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SUPREME COURT OF TEXAS
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Docket No.: 20-0005 & 20-0127

IN THE SUPREME COURT OF TEXAS

DIOCESE OF LUBBOCK,
Petitioner,
v.

JESUS GUERRERO,
Respondent.

On Appeal from the Seventh District Court of Appeals of Texas at Amarillo, Nos. 07-19-00307-CV & 07-19-00280-CV

IN RE DIOCESE OF LUBBOCK,
Petitioner.

On Petition for Writ of Mandamus from the 237th Judicial District Court, Lubbock County Courthouse, the Honorable Les Hatch, Cause No. 2019-534, 677, and the Seventh District Court of Appeals at Amarillo, No. 07-19-00307-CV

RESPONSE TO BRIEF ON THE MERITS

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STATEMENT OF THE CASE

Nature of the Case	Defamation
Trial Court	237th Judicial District, Lubbock County, TX, presiding Hon. Les Hatch
Trial Court Disposition	Denied the Diocese's Plea to the Jurisdiction and Motion to Dismiss under the Texas Citizens Participation Act ("TCPA") Tex. Civ.
Court of Appeals Opinion	*Diocese of Lubbock v. Guerrero*, 591 S.W.3d 244 (Tex.App - Amarillo 2019). *In re: Diocese of Lubbock*, 592 S.W.3d 196 (Tex.App – Amarillo2019). The Honorable Brian Quinn, Patrick Pirtle, and Judy Parker, presiding. Oral argument presented.
Court of Appeals Disposition	Unanimously denied the Diocese's Petition for Writ of Mandamus and Petition for Review

ISSUES PRESENTED

Religious Question

Issue No. 1 – The Court of Appeals correctly concluded that an alleged defamatory accusation of sexual abuse of children is not a religious matter protected by the First Amendment.

Scope of Publication ("Confines")

Issue No. 2 – The Court of Appeals properly applied a multi-factor analysis in concluding that the defamatory statements did not involve a religious question.

Defamation Elements

Issue No. 3 – Did Guerrero set forth clear and specific evidence of defamation so as to comply with the Texas Citizens Participation Act?

REASONS TO DENY REVIEW

This is a defamation case involving a *unique* set of facts arising from false publications made by Petitioner that accused Guerrero of sexually abusing minor children.There are *no conflict*s in authorities or issues of importance to the jurisprudence of this State that warrant review. The Seventh Court of Appeals ("COA7") unanimously denied both Petitions, and there was no disagreement amongst the justices on the court of appeals on any point of law. Any purported conflict Petitioner alludes to amongst appellate court decisions is illusory. Further, this case does not involve construction of a state statute necessary to decide the case or a question of state law. The case is fact-intensive and is important only to the parties to this appeal, with a set of facts that are unlikely to recur in many other cases. The trial court and COA7 correctly resolved the legal issues presented and there is no reason for the Supreme Court to disturb its decision. [1]

[1] Cites referenced herein to Petitioner's Appendix to the Brief on the Merits are referenced as "A:____" and record cites are "CR:____." Guerrero's Appendix to the Writ are cited as "GAW: ____". Guerrero's Appendix to the Petition for Review are referenced as "GAP:____". Guerrero's Appendix to his Response to Brief on the Merits are referenced as "GAM:____".

STATEMENT OF FACTS

This case arises out of the Catholic Diocese of Lubbock's (hereafter "Petitioner") decision to rebuild her image in the eyes of society and to atone for its long history of concealing the crime of sexual abuse. Petitioner used the secular media to promote and publish a list titled "Names of All Clergy with a Credible Allegation of Sexual Abuse of a Minor," (hereafter the "List"). (CR:60-61). The List included the name of Jesus Guerrero (hereafter "Guerrero"), a former deacon who had been permanently removed from the ministry in 2008. Id. Petitioner's representatives participated in a series of interviews with the media both prior to and contemporaneously with the publication of the List. The following publications give rise to Guerrero's defamation claim:

- 1/31/19 **List published titled** "Names of All Clergy with a Credible Allegation of Sexual Abuse of a Minor." (CR: 60-61).

- 1/31/19 **Press Release accompanying List**: Relator states the decision to release the names was made "in the context of their ongoing work to protect **children from sexual abuse**." (CR:122-124).

- 10/10/18 **Coerver Interview Statement #1 to advertise upcoming release of List**: Bishop Coerver said in reference to the upcoming release of the List, "it is a step the church is willing to take to ensure the **children** are safe." (CR:137).

- 10/10/18 **Coerver Interview Statement #2**: The Bishop said "they want to restore trust in the church and **protect children from crime**." (GAP:110).

- 1/31/19 **Interview #3**: Chancellor Martin, in discussing the List with news media, states that the "**Church is safe for children.**" Martin further states that a **"credible allegation means" (1) either the person admits to doing it, (2) they are found guilty in a court of law, or (3) the abuse is witnessed by somebody and they testify against it. [**(CR:68-69, 122-124, 114 (video at 1:11 clip 1)].

  ** Click here to see KAMC News Video Clip;

  ** Click to see KLBK News Video.

Guerrero denies the accusations and maintains his innocence. Specifically, "I have never been accused, investigated, criminally charged or questioned regarding any accusations of sexual abuse against any minor." (CR:148-151).

In 2003, Guerrero was made aware of an allegation of sexual misconduct against him involving a forty (40) year old female. Guerrero denied then, and continues to deny now, that any inappropriate relations occurred with her and/or that they engaged in any physical sexual conduct whatsoever. Id. Guerrero maintains, "I was never informed of what the actual allegation was…I was never informed as to what the exact allegation was about…the only thing they told me was that there was a complaint." Id. In 2008, there was another allegation involving the same female. Neither the 2003, nor the 2008 allegations, were made by the forty (40) year old female herself. Id. Guerrero was permanently removed from the ministry and all diaconal faculties were revoked, in November 2008. (CR:185). Guerrero never engaged in any further ministerial function or duties for the church and ceased his

role as a deacon in the Catholic Church as of November 2008. Guerrero had received no further communications from Petitioner regarding the 2003 and 2008 allegations.

In 2019, over ten (10) years later, the List was released to the public identifying Guerrero as clergy who had sexually abused a "minor". In response to his name appearing on the List, Guerrero insisted that Petitioner remove his name from the List. On March 6, 2019, in response to request for records, counsel for Petitioner, stated (for the first time) that the allegation was not against a child, and in fact the alleged victim was an adult woman. (CR:153-156). Petitioner refused to remove Guerrero's name from the List, and Guerrero subsequently filed this lawsuit. (CR:6-12). Approximately twenty (20) days after Guerrero's suit was filed, the Petitioner published a second list on its website titled "Names of All Clergy with a Credible Allegation of Sexual abuse of a Minor or a Vulnerable Adult Revised April 10, 2019" (hereafter "Revised List"). (CR:92-93). The Revised List contained the following admission by the Petitioner: (i) it had no evidence that Guerrero had sexually abused a minor under the age of 18, and (ii) that it regretted the "misunderstanding" that it had caused by the publication of the first List. (CR:92). Eight (8) days later, the Petitioner filed its Plea to the Jurisdiction and Motion to Dismiss on April 18, 2019. (CR:80, 158).

As set forth in his Petition, Guerrero claims: (1) Petitioner falsely accused him of sexually abusing children, and (2) that he was further defamed by Chancellor

Marty Martin's (hereafter "Chancellor Martin") statement via televised interview defining "credibly accused" to mean either the person admits to doing it, they are found guilty in the court of law, or the abuse has been witnessed by somebody and they testify against it. (CR:6-12). Guerrero's claim is based on the following representations made on January 31, 2019:

DEFAMATORY STATEMENT NO. 1 (the List):

Names of All Clergy with a Credible Allegation of Sexual Abuse of a Minor… Jesus Guerrero

(CR:60-61).

DEFAMATORY STATEMENT NO. 2 (Martin Interview):

In a TV news interview regarding the List, Chancellor Martin stated:

> Credibly accused is either the person **admits** to doing it, are **found guilty** in a court of law, or the allegation has been witnessed or the abuse has been **witnessed** by somebody and they **testify** against it. If the accusation is credible, that person is immediately removed from ministry.

(GAM:28-32; CR:114).

The following statements were also made by Petitioner in conjunction with the release of Defamatory Statement Nos. 1 and 2:

ADDITIONAL STATEMENTS MADE IN CONJUCTION WITH LIST:

1. In the press release drafted by Director of Communications of the Lubbock Diocese and sent to local T.V. news stations on January 31, 2019, Appellant states that the decision to release the names was made "in the

context of their ongoing work to protect ***children from sexual abuse***." (CR:123).

2. In the pre-publication interview given by Bishop Coerver on October 10, 2018, Bishop Coerver said in reference to the upcoming release of the names of clergy credibly accused of sexually assaulting a minor "it is a step the church is willing to take to ensure the ***children*** are safe." (CR:137).

3. In the first paragraph from a publication currently published on Petitioner's website titled "Preventing The Sexual Abuse of Minors," Petitioner admits that its leaders have failed, at times in their responsibilities to protect minors but then promises in the same paragraph to "remain vigilant to provide an even safer environment for every ***child*** we serve." (GAP:109).

4. In the interview with Fox 34, Chancellor Martin, a representative for the Diocese of Lubbock stated that all information was given to authorities, and some weren't charged because "You have to keep in mind, sometimes the authorities are involved but because of the age of the victims, the ***parents*** don't want anything released and the only way to ensure that is to not proceed with any legal court system or situation because then something is going to leak out and they don't want the embarrassment for themselves or ***their children***." (CR:114).

5. Chancellor Martin, in the same interview assured the public that "the church *is* safe ***for children.*** (CR:114).

Of equal importance, is the undisputed fact that Petitioner, in its January 31, 2019 release of the List or in any interviews did not say—that the word "minor" had an alternative meaning under canon law that included a vulnerable adult. (CR:92-93). Petitioner never qualified its statements, nor explained to the general public, that its accusations were to be read or heard "within the meaning of Catholic canon law." Id.

SUMMARY OF THE ARGUMENT

The Seventh Court of Appeals correctly concluded that the trial court did not abuse its decision in holding that the ecclesiastical abstention doctrine did not bar Guerrero's claims for defamation.

Guerrero asserts that the defamatory statements raised in his Petition involve secular matters that were published entirely outside the confines of the church, are not strictly and purely ecclesiastical, and can be resolved by the application of neutral principles of law without impeding on any issues of church governance or polity. Westbrook v. Penley, 231 S.W.3d 389, 394 (Tex. 2007). Specifically, false accusations of child sexual abuse is not a religious question, particularly when made outside the confines of the church.

Under the application of the neutral principles of Texas defamation law, the defamatory statements should be viewed from the perspective of a reasonable listener of ordinary intelligence and in the surrounding circumstances in which they were made. In re: Lipsky, 460 S.W.3d 579, 593 (Tex. 2015); Scripps NP Operating, LLC v. Carter, 573 S.W.3d 781, 794-95 (Tex. 2019); D Magazine Partners, L.P. v. Rosenthal, 529 S.W.3d 429, 439 (Tex. 2017). The surrounding circumstances in this case include pre-publication press releases, interviews, website postings, and post publication interviews on the topic of sexual abuse identifying those who have sexually abused children.

This Court should further affirm the findings of the trial court and Seventh Court of Appeals that Guerrero met his burden of establishing clear and specific evidence for each of the prima facie elements of his claim for defamation.

ARGUMENT

I:
THE PETITION FOR WRIT OF MANDAMUS SHOULD BE DENIED BECAUSE DEFAMATORY STATEMENTS ABOUT CHILD SEXUAL ABUSE ARE NOT ECCLESIASTICAL ISSUES

The Seventh Court of Appeals (hereafter "COA7") correctly concluded that the trial court did not abuse its discretion in denying Petitioner's Plea to the jurisdiction and Motion to Dismiss. The substance and content of Guerrero's Petition do not involve "strictly and purely ecclesiastical" issues. Guerrero is not asking this Court to weigh in on issues of faith, doctrine, or church governance. Our Lady of Guadalupe Schools v. Morrissey-Berru, 140 S.Ct. 2049, 2020 WL 3808420 at *3 (July 8, 2020). Further, if a fact issue exists regarding the court's jurisdiction, a plea to the jurisdiction should be denied. Westbrook, at 394. Likewise, dismissal for lack of subject matter is only proper if it appears certain that the plaintiff can prove no set of facts in support of his claim.

It is impossible to make a jurisdictional decision at this early stage without at least exploring the facts of this case. At a minimum, discovery should be allowed to proceed. McRaney v. The North American Mission Board of the Southern Baptist Convention, Inc. (Case No. 19-60 293) (5th Cir., July 16, 2020).

A. Guerrero's Claim is a Secular, not a Religious, Dispute that can be Decided by District Courts Consistent with this Court's Precedent of this State.

The ecclesiastical abstention doctrine does not apply in this case. This Court has subject matter jurisdiction to decide Guerrero's defamation claim because such claims involve secular issues that can be decided by application of neutral principles of law, and the resolution of his claims will not impede on church governance. Just as the act of sexually abusing minors is not a theological issue, neither is falsely accusing a person of sexual abuse of a minor. Hayden v. Schulte, *infra*.

This Court has recognized limitations on the ecclesiastical abstention doctrine. Indeed, this very Court has stated that the ecclesiastical abstention doctrine does not immunize religious organizations "from all causes of action alleging tortious conduct". Tilton v. Marshall, 925 S.W.2d 672, 677 (Tex. 1996).

In 2007, in Westbrook v. Penley this Court examined a conflict between church law and state law. This Court held that although the professional negligence claim for breach of a secular duty of confidentiality under state law could be decided by applying neutral principles of law, without regard to religion, the inquiry did not end there. Westbrook, 231 S.W.3d 389, 396-397 (Tex. 2007). The Court had to balance whether resolving the professional negligence claim impeded on the church's authority to manage its own affairs. Id. at 397. The Court held that imposing civil liability on the Westbrook pastor would "in effect impose a fine for his decision

to follow the religious disciplinary procedures that his role as pastor required." Id. at 402. Later, in Masterson v. Diocese of Northwest Texas, 422 S.W.3d 594 (Tex. 2013), this Court applied the neutral principles doctrine to a church property dispute and concluded that secular laws could be applied without impeding on church governance.

B. The Defamatory Statements Here are not Strictly and Purely Ecclesiastical in Nature.

The substance, contents, and context of both Defamatory Statement Nos. 1 and 2 accuse Guerrero of something that he can prove he did not do. First, he will prove at trial that he did not sexually abuse a minor child. He will also prove that he never (1) admitted to sexually abusing anyone, (2) has been convicted of sexual abuse, and (3) that Petitioner has no testimony from any witness that claimed to observe him committing sexual abuse. (CR:114).

Importantly, the Statements do not include the phrase "vulnerable adult" nor do they inform the reader that "minor" was intended to be defined "according to canon law". (CR:60-61; CR:114, GAM: 28-32). To adjudicate the underlying claims in this case, the Court need not decide, as the Petitioner argues, whether its canon law meaning of "minor" is correct, i.e. its belief that a "vulnerable adult" is equivalent to and should be afforded the same protection as a child victim of sexual abuse. (Pet. Merits Brief, p.32). This is the wrong question entirely and only posed by Petitioner to cast the dispute in a more biblical light. Petitioner's beliefs are not

in issue and certainly not triggered by any claims raised by Guerrero's Petition. Notwithstanding, Petitioner is asking the Court to focus on what was omitted from the Defamatory Statements. To be sure, Petitioner knows it cannot prevail unless it makes the dispute "strictly and purely" ecclesiastical in nature. Serbian E. Orthodox Diocese for U.S. and Can. v. Milivojevich, 426 U.S. 696, 713, (1976)(quoting Watson v. Jones, 80 U.S. (13 Wall.) 679, 20 L.Ed. 666 (1871). The right question, on the other hand, is: were the words and the context in which the words were said/written, defamatory as heard/read by an ordinary person of reasonable intelligence? The answer is yes.

Following the teachings of Westbrook, Masterson, and the additional authorities cited herein, this Court should deny the Petition, affirm the court of appeals and trial court, and find that: (1) neutral principles of law can be applied to resolve Guerrero's defamation claim without regard to religion; and (2) the application of neutral principles will not impede on church governance.

As set forth below, the Petitioner's arguments must fail.

1. Neutral Principles.

Applying the neutral principles of Texas defamation law to Guerrero's case, the proper inquiry is what the reasonable listener understands the defamatory statements to mean based upon what was actually written or said, not what Petitioner intended it to mean or even what it believes it to mean. In re: Lipsky, at 593. In other

words, the actual content of the Statements, including the context in which they are communicated, are determinative -- not the untold reasons or motives as Petitioner suggests. Petitioner misunderstands the law and conflates "context" with "motive." Motive is not relevant in the defamation analysis. Petitioner's focus on motive is a distraction from the Statements actually made and ignores the applicable context in which the Statements were made. Further, the reasons for making the Statements was expressly described in the Statements themselves, i.e. "to protect children from sexual abuse." (CR:123,137).

Despite overwhelming evidence in the record to the contrary, Petitioner unbelievably asserts that it "never" used the words "children" or "child" when discussing the List or Guerrero. (See List, Internet publications, press releases, interviews at CR:60-61, 109, 123, 137, 114; GAP:110). Petitioner also claims that the media, not Petitioner, used the word "children", and that the media's misstatements have been imputed to Petitioner. This, too, is false. (Id.). The series of communications made by Petitioner released in advance of and contemporaneously with the List, repeatedly reference "children," and imply Guerrero sexually abused a child. [See pre-publication interviews given by Bishop Coerver on October 10, 2018, (CR:137;GAP:110); Publication on website dated October 10, 2018 (GAP:107-109); January 31, 2019 Press Release (CR:122-124); January 31, 2019 Martin Interview (CR 114, Video at 1:11 clip 1)]. Each of

Petitioner's references to "children" were made in the context of discussing the List, and were the Petitioner's words. They were not "media misstatements."

