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Judge Tosses Clergy-Abuse Suit

By Doug Mandelaro
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Saying the legal clock for court action had run out years ago, a judge on Thursday dismissed a lawsuit against the Rev. Robert O'Neill, a Rochester-area priest who allegedly sexually abused eight men when they were boys.

The lawsuit remains against the Roman Catholic Diocese of Rochester, which was named as a co-defendant in the case. But the diocese will ask the judge at a later date to dismiss the case against it as well.

State Supreme Court Justice Robert J. Lunn, ruling from the bench, said he was not judging the merits of the allegations but only the law, which he termed "crystal clear."

In his motion to dismiss, Richard Curtis, O'Neill's attorney, said that "the sheer gravity of an allegation is insufficient" to extend the statute of limitations.

State law mandates that victims of sexual abuse file suit within a year of their abuse or, in the case of juvenile victims, within a year after their 18th birthday. Most of the men are in their 40s now.

The ruling leaves O'Neill free and clear of civil liability after the swirl of accusations this year of his alleged misconduct in the 1970s and 1980s. No criminal charges were ever filed in the cases. In April, Bishop Matthew Clark removed the now-retired O'Neill's priestly faculties; he cannot participate in any ministry, wear clerical clothing or live on diocesan property.

O'Neill, reached by phone at the home of a family friend, said Thursday that he "was very happy with the decision. . . . I hope with all the troubles we've had this year - and many people have been in pain - I hope this Christmas season will bring peace."

John Bansbach, the local attorney representing the plaintiffs, argued that both O'Neill and the diocese attempted to conceal the abuse.

The diocese had a responsibility to disclose O'Neill's activities long ago, Bansbach argues. If the diocese had done so, he said, each of the victims would have realized they were not alone and that the abuse was widespread; that would have made coming forward easier for them.

In effect, Bansbach maintained, the plaintiffs now had an additional period of time to pursue a lawsuit because they did not fully learn of O'Neill's history until spring of this year, when Clark took action.

Bansbach was given the go-ahead by the judge Thursday to add two additional plaintiffs to the suit, men in their 40s who also claim abuse by O'Neill.

Paul J. Yesawich III, the diocese's attorney, had withdrawn earlier motions to dismiss the case. He is planning to refile amended papers based on the additional two plaintiffs and Bansbach's amended filing relating to the case and the new plaintiffs.

The diocese declined to comment on the judge's decision.

Bansbach also argued that the diocese, as shepherd and leader of the Roman Catholic Church, created a situation of dependency and power over the boys and had a fiduciary responsibility to disclose information to them, as well as to protect them. But Yesawich had countered in papers that Bansbach's argument created a First Amendment issue and would require the court to delve deeply and inappropriately into the belief system of a religious faith and its adherents.

Bansbach's co-counsel, Jeffrey Anderson of Minneapolis, said he was "shocked and disappointed" by Lunn's decision. Anderson has represented more than 700 victims of clergy abuse in the last 20 years and currently has cases in 20 states, he said.

Current law, he said, is not protecting victims but is insulating predators.

"If the law is 'crystal clear' in New York, that just demonstrates how the law needs to be changed," he said, adding he considered New York's law on statutes of limitations involving sexual abuse among the most stringent in the nation.

Other states have changed their laws to benefit victims and most had accepted the concept of "delayed discovery" of abuse, acknowledging victims can go for years without fully accepting or being able to discuss what had happened to them.

Connecticut, for example, recently passed a law allowing victims of juvenile abuse to bring suit up to age 48, he said.

John Aretakis, a New York lawyer who also represents victims of clergy abuse, agreed. "Statutes of limitations are designed to protect pedophiles and are no help to victims," he said.

Aretakis recently came to Rochester to announce that he is considering a lawsuit against the Rochester diocese and against other, as-yet unidentified priests.

"These victims sometimes take 20 to 25 years to come out of their slumber," Aretakis said.

Margaret Keller-Cogan, assistant superintendent for curriculum and instruction in the Greece Central School District, has learned that first-hand. In a school district where she worked previously, she had to take action against a school staff member after a victim came forward years after abuse.

And she said a close relative had been victimized by a priest from age 5 until adolescence and lived with the pain and the secret until he was almost 50, said Keller-Cogan.

"A young child lacks understanding of what is occurring and lacks the authority to oppose an adult or vocalize what is happening," she said. "They fear they won't be believed."

She hopes to see statute-of-limitations laws changed and plans to be an advocate.

One of the plaintiffs, Albany-based attorney Mark Furnish, said he expected the decision. He said he would support a legal appeal to a higher court.

"The whole purpose of the lawsuit was to shout to the world about this," he said, "so that Father O'Neill will never be allowed around children again."