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Judge refuses to dismiss lawsuit against Jehovah's Witnesses

February 3, 2016 · by Craig Anderson · 109 Comments

DOVER — With a precedent-setting determination regarding confidentiality among some church members last week, a Superior Court judge continued a lawsuit against a Sussex County congregation.

Judge Mary M. Johnston did not dismiss a lawsuit filed by the state of Delaware against the Laurel Congregation of Jehovah's Witnesses regarding whether it should have reported child abuse allegations in 2013.

The state is suing the congregation and two elders for allegedly not disclosing knowledge of a reported sexual relationship between an adult member and juvenile member, according to court documents. The complaint was filed on July 10, 2014, in New Castle County Superior Court.

The congregation filed a motion for summary judgment on Nov. 9, 2015, which was denied on Jan. 26 by Judge Johnston.

The motion centered around the application of the "priest-penitent in a sacramental confession privilege" and whether conversations among Jehovah's Witnesses leaders and members were covered in Delaware Code.

According to court papers, the state alleged two elders met with a juvenile and his mother, both congregation members, in January 2013 and a disclosure of a sexual relationship was made.

Also, according to documents, the elders then spoke with the adult member in question, who confirmed the relationship had happened.

Both the juvenile and adult member were excommunicated from the congregation in February 2013, papers indicated.

Also named as defendants in the lawsuit were Joel Mulchansingh and William Perkins.

In papers, the Department of Justice said it is seeking a civil penalty against each defendant not to exceed \$10,000, costs, expenses and attorney's fees incurred awarded to the state, and "such other and further relief as the Court deems just and proper."

With the civil action pending, the Department of Justice declined comment on the matter.

From 2012 to 14, the Department of Justice said, other entities such as a charter school, public elementary school and medical practice were named as defendants in similar cases regarding all abuse and neglect and the matters "were settled and dismissed without trial, with settlements generally consisting of training on mandatory reporting and other penalties."

Officials said the mandatory statute regarding abuse and neglect has been active since at least 1971; before 1997, only attorney-client communication had privilege.

The criminal case

On Nov. 6, 2013, Katheryn L. Carmean pleaded guilty to third-degree rape, fourth-degree rape and endangering the welfare of a child, according to the Delaware Department of Justice. She was sentenced to six years in prison on Feb. 21, 2014, followed by six months at Level IV work release, followed by two years Level III probation. She is also registered as a Tier II sex offender, according to officials.

According to the Delaware State Police at the time of her arrest, Ms. Carmean, of Berlin, Maryland, was 35 and the allegedly involved male was 14.

The state police said investigation found encounters occurred over 10 months from November 2011 to August 2012 when the teen occasionally would stay at Ms. Carmean's residence on Mount Zion Road near Laurel. She later moved to Maryland, authorities said.

Today's Weather



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In court papers regarding the civil suit, the defendant in the criminal case was identified as Kathryn Harris Carmean White.

The civil suit

In the civil suit, the state responded to the motion by citing Delaware Code Sections 903 and 904 which required "Any person, agency, organization or entity who knows or in good faith suspects child abuse or neglect shall make a report ..." and "Any report of child abuse or neglect required to be made under this chapter shall be made by contacting the Child Abuse and Neglect Report Line for the Department of Services for Children, Youth and Their Families" as obligation to report suspected child abuse.

According to papers, the court examined the constitutionality of whether the congregation was exempted by Delaware Code Section 909 to report privileged communications.

Section 909 states "No legally recognized privilege, except that between attorney and client and that between priest and penitent in a sacramental confession, shall apply to situations involving known or suspected child abuse, neglect, exploitation or abandonment and shall not constitute grounds for failure to report as required by 903 of this title or to give or accept evidence in any judicial proceeding relating to child abuse or neglect."

According to court documents, the congregation maintained that all communications between elders, juvenile and adult members are covered by clergy/penitent privilege. Additionally, the congregation argued it had First Amendment coverage through the United States and Delaware, and were exempt from a reporting duty.

Ultimately, the court ruled that since the congregation had called a meeting with the adult member to discuss the issue, the member could not be deemed a "penitent" and the meeting to investigate allegations not a "sacramental confession."

Also, the court found the juvenile's subsequent excommunication indicated he might not have willingly met with the elders, and did not consider the meeting as a form of repentance as part of absolution and a "sacramental confession."

The elders' beliefs

The elders submitted signed affidavits, which included the premise that, "In accordance with the beliefs and practices of Jehovah's Witnesses, confidential information is kept confidential so as to uphold the elders' role as spiritual shepherds of the congregation, to maintain respect for the position of elders and congregants, and to allow congregants to feel comfortable fully disclosing information to the elders ..."

The court noted no reference was made to why the General Assembly used the language in Delaware Code Section 909 "between priest and penitent in a sacramental confession" instead of more ecumenical religious terms.

Thus, the court turned to Black's Law Dictionary to define "priest-penitent privilege" and determined it to be "In evidence, the recognition of the seal of confession which bars testimony as to the contents of a communication from one to his confessor."

Also in Delaware Code, the court noted, "A person has a privilege to refuse and disclose to prevent another from disclosing a confidential communication by the person to a clergyman in his professional character as a spiritual adviser."

A clergyman was described as a "minister, priest, rabbi, accredited Christian Science practitioner or other similar functionary of a religious organization, or an individual reasonably believed so to be by the person consulting him."

According to the court, a priest and penitent communication in a sacramental confession cited in Section 909 "is a narrow exception to the duty to report abuse or neglect.

"The obvious purpose of these privileges is to balance free and candid communications with legal or religious advisers, with the public mandate to prevent and prosecute child abuse."

'Genuine issues exist'

In conclusion, the court ruled that a narrow interpretation of Section 909 "is unconstitutional on its face" and the terms "priest," "penitent" and "sacramental confession" apply to only select denominations if taken literally.

"The Delaware Constitution prohibits laws that give preference to any religion," the court wrote.

"However, Section 909 can potentially be read to apply to all religions.

"Regardless of the constitutionality of Section 909, genuine issues of material fact exist that prevent summary judgment."

Delaware Code states that Section 903 violators "shall be liable for a civil penalty not to exceed \$10,000 for the first violation, and not to exceed \$50,000 for any subsequent violation." Costs and attorneys' fees may be awarded as well.

Attorneys James Liguori and Francis McNamara represented the defendant congregation in the motion, along with the Watchtower Legal Department, the Jehovah's Witnesses legal advisers. Deputy Attorneys General Janice Tigani and Valerie Farnan represented the state.

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