statements here cannot be properly considered by only referring to the Complaint. No court could meaningfully consider the *Scott* factors in the absence of an evidentiary record exploring the exact language and the contexts in which it was used. *Scott*, 25 Ohio St.3d at 250, 496 N.E.2d at 706.

With the only facts before the appeals court being those alleged in the Complaint, the appeals court properly determined that the Archdiocese's statements to a 16-year-old pregnant girl could be construed as statements of fact. (Complaint ¶¶ 17-22). Reasonable minds could most certainly conclude that the Archdiocese's statement that it would not baptize Ms. Doe's baby if she did not give the baby up for adoption and remain silent about the child's parentage was not an "opinion," but a factual

misrepresentation. (Complaint ¶19). Indeed, at least three reasonable minds disagree with the Archdiocese's view of these statements as purely opinion – the three judges seated on the appeals court panel, who unanimously determined that these statements could be inferred as factual misrepresentations sufficient to support a claim for equitable estoppel. (Opinion ¶ 11).

Of course, the Court is not bound to defer to any finding of the appeals court. Nonetheless, the appeals court decision is informative as to the reasonableness of any inference that can be drawn from the allegations in the Complaint. According to the version of the Complaint adopted by the appeals court, a reasonable trier of fact could conclude from the allegations of fact posited in the Complaint that the Archdiocese presented to Ms. Doe a portrait of the world depicting her child as a doomed to hell for all eternity if she failed to adhere to the church's fiat. (Complaint ¶ 17). To a reasonable sixteen-year-old parishioner, that portrait – painted by her teacher and her priest – was reality-based and not a point of view subject to debate as the Archdiocese's argument cynically suggests.

Proposition of Law No. II: The First Amendment does not protect purportedly “religious” statements which are not grounded in sincerely-held religious beliefs or practices.

Although the Complaint refers to certain statements made by the Archdiocese containing ostensibly religious references, this fact does not, in and of itself, invoke the protection of the Free Exercise Clause of the First Amendment so as to provide blanket tort immunity to the Archdiocese. It is well-established in Ohio that the First Amendment does not provide blanket tort immunity for religious institutions or their clergy. *Albritton v. Neighborhood Centers Assn.* (1984), 12 Ohio St.3d 210, 466 N.E.2d 867; *Strock v. Pressnel* (1988), 38 Ohio St.3d 207, 209, 527 N.E.2d 1235, 1237. The

Free Exercise Clause is relevant only to: (1) “government acts that aid and promote religion”; or (2) “judicial inquiries that interference with a hierarchal church’s internal ecclesiastical decisions when no tort is involved.” *Mirick v. McClellan* (Apr. 27, 1994), 1st Dist. App. No. C930099, unreported, 1994 WL 156303 at *4; citing *Lemon v. Kurtzman* (1971), 403 U.S. 602, 620, 91 S.Ct. 2105, 2115.

When protection is asserted under the Free Exercise Clause of the First Amendment, a court must examine whether the claim entails “valid religious beliefs or practices.” *Strock*, 38 Ohio St.3d at 209, 527 N.E.2d at 1237. “Only beliefs rooted in religion are protected by the Free Exercise Clause, which, by its terms, gives special protection to the exercise of religion.” *Id.* at 210; citing *Thomas v. Review Bd. of the Ind. Employment Secur. Div.* (1981), 450 U.S. 707, 713-715, 101 S.Ct. 1425, 1429-1430; see also Appellant’s Merit Brief at 13. In other words, while courts must give “due deference” to the veracity of religious beliefs, where a religious entity asserts a purportedly religious belief that is not, in fact, rooted in religion or is pretext for a secular motivation, the Free Exercise Clause does not apply. *Strock*, 38 Ohio St.3d at 210; *U.S. v. Ballard* (1944), 322 U.S. 78, 64 S.Ct. 882. “If no legitimate religious belief or practices are at issue, then the free-exercise defense becomes frivolous.” *Id.*; citing Brooks, Lee, Note, Intentional Infliction of Emotional Distress by Spiritual Counselors: Can Outrageous Conduct be “Free Exercise”? (1986), 84 Mich.L.Rev. 1296, 1302 (“Outrageous Conduct”).

The determination of whether the Archdiocese’s statements are protected by the Free Exercise Clause hinges on whether the Archdiocese can establish that these statements are rooted in sincerely-held religious beliefs or practices. *Strock*, 38 Ohio St.3d at 209, 527 N.E.2d at 1237; see also “Outrageous Conduct,” 84 Mich.L.Rev. at

1302 (“the free exercise clause is relevant only if the defendant can show that the conduct that allegedly caused plaintiff’s distress was in fact ‘part of the beliefs and practices’ of the religious group”). Under the specific circumstances of this case, the Free Exercise Clause requires the Archdiocese to establish that its sincerely-held belief and religious practice is – or was – not to baptize the children of teenage mothers impregnated by priests unless those babies were placed for adoption and the mother remained silent about the child’s parentage.