COA7 neither recharacterized, manipulated, or changed any of Petitioner's words nor recharacterized the context in which the words were said, as claimed by Petitioner. Instead, COA7 followed Texas defamation law instructed by Scripps and D Magazine, and considered all of the statements communicated by Petitioner in conjunction with Defamatory Statement Nos. 1 and 2. Scripps NP Operating, LLC v. Carter, at 794; D Magazine Partners, L.P. v. Rosenthal, at 439. Whether one is defamed depends on evaluating not only the statement uttered, but also its context or surrounding circumstances based upon how a person of ordinary intelligence would perceive it. Id. Under the guidance of Scripps and D Magazine, COA7 correctly concluded:

> Canon law is not in play. What is in play is how a person of ordinary intelligence would perceive the accusation that Guerrero sexually abused a "minor" when the church accompanied the word with reference to abuse involving "children" and the safety of children.

(GAM:013).

Petitioner's public use of the phrase "sexual abuse of a minor" (without disclosing Petitioner's alternate definition), coupled with their repeated reference to "child/children", told their intended audience that Guerrero sexually abused children. This Court need not interpret church doctrine in order to determine how the reasonable person would perceive these words. To the lay audience, the words

"sexual abuse", "child", and "minor" have secular meaning and no religious connotation. Hayden v. Schulte, 701 So.2d 1354, 1356 (La. App. 4th Cir. 1997)(child sexual abuse is not a purely religious matter). Child sex abuse is anathema to society in general, even to an atheist. Id. Sexually abusing "minors" is a crime under Texas law. Tex. Penal Code. Ann. §21.11(a)(West 2019). Churches do not have the "unfettered right to make unsubstantiated statements of an essentially secular nature to the media destructive of a priest's character." Hayden, at 1356-57. A "church cannot appropriate a matter with secular criminal implications by making it simultaneously a matter of internal church policy and discipline." Id. Here, Petitioner attempts to do just that and make the secular act of child sexual abuse, or false accusations thereof, a religious issue. This cannot be allowed.

Courts across the country have held that sexual misconduct and similar torts are not theological issues. See Martinelli v. Bridgeport Roman Catholic Diocesan Corp., 196 F.3d 409 (2nd Cir.1999); Doe v. Liberatore, 478 F.Supp.2d 742 (M.D.Pa.2007); Doe v. Archdiocese of Denver, 413 F.Supp.2d 1187 (D.Colo.2006); Malicki v. Doe, 814 So.2d 347 (Fla. 2002); Fortin v. Roman Catholic Bishop of Portland, 871 A.2d 1208 (Me.2005); Odenthal v. Minnesota Conference of Seventh-Day Adventists, 649 N.W.2d 426 (Minn.2002); Roman Catholic Diocese of Jackson v. Morrison, 905 So.2d 1213 (Miss.2005); McKelvey v. Pierce, 800 A.2d 840 (N.J.2002); Turner v. Roman Catholic Diocese of

Burlington, 987 A.2d 960 (Vt.2009). Petitioner does not claim that "sexual abuse" is a religious term, yet argues when accompanied with "minor" it transforms into a theological issue. If sexual abuse is not a theological issue, then how can sexual abuse "of a minor" be a theological issue?

Notably, none of the defamatory statements that Guerrero complains of ever mention the term "vulnerable adult". In fact, the phrase "vulnerable adult" is not publicly mentioned until **after** Guerrero filed the present lawsuit in an attempt to manipulate the evidence with its Revised List. (CR: 63-65). Instead, the words used by Petitioner in reference to the List and Guerrero were "minor", "sexual abuse", "child" and "credible allegations." (CR: 60-61). Again, Petitioner omitted any reference to canon law, the Charter, or an alternative definition of "minor" under church law until after Guerrero filed suit.

In its post-litigation publication of the Revised List, Petitioner, for the first time, publicly uses the phrase "minor or vulnerable adult" to identify two separate and distinct classes of victims of sexual abuse. (CR: 63-65). Importantly, the Revised List also states "a person who habitually lacks the use of reason is considered **equivalent** to a minor." It does not say that a vulnerable adult **is** defined as a minor, or conversely, a minor is defined as a vulnerable person. The point being, even in the Revised List, Petitioner still does not define "minor" and instead leaves it to the reader to define for themselves what the term "minor" means. As pointed out by the

three judges on the appellate panel, to the lay audience, the word "minor" has secular meaning:

> …our common parlance tends to assign a definition to "minor" based upon age, much like the common understanding of the words "child" and "children". In reference to human beings, "minors" are commonly understood to be under-age people or those below the age of majority or legal responsibility….[citations omitted]. That common perception of the term generally does not include adults older than 17 or 21 depending upon the law involved. As for the words, "child" or "children," they not only have a meaning similar to "minor" in our everyday parlance but often are interpreted as describing those of very young age, such as infants, toddlers, and pre-teens."

(GAM:000021). Quite simply, the term "minor" does not turn on religious interpretation and has no theological connotation, unlike terms such as "sin," "biblical impropriety," "bigamy according to Jewish faith," or "conduct contrary to Islamic law". See Westbrook; Klagsbrun v. Va'ad Harabonim, 53 F.Supp.2d 732, 735 (D.N.J. 1999); El-Farra v. Sayyed, 226 S.W.3d 796 (Ark. 2006).

a. *Courts have expanded the neutral principles doctrine to tort claims, including sexual abuse, fraud, and defamation.*

Petitioner asserts that the "neutral principles" doctrine has been "narrowly drawn" to church-property disputes only. This is false. Westbrook, 231 S.W.3d at 398; Masterson, 422 S.W.3d at 607. The neutral principles methodology adopted by this Court has been expanded to various tort claims, notably cases involving sexual abuse claims against churches/clergy nationwide. See Roman Catholic Diocese of Jackson v. Morrison, 905 So.2d 1213 (Miss.2005) (sexual abuse tort claims against

church); Moses v. Diocese of Colorado, 863 P.2d 310 (Colo.1993), *cert.denied*, 511 U.S. 1137 (breach of fiduciary claim against church); Erickson v. Christenson, 781 P.2d 383 (Or.App.1989) (claims for breach of fiduciary duty and intentional infliction of emotional distress); F.G. v. MacDonnell, 696 A.2d 697 (N.J.1997), (sexually inappropriate conduct during pastoral counseling); Martinelli, *supra*, (breach of fiduciary duty claim for sexual abuse by priest); Nutt v. Norwich Roman Catholic Diocese, 921 F.Supp.66 (D.Conn.1995) (negligent supervision against church for sexual misconduct of priest); Malicki, *supra* (negligence claims for sexual abuse not barred against church).

Indeed, Texas appellate courts have applied the "neutral principles doctrine" in defamation claims involving religious organizations. See Kelly v. St. Luke Community United Methodist Church, 2018 WL 654907 (Tex.App.-Dallas 2018)(ecclesiastical abstention did not apply to that portion of plaintiff's **defamation claims where the alleged publication occurred to persons outside of the church.)**; Turner v. Church of Jesus Christ of Latter–Day Saints, 18 S.W.3d 877, 896 (Tex.App.-Dallas 2000, pet.denied*)(*minister's employment-related claims were deemed "ecclesiastical matters" protected from review, **except for his defamation claim of statements made to third parties by the church**).

Other jurisdictions are in accord. See Kliebenstein v. Iowa Conference of the United Methodist Church, 663 N.W.2d 404, 406 (Iowa 2003); McRaney, *supra*;

Hayden, *supra;* Marshall v. Munro, 845 P.2d 424 (Alaska 1993) (applying neutral principals, court held claim for defamation and interference with contract not barred by First Amendment).

Lipscombe v. Crudup, 888 A.2d 1171 (D.C. App. 2005), also held that "neutral principles of law" can be employed in resolving plaintiff's defamation claims, relying on the following U.S. Supreme Court and Fifth Circuit authority:

> …not every civil court decision…jeopardizes values protected by the First Amendment." Presbyterian Church [full citation omitted]. As one court has explained:
>
> > The First Amendment does not categorically insulate religious relationships from judicial scrutiny, for to do so would necessarily extend constitutional protection to the secular components of these relationships….[T]he constitutional guarantee of *religious* freedom **cannot be construed to protect *secular*…behavior, even when [it] comprise[s] part of an otherwise religious relationship** between a minister and a member of his or her congregation.

Lipscombe at 1173-74. See also General Council on Fin. and Admin. of the United Methodist Church v. Superior Court, 439 U.S. 1369, 1372-73 (1978) (wherein Justice Rehnquist commented that religious autonomy not applicable **to purely secular disputes in which fraud, breach of contract and statutory violations are alleged)**.

To be clear, Guerrero does not suggest that all defamation cases would categorically fall outside the religious autonomy doctrine. Certain words have

religious connotations and would require interpretation of religious doctrine. See e.g., El-Farra, *supra* (statements that the Imam's conduct contradicted "Islamic law", khutbas (sermons) exhibited interference, and that he was creating "disunity" and "fitna" denoted religious meaning within the faith). In Guerrero's case, the word "minor" does not have religious connotation but is a secular term. In addition, Petitioner incorrectly seeks interpretation of not what it said, but rather what it allegedly intended to say.

b. *Petitioner's reliance on Kentucky appellate court jurisprudence is unavailing.*

Petitioner encourages this Court to follow an appellate opinion from Kentucky, Dermody v. Presbyterian Church, 530 S.W.3d 467 (Ky.Ct.App. 2017), and to completely ignore Scripps and D Magazine. However, Dermody is not "leading authority"[2] in church defamation cases, does not reject the "average reader" perspective from well settled Texas defamation law, and has no binding authority over this Court. Moreover, Dermody is distinguishable.

In Dermody, the church did not accuse the plaintiff of a secular crime. Rather, the defamatory statement in issue was that the minister "had committed unspecified ethics violations" contrary to the church's own ethical policy. The court declined to

[2] Dermody has been cited two times, one being a dissenting opinion. Sandmann v. WP Co., 401 F.Supp.3d 781 (E.D.Ky. 2019)(innuendo and special damages); Presbyterian Church (U.S.A.) v. Edwards, 566 S.W.3d 175 (Ky. 2018)(dissenting opinion).

review decisions made by a church in "applying its own ethics rules." Dermody, at 474. In an alternate argument, the Dermody plaintiff conceded that the defamatory statements were literally true but argued that the implication of the statements to the public was broader than the wrongful conduct itself. In other words, he argued the general public would think he committed an act more wrongful than was actually committed. Ultimately, the court declined to address plaintiff's alternative "recasting" argument since it had not been previously raised.

Here, Petitioner actually said and wrote the word "children" in the same breath it used "sexual abuse of a minor". Guerrero is not concerned that the public might perceive Petitioner's Defamatory Statements more broadly than what was actually said. Rather, Guerrero's concern is that the public is going to believe what was actually said – that Guerrero sexually abused a child because Petitioner told the public that "minor" meant "child" by its accompanying statements and rhetoric. Further, the "recasting" argument in Dermody is premised upon the plaintiff's concession that the alleged defamatory statement was true. Neither of the defamatory statements in Guerrero's case are true. This is made especially clear by Chancellor Martin's words in Defamatory Statement No. 2 with respect to a credible allegation:

> Credibly accused is either the person **admits** to doing it, are **found guilty** in a court of law, or the allegation has been witnessed, or the abuse has been **witnessed** by somebody and they **testify** against it. If the accusation is credible, that person is immediately removed from the ministry.

(GAM:28-32; CR:114).

** Click here to see KAMC News Video Clip;

** Click to see KLBK News Video.

Clearly, the "credibility determination" made by the Petitioner against Guerrero in Defamatory Statement No. 2 does not turn on a theological interpretation of the word "minor", as claimed by Petitioner. Rather, Chancellor Martin told us that a "credible allegation" meant one of three things, (admission, conviction, eye-witness testimony of sex act), none of which require study or interpretation of religious faith or doctrine in deciding whether the Statements were defamatory. Guerrero denies Chancellor Martin's allegations in *toto*. Petitioner has never refuted Defamatory Statement No. 2. (See Guerrero Affidavit CR: 148-151). Petitioner's silence is telling. Indeed, Petitioner selectively provided an incomplete transcript of Chancellor Martin's video interview to this Court that purposefully omitted Defamatory Statement No. 2. (Compare A:33-35 with GAM:28-32). wherein Petitioner omits the KLBK 10:00 p.m. news broadcast in its entirety and deletes pages 2 and 4 from the transcript of the KAMC 10:00 p.m. news broadcast). Both of these redacted news clips contain video footage of Defamatory Statement No. 2.

Moreover, the Court need not delve into whether a "credible allegation" existed against Guerrero for the sexual abuse of a minor because Petitioner has already admitted that it "**has no information of a credible allegation of sexual**

abuse of a minor below the age of eighteen (18) by Jesus Guerrero." (CR:145-146). Clearly, the truth or falsity of this defamatory accusation does not require consideration of any ethical rules, theology, or doctrine.

c. *Petitioner's "context recharacterization" argument is without merit.*

In an attempt to avoid the substance of its own words, Petitioner contends that COA7 had to have employed a "context recharacterization" maneuver to conclude that Petitioner had credibly accused Guerrero not of "minor" abuse, but of "child" abuse. (Pet. Merits Brief, p. 35). However, Petitioner's argument must fail because it is premised on factual disputes that the Petitioner never used the word "child/children." As set forth above, Petitioner repeatedly used written and spoken words to refer to "children" in its public statement to the media about the List. Context does matter in the analysis. It is the context in which the statements were spoken -- not the "motive" for making the statements. In crafting this concept, Petitioner ignores its own words, asks the Court to adopt Kentucky and New Jersey law, and ignores the precedent of this Court.

Petitioner's reliance on Klagsbrun v. Va'ad Harabonim, 53 F.Supp.2d 732 (D.N.J. 1999) is misplaced. Klagsbrun involved an Orothodox Jewish couple's defamation claim against a group of rabbis related to a public accusation of bigamy. Although it was undisputed that plaintiff had obtained a civil divorce in 1995, defamatory publications were made stating that the husband "had [never been] given

a 'Jewish' divorce." Klagsbrun , 53 F.Supp.2d at 735. Three things are important to take note of in the Klagsbrun court's decision to decline jurisdiction: (1) the publication at issue did not leave the confines of the church; (2) the notice had qualifying language narrowing the dispute to the meaning of "Jewish divorce" under "Jewish law"; and (3) the issue of whether a "Jewish" divorce had been given would require inquiry into Jewish faith and religious doctrine. Id.at 741. Klagsburn is clearly distinguishable from the case at bar and has no application here.

Next, Petitioner is critical of the reference to the In re: Godwin, 293 S.W.3d 742 (Tex.App. - San Antonio 2009) case in footnote 5 of the Opinion. (Pet. Merits Brief, p. 40). Petitioner mischaracterizes COA7's reference to Godwin, COA7 was simply pointing out there is not complete immunity for churches and that even pulpit statements about sexual abuse would likely not have protection. (GAM:012). Moreover, the reference to Godwin in a footnote is not a reason to warrant reversal.

Petitioner's reliance on Kavanagh v. Zwilling is also misplaced. In Kavanagh, and unlike the case at bar, the press release at issue informed the reader that the alleged sexual abuse was to be viewed through the lens of **church law**. Kavanagh v. Zwilling, 997 F.Supp.2d 241 (S.D.N.Y. 2014). Specifically, the Kavanagh court explained:

> Kavanagh's allegations fall far short of making such a showing, as Defendants' statement, on its face, belies Plaintiff's claim of innuendo. That is, the Archdiocese's press release stated expressly that "Mr. Kavanagh was found guilty by a **Church Court** of multiple counts of sexual abuse of a minor." ... Given that the statement explicitly refutes the implication of Plaintiff claims it has – namely, that he was convicted by a lay court of a crime – the Court concludes as a matter of law that it is not defamatory by implication and therefore that Plaintiff has failed to plead a necessary element of his claim.

Kavanagh, 997 F.Supp. at 255.

Because resolution of this matter is governed by the tort law of defamation, i.e. what a reasonable person believes, it does not require inquiry into the religious doctrine and practices of the Catholic Church in defining the words the Petitioner published -- especially because none of the publications clarified that they were to be read according to canon law. Again, the statement in Kavanagh specifically told the audience that his guilt was determined in a "Church Court." Here, no such qualifying words were used.

There is no religious question, theological issue, or doctrine involved in this case. Sexual abuse is not a theological issue, and neither is protecting persons, whether it be an adult or child, from sexual abuse. The same rings true for falsely accusing a person of committing sexual abuse, and there are no allegations in the Petition that remotely implicate an ecclesiastical issue. Williams v. Gleason, 26 S.W.3d 54, 59 (Tex. App.-Houston, 2018) (examine the substance and effect of the petition to determine its ecclesiastical implication). Petitioner cannot control the

audience's perception of the words it chooses to use. The proper analysis by this Court is how the ordinary Texas citizen would perceive the word "minor." Clearly, the word "minor" is NOT a religious term. If it were Petitioner would have had no reason to subsequently publish the Revised List.

C. Application of Texas Defamation Law to Guerrero's claim does not Impede on Church Governance.

Adherence to defamation law does not impede. Rather, it simply requires a reasonable amount of carefulness. Some amount of chilling or limited impediment is acceptable and has been upheld by the U.S. Supreme Court. (See Employment Division v. Smith, 494 U.S. 872 (1990); Bob Jones University v. United States Christian Schools, Inc v. United States, 461 U.S. 574; (1983); Reynold vs. U.S., 98 U.S. 145 (1878). Both this Court and the U.S. Supreme Court have recognized that, while the freedom to believe is absolute, the freedom to act, "**remains subject to regulation for the protection of society**," and the Free Exercise Clause "**never has immunized clergy or churches from all causes of action alleging tortious conduct."** Tilton, at 677 quoting Cantwell v. Connecticut, 310 U.S. 296, 303-04 (1940). For example, consider a pastor that is ticketed for speeding while in route to the church to deliver his sermon. Adhering to the speed limit does not mean that he cannot get to his destination or still deliver his sermon. Rather, it simply means that he must slow down and be more careful. The same logic applies to Petitioner.

