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9th District partially reverses Jehovah's Witnesses molestation suit

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A Lorain County trial court erred when it ordered the West Congregation of Jehovah's Witnesses to produce certain documents for discovery in a child molestation case.

However, the trial court was correct in concluding the majority of documents that were compelled are not protected from disclosure via the clergy-penitent privilege or the First Amendment, according to a recent decision by the 9th District Court of Appeals.

Former West Congregation member Elizabeth McFarland sued the Lorain-based church in 2013 for negligence, ratification and fraud by omission/concealment.

According to case summary, McFarland was a member of West Congregation from 1997 to 2001, when she was 10 to 14 years old. McFarland's parents told church elders that Scott Silvasy, a fellow member, had molested their daughter for several years.

Silvasy died in 2003. McFarland claimed elders never disciplined him or reported the issue to their superiors, and discouraged her parents from doing so.

In her suit, McFarland said church elders were aware Silvasy had previously molested a minor and was a danger to her. She sought compensatory and punitive damages.

After discovery began, McFarland served Watchtower – which was responsible for disseminating literature to the Bodies of Elders at each local congregation – to produce certain documents, including:

- A 1997 letter from Watchtower asking local elders to report any current or former members in a Society-appointed position with a known history of child molestation.

Watchtower argued that Silvasy never served in a "Society-appointed position." The trial court found McFarland's request was overbroad, but that any reports that specifically mentioned Silvasy were relevant.

- Any documents the West Congregation had relating to Silvasy and herself.

The appellants cited clergy-penitent privilege, attorney-client privilege and the First Amendment.

- All letters that Watchtower/Christian Congregation sent to the Bodies of Elders between Jan. 1, 1980 and Dec. 31, 2002.

The court ordered appellants to produce 10 letters from the Service Department elders to the Bodies of Elders, plus 15 other letters and memos.

Church officials filed an appeal over 19 of the documents they were ordered to produce.

In a 3-0 opinion written by 9th District Judge Beth Whitmore, the panel found four of the documents were privileged because they were requests for spiritual guidance, so the church need not produce them.

"The trial court did not err when it concluded that the remaining fifteen documents at issue here are not protected from disclosure by virtue of either the clergy-penitent privilege or the First Amendment," Whitmore stated.

Appellate judges Jennifer Hensal and Julie Schafer concurred.

The case is cited McFarland v. W. Congregation of Jehovah's Witnesses, Lorain, Ohio Inc., 2016-Ohio-5462.

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