Although the Archdiocese asserts that its statements to Ms. Doe during her pregnancy “are all statements of religious belief,” that statement of purported fact cannot be considered under Civ. R. 12(B)(6) as that “fact” is not alleged within the Complaint. *See State ex rel. Williams Ford Sales, Inc.*, 72 Ohio St.3d at 113, 646 N.E.2d at 806. Simply because a statement contains religious references does not, in and of itself, render it a “statement of religious belief” protected by the Free Exercise Clause. *See Strock*, 38 Ohio St.3d at 210; *see also U.S. v. Ballard* (1944), 322 U.S. 78, 88, 64 S.Ct. 882, 886.

Both this Court and the United State Supreme Court have been wary of religious institutions and clergy invoking religion in bad faith to escape liability from secular tortious conduct. *Id.* In *Strock*, this Court held that a husband could maintain a claim against a minister who engaged in a sexual affair with his wife during the course of religious counseling. *Strock*, 38 Ohio St.3d at 210. The Court held that the minister’s alleged misconduct was “non-religious in motivation – a deviation from normal spiritual counseling practices of ministers in the Lutheran Church.” *Id.* In *Ballard*, a self-proclaimed minister and several high-ranking staff were charged with federal mail fraud offenses stemming from their solicitation of funds for purportedly religious reasons.

Ballard, 322 U.S. at 81-82. The United States Supreme Court held that while the veracity of the defendants' alleged religious beliefs was protected by the First Amendment, the issue of whether their solicitation of funds was motivated in good faith by those beliefs was not. *Id.*, 322 U.S. at 90 (jury properly decided whether defendants "honestly and in good faith believed the representations" or "whether these representations were mere pretenses without honest belief on the party of the defendants...for the purpose of procuring money.").

Like *Strock* and *Ballard*, the appeals court found that the facts alleged in the Complaint permitted a reasonable inference under Rule 12(B)(6) that the Archdiocese's purportedly religious statements to Ms. Doe were not rooted in religious tenets or motivated by religious purpose. (Opinion at ¶ 21). In examining the allegations of this case within the context of the pleadings, neither the court nor any trier of fact will be required to examine the legitimacy or veracity of the church's beliefs. What has been placed in issue by virtue of Ms. Doe's reliance on the equitable estoppel doctrine are the Archdiocese's good faith belief and motivation in advancing them. Not one of these issues requires a court to concern itself with religious doctrine or tenets of the church.

Returning again to the Archdiocese's statement to Ms. Doe that the church would not baptize her baby if she did not give it up for adoption implying that Ms. Doe's baby would go to hell (Complaint ¶ 17), the Court need not examine whether the baby would, in reality, go to hell if Ms. Doe did not relinquish her parental rights and remain silent. The court need only consider whether this statement constituted a sincerely-held belief of the Archdiocese and/or the church, or, as the Complaint alleges, was made in bad faith for the purpose of preventing Ms. Doe from taking action that would compromise the Archdiocese's reputation and finances – including filing a lawsuit against it. Simply

stated, unless and until the Archdiocese affirmatively establishes that the statements attributed to it in the Complaint are expressions of official church doctrine or religious tenets, this Court cannot presume them to be. To do otherwise would be to needlessly and improperly entangle this Court in ecclesiastical affairs. This Court should flatly reject the Archdiocese's tacit invitation to allow a judicial body to declare church doctrine as a matter of law.

Proposition of Law No. III: No public policy favors blanket immunity for individuals or entities that tortiously threaten, intimidate and coerce a minor into relinquishing her parental rights.

An argument that the Archdiocese failed to raise either before the trial court or appeals court and now asserts for the first time is that public policy prohibits a claim against individuals "merely because they advocated adoption." (Appellant's Merit Brief at 16). The Archdiocese ignores the facts alleged in the Complaint and attempts to revise the history involving the Archdiocese and Ms. Doe by depicting itself as a well-intentioned, disinterested third party to Ms. Doe's adoption. (*Id.* at 19). This self-serving attempt to revise the Complaint is procedurally and logically infirm.

Generally, issues not raised in the trial court are waived for the purpose of appeal. *In re Dismissal of Mitchell* (1979), 60 Ohio St.2d 85, 90, 397 N.E.2d 764, 768. A very narrow exception to this rule exists where there has been a significant change in the law since the matter was before the trial court. *See Standard Industries, Inc. v. Tigrett Industries* (1970), 397 U.S. 586, 587, 90 S.Ct. 1310. Although the Archdiocese argues that this so-called public policy immunity constitutes an "over-arching flaw in Plaintiff's action," it has failed to offer any explanation or justification for why this point was not raised before either the trial court or the appeals court. (Appellant's Merit Brief at 16).