They can still make public accusations about sexual abuse, but they simply must slow down and be more careful to not make false accusations.

This case is not like Westbrook where the pastor could not keep the "biblical impropriety" secret from the church without violating a church disciplinary procedure that required disclosure. Quite the opposite. Petitioner points to no church doctrine that requires it to make false accusation or publicly mislead non-members. Moreover, the subject of publicized sexual abuse is a secular issue. It is not too much to ask, and certainly not an impediment, that Petitioner simply be accurate when using the secular media to publicly accuse a person of the very worst crime imaginable, i.e. sexual abuse of a child. Further, Petitioner does not claim to have been impeded or imposed upon for undertaking its post-litigation publication of the Revised List wherein such a qualification/clarification was attempted.

1. **Not Discipline.**

In the case at bar, unlike Westbrook, Petitioner did not publish the List as a required step of a disciplinary process of Guerrero. Guerrero was removed as a deacon over ten (10) years prior, and Guerrero makes no claims as a result of that discipline.[3] **The record is devoid of any evidence**, (including the Charter or Bishop Coerver's Affidavit), that suggests the 2019 Statements were published to punish

[3] This point is conceded by Petitioner, "Guerrero was not an employee, and Guerrero brings no claims that the church wrongfully removed him from his position as a deacon of the church." (GAP: 045-46).

Guerrero. Rather, according to the Petitioner's own words, the List was published to "**protect children from sexual abuse**." (1/31/19 Press Release CR:123). Indeed, the Petitioner's counsel argues the List "**relates to safety and community well-being**" and was "**published in an effort to be transparent to the Catholic faithful in the Diocese, to assist victims of sexual abuse and promote healing, and to restore trust in the Diocese and the Catholic church**." (GAP:23).

Petitioner continues to change its motive for the publication of the List throughout the course of this litigation. Initially, it was transparency, assist victims, and restore trust in the Church. Now, in an effort to make this a matter of church governance, Petitioner claims the publications were made to discipline Guerrero for conduct that occurred more than a decade ago. Notwithstanding, the publications here were made to restore Petitioner's image in the public and to combat the secular topic of sexual abuse in society at large. At Guerrero's expense, Petitioner wrongfully included his name on the List to bolster its efforts at redirecting and diffusing blame for a decade-long policy of concealing sexual abuse. COA7 said it best in concluding that the issue was **not** an "internal church disciplinary matter.":

> The event [publication of the List] was utilized by the Diocese, according to one or more church representative, as an opportunity to address sexual abuse against "children", help victims of sexual abuse, assuage public concern about safety of "children" in the church, and criticize both the church and "society" for not "always [being] open and honest about" the topic of sexual abuse.
>
> ***

> It is the injection into the discussion of more than simply the misconduct of those related to the church. The church's statements that 1) "our dioceses are serious about ending the cycle of abuse in the Church and **in society at large**, which has been allowed to exist for decades" and 2) "[i]t's time we need to be honest about these kinds of matter **and society hasn't always been open and honest** about those." (Emphasis added). They [the Church] reveal 1) an acknowledgement that the issue necessitating attention (i.e., sexual abuse) is more than a church matter but rather one of society at-large, 2) an intent to induce society at-large to address the issue, and 3) an intent to join society at-large in the effort. So, admonishing, inducing, and joining society at-large is telling. Those indicia provide further basis dispelling any nexus between the Diocese's conduct and any theological, dogmatic, or doctrinal reason for engaging in it.

(GAM: 11-12). Guerrero had been removed from the ministry more than ten (10) years prior to 2019, and many of the names on the List are deceased persons. Clearly, this was not discipline.

2. <u>No Impingement on Communications with Members.</u>

Petitioner argues that Guerrero's claim impedes on its ability to follow its directives to communicate with its members on the status of clergy. Petitioner offers no reason as to how or why it would be punished for such conduct. Indeed, Petitioner can still communicate with their members, and follow their directives, even if their directive includes using secular media to "tell the world." However, if Petitioner chooses to "tell the world", as they did here, then its statements simply must be accurate.

In this case, Petitioner was not merely discussing or opining on religious law or clergy status in a public setting. Instead, Petitioner sought out and used a secular

forum (television news and the internet) to publicly accuse Guerrero of a secular crime against children. To simply require accuracy in publicly accusing one of the abhorrent crimes of sexual abuse of children is merely reasonable, not punishment and does not preclude Petitioner from communicating with its members.

3. No Internal Process.

In its brief, Petitioner allocates a great number of pages on the discussion of various provisions of Catholic law and its past and current struggle with the topic of sexual abuse. The fact that many Catholic clergy have been found to have committed sexual abuse does not make the abuse a religious issue. Neither is such secular crime transformed into a matter of religious doctrine simply because Petitioner created a "Charter" or other laws on the topic. Again, a "church cannot appropriate a matter with secular criminal implications by making it simultaneously a matter of internal church policy and doctrine." See Hayden, *supra*. For example, a church that creates an internal "travel charter" addressing the secular topic of driving the church vehicles does not convert reckless driving or speeding into a religious issue. Similarly, an internal church-created policy on how and when to wear a mask during the COVID-19 pandemic, does not make the act of wearing a mask a religious issue.

By constantly referencing its internal Charter on sexual abuse, Petitioner is baiting Guerrero into an argument as to the interpretation or application of said

provisions in hopes that Guerrero will engage in it and thereby create an illusion of a doctrinal dispute. Guerrero need not take the bait as the Charter pertains exclusively to the topic of sexual abuse and is not strictly and purely an ecclesiastical matter. Accordingly, Petitioner's argument that Guerrero must utilize an internal process to rebuild his reputation contained within Petitioner's sexual abuse Charter is a ruse.

Similarly, Petitioner has admitted that Guerrero was not an employee. It is now been over ten (10) years since Guerrero was "permanently removed from the ministry" and his diaconal facilities had been removed. (CR:54-57) Guerrero has played no part in leading, preaching, or teaching the faith on behalf of the Petitioner as a deacon since 2008. Indeed, he has performed no duties on behalf of Petitioner, not even *de minimus*. Yet, Petitioner now argues Guerrero still maintains the **title** of "deacon" under church law. However, a person's "title" is not the relevant inquiry. Lady of Guadalupe, *supra*. The religious functions being performed on behalf of the religious organization is the inquiry. Id.

The Petitioner's argument presupposes that internal disciplinary issues are at play and that reputational damages resulting from the topic of sexual abuse is a theological issue. It is not. Again, Guerrero is not challenging his removal from the ministry in 2008, nor is he challenging the determination the Petitioner made from that investigation. Independent conduct by the Petitioner forms the basis of the

defamation claim versus the acts taken to remove him as a deacon in 2008. The conduct giving rise to defamation did not occur until 2019, and the act of the Petitioner making the defamatory statements did not arise from any alleged, internal process.

Also important to the analysis in Guerrero's case is that the damages suffered occurred in the public domain and not only within the confines of the church. (CR:148-51). Instead, his damages arise from the external acts of giving media interviews to Fox, KAMC News, KLBK news, newspaper press releases, and postings on the Internet that were false.

In addition, there is no conflict between state law and church law in this case as there was in Westbrook. The Westbrook pastor had an obligation under church law to inform its members of the extra-marital affair. Canon law does not require the Petitioner to publish defamatory material.

4. Financial Impact.

The potential impact on the solvency of the church because of litigation has never been a reason to invoke the ecclesiastical abstention doctrine. Petitioner cites to no authority in support. Indeed, the Catholic Church, according to Petitioner, has over 1 billion members worldwide, with 8.5 million in Texas. (Pet. Merits Brief, p. 59). Certainly, the Catholic Church has "giving" members and substantial resources.

Moreover, Petitioner's financial responsibility is minimal when compared to the irreparable harm it caused to Guerrero's legacy, relationships, and reputation.

II:
THE CONFINES INQUIRY IS CONSISTENT WITH THIS COURT'S PRECEDENT AND THE ECCLESIASTICAL ABSTENTION DOCTRINE

A. The Seventh Court of Appeals did not Create New Law.

By its use of the Internet, press releases, and television interviews, Petitioner left the confines of the church with the obvious intent of reaching the secular public. COA7 agreed and recognized that the intended audience is a relevant factor or "pivotal nuance" in determining whether the statements relate strictly and purely to an ecclesiastical question. (A:12). However, COA7 made clear that the breadth of the publication, or "confines" analysis was only one of many factors that should be considered in determining whether the issue was ecclesiastical in nature.

Nevertheless, Petitioner asserts that COA7 created a new rule that would require future courts to decide religious issues that they are incompetent to decide and second guess internal church processes. (Pet. Merits Brief, p.56). Petitioner's "the sky-is-falling" argument misstates COA7's rule and ignores existing authority. COA7 did not create a hard and fast "new rule [that] portends serious religious entanglement" and there will be no need for religious organizations to "predict which of [their] activities a secular court will consider religious." (Pet. Merits Br., p. 56).

Instead, COA7 simply recognized that leaving the confines of the church is one of several factors, "pivotal nuances," that should be considered in determining whether the disputed issue is an internal ecclesiastical matter. COA7 took care to makes this point crystal clear in the following passage:

> A common thread runs through the authority just cited. A religious body **exposing matters historically deemed ecclesiastical to the public eye has consequences**. The action leaves the area of deference generally afforded those bodies and enters the civil realm. ***This is not to say that such a publication alone is always enough***, but it is a pivotal nuance. Indeed, arguing that a dispute remains an internal ecclesiastical or church polity issue after that body chooses to expose it publicly rings hollow. And, that is the situation here.

(A:12).

Furthermore, the threshold inquiry in deciding if the religious autonomy doctrine applies is whether the issue is "rooted in religious belief." Bryce v. Episcopal Church in the Diocese of Colorado, 289 F.3d 648, 658 (10th Cir. 2002)(quoting Wisconsin v. Yoder, 406 U.S. 205, 215, (1972). The "Church autonomy doctrine **does not apply to purely secular decisions, even when made by churches."** Id. Courts must consider the issues presented and make the threshold determination as to whether matters of theology, faith, doctrine, or polity are involved. Thus, while courts may indeed be "incompetent" to decide strictly and purely religious questions as Petitioner suggests, courts must be at least competent enough to recognize whether a religious question is at issue from the outset. In the case at bar, COA7 simply considered to whom the subject statements were made in

answering this threshold question and determined that the List an internal ecclesiastical matter.

Citing Bryce v. Episcopal Church in the Diocese of Colorado, 289 F.3d 648, 658 (10th Cir. 2002), Petitioner argues that COA7's opinion would somehow weaken "the right of the church to engage freely in ecclesiastical discussions with members and non-members." (Pet. Merits Br., p.56). Bryce involved statements made during an internal discussion on the issue of an internal personnel matter involving homosexuality of a youth minister. Id. The youth minister, Lee Ann Bryce and her life partner, Sara Smith, brought a sexual harassment suit arising out of statements made in a letter and church meetings which took place at the church. Smith was not a member or employee of the church and, therefore argued that she could not be subject to the internal church disciplinary procedures like her life partner, Bryce. The court held that Smith's claims were barred by the church autonomy doctrine because she had "voluntarily attended the four meetings [at the church] and voluntarily became part of the church's **internal dialogue on homosexuality** and Bryce's employment." Id. The Bryce court was competent enough to answer the threshold question and determined that the purpose of the letter and meeting were not only "internal church personnel matters" but also occurred to facilitate a dialogue between the minister and his parishioners on church doctrine. Id. at 658-59. Thus, the rule from Bryce is that non-members will be treated as

members if they voluntarily attend and voluntarily participate in discussions of internal doctrine. COA7's opinion is based on the church's affirmative act of leaving confines of the church to publish the complained of Statements. The fact that non-members hear/see the statement does not change the rule from Bryce where non-members voluntarily and actively participate in "internal" discussion of church doctrine.

B. Intended Audience Matters.

Despite Petitioner's claim to the contrary there is an abundance of authority that has considered where and to whom the publication was made in deciding cases of defamation and church autonomy. In truth, the scope or breadth of the statement's publication is a factor and almost always considered by courts in deciding whether church autonomy should be afforded to a religious institution. This is not a novel or new idea and finds its roots in the Common Interest Doctrine set forth in the RESTATEMENT OF TORTS 2d, § 596 (1977), wherein it has been recognized:

> a church or other religious organization ordinarily bears no tort liability for statements by or between church officers or members concerning the conduct of other officers or members, because 'communications between members of a religious organization concerning the conduct of other members or officers in their capacity as such are qualifiedly privileged' as matters affecting a common interest or purpose.

[citing 50 Am.Jur.2d, *Libel and Slander,* § 340; RESTATEMENT OF TORTS *2d*, § 596, *comment (e) (1976)*]. Importantly, RESTATEMENT OF TORTS *2d*, § 596, *comment (e)* explains:

> "[t]he rule, however, **does not afford protection to communications made by a non-member to members of the organization, nor does it afford protection to communications made by a member to one who is neither a present nor a prospective member.**"

Further, as set forth below, courts across the nation, including Texas, have been considering this distinguishing factor for years.

In an often cited case in the church autonomy doctrine involving defamation, the Austin Court of Appeals in Patton v. Jones, made the "outside the confines" factor a crucial element of its analysis. Patton v. Jones, 212 S.W.3d 541, 554 (Tex. App.—Austin 2006). In examining where and to whom the publication was made, the Patton court held that the constitutional protections of ecclesiastical abstention extend to defamation claims when:

> (1) such claims flow entirely from an employment dispute between a church and its pastor…
>
> (2) **the alleged "publication" is confined within the church**, and
>
> (3) there are no unusual or egregious circumstances….

Patton, 212 S.W.3d at 554.

Torralva v. Peloquin is another Texas defamation case brought by a pastor against church leadership for falsely accusing him of disseminating pornography. Torralva v. Peloquin, 399 S.W.3d 690 (Tex. App.—Corpus Christi 2013). In construing whether to apply the autonomy doctrine, the appellate court considered whether the plaintiff's reputation had been harmed outside the church community

and whether the statements had been published outside the church membership. Torralva, 399 S.W.3d at 696. Because the statements stayed within the church membership, the court applied the abstention doctrine. Id. at 697.

Conversely, in Turner, *supra,* a former missionary brought suit against his church on various grounds, including defamation. All the minister's employment-related claims were deemed "ecclesiastical matters" protected from review, except his defamation claim regarding information published to third parties. Turner, 18 S.W.3d at 898. Importantly, the Dallas Court of Appeals noted, the allegedly defamatory statements were made to third parties, as opposed to being internal statements made by the church in connection with its employment decision. Id. The communication being disseminated outside the church was key to the survival of the plaintiff's claim. Id.

Recently, In re: Alief Vietnamese All. Church, the Houston Court of Appeals considered a Deacon's defamation action against church and senior pastor for defamatory statements made to other members of his church. In re: Alief Vietnamese All. Church, 576 S.W.3d 421, 435 (Tex. App.—Houston 2019). In finding that the religious autonomy doctrine applied, the court put great emphasis on the fact that "[the plaintiff's] complaint that his reputation was harmed is clearly a harm alleged to have occurred ***within the Church community***." In re: Alief, 576 S.W.3d at 435. In reaching its holding, the Alief Court, relied on Jennison v.

Prasifka, 391 S.W.3d 660, 667-668 (Tex. App.—Dallas 2013), in which the defamatory claim was dismissed because the "only defamatory statements allegedly made by [the parishioner-defendant] ***were made to the church itself*** in connection with the church's disciplinary process." Jennison involved an episcopal priest that claimed to be defamed by a parishioner's letter to the church. In holding that the defamations claims barred, the Dallas court reasoned "[t]he only defamatory statements allegedly made by Prasifka *were made to the church itself* , and there was "***no allegation*** the allegedly defamatory s***tatements were made in any other forum***." Jennison, 391 S.W.3d at 667-668.

In Kelly, *supra*, the Dallas Court of Appeals concluded that the ecclesiastical abstention doctrine applies to all of Kelly's claims other than the portion of her defamation claim in which she asserts she was defamed by the alleged publication of the ***statements described above to persons outside the church***." Kelly, 2018 WL 654907 at *8.

Becker v. Clardy involves a teacher's complaint about comments made to people within her employment (a religious school). Becker v. Clardy, No. 03-10-00376-CV, 2011 WL 6756999 (Tex. App.—Austin 2011). The court reasoned that because "the alleged statements and damage to reputation contained in Becker's pleadings were 'confined' to the church community" and "Becker's claims were

limited to damage to her reputation ***in the church community***" the church autonomy doctrine would bar consideration. Becker, at *3.

Courts in other jurisdictions have likewise considered the "confines" factor. In holding that the doctrine did not apply, the Supreme Court of Iowa noted that the "ecclesiastical shield" is weakened by a publication made outside of the confines of the congregation. Kliebenstein v. Iowa Conf. of the United Methodist Church, 663 N.W.2d 404, 407 (Iowa 2003) (statements made to members and **other persons in the community)**.

Schoenhals v. Mains, 504 N.W.2d 233, 236 (Minn. Ct. App. 1993), involved a defamation claim arising out of a letter disseminated only to the congregants of a church. The court relied on the fact that the ***defamatory letter was disseminated only to other members of the Church*** in concluding that the defamation claim arose from an internal conflict within the church.

