

STATE OF INDIANA) IN THE HAMILTON SUPERIOR COURT
) SS;
COUNTY OF HAMILTON) CAUSE NO.:

JAMESDEOREO,)
)
Plaintiff,)
)
v.)
)
XXXXXXXX)
)
Defendant.)

COMPLAINTFORDECLARATORYJUDGM : ENT

Plaintiff, James DeOreo, by counsel, for his Complaint for Declaratory Judgment against Defendant, XX, hereby states as follows:

1. Defendant XXXX is an Indiana resident with his primary residence in Zionsville, Boone County, Indiana. XXXX attends Marian University in Indianapolis, Marion County, Indiana.
2. Plaintiff DeOreo is an Indiana resident, living in Carmel, Hamilton County, Indiana. DeOreo is a Catholic Priest of the Roman Catholic Diocese of Lafayette in Indiana.
3. DeOreo seeks a declaration by this Court that, as a matter of law, DeOreo's behavior toward and treatment of XXXX was not unlawful and does not constitute negligent or intentional infliction of emotional distress.

4. XXXX was a member of Saint Alphonsus Liguori Catholic Church in Zionsville, Indiana and DeOreo was a priest stationed at that church during the XXXX time. XXXX was involved in several youth groups and youth ministries and had occasional contact with DeOreo as a result of that involvement.

5. In mid-2020, near XXXX' graduation from high school, he applied for admission to a priestly seminary and, in that process, requested and was given a recommendation by DeOreo.

6. Despite DeOreo's recommendation, Diocesan representatives determined that seminary would not be a prudent choice for XXXX at that time, the Diocese refused to recommend XXXX for admission and his application was denied.

7. After denial of his summary application, XXXX also learned that DeOreo would be transferred to a different parish, Our Lady of Mount Carmel in Carmel, Indiana, as a part of a restructuring plan put in place by the Diocese called "Uniting in Heart." XXXX sent DeOreo a hand-written letter praising and thanking DeOreo for the guidance and support he had given XXXX during his time at St. Alphonsus parish and during his seminary discernment process and wishing DeOreo good luck in his time at Carmel. A copy of the letter is attached to this Complaint as Exhibit 1.

8. Subsequently, in January, 2021, XXXX alleged, in a letter purportedly sent to the Roman Catholic Diocese of Lafayette-in-Indiana, that DeOreo 'urged' XXXX to participate in a program known as 'Exodus 90' which included periods of fasting. According to XXXX, DeOreo personally encouraged XXXX to 'fast' four times a week-which consisted of taking one meal per day on those days. XXXX asserted that the fasting "quickly spiraled into a vicious eating disorder" and that XXXX "would feel guilty when I ate 'too much,' and I believed that the only way I could love Goel was by doing this." XXXX claimed that he was "burdened with undue pressure" and blamed DeOreo for his eating disorder. ("January Letter") A Copy of the January Letter is included in "Exhibit B" to the Claim Letter, attached to this Complaint as Exhibit 2.

9. Upon information and belief, the Diocese investigated XXXX' claim, including 'extensive' discussions between XXXX and a representative for the Diocese, attorney Barry Loftus. As a result of that investigation, the Diocese found the claims unsubstantiated and took no action.

10. Apparently unsatisfied with the Diocese's determination, ¹¹¹ October, 2021, XXXX sent another letter to the Diocese. Based upon discussions with the Diocese, including Mr. Loftus, XXXX expanded his allegations against DeOreo, stating:

my therapist and I have been working with the Diocese to provide greater clarity to the situation. As I have gone through counseling, I have been able to come to terms with aspects of the abuse that I had previously been unable to; namely sexual harassment and grooming on the part of Fr. DeOreo.

("October Letter") A copy of the October Letter is included in "Exhibit B" to the Claim Letter, attached to this Complaint as Exhibit 2.

11. By the October Letter, XXXX identifies three instances which, he claims, constitute "psychological abuse" for what XXXX concludes DeOreo intended to 'groom' XXXX "towards sexual assault." XXXX unequivocally notes in the October Letter, however, that "I would like to be clear from the start, at no point was there any sexual contact; it was all through verbal communication and innuendo."

12. The first claimed instance of "abuse" related by XXXX was a time in which XXXX was at DeOreo's residence with several other youth from the parish and adult chaperones. DeOreo encouraged XXXX to go look at a painting of the Virgin Mary DeOreo obtained during his studies in Rome. The painting was hanging in DeOreo's bedroom and DeOreo remained in the living room while XXXX viewed the painting. XXXX unequivocally states "I was alone in the [bed]room the whole time, and at no point was Fr. DeOreo in the room with me. Regardless of this fact I was deeply uncomfortable."

13. DeOreo disagrees with many of the facts recounted by XXXX, but does recall encouraging a group of youths, including XXXX, to look at the painting while DeOreo remained in the living room.

14. The second claimed instance of "abuse" occurred while XXXX was in the Parish Offices where his mother was employed. XXXX visited DeOreo's office, and XXXX alleges, DeOreo stated without any context that "I'm feeling really tempted right now." XXXX gives no other context and suggests that no other conversation occurred, but notes "this statement made me feel incredibly uncomfortable and unsafe."

