

Who's Responsible in Sex Abuse Claims Against Out-of-State Nonprofits?

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March 29, 2024

On Feb. 28, 2024, the New Jersey Superior Court, Appellate Division, published a precedential opinion in six consolidated lawsuits filed by sexual abuse victims claiming to have been assaulted decades earlier when they were minors and participants in a New Jersey nonprofit youth organization. *E.T. v. Boys & Girls Club*, no. A-3720-22, 2024 N.J. Super. LEXIS 21 (N.J. App. Div. Feb. 28, 2024). Disagreeing with and reversing the ruling of the trial court, the Appellate Division held that its state courts do not have personal jurisdiction over an out-of-state national organization that is affiliated with a New Jersey nonprofit where plaintiffs claim to have been sexually abused by a counselor of the New Jersey entity within its borders.

Following a series of impactful decisions in December 2023, which established the personal jurisdiction requirements for out-of-state religious institutions sued in New Jersey based upon claimed abuse by clergymen in their parishes, the appellate panel found that “the



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national organization did not purposely avail itself of benefits in or from New Jersey regarding the alleged sexual abuser, and hence, our state has no specific personal jurisdiction over the national organization ... ” See e.g., *D.T. v. Archdiocese of Phila.*, 477 N.J. Super. 370, 307 A.3d 37 (N.J. App. Div. 2023); *Doe v. Diocese*, 477 N.J. Super 270, 306 A.3d 237 (N.J. App. Div. 2023).

Lawsuits alleging sexual assault/abuse of minors spiked in New Jersey following the enactment of the state’s Child Victims Act in 2019. The act provided a two-year revival

window until 2021 for victims to file otherwise time-barred claims for sexual abuse committed against them while minors. N.J.S.A. 2A:14-2b(a). Thereafter, victims may file civil claims for child abuse before their 55th birthday or within seven years of realizing that the abuse caused them harm. The act also amended the state's Charitable Immunity Act to allow retroactive liability against religious and other charitable organizations. N.J.S.A. 2A:53A-7(c); N.J.S.A. 2A:14-2b(b).

Unsupported Claims of Negligent Hiring, Training and Supervision

The plaintiffs in six lawsuits allege that Arthur Freudenberg, a part-time counselor for the Boys & Girls Clubs of Hudson County (Hudson County BGC), sexually abused them from 1978-1982, when they were members of the local club. Seeking compensatory and punitive damages, the plaintiffs sued Hudson County BGC, a New Jersey nonprofit, and the Boys & Girls Clubs of America (BGCA), the affiliated national nonprofit organization, which maintained a principal place of business in Georgia and was incorporated in the District of Columbia. The plaintiffs' lawsuits claim that Freudenberg was an agent, servant, or employee of BGCA and that BGCA failed to use reasonable care in hiring, training and supervising him. The lawsuits similarly claim that BGCA was responsible for the supervision and control of Hudson County BGC and its staff.

In considering whether BGCA availed itself of the state's benefits and if New Jersey courts have jurisdiction over BGCA, the court found:

- BGCA had contacts with New Jersey through its relationship with Hudson County BGC.
- BGCA received membership dues from Hudson County BGC to be a member of BGCA.
- BGCA provided support, including in-person training to Hudson County BGC, including training on recruitment and retention of members, such as plaintiffs.
- BGCA may revoke Hudson County BGC's membership in BGCA if Hudson County BGC fails to comply with its national membership requirements.

Critically, however, BGCA did not maintain control over the hiring, training, supervision or termination of any Hudson County BGC employee, including Freudenberg. Accordingly, Freudenberg was not an agent, servant or employee of BGCA as plaintiffs allege and therefore, not subject to BGCA's control or supervision.

Citing BGCA's constitution—which provides that member organizations, like Hudson County BGC, shall control their own buildings and finances, establish their own policies and programs, appoint their own executives, set the pay and conditions of employment for workers, and control hiring and firing—the Appellate Division found no evidence that BGCA had any input in Hudson County BGC's hiring practices or gave Hudson County BGC directives on training or supervising.