In Heard v. Johnson, 810 A.2d 871 (D.C. App. 2002), a pastor brought a defamation lawsuit against the church trustees. In its reasoning, the court noted that the alleged defamatory statements did not overtly express any religious principles or beliefs, but all the actions resulted from conflicts ***'confined within' the churches*** involved. Id. at 884-85. The Heard court also stated:

> It is also conceivable that torts such as defamation, infliction of emotional distress, and invasion of privacy might be so unusual or egregious as to fall within the Sherbert exception. For example, a **potentially defamatory charge of child molestation might be actionable under the Sherbert exception.**

Id. at 885 (Emphasis added), citing Hayden, *infra*, 701 So. 2d at 1356 ("[w]here child molestation is at issue, it cannot be considered just an internal matter of Church discipline or administration.").

Conley v. Roman Catholic Archbishop of San Francisco, 102 Cal. Rptr. 2d 679, 683–84 (2000), involved a letter published in the San Francisco Examiner accusing the plaintiff of a "witch hunt." The court put emphasis on the fact that the defendant in that case caused the publication to be published in the newspaper in concluding "[t]he commission of a common law tort in the name of or under the auspices of a church does not lessen its culpability." Id. at 1356-1357.

Hayden v. Schulte, *supra*, *is* a case that is factually on all fours with the case at bar and involved a priest accused of sexual abuse of a minor in statements made to the local newspaper. The priest claimed damage to his reputation arose out of the defendants' unfounded allegations and innuendos of child sexual abuse. Id. The Hayden court found that the accusations had been "**intentionally disseminated outside the church to news organizations**." Id. The court held"[i]t is one thing to say that churches must be free of governmental interference to conduct matters of internal discipline and organization, even when those matters touch upon the

reputations of those effected…it is quite another to say that churches have the unfettered right to make ***unsubstantiated statements of an essentially secular nature to the media destructive of a priest's character***…" Id. at 1356-1357. As in the case at bar, the Catholic Church in Hayden, intentionally disseminated information to the news media, outside the confines of the church and was held to account for their conduct. Id.

See also Cha v. Korean Presbyterian Church of Washington, 262 Va. 604, 553 S.E.2d 511 (2001), (wherein the Supreme Court of Virginia applied the church autonomy doctrine to a former pastor's claims because the defamation remarks were made to church officials during a church meeting).

In Pfeil v. St. Matthews Evangelical Lutheran Church of Unaltered Augsburg Confession of Worthington, 877 N.W.2d 528 (Minn. 2016), the Minnesota Supreme Court held the ecclesiastical abstention doctrine applied to statements made by pastors during course of formal church discipline proceedings, where ***statements were communicated only to other members of church and participants in formal church discipline process***." Pfeil, at 540. Of importance is that the court further reflected "we would of course be troubled by any case…if the statements were disseminated to individuals outside of the religious organization." Id.

C. Application to the Instant Case and Guerrero's Claims.

As the authority set forth above makes clear, COA7 was following well established precedent in recognizing that the intended audience matters and should be a pivotal factor in determining whether the ecclesiastical abstention doctrine applies in defamation cases. Understandably, the chosen or intended audience is particularly important when applying Texas defamation law where the truth or falsity of the statement is judged through the lens of a reasonable person's perception of the entirety of the publication. In re: Lipsky, at 594. The reasonable person is someone of "ordinary intelligence"— "a prototype of a person who exercises care and prudence, but not omniscience." Johnson v. Phillips, 526 S.W.3d 529, 534–35 (Tex.App. 2017). Accordingly, upon leaving the confines of the church, Petitioner's untold, alternative meanings are no longer relevant. In other words, when Petitioner exercised its freedom to act *via* secular media outlets, it subjected itself to the plain and ordinary meaning of the words that are known and used by the secular audience that it chose.

In the case at bar, the false accusations of pedophilia were published to the world *via* the television and Internet rather than being confined only to church leadership, members, or staff. As noted by COA7, this was not a case of an incidental disclosure or leak to the media by a person without authority. (A:14). Rather, the decision to release the List into the general public was made purposefully,

intentionally, and as an attempt to use the secular media to maximize exposure and furthering its interest to restore "trust in the Diocese and Church." (CR:57, 122-124).

Furthermore, Petitioner admittedly included individuals from outside the church to be involved with the assimilation and dissemination of the List. The List itself points to the involvement of non-church personnel "**in an effort for transparency"** the Petitioner **"engaged the services of a retired law enforcement professional and a private attorney to review all clergy files for any credible allegations of abuse of minors**." (CR:61). The fact Petitioner hired outside, "retired law enforcement" and a "private attorney" to review its files and determine whether sexual abuse of a minor occurred is revealing. These statements tell the reader that Petitioner's relied on the conclusions of non- church personnel further confirm the secular nature of the subject matter. Such references by Petitioner are clearly an attempt to bolster the credibly of its List.

D. <u>No Chilling Effect.</u>

COA7's opinion will not chill the use of technology by churches. To the contrary, COA7's opinion adds clarity to existing law on what constitutes "outside the confines" and adds guidance as to the weight to be placed on this pivotal factor. Moreover, the existing law as articulated by the Tenth Circuit in <u>Bryce</u> instructs how courts should handle the concerns raised by Petitioner pertaining to publications to nonmembers remains unchanged by COA7's opinion. Thus, if a nonmember

voluntary inserted his or herself into the internal discussion like in Bryce, by say, walking in the front door of the church, using the remote control to select the televised church service, or joining a zoom meeting or facebook live video, then the same analysis from Bryce should apply and the doctrine can still be applied.

Alternatively, if the religious body actively engages the secular media, whether it be, television, internet, facebook, etc., with the indiscriminate intent of reaching the general public on issues that are secular in substance, then the religious body simply must conduct itself as every other citizen in the State of Texas and be accurate when accusing a person of a heinous crime. Nearly all churches have historically maintained open-door policies that welcome all visitors, and COA7 opinion have no impact on those situations. With the advent of the Internet and related technology, admittedly, there are now more doors available to enter/visit the church. However, the analysis remains unchanged by COA7's opinion.

Accordingly, the Ecclesiastical Abstention Doctrine should not preclude the exercise of jurisdiction by this Court as the defamatory conduct was clearly not confined within the church.

E. Petitioner Seeks Unbridled Immunity.

Hosanna-Tabor has no bearing or relevance in this case. Guerrero's case has nothing to do with preaching, training, or carrying out the "mission or faith" of the church, nor were the Defamatory Statement released, in furthering the faith. Indeed,

the Ninth Commandment, "thou shalt not bear false witness" was certainly not followed as to Guerrero. (Exodus, 20:16)

The U.S. Supreme Court case of Hosanna-Tabor "prohibits government interference with an internal church decision that affects the faith and mission of the church itself." Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C., 565 U.S. 171, 190, 132 S. Ct. 694, 697, 181 L. Ed. 2d 650 (2012). Petitioner attempts to equate their act in releasing the List to selecting a minister to lead a religious institution. Hosanna-Tabor involved an employment dispute and the ministerial exception, a type of religious autonomy applicable in personnel disputes. This exception was recently re-examined in the case of Our Lady of Guadalupe School v. Morrissey-Berru, which clarified that "titles" are not the determining factor in deciding whether a person falls within the ministerial exception. Our Lady of Guadalupe School v. Morrissey-Berru, *supra*. Rather, the functions and duties the employee is performing in carrying out the faith and mission of the religious organization is the focus of the inquiry. Id. at *10.

The case at bar bears no factual resemblance to Hosanna-Tabor. The ministerial exception is not at play in this case, and Petitioner's assertions are nothing but a host of conclusory statements with no argument. Clearly, sexual abuse or false accusations thereof, are not furthering the faith and mission of Petitioner.

Indeed, as pointed out by the Honorable Chief Justice Brian Quinn, the Church made a conscious effort to seek out the secular Media and promote the NON-RELIGIOUS DOCTRINE of Sexual Abuse. (A:14-15). To that end, COA7 correctly noted that, based on these facts and the actions and words of Petitioner in "admonishing, inducing, and joining society at-large is telling. Those indicia provide further basis dispelling any nexus between the Diocese's conduct and any theological, dogmatic, or doctrinal reason for engaging in it. The same is also true regarding any nexus between the decision to go public and the internal management of the church." (A:14-15).

1. The Only Chilling Effect would be on Sexual Abuse Victims if this Court Grants the Abuser Unbridled Immunity to Defame.

Petitioner claims that if COA7's opinion is left to stand, there is a real risk that the transparency and accountability exhibited by religious organizations toward allegations of clergy sexual abuse will be slowed or stopped—in Texas and across the nation." (Pet. Merits Brief p. 63-64). This is another conclusory statement without any examples of how or why. Petitioner never explains how transparency and accountability will be adversely impacted. Clearly, Petitioner seeks complete immunity for her actions. Under these facts, if Petitioner can spread false, defamatory statements about a person, with impunity, it in effect transforms the shield of autonomy into a sword of immunity to be used at the whim of any religious organization.

Further, If the abuser is given outright immunity to defame, as Petitioner suggest, this would deter the abused from coming forward and could be used as a weapon against any parishioner or minister alike. The unrestrained ability to defame ***in the general public***, as Petitioner desires, would mean an abuser could publish defamatory statements about a victim, with no consequence. This is not what the framers intended or what society demands. Society has recognized the need to protect these victims by enacting rape shield laws, etc. Guerrero's case is precisely the type of case the Free Exercise Clause never intended to immunize religious organization from civil liability. Tilton, 925 S.W.2d at 677.

III:
THE APPELLATE COURT PROPERLY DETERMINED THAT GUERRERO ESTABLISHED A PRIMA FACIE CASE OF DEFAMATION BY CLEAR AND SPECIFIC EVIDENCE

The Texas Citizens Participation Act ("TCPA") protects citizens from retaliatory lawsuits that seek to intimidate or silence them on matters of public concern, ***not to dismiss meritorious lawsuits***. Tex. Civ. Prac. & Rem. Code Ann. § 27.001; In re: Lipsky, *supra*. In short, the TCPA's purpose is to identify and summarily dispose of *lawsuits designed only to chill First Amendment rights*. The lower courts correctly determined that Guerrero's claims should not be dismissed because Guerrero can establish each element of his defamation claim raised in his Petition.

A. The Elements of Defamation: Context Matters.

It is well settled Texas law that the meaning of a publication, and thus whether it is false and defamatory, depends on a reasonable person's perception of the entirety of a publication and not merely on individual statements. Lipsky. The elements of defamation are:

(1) a false statement of fact to a third party;

(2) that was defamatory concerning the plaintiff

(3) with the requisite degree of fault; and

(4) which caused damage.

Id. at 593. The context in which the defamatory statements are made also matter, and statements are not to be considered in isolation. Scripps; D Magazine, *supra*. In determining whether a publication is defamatory, an examination of the "gist" of the publication is crucial. D Magazine Partners, L.P., 592 S.W. 3d at 434. To determine the "gist", courts must examine the **entire communication, or series of communications**, published "as a whole, in light of the surrounding circumstances based on how a person of ordinary intelligence would perceive it." Scripps, 573 S.W.3d at 790, citing D Magazine Partners at 434. Examining individual sentences or only portions of the publication is improper. Schauer 856 S.W.2d at 437. Rather, the alleged defamatory statement must be considered in the "surrounding

circumstances" or "context" in which the statement was made, which includes **all instances of publication**. Scripps, at 790. (Emphasis added). It is appropriate to consider the entirety of a **series of publications** on the same subject matter for purposes of assessing defamatory meaning and how an ordinary person would perceive it. Id. at 790-791.

1. Guerrero has Credible Evidence that the Statements are False and that he can be Identified as the Subject of the Defamatory Statements.

a. Evidence of a false, defamatory statement.

On January 31, 2019, Petitioner falsely told the world that Guerrero sexually abused children when it released Defamatory Statement No. 1 on the Internet and Defamatory Statement No. 2 to the news media. The evidence in that regard includes the Statements themselves, the additional Statements Petitioner made in connection with releasing the List, and Guerrero's testimony. Incredibly, Petitioner claims that its Statements on the List are true, but if and only if, the clause **"(as defined by canon law as including one who habitually lacks the use of reason)"** is added to Defamatory Statement No. 1. (Pet. Merits Brief, p. 51). This, the Court cannot do. The clause "within the meaning of Catholic canon law" was not mentioned in the List nor in any accompanying interview or press release published by Petitioner. (CR:113-138). This omission is at the crux of this case.

Prior to Guerrero filing this lawsuit, Petitioner published no explanation that the word "minor" encompassed any meaning other than a common understanding of

the word, i.e. person under the age of 18. Id. To the contrary, through its multiple on-camera interviews and church-drafted press releases that it provided to the secular news media, Petitioner made several references to the word "child" or "children" in the context of discussing sexual abuse of minors by clergy. Id. Accordingly, the context in this case includes Petitioner's "Hollywood-like" promotions made in advance of the List, various press release and interview "teasers" given in conjunction with releasing the List, the blockbuster release of the List on the Internet, and post-release interviews. In construing the context, the appellate court properly considered (1) the release of the List for public view on the Internet on January 31, 2019; (2) the related press release from Petitioner dated January 31, 2019 sent to the media, and (3) the pre- and post-publication interviews given by church representatives, and their intermixing of the terms "minor", "child/children", "credibly accused" and "sexual abuse" therein. (GAM:28-32). [See also January 31, 2019 press release (CR:123); KJTV Fox 34 news story, (CR:115-17, video at 0:000:15); Bishop Coerver interview (CR:137)].

Further, because Petitioner's interviews and press releases made multiple references to the word "child" or "children" in the context of discussing its publication of the List of clergy who had sexually abused a "minor, Petitioner was clearly telling its intended audience, i.e. the general public, that every name on the List, including Guerrero, was "credibly accused" of being a child molester. It is

clear, the context in which the List was released, interchangeably uses the term "minor" with "children/child" in reference to sexual abuse. Petitioner focuses only on the word "minor" referenced on the List and relies solely on an alternate meaning never mentioned in any statements made by Petitioner until after a lawsuit was filed. However, caselaw teaches that Petitioner cannot isolate the List itself and ignore the surrounding circumstances in which it was released. See Scripps, 573 S.W.3d at 790.

In addition, Guerrero, himself, denies the allegation of sexually abusing anyone, including a minor child. (See Guerrero's Affidavit, CR:148-151). As stated in his Affidavit: "I have never been accused, investigated, criminally charged or questioned regarding any accusations of sexual abuse against any minor." (CR:148). Guerrero goes on to state "I continue to deny that anything inappropriate happened between me and Ms. Placencio" (the alleged vulnerable adult). Id. More importantly, Petitioner admitted the accusations were false in its second publication of April 10, 2019, wherein it stated "**The Diocese of Lubbock has no information of a credible allegation of sexual abuse of a minor below the age of eighteen (18) by Jesus Guerrero."** (CR:146). These facts are not in dispute.

Furthermore, the claim that Guerrero had been "credibly accused" is also false. In Chancellor Marty Martin's news interview conducted by local news stations of Lubbock, Petitioner defined a "credible allegation" to mean:

> **One of three things would make it a credible allegation. Either the person admits to doing it, they have been found guilty in a court of law, or the abuse has been witnessed by somebody and they have testified against it.**

(CR:68-69, 122-124, 114 (video at 1:11 clip 1); GAM:028-32). The entire time that Chancellor Martin was conducting interviews and asserting that the names on the List, including Guerrero, were "credibly accused" of sexual abuse of a minor, Petitioner knew that Guerrero had never admitted to sexually abusing any person, had never been found guilty in a court of law, and that there was no "testimony" from any person that claimed to have witnessed sexual abuse committed by Guerrero. (CR:146; See also, Guerrero Affidavit, CR:148-151).

b. Guerrero is easily identifiable as a person on the List.

Petitioner also makes a feeble attempt to persuade this Court that none of the publications made by Petitioner, except the publishing of the List on the Internet, mentioned Guerrero's name. As recognized by COA7, this is inconsequential under the facts of this case. (GAM:22). Scarbrough v. Purser, No. 03-13-00025-CV, 2016 WL 7583546, at *5 (Tex. App. Dec. 30, 2016) held that a defamed person need not be personally named so long as those who know and are acquainted with the plaintiff understand that the statement refers to the plaintiff. Petitioner identified Guerrero on the List as clergy who had been "credibly accused of sexual abuse against a minor," publicized the List, gave news interviews on public TV directing the general public

to the List and continues to publish the List on-line to the public today. (CR:60-61, 114, 123, 137). Here, the "news release" prepared by Petitioner was emailed with a subject line which said "Dioceses of Lubbock **publishes List of clergy members** credibly accused of sexual abuse of a minor" and in the body of the release states "The Roman Catholic Diocese of Lubbock **published the names of clergy members** credibly accused of sexual abuse of a minor on January 31, 2019 on Petitioner's website." (CR:122-124). Guerrero's name was on the List.

Additionally, Guerrero has provided proof that people recognized him as part of that List. In his Affidavit, Guerrero confirms that his name was identifiable. Guerrero says: "When I first saw this, my heart stopped for a minute and after I saw the broadcast, I was shocked, confused, hurt and I knew that it wasn't true." (CR:240). Guerrero further testified that "all my children called me and asked about the allegation" and "[a]fter the allegations came out, people at the Church and the community began to shun me, look at me funny and began to avoid me." Id. The argument that neither the pre-publication nor the post-publication interviews ever mentioned Guerrero specifically is disingenuous.

c. Petitioner mischaracterizes the applicable context.

In attempting to divert the Court's attention from the actual substance of the publications themselves and the applicable context surrounding the respective publications, Petitioner argues that COA7 "erred by subjectively re-characterizing

both the context in which the Diocese made the allegedly defamatory statement and the meaning of the word "minor." (Pet. Merits Brief, p.53). As set forth in the prior Proposition Petitioner's "minor" argument is without merit. Petitioner bases this argument on the topics of "vulnerable adult" and its Charter, neither of which were ever mentioned in any statements to the public until a lawsuit was filed. Petitioner claims that when it referred to sexual abuse of "children" in the press release and interviews, it was actually referring to its broader policy reforms contained in the Charter, and not the List. Id. This is not the type of context to be under the holding of Scripps and D Magazine. In order to accept Petitioner's position, the Court and the ordinary person, would have to believe that the subject matter of the press release and interviews had nothing to do with the simultaneous release of the List. This argument is absurd and ignores the express reason given by Petitioner for publishing the List identified in its press release. (CR:122-124). Indeed, the context of all interviews deal exclusively with the List, the names included therein, and the sexual abuse of children. Moreover, the press release and the List both are published on the same date, January 31, 2019 and expressly identify the context of why the List was published -- to protect children from sexual abuse. (CR:123).