There is no change in the law that would permit the Archdiocese to raise this argument now. The Archdiocese's failure to raise the argument then constitutes a waiver of that argument. *In re Dismissal of Mitchell*, 60 Ohio St.2d at 90, 397 N.E.2d at 768.

Even if this "public policy" argument had been properly raised, the argument is without foundation in either Ohio statute or common law. In order to assert a defense under the auspices of "public policy," the Archdiocese must cite laws and legal precedent that are "well defined and dominant * * * not from general consideration of supposed public interest." *Southwest Ohio Regional Transit Auth. v. Amalgamated Transit Union Local 627* (2001), 91 Ohio St.3d 108, 112, 742 N.E.2d 630, 634, quoting *W.R. Grace & Co. v. Local Union 759, Int'l Union of United Rubber, Cork, Linoleum & Plastic Workers of America* (1983), 461 U.S. 757, 766, 103 S.Ct. 2177.

In an effort to cobble together a public policy argument, the Archdiocese is able to point to no more than two random statutory schemes – one prohibiting "child stealing" and the other governing adoption procedure. (Appellant's Merit Brief at 17-18); citing R.C. §§ 2307.50 and 3107.01 *et seq.* These statutory schemes are neither well-defined in terms of their direction to citizens of the state of Ohio with respect to the rendering of "advice" in adoption situations, nor are they so dominant in terms of the public's interest in promoting adoption as to provide a clear statement of policy that could be applied uniformly by courts across the state. In essence, the Archdiocese is suggesting that this Court create a tort immunity without authorization from the General Assembly or precedent under Ohio common law.

The Archdiocese's "public policy" argument also mischaracterizes the facts in a manner not permitted under Rule 12(B)(6), disingenuously suggesting that Ms. Doe is merely a "regretful" biological mother attempting to second-guess a counselor's advice

on adoption. (Appellant's Brief at 17). The Archdiocese's gloss on the Complaint imputes a motive to Ms. Doe which is not only irrelevant, but lacks any basis in the allegations contained in the Complaint. Ms. Doe has not alleged that the Archdiocese merely offered its counsel that in retrospect she now regrets accepting. The Complaint expressly alleges that the Archdiocese made misrepresentations to her as a teenage girl for the purpose of coercing her into giving her child up for adoption and remaining silent – not for her best interest, not for the child's best interest, but for the best interest of the Archdiocese. (Complaint ¶¶ 17-22). Even a cursory reading of the Complaint reflects that this case is not a challenge to adoption law. The allegations in the Complaint are pointed and fact-specific to the actions and statements of the Archdiocese in this one particular instance. The notion that this case has the potential to undermine philosophies, principles, policies or even institutions that support or promote adoption in the state of Ohio is spurious on its face.

CONCLUSION

Despite its provocative facts, the issue raised by this appeal involves no more than an application of the well-established standard of review for a motion to dismiss pursuant to Rule 12(B)(6). The Archdiocese's memorandum offers no legitimate legal basis to undermine the appeals court's decision. Under a Civ. R. 12(B)(6) analysis – one that considers only those allegations contained in the Complaint and draws all reasonable inferences in favor of Ms. Doe – the Archdiocese's argument must be rejected. To hold otherwise would be to ignore Civ. R. 12(B)(6), as the Archdiocese's arguments on the issues of equitable estoppel, the Free Exercise Clause and public policy are all premised upon facts and inferences which are neither found in nor can be drawn from the Complaint.

Moreover, in an effort to avoid the consequences of its egregious conduct in convincing a vulnerable teenager to relinquish parental rights to her child to protect its own secular interests, the Archdiocese has contrived arguments that are not only attenuated in the extreme, that if they are accepted by this Court threaten fundamental principles separating church and state. Fairly considered, it is simply impossible for this Court to grant the Archdiocese the relief it seeks at this stage of the litigation without adopting its statements of religious belief as a matter law.

For the foregoing reasons, the appeals court's decision holding that under a Rule 12(B)(6) analysis, Ms. Doe's claims of intentional infliction of emotional distress, tortious interference with familial relationships and breach of fiduciary duty are sufficiently plead and that the Archdiocese may be equitably estopped from asserting a statute of limitations defense to bar these claims should be affirmed.

Respectfully submitted,

MEZIBOV & JENKINS, CO. L.P.A.

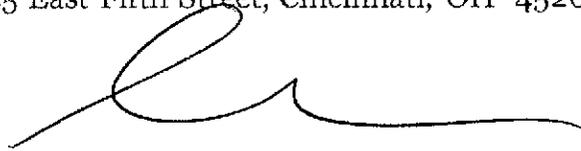


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CERTIFICATE OF SERVICE

I certify that a copy of this Merit Brief of Appellee Jane Doe was sent by ordinary U.S. mail to counsel of record for appellant, Mark A. Vander Laan, Dinsmore & Shohl LLP, Chemed Center, Suite 1900, 255 East Fifth Street, Cincinnati, OH 45202, on this 24th day of January 2007.



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