Finding that the trial court erred in not dismissing BGCA for lack of jurisdiction, the three-judge panel comprised of Judges Thomas Sumners Jr., Lisa Rose, and Morris Smith found

no credible evidence to rebut BGCA testimony that local clubs, like Hudson County BGC, solely hire, evaluate and train their employees without the oversight of BGCA. Although membership in BGCA is contingent on BGCA finding its local club's director "acceptable," the national organization did not and could not compel the local director or their staff to undergo mandatory training. Instead, the local club's executives managed their operations independently. Plaintiffs argued, unsuccessfully, that Hudson County BGC's affiliation with BGCA, use of BGCA's brand to market its services, and access to BGCA's programming establish the minimum contacts necessary for personal jurisdiction in New Jersey. Instead, to establish specific personal jurisdiction, BGCA's support to its local club must have related to Freudenberg's alleged sexual abuse.

Distinguished From Diocese of Richmond Opinion

The appellate court factually distinguished the *Boys & Girls Club* case from its recently published, Dec. 7, 2023 decision in *Doe v. Diocese*, where the court found that the Diocese of Richmond (Virginia) had prior notice of a priest's alleged abuse and availed itself of the benefits of New Jersey. The record reflects that after two incidents in Virginia, including being reprimanded for grooming a young boy and taking him on an out-of-town trip, the Diocese encouraged Father John Butler to relocate. Butler then moved to New York where he later admitted to sexually abusing two boys, ages 13 and 14. After the Bishop of Richmond was notified of Butler's abuse in New York, he

encouraged Butler to "find a fresh start" and granted him permission to serve as a priest in New Jersey, first in Trenton and then Metuchen, where he was alleged to have, again, sexually assaulted a young boy.

The court found that the Diocese of Richmond was aware that the priest sexually abused at least three children before it granted Butler, whom it retained the power to control and terminate, permission to join a New Jersey parish. By contrast, BGCA had no connection with Freudenberg's employment with Hudson County BGC and no authority to discipline or terminate him.

Takeaways

Following its opinion in *Doe v. Diocese*, discussed above, the Appellate Division declined to find specific personal jurisdiction in several other cases where plaintiffs claimed nonresident religious institutions negligently hired, retained and supervised priests who sexually abused them. See e.g., *Doe v. Archdiocese of Philadelphia*, no. A-3636-21, 2023 N.J. Super. Unpub. LEXIS 2398 (N.J. App. Div. Dec. 27, 2023); *F.C. v. Roman Cath. Archdiocese of Phila.*, no. A-2955-22, 2024 N.J. Super Unpub. LEXIS 106 (N.J. App. Div. Jan. 24, 2024); *J.S. v. Roman Cath. Archdiocese of Phila.*, no. A-2956-22, 2024 N.J. Super. Unpub. LEXIS 107 (N.J. App. Div. Jan. 24, 2024). The court's decision in *Boys & Girls Club* extends the court's rationale in the clergy cases into the nonprofit sphere. This decision should remind practitioners that cases filed under New Jersey's Child Victims Act still require a strict showing of personal jurisdiction for nonresident defendants.

When an abuse victim sues a national organization without real property in New Jersey, alleging negligent hiring, retention, and/or supervision of local affiliate/chapter or its employees, the plaintiff must produce evidence that the defendant established the requisite minimum contacts in the state, such as:

1. The defendant had authority to control the hiring, supervision or discipline of the agent/employee.
2. The defendant trained, evaluated and directed the activities of the agent/employee.
3. The defendant set the conditions of employment and job duties for the agent/employee.
4. The defendant compelled its local affiliate and their workers to use specific services and undergo mandatory trainings.
5. The defendant provided services to the youth members, such as the plaintiff, directly.

By the same token, national youth services or mentorship organizations with New Jersey chapters should ensure that their governing

agreements relinquish authority to control, direct, and discipline agents/employees of their local affiliates to avoid unnecessary entanglement in the state's courts.

As trial court orders hinging on jurisdictional questions of out-of-state defendants in childhood sexual abuse cases continue to be appealed, we anticipate that the appellate courts will continue to expand and distinguish their recent opinions in contexts outside of religious and nonprofit defendants.

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