2. Guerrero has Presented Evidence that Petitioner was Negligent.

The status of the person allegedly defamed determines the requisite degree of fault. In re Lipsky, at 593. A private individual need only prove negligence, whereas

a public figure or official must prove actual malice. Id. Petitioner complains that Guerrero has not proved negligence.

None of the publications (i.e. interviews of church personnel or press release drafted by church personnel) explained to the target audience—the general public--that the word "minor" also encompassed adults when used by the Catholic Church. Petitioner did not offer any explanation to the public as to what "minor" meant under canon law, until nearly three (3) months AFTER the defamatory statement was made. Importantly, this was AFTER Petitioner had refused to issue a retraction, AFTER Guerrero hired a lawyer and AFTER the filing of this lawsuit. (CR:146). Even then, Petitioner made the revision only on its website, which did not occur until April 10, 2019. Id. The express admission made by Petitioner in the Revised List reveals that Petitioner has "…**no information of a credible allegation of sexual abuse of a minor below the age of eighteen (18)…"** and that they regretted the "misunderstanding." (CR:92-93). We know, without a doubt, that Petitioner had no evidence that Guerrero had sexually abused children because Petitioner told us so. Id. This admission was done well after Guerrero's name, reputation and legacy suffered irreparable harm.

Petitioner was also negligent because it misleads the public by omitting material facts. Petitioner ignores the fact that its omission created a substantially false impression and/or "misunderstanding" as admitted to by Petitioner in its

Revised List nearly three months later. Such misleading statements are still defamation if the publication "**creates a substantially false and defamatory impression by omitting material facts or suggestively juxtaposing them in a misleading way."** Johnson, at 535. Petitioner clearly mislead the public by continuously referring to "child or children" in the context of discussing its sexual predators List with secular media. If there was an alternative meaning of minor, as Petitioner is now maintaining, Petitioner was negligent in the original publication by not including any alternative definitions or qualifying statements therein. Petitioner had a duty to not falsely label Guerrero a sexual abuser of minor children. Petitioner breached its duty by negligently reviewing or ignoring the information in its file before Petitioner told the general public that Guerrero had sexually abused children. Again, Petitioner admitted the falsity of its first publication in its half-hearted "clarification" in the Revised List. (CR:92-93).

a. The reasonable person would not understand the term "minor" as being defined by canon law.

The assertion that the reasonable observer would interpret a message from the Catholic Church, as using only terms as defined by Catholics ignores the law. (Pet'r Br. at 52). As more fully set forth in Propositions I and II and incorporated herein, the meaning of a publication, and thus whether it is false and defamatory, depends on a reasonable person's perception of the entirety of a publication and not merely on individual statements. In re: Lipsky at 594. Indeed, statements made by a

religious organization lose the definitions they intend when published outside their religious organization. For instance, Kliebenstein, *supra*, a case cited by both parties in this case and by the Austin Court of Appeals in Patton, 212 S.W.3d at 545, discusses the definitions of words in the publication that the religious organization chooses to use.

In Kliebenstein, the Church made the same argument that Petitioner is making in this case, i.e. for this defamation case to be considered, a civil court would have to define "minor" as it is in canon law. In Kliebenstein, "[d]efendants contend that in order to determine whether the term 'spirit of Satan' is defamatory—or truthful—as applied to Kliebenstein, a factfinder would necessarily be required to study and interpret church theology and beliefs concerning Satan." Kliebenstein, 663 N.W.2d at 706-707. The Iowa Supreme Court rejected that proposition. The court reasoned that although the phrase "spirit of Satan," clearly conveys sectarian meaning, it also carries a secular meaning and could, therefore effect the secular public's impression of the plaintiff's character. Id. The court correctly recognized that once the communication was published outside the congregation, it weakened the "ecclesiastical shield." Id. at 707. In the instant case, the same is true. The term "minor" has its own meaning in the secular world, and the reasonable person would infer "minor", meant "child or children" given the context in which it was said.

Further, as explained above, audience matters. Petitioner's argument that the List was directed "to Catholics, by Catholic leadership, on the Diocese's website" and misunderstood by the press is unavailing. (Pet. Merits Brief, p. 52). The undisputed fact is that Petitioner decided to post the List on the World Wide Web, gave interviews to the local television and spoke to the local media through written publications, all of which are being broadcast to people of different races, religions and culture without any clarification or disclaimer that they are using terms defined by canon law instead of common parlance. *Assuming arguendo* that this website is directed at Petitioner's members only[4], the website was NOT the only avenue chosen by Petitioner to publish the List. Petitioner went out of its way to distribute the List to secular media outlets. These interviews and press releases are the types of "surrounding circumstances" that courts consider in determining whether a statement is defamatory. Likewise, all publications were silent as to the Charter's new policy reforms, and do not (in any manner) communicate to the public that Petitioner is releasing the List as part of its broader policy reforms. In fact, the "Charter" has never been a part of the record. It is, for the first time being identified, and explained by Petitioner as the basis for the publications. The only broader policy reforms that can be gleaned, from a fair reading of the actual publications, is that the

[4] Jesus disputes that the website is a website exclusive for use by Catholics only. While Petitioner may use it as a means to communicate with its lay members, this website is accessible by the secular public at any time without any restrictions.

Church had finally decided to stop concealing sexual abuse of children from the general public and recognized that the same was a problem in society at large.

3. Guerrero has Proof of Damages that Satisfy the TCPA.

Guerrero also has evidence of damages. The impact of the List and accompanying publications were defamatory. Given the nature of the accusations in the publications, i.e. sexual abuser of minors, Petitioner accused Guerrero of committing a serious crime and damages need not be proved. In re: Lipsky, 460 S.W.3d. at 596. Whether a statement qualifies as defamation *per se* is generally a question of law. Id. at 579. Defamation *per s*e is itself broken down into separate categories of falsehoods. Id. Accusing someone of a crime…. or of engaging in serious sexual misconduct are examples of defamation *per se*. Id. at 593-594.

No other accusation could be more egregious or horrendous than that of child sexual abuse. Sexual abuse is not just prohibited by the teachings of the Catholic Church. Such abuse is hated by secular society and prohibited by secular law. The publication of Guerrero's name on a list of alleged pedophiles and the claim that he had been "credibly accused" when both statements are false is a defamatory publication. Again, Petitioner has admitted that the first publication was false. (See CR:146). Moreover, Guerrero completely denies all of Petitioner's allegations and received them as a total shock to him and his family. (CR:150). As a result, he was rejected by his family, friends, and neighbors. (CR:150). Guerrero consequently

suffered severe anxiety and stress that contributed to physical illness[5] in the form of a stroke which required hospitalization. (CR:150-151).

Based on the aforementioned, Guerrero carried his burden imposed by the TCPA. (A:29). The record contains clear and specific evidence creating a prima facie case on each element of defamation. Id.

PRAYER

WHEREFORE, Guerrero prays that this Court deny Petitioner's Petition for Writ of Mandamus and Petition for Review.

[5]Jesus's stroke occurred in the interim between the filing of his Petition and Petitioner's Motion to Dismiss and Plea to the Jurisdiction. Jesus fully intends to amend his Petition to include a claim for bodily injury which would fall within the exemption of the TCPA. Tex. Civ. Prac. & Rem. Code Ann. § 27.010 (a)(3).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of July, 2020 a true and correct copy of the foregoing has been served via e-service to all parties of interest.

___/s/ Nick L. Olguin_____
Nick Olguin

CERTIFICATE OF COMPLIANCE

Pursuant to Tex. R. App. P. 9.4(i)(3), I, Nick L. Olguin, attorney for the Appellants, hereby certify that this brief contains 14,708 words (excluding the caption, table of contents, table of authorities, signature, proof of service, certification, and certificate of compliance). This is a computer-generated document created in Microsoft Word, using 14-point typeface for all text, except for footnotes which are in 12-point typeface. In making this certificate of compliance, I am relying on the word count provided by the software used to prepare the document.

___/s/ Nick L. Olguin_____
Nick Olguin

Docket No.: 20-0005 & 20-0127

IN THE SUPREME COURT OF TEXAS

DIOCESE OF LUBBOCK,
Petitioner,

v.

JESUS GUERRERO,
Respondent.

On Appeal from the Seventh District Court of Appeals of Texas at Amarillo, Nos. 07-19-00307-CV & 07-19-00280-CV

IN RE DIOCESE OF LUBBOCK,
Petitioner.

On Petition for Writ of Mandamus from the 237th Judicial District Court, Lubbock County Courthouse, the Honorable Les Hatch, Cause No. 2019-534, 677, and the Seventh District Court of Appeals at Amarillo, No. 07-19-00307-CV

APPENDIX

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In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-19-00307-CV

IN RE DIOCESE OF LUBBOCK, RELATOR

ORIGINAL PROCEEDING FOR WRIT OF MANDAMUS

December 6, 2019

OPINION

Before QUINN, C.J., and PIRTLE and PARKER, JJ.

"Render therefore unto Caesar the things which are Caesar's; and unto God the things that are God's."[1] The biblical verse captures the inherent conflict long existent between civil and religious authority. We now address an aspect of that conflict raised through the ecclesiastical abstention doctrine.

Jesus Guerrero sued the Diocese of Lubbock for allegedly defaming and intentionally inflicting emotional distress upon him. The accusations underlying both causes of action concern the Diocese's publication of a list entitled "Names of All Clergy with a Credible Allegation of Sexual Abuse of a Minor." Guerrero, a former deacon with the Diocese, found his name on the list. The Diocese moved to dismiss the action under § 27.001 *et seq.* of the Texas Civil Practice and Remedies Code. So too did it file a plea to the jurisdiction of the 237th District Court, Lubbock County. Both motions were denied.

[1] *Matthew* 22:21.

That resulted in the Diocese asking us to review the motion to dismiss via a separate interlocutory appeal and the plea to the jurisdiction through a petition for writ of mandamus. We address the latter here. In it, the Diocese asks us to issue the equitable writ to direct the Honorable Les Hatch, presiding judge of 237th Judicial District Court, to "vacate the trial court's denial of its plea to the jurisdiction, and reverse and render judgment granting the plea to the jurisdiction."[2] We deny the petition.

Abstention Doctrine and Subject-Matter Jurisdiction

Mandamus is an extraordinary remedy available only in limited situations. *Walker v. Packer*, 827 S.W.2d 833, 840 (Tex. 1992) (orig. proceeding); *In re Talley*, No. 07-15-00198-CV, 2015 Tex. App. LEXIS 6268, at *3–4 (Tex. App.—Amarillo June 22, 2015, orig. proceeding) (mem. op.). Its small umbrella, though, extends over jurisdictional disputes. *In re Torres,* No. 07-19-00220-CV, 2019 Tex. App. LEXIS 6516, at *2-3 (Tex. App.—Amarillo July 30, 2019, orig. proceeding) (mem. op.); *In re Alief Vietnamese Alliance*, 576 S.W.3d 421, 428 (Tex. App.—Houston [1st. Dist.] 2019, orig. proceeding). Within such disputes lie questions about the effect certain religious liberties have upon a trial court's subject-matter jurisdiction. *See,* e.g., *Westbrook v. Penley*, 231 S.W.3d 389, 394 (Tex. 2007) (stating that a lack of jurisdiction may be raised through a plea to a court's jurisdiction when religious-liberty grounds form the basis of the jurisdictional challenge); *In re Torres*, 2019 Tex. App. LEXIS 6516, at *3. And, such is the dispute here. The Diocese posits that the ecclesiastical abstention doctrine bars the trial court from adjudicating Guerrero's lawsuit. In refusing to dismiss it, the trial court allegedly abused

[2] We interpret the request as one asking that we direct the trial court to 1) vacate its order and 2) enter another dismissing the suit. Through a writ of mandamus, we do not substitute our order for that of the trial court. Instead, we assess the accuracy of the trial court's decision and, if inaccurate, direct it to enter the order it should have.

its discretion. *See In re Navajo Nation*, ___ S.W.3d ___, ___, 2019 Tex. App. LEXIS 8224, at *9-10 (Tex. App.—Amarillo Sept. 10, 2019, orig. proceeding) (stating that mandamus is appropriate when the relator shows that the trial court clearly abused its discretion and lacked an adequate legal remedy).[3]

We recognized in *In re Torres*, 2019 Tex. App. LEXIS 6516, that the doctrine may indeed deprive trial courts of jurisdiction to adjudicate certain civil actions and entitle an ecclesiastical entity to a writ of mandamus. *See id.* at *6-7. It all depends upon whether the factual circumstances underlying the causes of action fall within the doctrine's scope.

Generally speaking, the ecclesiastical abstention doctrine bars civil courts from adjudicating matters concerning theology, theological controversy, church discipline, ecclesiastical government, and compliance with church moral doctrine. *Reese v. Gen. Assembly of Faith Cumberland Presbyterian Church in Am.*, 425 S.W.3d 625, 629 (Tex. App.—Dallas 2014, no pet.). Though easily described, its application and scope are the source of debate. This is so because the doctrine does not necessarily bar civil courts from adjudicating all controversies touching sectarian interests. *In re First Christian Methodist Evangelistic Church*, No. 05-18-01533-CV, 2019 Tex. App. LEXIS 8045, at *12 (Tex. App.—Dallas Aug. 30, 2019, orig. proceeding) (mem. op.); *In re St. Thomas High Sch.*, 495 S.W.3d 500, 507 (Tex. App.—Houston [14th Dist.] 2016, orig. proceeding). After all, religious entities, like the coins of Caesar, co-exist within the secular world.

Several years ago, our Texas Supreme Court provided a framework to utilize when parsing through the debate. We were told, in *Masterson v. Diocese of Nw. Tex.*, 422

[3]A relator need not illustrate that he lacks an adequate legal remedy if the trial court lacks jurisdiction over the suit. *In re Alief Vietnamese Alliance*, 576 S.W.3d at 428.

S.W.3d 594 (Tex. 2013), to apply the neutral principles methodology. *Id.* at 596; *In re Torres*, 2019 Tex. App. LEXIS 6516, at *3 (so acknowledging). It better conforms to a court's constitutional duty to decide disputes within their jurisdiction while respecting limitations imposed by those provisions in the First Amendment of the United States Constitution concerning religion. *Masterson,* 422 S.W.3d at 596. Per that methodology, courts have the jurisdiction to determine non-ecclesiastical issues based on the neutral principles of law applicable to other entities. *Id.* Falling outside that jurisdiction, though, are decisions by religious entities on ecclesiastical and church polity questions; those we leave to the ecclesiastical authority making them. *Id.* However, this is another test more easily described than applied. As acknowledged in *Masterson*, the difference between ecclesiastical and non-ecclesiastical issues will not always be distinct. *Id.* at 606. Indeed, the resolution of non-ecclesiastical matters may sometimes impinge on church operations to some degree. *See id.* (stating that many disputes of the type there before the court, i.e., property ownership after a church schism, will require courts to analyze church documents and organizational structures to some degree).

Normally, matters of religion or theology, church discipline, church governance, church membership, and the conformity of those members to church precepts are ecclesiastical in nature and outside the jurisdiction of civil courts. *See Westbrook v. Penley*, 231 S.W.3d at 397-98; *Jennison v. Prasifka*, 391 S.W.3d 660, 665 (Tex. App.—Dallas 2013, no pet.); *accord In re Torres*, 2019 Tex. App. LEXIS 6516, at *5-6 (listing the areas deemed ecclesiastical by our sister courts). Yet, as said in *Hubbard v. J Message Grp. Corp.*, 325 F.Supp.3d 1198 (D.N.M. 2018), "nuances," "context and . . . subtle distinctions in the context" play an important role, as well. *Id.* at 1213-14. For instance, in *Westbrook*, a pastor directed his congregation, via letter, to 1) shun Penley for engaging

in a "'biblically inappropriate'" relationship and 2) "treat the matter as a 'members-only issue, not to be shared with those outside [the congregation].'" *Westbrook,* 231 S.W.3d at 393. The revelation about the "inappropriate" relationship occurred when Penley told Pastor Westbrook of same during a counseling session. *Id.* The pastor's letter resulted in Penley suing Westbrook for defamation and professional negligence. All but the professional negligence claims were dismissed by the trial court. Ultimately, our Supreme Court held that the negligence claim also had to be dismissed. This was so because "[a]ny civil liability that might attach for Westbrook's violation of a secular duty of confidentiality in this context would in effect impose a fine for his decision to follow the religious disciplinary procedures that his role as pastor required and have a concomitant chilling effect on churches' autonomy to manage their own affairs." *Id.* at 402.

The court observed that Westbrook's disclosure was grounded in religious doctrine concerning a three-step disciplinary process. *Id.* at 404. An "integral part" of that doctrine required disclosure to church elders, that is, "to 'tell it to the church.'" *Id.* Furthermore, "[t]he letter itself was disseminated to the congregation as the final step in the process," that process being "'[t]hrough their continuing sin, they forfeit their membership in the church, and members of the church are to break fellowship with them.'" *Id.* That Westbrook's action was founded upon church tenet obligating church members to respond in a particular way to the discovery of a particular act was incremental to the decision by the Supreme Court.