15. DeOreo denies that this scenario ever occurred.

16. The third claimed instance of "abuse" occurred following a youth ministry program when XXXX, his brother, and the parish youth minister were present. XXXX claimed that DeOreo told him an extremely off-color joke. XXXX notes "this situation made me feel incredibly uncomfortable and unsafe."

17. DeOreo denies that this scenario ever occurred.

18. XXXX further notes in the October letter that he recalled "DeOreo also made a lot of general comments" without any specificity that XXXX claims he interpreted as "sexual" but XXXX does not allege or assert any physical contact, or that DeOreo made any request or demand of a sexual nature to XXXX. Nevertheless, XXXX concludes "I truly believe,

and my therapist has echoed this belief, that Fr. DeOreo was grooming me towards sexual assault."

19. DeOreo never made any comments to XXXX that were intended or could have reasonably been construed as sexual in nature.

20. DeOreo never made any attempt to "groom" XXXX, never intended, attempted, or even considered sexual assault, sexual harassment, or any inappropriate conduct with XXXX.

21. DeOreo never violated Diocesan codes of conduct in interacting with XXXX, including never being in a closed, unobservable room with XXXX. While engaged in conversation with XXXX, DeOreo avoided all unnecessary physical contact. DeOreo's conversations with XXXX were always in an area with windows and/or open doors so that he and XXXX were visible to others, observable, and interruptible.

22. DeOreo never knowingly or intentionally caused XXXX discomfort or distress.

23. Following receipt of the October Letter and the new allegations 'clarified' with the help of Mr. Loftus and the Diocese, the Diocese, Mr. Loftus, XXXX, and XXXX' counsel met via Zoom in October 2021 at which time the Diocese apparently agreed to limit DeOreo's employment responsibilities in an attempt to quell XXXX' litigious insistence.

24. The Diocese and Loftus again investigated XXXX' claims and found no evidence to support XXXX claims and found no individuals who would corroborate XXXX' version of events or interpretations of DeOreo's conduct.

25. Nevertheless, on March 11, 2022, the Diocese removed DeOreo from public ministry and issued a public statement the following day that the "diocese received allegations of inappropriate conduct with a minor."

26. Upon information and belief, the statement was delivered to journalists by Gabby Hlavek, the Diocese's director of communications, and most major news institutions in the state published a story regarding DeOreo, each intimating that the "inappropriate conduct" was sexual in nature, despite no such allegation. A story published by WRTV, for example, included a quote from SNAP: "Fr. De Oreo was ordained in 2018 and may already have other victims. Because of the reality of delayed disclosure in cases of sex crimes, it is likely that other potential victims might take decades to come forward."

(WRTV.com "*Carmel Priest Suspended on Allegations of Inappropriate Conduct*" [https://www.wrtv.com/news/local-news/crime/carmel-priest-](https://www.wrtv.com/news/local-news/crime/carmel-priest-suspended-on-allegations-of-inappropriate-conduct-with-minor)

[suspended-on-allegations-of-inappropriate-conduct-with-minor,](https://www.wrtv.com/news/local-news/crime/carmel-priest-suspended-on-allegations-of-inappropriate-conduct-with-minor) Accessed 3/31/2022)

27. Via Letter on March 21, 2022, XXXX' counsel threatened legal action and issued a formal "Demand for Settlement" to the Diocese. ("Claim

Letter") The Claim Letter characterizes DeOreo's behavior as "intentional acts of abuse" "intentionally inflicted emotional distress on XXXX" "emotionally abuse ... also sexually harassing XXXX and grooming XXXX for sexual abuse" and characterizes the Diocese as "Negligent in failing to adhere to its own policies allowing Fr. DeOreo to be alone with XXXX in multiple instances." A copy of the Claim Letter is attached as Exhibit 2.

28. The Claim Letter was not sent directly to DeOreo. Instead, a copy was sent by XXXX' counsel to DeOreo's counsel on March 22, when XXXX requested that DeOreo enter into a tolling agreement regarding the time XXXX had to file suit against DeOreo and the Diocese. The Claim Letter was the first notice DeOreo received of the substance of the claims being made against him.

29. Despite these assertions in the Claim Letter, it does not include any new evidence or allegation of additional "instances" - only relying upon the January and October Letters as support; neither of which alleges that DeOreo was alone with XXXX at any time in violation of Diocese policies.

30. XXXX issued a pre-suit demand of \$295,000, based on expected damages of \$383,000 incurred "because of Fr. DeOreo and the Diocese's intentional and negligent acts."

31. If the Diocese settles the alleged dispute in anyway involving DeOreo, then DeOreo will become 'uninsurable' and will be administratively

prohibited from participating in parish ministry - his priestly vocation. This irreparable harm is in addition to any likely additional damage to DeOreo's reputation.

