ORIGINAL

IN THE SUPREME COURT OF OHIO

Jessica Simpkins, et al.	:	Ohio Supreme Court Case No. 14-1953
Appellants,	:	On Appeal from the Delaware County Court of Appeals, Fifth Appellate District
v.	:	
Grace Brethren Church of Delaware, Ohio	:	Court of Appeals Case No. 13 CAE 10 0073
Appellee.	:	

RESPONSE OF APPELLANTS/CROSS-APPELLEES JESSICA SIMPKINS AND GENE SIMPKINS TO APPELLEE/CROSS-APPELLANT'S MEMORANDUM IN SUPPORT OF JURISDICTION

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RESPONSE TO CROSS-APPELLANT'S STATEMENT OF PUBLIC OR GREAT GENERAL INTEREST

Under Article IV, Section 2 of the Ohio Constitution, review by the Ohio Supreme Court is limited to cases involving the Ohio and/or U.S. Constitutions and cases of "public or great general interest." In contrast to Appellants' propositions of law, which raise not only substantial constitutional questions but also questions of statutory construction and procedure never addressed by this Court, the propositions of law presented by Cross-Appellant are effectively assignments of error seeking review of evidentiary issues, jury instructions and other rulings by the trial court which are specific to this case alone.

Cross-Appellant's first proposition of law goes to the issue of whether the trial court properly overruled Cross-Appellant's post-trial motions, which were based on the argument that the prior acts of sexual misconduct involving teenage girls by Cross-Appellant's former youth pastor, Brian Williams, were insufficient, "as a matter of law," to make the pastor's subsequent sexual abuse of Appellant Jessica Simpkins foreseeable. The Fifth District Court of Appeals, *applying the same legal test as the one relied upon by Cross-Appellant*, and based upon a *de novo* review of the record by that court, affirmed the trial court's rulings. No issue of public or great general interest is presented in Cross-Appellant's first proposition.

Cross-Appellant's second proposition, arguing that the Fifth District erred in reversing the trial court's grant of summary judgment to Cross-Appellant on Appellants' claim for punitive damages, is completely case specific. It is premised primarily on an alleged lack of evidence, an argument rejected by the appellate court.

Finally, Cross-Appellant's third and fourth propositions of law challenge the jury instructions given by the trial court. No unique or unusual circumstance is presented in those propositions. Rather, Cross-Appellant argues that the trial court erred in its instructions and the

appellate court erred in finding that the trial court did not abuse its discretion in rejecting Cross-Appellant's proposed instructions.

Cross-Appellant's propositions of law raise no constitutional issue nor issue of statutory construction. They raise no issue of public policy nor issues of law over which a diversity of opinion has developed, either in the lower courts or courts of Ohio's sister states. Plainly stated, Cross-Appellant's propositions seek only to have this Court review the arguments and assignments of error already reviewed by the Fifth District Court of Appeals. Accordingly, Cross-Appellant's request that this Court accept its propositions of law for determination should be denied.

STATEMENT OF FACTS

The Statement of Facts set forth in the November 11, 2014 Memorandum in Support of Jurisdiction of Appellants Jessica Simpkins and Gene Simpkins is adopted and incorporated herein.

ARGUMENT

Cross-Appellant's Proposition of Law No. 1.

Cross-Appellant's Proposition of Law No. 1 cites *Reitz v. May Co. Dept. Stores*, 66 Ohio App.3d 188, 583 N.E.2d 1071 (8th Dist.1990) for the proposition that the foreseeability of a criminal act must be determined by the "totality of the circumstances" and that those circumstances must be "somewhat overwhelming." Paragraph 35 of the Fifth District's opinion in this case reads as follows:

> {¶35} The foreseeability of a criminal act depends upon the knowledge of the defendant, which must be determined by the totality of the circumstances. *March v. Steed Enterprises, Inc.* 5th Dist. Muskingum No. CT2012-0058, 2013-Ohio-4448. It is when the totality of the circumstances is "somewhat overwhelming" that a defendant will be held liable. *Id.*

Simpkins v. Grace Brethren Church of Delaware, 5th Dist. Delaware No. 13-CAE-10-0073, 2014-Ohio-3465, ¶ 35. ("Ct. App. Op.," Appendix 1 to Appellants' Jurisdictional Memorandum.)

In other words, the Fifth District applied the exact rule of law that Cross-Appellant now urges this Court to adopt. In reality, Cross-Appellant does not seek for this Court to adopt a proposition of law but rather seeks a second review of the application of the facts in this case to that proposition.

Having agreed with the rule of law urged by Cross-Appellant, the Fifth District applied that rule to the evidence presented at trial and concluded:

> {¶36} Upon our de novo review, we find no error by the trial court to deny the motions for directed verdict and motion for judgment notwithstanding the verdict as the prior conduct of Williams was not, as a matter of law, insufficient to make his 2008 conduct foreseeable. * * * In light of this similar prior conduct, we find the totality of the circumstances indicates that a reasonable jury could have found that Delaware Grace should have reasonably foreseen the 2008 incident.