Then, we have *Turner v. Church of Jesus Christ of Latter-Day Saints*, 18 S.W.3d 877 (Tex. App.—Dallas 2000, pet. denied). It involved a missionary trip by Turner undertaken as part of his religious duty. The church ended it early due to Turner purportedly encountering emotional or mental problems. Turner sued the church alleging

multiple causes of action including defamation. But since the facts underlying those claims implicated church practice and procedure, most were dismissed for want of jurisdiction. The defamation claim was not, though. It arose from the disclosure of medical records to Turner's grandparents. In explaining why it survived, the court initially observed that while "the First Amendment prohibits government regulation of the information a religious organization chooses to record concerning its members, the government may regulate the organization's use of that information if the regulation would not actively involve the government in the organization's internal affairs, religious practice, or religious doctrine." *Id.* at 896. Then, it noted that the church failed to explain how the disclosure of Turner's medical records to his grandparents "concern[ed] the internal policies of the Church or matters of faith or ecclesiastical doctrine." *Id.* Also absent was any explanation about "how resolution of the claim would actively involve the government in the Church's religious activities or excessively entangle the government with religion." *Id.* Consequently, the First Amendment of the United States Constitution did not bar the defamation claim. *Id.* What we see from *Turner* is the importance of indicia such as the reason for the disclosure and the interrelationship between that reason and the church's internal affairs, religious practice, and doctrine.

The *Turner* court is not alone in assigning weight to the identity of those told information and their relationship to the church. In *Jennison*, 391 S.W.3d at 668, the reviewing court held that the facts underlying the claim of defamation concerned discipline imposed by the church upon a priest for inadequate performance. Their adjudication necessarily required inquiry into canon law, the application of church policy, and the church's assessment of the complainant's fitness to perform his religious duties. *Id.* Thus, the ecclesiastical abstention doctrine applied to the claims. Yet, before so holding,

the court took care to mention that "[t]he only defamatory statements allegedly made . . . were made to the church itself in connection with the church's disciplinary process." *Id.* Jennison made "no allegation the allegedly defamatory statements were made in any other forum." *Id.* In other words, the injurious act arose from historically ecclesiastical conduct, namely engaging in the internal discipline of clergy, that remained internal.

Similarly, in *Patton v. Jones*, 212 S.W.3d 541 (Tex. App.—Austin 2006, pet denied), the reviewing court held the abstention doctrine barred the defamation suit Patton commenced against the church and various of its clergy. He was the director of youth ministries and was terminated from the job due to allegedly inappropriate conduct. *Id.* at 545-46. In holding as it did, the court applied a three-prong test first announced in *Heard v. Johnson*, 810 A.2d 871 (D.C. App. 2002). *Id.* at 554-55. Those prongs consisted of whether 1) the claim flowed entirely from an employment dispute between the church and its pastor rendering it impractical to separate the claim from the church's decision as to its pastor, 2) the publication was confined within the church, and 3) there existed unusual or egregious circumstances. *Id.* (quoting *Heard, 810 A.2d at 885).* Patton's claim 1) flowed entirely from an internal employment dispute between the church and its pastor, 2) involved a publication confined within the church, and 3) implicated no unusual or egregious circumstances surrounding the comments. So, as in *Jennison*, the source of Patton's claim emanated from historically ecclesiastical conduct confined within the body having the duty to undertake that conduct. The civil courts were barred for entertaining it.

Kelly v. St. Luke Comm. United Methodist Church, No. 05-16-01171-CV, 2018 Tex. App. LEXIS 962 (Tex. App.—Dallas Feb. 1, 2018, pet. denied) (mem. op.), also involved a suit filed by a terminated church employee. So too was the ecclesiastical doctrine the

reason why all but one cause of action was dismissed; the one claim retained was that of defamation. *Id.* at *2. The injurious act underlying the claims consisted not only of statements to church members but also communications to "persons outside the church" and non-church members witnessing the injurious act. *Id.* at *25. Those circumstances led the court to hold that "the ecclesiastical abstention doctrine applie[d] to all of Kelly's claims other than the portion of her defamation claim in which she asserts she was defamed by the alleged publication of the statements described above to persons outside the church." *Id.* at *26-27. So, like *Turner,* while the injurious act arose from historically ecclesiastical activity, it lost protection when it escaped the internal confines of the religious entity performing it. *See also, Hubbard*, 325 F.Supp.3d at 1219 (holding that because the alleged defamations were published exclusively to the church membership, "this fact strengthens the [Court's] conclusion that Plaintiff's claims, having occurred in the context of an ecclesiastical dispute . . . are barred by the First Amendment"); *Pfeil v. St. Matthews Evangelical Lutheran Church,* 877 N.W.2d 528, 541 (Minn. 2016) (involving statements made by pastors during a formal church disciplinary proceeding and stating that "on the facts before us—where ministers made largely religious and doctrinal allegations as part of an excommunication proceeding and only disseminated those statements to members of the congregation—'the First Amendment has struck the balance for us'"); *Kliebenstein v. Iowa Conf. of the United Methodist Church*, 663 N.W.2d 404, 407 (Iowa 2003) (stating that 1) "[t]he fact that Swinton's communication about Jane was published outside the congregation weakens this ecclesiastical shield," 2) "otherwise privileged communications may be lost upon proof of excess publication or publication 'beyond the group interest,'" and 3) "if publication solely to church members justifies ecclesiastical status for otherwise defamatory communications, proof of publication to

non-church members arguably supports the opposite conclusion") (emphasis in original); *Ex parte Bole*, 103 So. 3d 40, 59-60 (Ala. 2012) (in barring prosecution of the claim, the court observed that 1) the "statement of which [Trice] complained related to the ostensible reason for his termination, conveyed from the pastor to a member of the congregation concerning the conduct of another member" and 2) "[a]t least one court has specifically held that statements by and between church members 'relat[ing] to the Church's reasons and motives for terminating [parishioners'] membership' 'require an impermissible inquiry into Church disciplinary matters'").

A common thread runs through the authority just cited. A religious body exposing matters historically deemed ecclesiastical to the public eye has consequences. The action leaves the area of deference generally afforded those bodies and enters the civil realm. This is not to say that such a publication alone is always enough, but it is a pivotal nuance. Indeed, arguing that a dispute remains an internal ecclesiastical or church polity issue after that body chooses to expose it publicly rings hollow. And, that is the situation here.

Guerrero's claims arise not from the decision of the Diocese to discipline a deacon for engaging in inappropriate sexual activity. That had been done years earlier with its most recent effort having culminated in 2009. Instead, they arise from a decision made some nine to ten years later "to release the names of clergy who have been credibly accused of sexual abuse of a minor." A list was developed containing those names, and Guerrero's name appeared on it. The Diocese not only incorporated the list into a message describing its purpose and inviting those who may have suffered from such abuse to contact the Diocese but also posted it on its website accessible by the general public. The posting occurred on January 31, 2019.

The Diocese then accompanied its internet post with a press release. Through the press release dated January 31, 2019, the body announced to local media that it joined other Catholic Dioceses in Texas in "releas[ing] names of clergy who have been credibly accused of sexually abusing a minor." It continued with: "[t]he bishops' decision was made in the context of their ongoing work ***to protect children*** from sexual abuse, and their efforts to promote healing and a restoration of trust in the Catholic Church." (Emphasis added). Also referred to within the release was a letter from the bishop of the Lubbock Diocese. In the letter, the bishop said that "the administrations of our dioceses are serious about ending the cycle of abuse in the Church ***and in society at large***, which has been allowed to exist for decades." (Emphasis added). "The scourge of abuse must be stopped," wrote the bishop.

News coverage followed. In one instance, a local television station aired a segment announcing that "four priests . . . and one deacon have credible allegations against them . . . of sexual abuse against ***children*** . . . according to the Lubbock Diocese." (Emphasis added). Guerrero again was mentioned as one of the group. Following that pronouncement were snippets from a chancellor of the Diocese. The snippets included the chancellor 1) explaining that the reason the names were not released "sooner" was "bishops at the time wanted to keep church issues . . . within the church," 2) saying that "we felt that whatever was handled within the church as far as church punishment was concerned needed to remain in the church," and 3) revealing that though relevant names initially were disclosed to church members, "they weren't made public." The same church

representative also sought to assure that "the church *is* safe ***for children***."[4] (Emphasis added).

Another media outlet reported on the release as well. It alluded to an interview held with the bishop of the Lubbock Diocese several months earlier, in October of 2018. The bishop was quoted as saying in that earlier interview: "[i]t's time we need to be honest about these kinds of matters and ***society*** hasn't always been open and honest about those." (Emphasis added). He also conceded that the church itself had "maybe done some concealing of such things," too.

As can be seen, what began years earlier as an exercise in internal church discipline evolved into an effort at transparency broadcast worldwide through the media and internet. Though somewhat confessional in tone, the event was utilized by the Diocese, according to one or more church representatives, as opportunity to address sexual abuse against "children," help victims of sexual abuse, assuage public concern about the safety of "children" in the church, and criticize both the church and "society" for not "always [being] open and honest about" the topic of sexual abuse.

What we have before us is not an incidental public disclosure of internal church disciplinary matter. Nor was the information leaked to the public via the media by individuals lacking permission to do so. *See In re Godwin*, 293 S.W.3d 742, 745-46 (Tex. App.—San Antonio 2009, orig. proceeding) (wherein an ex-employee of the church gave a local newspaper the church's financial information without permission of the church). Nor did it involve reiteration outside the church of purported statements uttered within

[4] In the interview with the local station, the Chancellor also alluded to "the age of the victim" and families not wanting "the embarrassment for themselves and their children" when explaining why "parents" do not want information released and why legal action is not commenced in the "court system."

church confines, such as in a sermon or message directed to church members. *See id.* at 746 (where the utterance at issue was made to those attending church services and from the pulpit).[5] That the Diocese posted the list on a website accessible by the public at-large and brought attention to the list and its accessibility through use of local news media distinguishes the circumstances at bar from *Penley*, *Jennison*, *Patton,* and every other judicial opinion we encountered (or the Diocese cited) that imposed the ecclesiastical abstention doctrine as a bar.

There is also another bit of nuance distinguishing our situation from the foregoing authority. It is the interjection into the discussion of more than simply the misconduct of those related to the church. The church's statements that 1) "our dioceses are serious about ending the cycle of abuse in the Church and ***in society at large***, which has been allowed to exist for decades" and 2) "[i]t's time we need to be honest about these kinds of matters ***and society hasn't always been open and honest*** about those." (Emphasis added). They reveal 1) an acknowledgement that the issue necessitating attention (i.e., sexual abuse) is more than a church matter but rather one of society at-large, 2) an intent to induce society at-large to address the issue, and 3) an intent to join society at-large in the effort. So, admonishing, inducing, and joining society at-large is telling. Those indicia provide further basis dispelling any nexus between the Diocese's conduct and any theological, dogmatic, or doctrinal reason for engaging in it. The same is also true

[5] Even the court in *Godwin* hesitated when it came to holding that everything said from the pulpit is insulated from consideration by civil courts. *In re Godwin*, 293 S.W.3d at 749 (stating that "[c]ase law instructs us that there are indeed limits to what can be said by church officials from the pulpit" and "an accusation of inappropriate sexual behavior would likely not be protected").

regarding any nexus between the decision to go public and the internal management of the church.

Finally, underlying Guerrero's claim of defamation and infliction of emotional distress is more than simply a disagreement about the meaning of a religious term imbedded in canon law, as the Diocese would have us conclude.[6] He avers that the church labelled him a "child molester," given the context of the publication. That context is not the definition of "minor" printed in a retraction posted months later. It is the Diocese using the word "minor" at the same time 1) its chancellor tells the media and public that "the church *is* safe for ***children***" and 2) it represents in a press release that disclosing the names was made "in the context of . . . ongoing work to protect ***children*** from sexual abuse." (Emphasis added). And, the Diocese has not cited us to, nor does it argue that, those of its representatives invoking the word "children" were relying on, at the time, some bit of canon law or theological tenet that includes adults within the category.

Whether one is defamed depends on evaluating not only the statement uttered but also its context or surrounding circumstances based upon how a person of ordinary intelligence would perceive it. *See Scripps NP Operating, LLC v. Carter*, 573 S.W.3d 781, 794-95 (Tex. 2019) (directing the use of context); *D Magazine Partners, L.P. v. Rosenthal*, 529 S.W.3d 429, 439 (Tex. 2017) (directing consideration of the surrounding circumstances). Canon law is not in play.

What is in play is how a person of ordinary intelligence would perceive the accusation that Guerrero sexually abused a "minor" when the church accompanied the word with references to abuse involving "children" and the safety of children. For

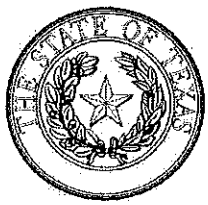
[6] Apparently, canon law defines "minor" as including all people lacking the ability to reason. The individual Guerrero supposedly abused was an adult allegedly within that description.

instance, it mattered not that the name "Satan" and the phrase "in the spirit of Satan" may have had sectarian meaning in *Kliebenstein*. Because both also had secular meaning, the court in *Kliebenstein* held that it was improper to dismiss Kliebenstein's defamation suit when the comparisons of her with Satan left the confines of the church. *Kliebenstein*, 663 N.W.2d at 408. Both "minor" and "child" have secular meaning to a person of ordinary intelligence. That either may have sectarian meaning, as well, does not mandate application of the ecclesiastical abstention doctrine.

To quote from *Westbrook,* "the First Amendment does not necessarily bar all claims that may touch upon religious conduct." *Westbrook*, 231 S.W.3d at 396. Secular courts are not barred from adjudicating all controversies touching sectarian interests. That is the situation here. The Diocese, like the churches in *Kliebenstein*, *Kelly*, and *Turner*, placed the controversy in the realm of Caesar or the secular world by opting to leave the confines of the church. Thus, the secular court in which Guerrero sued is not barred from adjudicating the matter.

We deny the petition for writ of mandamus.

Brian Quinn
Chief Justice



In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-19-00280-CV

DIOCESE OF LUBBOCK, APPELLANT

V.

JESUS GUERRERO, APPELLEE

On Appeal from the 237th District Court, Lubbock County, Texas
Trial Court No. 2019-534,677, Honorable Les Hatch, Presiding

December 6, 2019

OPINION

Before QUINN, C.J., and PIRTLE and PARKER, JJ.

This appeal is a companion case to the petition for writ of mandamus filed by the Diocese of Lubbock. Our opinion in that cause is styled *In re Diocese of Lubbock*, No. 07-19-00307-CV. We address, now, the appeal perfected by the Diocese of Lubbock from the order denying its motion to dismiss. The Diocese so moved under § 27.001 of the Texas Civil Practice and Remedies Code (TCPA).[1] TEX. CIV. PRAC. & REM. CODE ANN. § 27.001 *et seq.* (West 2015). We affirm in part and reverse in part.

[1] Because Guerrero sued prior to September 1, 2019, the legislative amendments to the TCPA that took effect on September 1, 2019 have no application here. *See City of Port Aransas v. Shodrok*, No. 13-18-00011-CV, 2019 Tex. App. LEXIS 10063, at *2 n.2 (Tex. App.—Corpus Christi Nov. 21, 2019, no pet. h.) (mem. op.) (stating that Chapter 27 of the Civil Practice and Remedies Code, as amended by H.B. 2730, apply only to an action filed on or after the effective date of this Act which was September 1, 2019).

Our opinion in *In re Diocese of Lubbock* describes the general background from which this appeal arose. We see no need to reiterate it and, instead, incorporate the opinion into this one. Suffice it to say that Guerrero sued the Diocese for defamation and intentional infliction of emotional distress after the Diocese published a list entitled "Names of All Clergy with a Credible Allegation of Sexual Abuse of a Minor" (i.e., the List).[2] The list included Guerrero's name. According to the Diocese, his suit is subject to dismissal because the underlying claims fell within the scope of § 27.003(a) of the TCPA. It also contends that the trial court lacked jurisdiction to entertain the cause due to the ecclesiastical abstention doctrine. We addressed the latter issue via our opinion in Cause No. 07-19-00307-CV and again reject the jurisdictional claim for the reasons stated in that opinion. Now we turn to the TCPA and whether it mandated dismissal.

TCPA

The provisions of the TCPA act like a pendulum; they impose burdens on the parties that swing back and forth. How they swing was described in *Batra v. Covenant Health Sys.*, 562 S.W.3d 696, 706-08 (Tex. App.—Amarillo 2018, pet. denied), and *Castleman v. Internet Money Ltd.*, No. 07-16-00320-CV, 2018 Tex. App. LEXIS 8559, at *5-7 (Tex. App.—Amarillo Oct. 18, 2018, pet. denied) (mem. op.). We apply that pendulum here. Yet, before doing so, it is appropriate to note that the standard of review is *de novo,* and the pleadings, affidavits and other evidence of record are viewed in a light most favorable to the non-movant. *Batra*, 562 S.W.3d at 707-08; *Castleman*, 2018 Tex. App. LEXIS 8559, at *5-6.

[2] This list was first published on January 31, 2019, and is not the retraction and clarification published in April of 2019.

The Diocese's Burden

The first question is whether the causes of action fall within the ambit of the TCPA. The net cast by the statute encompasses "a legal action . . . based on, relates to, or is in response to a party's exercise of the right of free speech, right to petition, or right of association."[3] TEX. CIV. PRAC. & REM. CODE ANN. § 27.003(a). Legal actions within that scope are subject to dismissal, *id.* § 27.005(b), unless the complainant tenders "clear and specific" evidence establishing "a prima facie case" for each element of his claim. *Id.* § 27.005(c). That said, we turn to the pendulum of burdens.

The first burden lies with the movant to show that the action falls within § 27.003(a). *Greer v. Abraham*, 489 S.W.3d 440, 442-43 (Tex. 2016); *Batra*, 562 S.W.3d at 706. That Guerrero sued because the Diocese publicized the List on the internet and through the media is undisputed. Similarly undisputed is that the publication purported to reveal the identity of clergy against whom a "credible" allegation of sexual abuse involving minors was made. This satisfied a prong of the TCPA's definition of "free speech," as we now explain.