32. Given the threats contained in the letter, the possibility of litigation, the damage to DeOreo's reputation, and the potential that he will be unable to perform his vocation if the Diocese settles the claims, even without DeOreo's consent, DeOreo request and is entitled to a declaration by this Court that the threatened claims against DeOreo are legally and factually unsubstantiated and must fail as a matter of law.

33. Indiana law provides that "When ... a plaintiff sustains a direct impact by the negligence of another and, by virtue of that direct involvement sustains an emotional trauma which is serious in nature and of a kind and extent normally expected to occur in a reasonable person, ... such a plaintiff is entitled to maintain an action to recover for that emotional trauma without regard to whether the emotional trauma arises out of or accompanies any physical injury to the plaintiff." *Atl. Coast Airlines v. Cook*, 857 N.E.2d 989, 995-96 (Ind. 2006).

34. Upon these facts - even as presented by the January and October Letters, and especially as modified by the truth - XXXX cannot establish 1. Direct Impact, 2. Negligence by DeOreo, or 3. Emotional Trauma normally expected to occur in a reasonable person.

35. XXXX' claims are, by his own words, limited to "verbal communication and innuendo." Under Indiana law this cannot constitute the requisite 'impact' to support a claim for negligent infliction of emotional distress. As XXXX further explained, the primary result of DeOreo's alleged communications and innuendo was that XXXX was "deeply uncomfortable." But our courts have recognized that 'comfort' is not a protectible interest.

36. As the *Atl. Coast* court noted, "Complete emotional tranquility is seldom attainable in this world, and some degree of transient and trivial emotional distress is a part of the price of living among people. The law intervenes only where the distress inflicted is so severe that no reasonable person could be expected to endure it." *Id.* at 1000. XXXX' discomfort does not rise to the level of 'severe distress' necessary to support the claim.

37. Specifically, to the involvement in the Exodus90 program and fasting, XXXX cannot show DeOreo's behavior to be negligent or that his own response is that of a reasonable person.

38. DeOreo did not develop or introduce the Exodus90 program and certainly did not introduce the ascetic practice of fasting. XXXX' own letter characterizes DeOreo's position as "general insistence of fasting." DeOreo also had no involvement with XXXX' food preparation, most mealtimes, or parental supervision.

39. To establish that DeOreo was negligent, XXXX must assert and prove breach of a duty owed by DeOreo, but Indiana law does not recognize a general duty to 'not insist on fasting' or even a more ubiquitous duty of good advice.

40. DeOreo was not negligent in his behavior toward XXXX, did not physically or directly impact XXXX in anyway, and XXXX' claimed emotional trauma is "speculative, exaggerated, fictitious, or unforeseeable." 857 N.E.2d at 999.

41. XXXX' alleged claims for negligence and/or negligent infliction of emotional distress must therefore fail as a matter of law and DeOreo is entitled to a declaration to that effect.

42. XXXX' threatened claims of intentional infliction of emotional distress similarly fail. "The tort of intentional infliction of emotional distress ("IIED") occurs when the defendant "(1) engages in extreme and outrageous conduct (2) which intentionally or recklessly (3) causes (4) severe emotional distress to another. The requirements to prove this tort are rigorous, and at its foundation is the intent to harm the plaintiff emotionally. As often quoted from Comment d of the Restatement (Second) of Torts Section 46 (1965),

The cases thus far decided have found liability only where the defendant's conduct has been extreme and outrageous. It has not been enough that the defendant has acted with an intent which is tortious or even criminal, or that he has intended to

inflict emotional distress, or even that his conduct has been characterized by "malice," or a degree of aggravation which would entitle the plaintiff to punitive damages for another tort. Liability has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community. Generally, the case is one in which the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, "Outrageous!"

The question of what amounts to extreme and outrageous conduct depends in part on prevailing cultural norms and values, and in the appropriate case, the question can be decided as a matter of law." *Ali v. All. Home Health Care, LLC*, 53 N.E.3d 420, 433 (Ind. Ct. App. 2016) (citations omitted).

43. There is nothing in even DeOreo's alleged conduct that qualifies as "extreme and outrageous" as a matter of law. When further mollified by the truth, DeOreo's conduct is shown to be both reasonable and respectable interactions between DeOreo and XXXX - neither outrageous nor intentional or reckless.

44. As a matter of law, DeOreo's conduct does not constitute intentional infliction of emotional distress and DeOreo is entitled to a declaration as such.

45. Pursuant to the Indiana Constitution, DeOreo is guaranteed open access to the courts of this State to protect and defend his reputation.

WHEREFORE, Plaintiff, James DeOreo, respectfully prays for Declaratory Relief in his favor, specifically a declaration by this Court that Defendant, XXXX XXXX, threatened claims of negligent or intentional infliction of emotional distress are unsubstantiated and legally and factually insufficient, and therefore fail as a matter of law, and for all other just and proper relief.

Respectfully submitted,

/s/Michael L. Einterz

#11717-49

mike@einterzlaw.com

EINTERZ & EINTERZ
4600 NW Plaza West Drive
Zionsville, Indiana 46077
(317) 337-2021