Ct. App. Op., ¶ 36.

There being no rule of law in dispute with respect to Cross-Appellant's first proposition of law, and the trial court and the appellate court having weighed and rejected Cross-Appellant's contentions regarding the evidence in this case, no further review is warranted by this Court.

Cross-Appellant's Proposition of Law No. 2.

Cross-Appellant's Proposition of Law No. 2 seeks a review of the Fifth District's decision to reverse the trial court's grant of summary judgment to Cross-Appellant on Appellants' claim for punitive damages. In support of its Proposition of Law No. 2, Cross-Appellant first argues that there was "no evidence" to support a finding of "conscious disregard for the rights and safety of others" by Cross-Appellant. The Fifth District has already weighed that argument and found that "reasonable minds could differ on whether Delaware Grace's

conduct demonstrated a conscious disregard * * * such that the issue of punitive damages may be submitted to the jury." Ct. App. Op., ¶ 96.

Cross-Appellant next makes the truly remarkable argument that because its Senior Pastors covered-up Williams' prior incidents of sexual misconduct with teenage girls, and did not disclose them to the church's Board of Elders, the church cannot be held liable for punitive damages. Cross-App. Memo at p. 10. In rejecting that argument, the Fifth District noted that both of the senior pastors involved in covering up Williams' prior misconduct were also members of the Board of Elders. Ct. App. Op., ¶ 90. Furthermore, "(i)t is well-established in Ohio [that] a corporation can act only through its officers and agents, and the knowledge of the officers of a corporation is at once the knowledge of the corporation." *Arcanum National Bank v. Hessler*, 69 Ohio St.2d 549, 433 N.E.2d 204 (1982). Cross-Appellant's senior pastors were effectively the chief executive officers of the church and the church acted through them in, in the jury's words, "fail[ing] to do a proper investigation and documentation of the previous two incidents * * *" and in otherwise consciously disregarding the rights and safety of others.

The Fifth District properly held that Appellants' claim for punitive damages should have been submitted to the jury in this negligence action. No further review by this Court is warranted.

Cross-Appellant's Propositions of Law No. 3 and No. 4.

Cross-Appellant's Propositions of Law No. 3 and No. 4 address the jury instructions given by the trial court. In its memorandum in support, Cross-Appellant argues that "it was error on the part of the trial court," "error by the court of appeals" and "the court of appeals errs" with respect to the jury instructions. As noted above, this Court is not an "error" court. Cross-

Appellant has had its objections to the trial court's jury instructions reviewed and rejected by the court of appeals. It is not entitled to a further review by this Court.

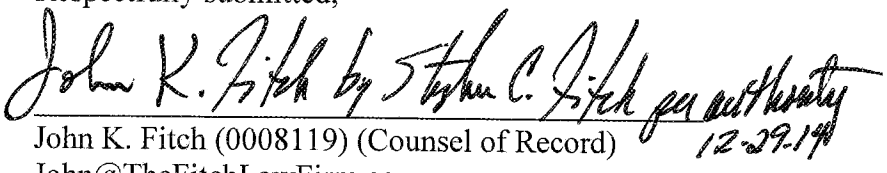
As the appellate court noted, the trial court instructed the jury that "foreseeability for future intentional criminal conduct requires stronger knowledge than foreseeability of other possible future conduct." The fact that the trial court did not use the exact language requested by Cross-Appellant with respect to future criminal conduct did not constitute an abuse of discretion by the trial court and the Fifth District so held. Ct. App. Op., ¶ 43.

Jury instructions must be reviewed as a whole and are within the sound discretion of the trial court. *State v. Martens*, 90 Ohio App.3d 338, 629 N.E.2d 462 (3rd Dist.1993); *State v. Coleman*, 37 Ohio St.3d 286, 525 N.E.2d 792 (1988). Having been reviewed by the appellate court *de novo* and, that court finding no error by the trial court, the jury instructions in this case, and Cross-Appellant's propositions of law regarding them, present no issue for consideration by this Court.

CONCLUSION

For the reasons set forth above, Appellants Jessica and Gene Simpkins ask that the Court decline to consider the propositions of law presented by Cross-Appellant in its memorandum in support of jurisdiction.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **RESPONSE OF APPELLANTS/CROSS-APPELLEES JESSICA SIMPKINS AND GENE SIMPKINS TO APPELLEE/CROSS-APPELLANT'S MEMORANDUM IN SUPPORT OF JURISDICTION** was served by regular U.S. Mail, postage prepaid, this 29th day of December 2014, upon the following:

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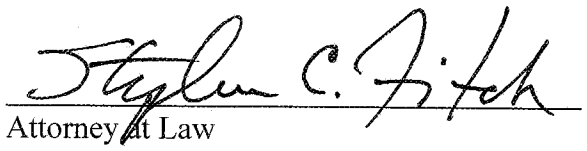

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