The "right of free speech" encompasses a "communication made in connection with a matter of public concern." *See* TEX. CIV. PRAC. & REM. CODE ANN. § 27.001(3). A "communication" includes the "making or submitting of a statement or document in any form or medium." *Id.* § 27.001(1). The List is a statement made by the Diocese and, thus, a communication.

As for the statement involving "a matter of public concern," we note that our Texas Supreme Court held the "'commission of crime'" such a concern. *Brady v. Klentzman*,

[3] "Legal action" is a lawsuit, cause of action, petition, complaint, cross-claim, counterclaim, or any other judicial pleading or filing that requests relief. TEX. CIV. PRAC. & REM. CODE ANN. § 27.001(6) (West 2015).

515 S.W.3d 878, 884 (Tex. 2017). Sexually abusing "minors" is a criminal offense.[4] *See, e.g.*, TEX. PENAL CODE ANN. § 21.11(a) (West 2019) (stating that a person commits an offense by engaging in sexual contact with a child younger than seventeen); *id.* § 22.011(a)(2)(A) (stating that a person commits an offense by intentionally or knowingly causing the penetration of the anus or sexual organ of a child); *id.* § 22.011(a)(1)(A), (b)(4) (stating that a person commits an offense by intentionally or knowingly causing the penetration of the anus or sexual organ of another person without the person's consent and it is without the others consent if the actor knew that the person was incapable either of resisting or appraising the act due to a mental disease or defect); *id.* § 22.011(a)(1)(A), (b)(10) (stating that a person commits an offense by intentionally or knowingly causing the penetration of the anus or sexual organ of another person without the person's consent and it is without the other's consent if the actor was a clergyman and exploited the other person's emotional dependency on the clergyman in the clergyman's position as a spiritual adviser). Since the List described potential sexual abuse of minors and that is a criminal offense, it also involved a matter of public concern. *See Crews v. Galvan*, No. 13-19-00110-CV, 2019 Tex. App. LEXIS 8962, at *11 (Tex. App.—Corpus Christi Oct. 10, 2019, no pet.) (mem. op.) (involving statements about a clergyman inducing a seventeen-year-old to engage in sexual conduct). Thus, the Diocese satisfied its initial burden, and the pendulum swung in the direction of Guerrero.

Guerrero's Burden

The next burden lies with the complainant, Guerrero, and required him to present "clear and specific evidence" establishing a prima facie case of each element of his claims. *Batra*, 562 S.W.3d at 706-07; *Castleman*, 2018 Tex. App. LEXIS 8559, at *6.

[4] The purported definition of "minor" used by the Diocese in deriving the List includes children and adults who "habitually lack the use of reason."

The burden is met through tendering the minimum amount of evidence needed to support a rational inference that each element of his claims is true. *Castleman,* 2018 Tex. App. LEXIS 8559, at *7 (quoting *In re Lipsky,* 460 S.W.3d 579, 591 (Tex. 2015) (orig. proceeding)).

Defamation

We begin with the claim of defamation. Its elements consist of a false statement published by the defendant with the requisite degree of fault that defames the plaintiff and causes him damage. *Bedford v. Spassoff*, 520 S.W.3d 901, 904 (Tex. 2017); *Castleman,* 2018 Tex. App. LEXIS 8559, at *8. Damages need not be proved, though, where the statement is defamatory *per se. Bedford*, 520 S.W.3d at 904; *Castleman*, 2018 Tex. App. LEXIS 8559, at *8.

Guerrero contended that the Diocese falsely defamed him "by publishing his name on a list of alleged child molesters" and confirming those representations through its interviews with the local media. This suggests the presence of a defamation occurring through a series of events. They include not only what was said in the List but also said through a press release and ensuing interviews. As for the List, it was entitled "Names of All Clergy with a Credible Allegation of Sexual Abuse of a Minor." Therein, the Diocese 1) apologized to "all the victims of abuse, especially minors"; 2) iterated that "this list includes the names of priests or deacons against whom a credible allegation has been made since the Diocese . . . was created"; 3) represented that "a priest or deacon's name only appears on the list if the diocese possesses in its files evidence of a credible allegation; and 4) explained that a "'credible allegation'" was "one that, after review of reasonably available, relevant information in consultation with the Diocesan Review

Board or other professionals, there is reason to believe is true." As previously mentioned, the document included Guerrero's name and assignments with the Diocese as a deacon.

As for the press release issued by the Diocese, local media were told that the Diocese joined other Texas Catholic Dioceses in "releas[ing] names of clergy who have been credibly accused of sexually abusing a minor." So too did it mention that "[t]he bishops' decision was made in the context of their ongoing work to protect ***children from sexual abuse***, and their efforts to promote healing and a restoration of trust in the Catholic Church." (Emphasis added). Media interviews and coverage followed. One broadcast began with the announcement that "four priests . . . and one deacon have credible allegations against them . . . of ***sexual abuse against children*** . . . according to the Lubbock Diocese." (Emphasis added). Guerrero was mentioned as one of the group. Elsewhere in the broadcast the Diocese's chancellor sought to assure the public that "the church *is* ***safe for children.***" (Emphasis added).

As we said in *In re Diocese of Lubbock,* "[w]hether one is defamed depends on evaluating not only the statement uttered but also its context or surrounding circumstances based upon how a person of ordinary intelligence would perceive it." *In re Diocese of Lubbock*, No. 07-19-00307-CV, slip op. at 14 (Tex. App.—Amarillo Dec. 6, 2019, orig. proceeding) (citing *Scripps NP Operating, LLC v. Carter*, 573 S.W.3d 781, 794-95 (Tex. 2019), and *D Magazine Partners, L.P. v. Rosenthal*, 529 S.W.3d 429, 439 (Tex. 2017)); *accord In re Lipsky*, 460 S.W.3d at 594 (stating that whether a publication is false and defamatory depends on a reasonable person's perception of the entirety of a publication and not merely on individual statements). That context or those surrounding circumstances may include a series of writings or events. *See Scripps NP Operating, LLC*, 573 S.W.3d at 791 (holding that "[t]he court of appeals could not make a proper

assessment of the alleged defamatory material in this case without looking at the 'surrounding circumstances' encapsulated in this series" of articles). So, our review is not restricted to simply the List but rather encompasses the List, the related press release from the Diocese, as well as interviews given by church representatives about the List and why it was developed and published. From that context and those events, we conclude that a person of ordinary prudence would perceive those named in the List as clergy who may have sexually abused children or those under the age of consent.

Admittedly, the List used the term "minor," not "child" or "children." Yet, neither the List, press release, nor explanations from those representing the Diocese explained what it meant by "minor."[5] Moreover, our common parlance tends to assign a definition to "minor" based upon age, much like the common understanding of the words "child" and "children." In reference to human beings, "minors" are commonly understood to be under-age people or those below the age of majority or legal responsibility. *See Minor,* MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 791 (11th ed. 2003) (defining minor as "not having reached majority"); *Minor*, BLACK'S LAW DICTIONARY (6th ed. 1990) (defining minor as "[a]n infant or person who is under the age of legal competence"). In the everyday mind, they are those who are too young to legally vote, buy cigarettes, buy alcohol, or consent to sex, for instance. That common perception of the term generally does not include adults older than 17 or 21 depending upon the law involved. As for the words, "child" or "children," they not only have a meaning similar to "minor" in our everyday parlance but often are interpreted as describing those of very young age, such as infants, toddlers, and pre-teens. *See Child*, MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 214

[5] This definition came several months later.

(11th ed. 2003) (defining child as "a young person especially between infancy and youth" and "a person not yet of age").

We find little difficulty in concluding that one who intermixes all those terms while speaking can readily and reasonably lead the listener to believe that the subject being discussed encompasses people under the legal age. Doing such can reasonably lead others to think the speaker is discussing infants, toddlers, pre-teens and even teenagers, not adults. So, the entire context of the conversation initiated by the Diocese about sexual assault upon "minors" by clergy would lead "a person of ordinary intelligence . . . [to] perceive" that those clergy assaulted not adults but kids, youths, and other people under the age of majority. And, the Diocese named Guerrero as one of those clergy against whom there existed a "credible allegation" of abusing "minors."[6]

As for whether the publication was reasonably susceptible to a defamatory meaning, that implicates a question of law. *Dallas Morning News, Inc. v. Tatum*, 554 S.W.3d 614, 631-32 (Tex. 2018). Its answer depends on the tendency of the statement to injure a person's reputation, expose him or her to public hatred, contempt, or ridicule, or impeach the person's honesty, integrity, virtue, or reputation. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 73.001 (West 2017) (defining libel as "a defamation expressed in written or other graphic form that tends to blacken the memory of the dead or that tends

[6] We are aware of the Diocese's contention that "the statements made by representatives of the Diocese to the media were not defamatory concerning Guerrero" and "[t]here [was] no indication in any of the evidence concerning the media that either Bishop Coerver or Chancellor Martin specifically discussed Guerrero in any of the interviews." That neither church representative said his name is inconsequential, though, under the facts at bar. The defamed person need not be expressly mentioned so long as he or she is otherwise identifiable. *Scarbrough v. Purser*, No. 03-13-00025-CV, 2016 Tex. App. LEXIS 13863, at *13 (Tex. App.—Austin Dec. 30, 2016, pet. denied) (mem. op.). And, whether the identity is ascertainable, per *Scripps, D Magazine, and Lipsky*, depends upon viewing the entire picture, not simply one corner of it. The entire picture here consists of the List, posting it for public view on the internet, the press release sending the List to the media, conversations about the List and its purpose between church representatives and the media, and the inclusion of Guerrero's name on the List. Together, they made Guerrero's identity as one of the clergy in question identifiable. Just as a mime can identify a wall through his actions, the Diocese and its representatives identified Guerrero through theirs.

to injure a living person's reputation and thereby expose the person to public hatred, contempt or ridicule, or financial injury or to impeach any person's honesty, integrity, virtue, or reputation or to publish the natural defects of anyone and thereby expose the person to public hatred, ridicule, or financial injury"). Accusing one of sexually abusing children can reasonably be perceived as having the aforementioned effect; thus, the publication here is reasonably susceptible to a defamatory meaning. And, the purported falsity of the accusation finds evidentiary support in Guerrero's sworn denial about having engaged in such conduct and in the Diocese's later admission that it had no evidence that he sexually assaulted someone under 18 years of age.

That leaves us with the two remaining elements of defamation, which elements are the statement's utterance with the requisite fault and damages. Regarding the latter, authority tells us that falsely accusing one of committing a crime is defamatory *per se*, *Dallas Morning News, Inc.*, 554 S.W.3d at 638, as is accusing one of engaging in serious sexual misconduct. *See, e.g., Miranda v. Byles*, 390 S.W.3d 543, 552 (Tex. App.—Houston [1st Dist.] 2012, pet. denied) (holding as defamatory *per se* an accusation about the sexual molestation of a child). The accusation at bar comes within both categories. Not only is it a factual statement subject to objective verification but also an accusation about criminal and serious sexual misconduct. Thus, Guerrero need not prove damages.

As for the requisite fault, the standard is negligence where the plaintiff is a private, as opposed to public, figure. *Bedford*, 520 S.W.3d at 904; *D Magazine Partners, L.P.*, 529 S.W.3d at 440. In what category Guerrero falls is a question of law. *Klentzman v. Brady*, 312 S.W.3d 886, 904 (Tex. App.—Houston [1st Dist.] 2009, no pet.). No one suggests that he was anything other than a private individual when the alleged defamation occurred. Nor does the record contain evidence placing him into the category of a public

figure. *See id.* (defining the two classes of "public figures"). So, our legal conclusion is that he was a private figure at the time, and the negligence standard controls.

Under the standard of negligence, a defendant acts unreasonably if he knew or should have known that the defamatory statement was false. *D Magazine Partners, L.P.*, 529 S.W.3d at 440. The record before us contains sufficient evidence to make a prima facie case of the Diocese's negligence in publishing the purportedly false defamation. We find that evidence in its own invocation of the meaning of "minor." The List itself used the word "minor" when alluding to a credible allegation of sexual abuse. And, in so using the word, the Diocese allegedly intended to assign it the definition accorded under canon law, as revealed through the affidavit of the Diocese's bishop. Again, that definition described a "minor" as "a person who habitually lacks the use of reason." Arguably, then, a "minor" encompasses not only those under the age of majority but also adults who habitually lack the use of reason. Knowing this definition, the Diocese nonetheless incorporated the term "children" into its public rhetoric about the List. Again, one media outlet announced that "according to the Lubbock Diocese," "four priests . . . and one deacon have credible allegations against them . . . of sexual abuse against ***children***." (Emphasis added). Additionally, a Diocese representative also told the outlet that the church was "safe for ***children.***" (Emphasis added). So too did the Diocese declare in its January 31st press release that it was working "to protect ***children*** from sexual abuse." (Emphasis added). While all "children" may be minors within the canon law's definition of "minor," not all "minors" are children per that same definition.[7] Yet, the purported "credible allegation" against Guerrero involved an adult around 41 years old.

[7] The Diocese does not argue that canon law or other religious tenet also defines "child" or "children" as including certain adults.

Given our earlier discussion about the general public perception of the word "children," the Diocese's multiple references to "children" while discussing the List, and its knowledge that Guerrero's supposed victim was an adult, there is some evidence of record from which a fact-finder could reasonably infer that the Diocese was negligent. There is evidence that the Diocese knew or should have known 1) the difference between "minors" and "children" while referring to "children" and 2) that by speaking about sexual abuse of "children" the public could reasonably perceive the discussion to be about clerics who sexually abuse infants, pre-teens, and those under the age of majority, not adults. Thus, evidence exists of record from which one could reasonably infer that the Diocese publicly portrayed Guerrero has having abused "children" or people under the age of majority.

In short, Guerrero carried his burden imposed by the TCPA. The record contains clear and specific evidence creating a prima facie case on each element of defamation.

Intentional Infliction of Emotional Distress

Regarding the claim of intentional infliction of emotional distress, we need not dwell upon it for long. In lieu of our engaging in an extended explanation regarding its components and whether the record contains evidence of each, we simply focus on one elemental aspect of the claim. That aspect is the mens rea. It requires proof that the defendant acted intentionally or recklessly. *Hersh v. Tatum*, 526 S.W.3d 462, 468 (Tex. 2017). And, to establish it, the plaintiff must proffer evidence illustrating the emotional distress was the intended or primary consequence of the conduct. *Standard Fruit & Veg. Co. v. Johnson*, 985 S.W.2d 62, 67 (Tex. 1998); *accord Fishman v. C.O.D. Capital Corp.*, No. 05-16-00581-CV, 2017 Tex. App. LEXIS 6661, at *14 (Tex. App.—Dallas July 18, 2017, no pet.) (mem. op.) (stating the same); *Vaughn v. Drennon*, 372 S.W.3d 726, 732

(Tex. App.—Tyler 2012, no pet.) (stating the same). That is, recovery is available when the defendant desired or anticipated that the plaintiff would suffer severe emotional distress. *Standard Fruit & Veg. Co.*, 985 S.W.2d at 67. It is not enough that the emotional distress emanates from, is derivative of, or "incidental to the intended or most likely consequence of the" defendant's conduct. *Id.*; *Vaughn*, 372 S.W.3d at 732. In the latter situations, the distress is the consequence of some conduct, it is not the reason for the conduct. And, because it is the consequence of, as opposed to the reason for, the conduct, the claim of intentional infliction of emotional distress is unavailable. As said by our Supreme Court in *Hoffman-La Roche, Inc. v. Zeltwanger,* 144 S.W.3d 438 (Tex. 2004), "[w]here the gravamen of a plaintiff's complaint is really another tort, intentional infliction of emotional distress should not be available. *Id.* at 447-48; *see Warner Bros. Entm't, Inc. v. Jones*, 538 S.W.3d 781, 814 (Tex. App.—Austin 2017, pet. granted) (holding that Jones did not establish a prima facie case of intentional infliction of emotional distress because the facts underlying that claim were the same facts upon which he based his claim of defamation); *Bilbrey v. Williams*, No. 02-13-00332-CV, 2015 Tex. App. LEXIS 2359, at *39-40 (Tex. App.—Fort Worth Mar. 12, 2015, no pet.) (mem. op.) (holding the same). Instead, there must be proof that the defendant wanted the plaintiff to suffer or anticipated that he would suffer severe emotional distress. In that situation, the distress in not merely derivative from some other tort; it is the tort's aim.

Here, neither party cited us to any evidence indicating that the Diocese intended for Guerrero to experience emotional distress or anticipated that such distress would be the primary consequence of the alleged defamation. Nor did our own search of the record uncover any. What it did reveal, though, was that the facts underlying the allegation of severe emotional distress were the very same ones forming the basis of Guerrero's

defamation claim. In other words, his alleged distress derived from being defamed. So, like *Bilbrey* and *Warner Bros.*, the record before us lacks prima facie evidence of an element to Guerrero's chose in action sounding in the intentional infliction of emotional distress.

The Diocese's Defense

Having found that one of Guerrero's causes of action survives dismissal, we now determine if the Diocese raised some defense or other basis barring recovery. It attempted to do so by asserting the doctrine of ecclesiastical abstention. But, as we explained in our earlier opinion in Cause No. 07-19-00307-CV, the doctrine does not apply to the circumstances at bar.

Conclusion

In ordering that the motion to dismiss be denied, the trial court did not address individually the two causes of action Guerrero averred. Nevertheless, we affirm its order to the extent that it retained the claim of defamation but reverse it to the extent that it retained the cause sounding in the intentional infliction of emotional distress. We also dismiss, with prejudice, the latter claim and "remand the case to the trial court for further proceedings consistent with this opinion, including consideration of the defamation . . . claim[] and determination of the attorneys' fees and sanctions that must be awarded under Section 27.009 in connection with the dismissal of the other claim[]." *Warner Bros. Entm't., Inc.* 538 S.W.3d at 818.

Brian Quinn
Chief Justice

FS= Full Screen | VO= Video Over | SOT= Sound Bite | PKG= Package

KAMC News:

January 31, 2019: KAMC 6 P.M.

FS/VO/SOTVO/SOT

1 MON

BRYAN

AVERY, THE 'CATHOLIC DIOCESE OF LUBBOCK' AND AMARILLO.. TODAY RELEASED THE NAMES OF CLERGY IN THE AREA..

WHO HAVE EVER BEEN *CREDIBLY ACCUSED OF SEXUAL MISCONDUCT.

TAKE BOXES

KAMC'S 'TORI LARNED' JOINS US LIVE FROM THE DIOCESE TONIGHT.

AND TORI, HOW MANY PEOPLE MADE THE LIST?

TAKE LIVE

TORI

BRYAN,

FIVE CLERGY MEMBERS OF THE LUBBOCK DIOCESE HAVE BEEN 'CREDIBLY ACCUSED' OF SEXUAL ABUSE OF A MINOR.

THEY SAY A FEW OF THEM WERE ALSO CHARGED OR ARRESTED.

(Priests Names Reveal VO)

TAKE FS

CLERGY ON THE LIST INCLUDE *ALPHONSE BOARDWAY AND *PATRICK HOFFMAN WHO'VE BOTH DIED.

OMAR QUEZADA, JESUS GUERRERO, AND NELSON DIAZ ---WHO WAS THE LAST TO BE REMOVED FROM THE MINISTRY IN 2011.

TAKE VO

THE CHANCELLOR FOR THE DIOCESE SAYS ALL THE INDIVIDUALS ABUSED WERE MINORS.

HE DESCRIBED 'CREDIBLY ACCUSED' AS SOMEONE WHO ADMITTED TO THE ABUSE, ARE FOUND GUILTY BY THE COURT, OR WHO WERE WITNESSED COMMITTING THE CRIME.

LAWYERS HIRED BY THE DIOCESE INVESTGIATED THESE CASES AND TURNED THEM OVER TO AUTHORITIES.

IN A STATEMENT, THE DIOCESE SAYS, 'THE SCOURGE OF ABUSE MUST BE STOPPED.'

HOWEVER, OUT OF RESPECT TO THE VICTIMS AND SURVIVORS, THEY HAVE TO HANDLE THE CASES WITH CARE.

(Priests Names Reveal SOTVO)

TAKE SOT

Marty Martin, Chancellor, Catholic Diocese of Lubbock: You have to keep in mind, sometimes the authorities are involved but because of the age of the victims, the parents don't want anything released and the only way to ensure that is to not proceed with any legal court system or situation because then something is going to leak out and they don't want the embarrassment for themselves or their children.

TRAILING VO

THE LUBBOCK DIOCESE IS ONE OF 15 ACROSS THE STATE RELASING NAMES OF CLERGY WHO'VE BEEN CREDIBLY ACCUSED.

LUBBOCK BISHOP REVEREND ROBERT COERVER, RELEASED A STATEMENT SAYING HE KNOWS THIS WILL BE A 'SOURCE OF PAIN' FOR VICTIMS, SURVIVORS AND THEIR FAMILIES...

BUT HOPES THIS WILL HELP VICTIMS COME FORWARD,

AND 'PROMOTE HEALING AND A RESTORATION OF TRUST IN THE CATHOLIC CHURCH. '

WHEN WE SPOKE WITH CHANCELLOR MARTIN, HE ECHOED THAT FEELING.

(Priests Name Reveal)

TAKE SOT

Marty Martin, Chancellor, Catholic Diocese of Lubbock: I certainly want people to know that the Diocese of Lubbock extend an apology to all victims. Especially to minors but to all victims. Not just because of what happened to them, but also for the fact that in the past the church needed them they failed them. That's not something we want to do or will be tolerated anymore

TAKE LIVE

TORI

THE BISHOP ENCOURAGES ANYONE WHO HAS BEEN ABUSED BY SOMEONE IN THE CATHOLIC CHURCH--

TO REPORT IT LOCAL LAW ENFORCEMENT.

SOME CLERGY MEMBERS ACCUSED IN AMARILLO, ALSO USED TO WORK IN LUBBOCK.

WE HAVE THE FULL LIST OF THOSE INDIVIDUALS ON OUR WEBSITE EVERYTHINGLUBBOCK DOT COM.

REPORTING FROM THE CATHOLIC DIOCESE OF LUBBOCK, I'M TORI LARNED KAMC NEWS.

January 31, 2019: KAMC 10 P.M.

PKG

TRAILING VO/LAUREN

DIOCESE ACROSS TEXAS NAMING CLERGY IN THEIR MINISTRY ACCUSED OF SEXUALLY ABUSING CHILDREN.

LAUREN

GOOD EVENING, I'M LAUREN MATTER.

BRYAN

I'M BRYAN MUDD.

FS= Full Screen | VO= Video Over | SOT= Sound Bite | PKG= Package

THE DIOCESES OF LUBBOCK AND AMARILLO.. RELEASING THEIR OWN LISTS OF CLERGY WHO HAVE BEEN 'CREDIBLY ACCUSED' OF THESE CRIMES OVER THE YEARS..
AND IT'S HEARTBREAKING.
KAMC'S 'TORI LARNED' JOINS US WITH MORE.

TORI
THE CATHOLIC DIOCESE OF LUBBOCK RELEASING THAT LIST TRYING TO PUT A STOP TO THE SEXUAL ABUSE OF CHILDREN IN THEIR MINISTRY.
THEY DID NOT SAY HOW MANY VICTIMS AND SURVIVORS THERE ARE, BUT THEY HOPE THERE WILL BE NO MORE.

(Clergy Names PKG)
TAKE PKG
Marty Martin, Chancellor, Catholic Diocese of Lubbock: The Diocese of Lubbock extend an apology to all victims.

FIVE MEMBERS OF THE CATHOLIC CHURCH 'CREDIBLY ACCUSED' OF SEXUALLY ABUSING CHILDREN.

In the past the church needed them they failed them. That's not something we want to do or will be tolerated anymore

A LIST THAT GOES BACK TO 1983....

PATRICK HOFFMAN LAST SERVED AT SACRED HEART IN PLAINVIEW FROM 1983 TO 1986. HE WAS REMOVED IN 1987 AND DIED IN 2005.

ALPHONSE BOARDWAY'S LAST ASSIGNMENT WAS AT SAINT ANN IN STAMFORD FROM 1987 TO 1989... HE WAS REMOVED FROM THE MINISTRY IN 1989 AND DIED IN 1997.

OMAR QUEZADA'S LAST ASSIGNMENT WAS AT OUR LADY OF GRACE IN LUBBOCK. HE NEVER SERVED BUT WAS REMOVED IN 2003.

JESUS GUERRERO LAST SERVED AT SAN RAMON IN WOODROW FROM 2006 TO 2007 AND WAS REMOVED A YEAR LATER

FINALLY, NELSON DIAZ LAST SERVED IN WOODROW FROM 2003 TO 2011... AND WAS REMOVED IN 2011.

MARTY MARTIN, THE CHANCELLOR WITH THE DIOCESE OF LUBBOCK BELIEVES MANY OF THESE MEN WERE EITHER ARRESTED OR CHARGED.

Marty Martin, Chancellor for Diocese of Lubbock: Credibly accused is Either the person admits to doing it, are found guilty in the court of law or the allegation has been witness or the abuse has been witnessed by somebody and they testify against it. If the accusation is credible, that person is immediately removed from ministry.

IN A LETTER, BISHOP ROBERT COERVER APOLOGIZED:
"I realize that this release of names will be a source of pain for victims, survivors, and their families. I realize that this might also be occasion for more victims to come forward and to be appropriately ministered to"

WITH THE HELP OF AUTHORITIES, THE CATHOLIC DIOCESE NOW TRYING TO PROTECT CHILDREN FROM FUTURE HARM.

we do total cooperation with the authorieis during the investigation

WE REACHED OUT TO LUBBOCK POLICE SAID THEY CURRENTLY HAVE NO INVESTIGATIONS OF ABUSE ON RECORD FOR THESE NAMES... AND DON'T KNOW IF THEY WERE REPORTED TO OTHER AGENCIES. HOWEVER THEY WILL LOOK INTO THIS SITUATION.

TORI
THE DIOCESE SAYS IF YOU OR ANYONE YOU KNOW HAS BEEN ABUSED BY ANYONE ACTING IN THE NAME OF THE CATHOLIC CHURCH..
REPORT THEM TO THE VICTIM'S ASSISTANCE COORDINATOR OF THE DIOCESE AND TO YOUR LOCAL AUTHORITIES.

March 25, 2019 KAMC 10 P.M.

VO
BRYAN
A LUBBOCK MAN IS SUING THE CATHOLIC DIOCESE OF LUBBOCK.
(Diocese Lawsuit VO)
TAKE VO
'JESUS GUERRERO' CLAIMS THAT THE CHURCH FALSELY ACCUSED HIM OF SEXUAL ABUSE.
'GUERRERO' WAS ON THE LIST OF NAMES RELEASED BY THE CHURCH.. AS BEING 'CREDIBLY ACCUSED' OF SEXUALLY ABUSING A MINOR.
BUT THE LAWSUIT STATES 'GUERRERO' HAS NEVER BEEN ACCUSED OF SEXUAL ABUSE OR MISCONDUCT AGAINST A MINOR..
AND HAS NEVER EVEN BEEN INVESTIGATED FOR THOSE CRIMES.
HE ACCUSES THE DIOCESE OF LIBEL AND DEFAMATION.. AND IS SEEKING AT LEAST A MILLION DOLLARS.

FS= Full Screen | VO= Video Over | SOT= Sound Bite | PKG= Package

KLBK News:

January 31, 2019: KLBK 6 P.M.

VO/SOT/FS

TERRI

GOOD EVENING, I'M TERRI FURMAN.
THE CATHOLIC DIOCESE OF LUBBOCK RELEASED NAMES OF PRIESTS TODAY WHO ARE *CREDIBLY* ACCUSED OF SEXUAL ABUSE..
THE DIOCESE HAS BEEN CREATING THIS LIST FOR US SINCE OCTOBER.
OUR MARI SALAZAR HAS THE NAMES ON THE LIST FOR US TONIGHT.

TAKE BOXES

SHE JOINS US FROM THE DIOCESE.
MARI, THESE MEN WERE ALL PERMANENTLY REMOVED FROM MINISTRY.

TAKE LIVE

MARI TERRI,
THEY WERE..
AND SOME OF THE CASES DATE BACK TO THE 80's.
BUT NO ONE MATTER THE CIRCUMSTANCE..
THE DIOCESE REVIEWED ANY ACCUSATION AGAINST A CHURCH MEMBER.

(Priest Allegations VO)

TAKE VO

THIS IS THE LIST OF PRIEST* NAMES RELEASED HERE IN LUBBOCK--

'ALPHONSE BOARDWAY' IS THE FIRST NAME.
HIS LAST ASSIGNMENT WAS 'SAINT ANN CATHOLIC CHURCH' IN STAMFORD -- TEXAS..
HE WAS REMOVED FROM MINISTRY IN 19-89..AND HE PASSED AWAY IN 19-97.

SECOND IS 'NELSON DIAZ'.
HIS LAST ASSIGNMENT WAS 'SAN RAMON' IN WOODROW.
HE WAS REMOVED FROM MINISTRY IN 20-11.

NEXT - 'PATRICK HOFFMAN'.
HIS LAST ASSIGNMENT WAS SACRED HEART IN PLAINVIEW.
HE WAS REMOVED FROM MINISTRY IN 19-87..AND HE DIED IN 2005.

FOURTH -- 'OMAR QUEZADA'.
HIS LAST ASSIGNMENT WAS 'OUR LADY OF GRACE' IN LUBBOCK'...THE RELEASE SAYS HE NEVER SERVED..
BUT WAS PERMANENTLY REMOVED FROM MINISTRY IN 2003.

LASTLY -- 'JESUS GUERRERO'..HE WAS A DEACON.
HIS LAST ASSIGNMENT WAS ALSO 'OUR LADY OF GRACE'.
HE WAS REMOVED FROM MINISTRY IN 2008.

THE CHANCELLOR WITH THE DIOCESE TOLD ME THIS AFTERNOON..
HE WANTS VICTIMS TO KNOW THE DIOCESE WON'T ALLOW THIS BEHAVIOR.

(Priest Allegations SOT)

TAKE SOT

MARTY MARTIN/DIOCESE OF LUBBOCK CHANCELLOR: "The Diocese of Lubbock extends an apology to all victims. Especially the minors, but to all victims. Not just of what happened to them, but also for the fact in the past many times, the church leaders have failed them and that's not something we want to do and that's something that won't be tolerated anymore."

TAKE FS

BISHOP COERVER SAYS HE'S OUT OF THE COUNTRY RIGHT NOW..
BUT SAYS IN A STATEMENT IN PART QUOTE..
HE CONTINUES TO PRAY FOR THE VICTIMS AND SURVIVORS OF ABUSE OF ANY KIND..
ESPECIALLY FOR THOSE FAMILIES WHOSE TRUST IN THE CHURCH HAS BEEN BROKEN.
HIS FULL STATEMENT IS ON OUR WEBSITE.

TAKE LIVE

MARI

SOME OF THE MEN LISTED HAVE BEEN CHARGED OR ARRESTED FOR THE CRIMES.
THE AMARILLO DIOCESE ALSO RELEASED A LIST OF NAMES IN THEIR AREA...
SEVERAL ALSO SERVED IN THE LUBBOCK AREA AT SOME POINT IN TIME.
YOU CAN FIND THAT LIST ON OUR WEBSITE EVERYTHING LUBBOCK DOT COM.
FOR NOW REPORTING LIVE FROM THE DIOCESE OF LUBBOCK.
I'M MARI SALAZAR, KLBK NEWS.

FS= Full Screen | VO= Video Over | SOT= Sound Bite | PKG= Package

January 31, 2019; KLBK 10 P.M.

PKG

TERRI

GOOD EVENING, I'M TERRI FURMAN.
THE CATHOLIC DIOCESE OF LUBBOCK RELEASED NAMES OF CLERGY MEMBERS TODAY WHO ARE *CREDIBLY* ACCUSED OF SEXUAL ABUSE..
THE LIST HAS BEEN IN THE MAKING SINCE LAST FALL.
THE DIOCESE TRYING TO BE AS OPEN AS POSSIBLE WITH THEIR COMMUNITY.
HOPING TO PREVENT FUTURE CHILD ABUSE..
OUR MARI SALAZAR HAS BEEN FOLLOWING THIS STORY FOR US.
MARI, HOW MANY NAMES ARE ON THE LIST?

HUGE
MARI

TERRI,
THERE WERE 4 NAMES OF PRIESTS AND ONE DEACON.
THE AMARILLO DIOCESE ALSO RELEASED A LIST.
SEVERAL HAD SERVED IN THE LUBBOCK AREA AT SOME POINT IN TIME.
WHEN I SPOKE WITH THE CHANCELLOR OF THE DIOCESE IN LUBBOCK..
HE SAYS HE WANTS VICTIMS TO KNOW THEY WON'T ALLOW THIS BEHAVIOR.

(Priest Accusations PKG)
TAKE PKG
MARTY MARTIN/DIOCESE OF LUBBOCK CHANCELLOR:
"The Diocese of Lubbock extends an apology to all victims."

MARTIN SAYS THE VICTIMS WERE ALL MINORS.
MARTY MARTIN/DIOCESE OF LUBBOCK CHANCELLOR:
"To all victims. Not just of what happened to them, but also for the fact in the past many times, the church leaders have failed them and that's not something we want to do and that's something that won't be tolerated anymore."

THESE ARE ALL THE MEN ACCUSED* OF SEXUAL ABUSE.. THE CHURCH SAYS

'ALPHONSE BOARDWAY'....HIS LAST ASSIGNMENT WAS 'SAINT ANN CATHOLIC CHURCH' IN STAMFORD -- TEXAS..
REMOVED FROM MINISTRY IN 19-89..AND HE PASSED AWAY IN 19-97.

'NELSON DIAZ'.
HIS LAST ASSIGNMENT WAS 'SAN RAMON' IN WOODROW.
HE WAS REMOVED FROM MINISTRY IN 20-11.

'PATRICK HOFFMAN'.
HIS LAST ASSIGNMENT WAS 'SACRED HEAR'T IN PLAINVIEW.
HE WAS REMOVED FROM MINISTRY IN 19-87..AND DIED IN 2005.

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HIS LAST ASSIGNMENT WAS 'OUR LADY OF GRACE' IN LUBBOCK'...THE RELEASE SAYS HE NEVER SERVED..
BUT WAS PERMANENTLY REMOVED FROM MINISTRY IN 2003.

LASTLY -- 'JESUS GUERRERO'..HE WAS A DEACON.
HIS LAST ASSIGNMENT WAS ALSO* 'OUR LADY OF GRACE'.
HE WAS REMOVED FROM MINISTRY IN 2008.

CHANCELLOR MARTIN SAYS A CREDIBLE ALLEGATION MEANS A COUPLE DIFFERENT THINGS.

MARTY MARTIN/DIOCESE OF LUBBOCK CHANCELLOR:
"Either the person admits to doing it, they are found guilty in a court of law or the allegation has been witnessed or the abuse has been witnessed by someone and they testify against it."

THE LIST RELEASED BY THE CATHOLIC DIOCESE OF LUBBOCK IS MEANT TO RESTORE FAITH IN CHURCH LEADERS.

HUGE
MARI

BISHOP COERVER SAYS HE'S OUT OF THE COUNTRY RIGHT NOW..
BUT SAYS IN A STATEMENT..
IN PART QUOTE..
TAKE FS
HE CONTINUES TO PRAY FOR THE VICTIMS AND SURVIVORS OF ABUSE OF ANY KIND..
ESPECIALLY FOR THOSE FAMILIES WHOSE TRUST IN THE CHURCH HAS BEEN BROKEN.
HIS FULL STATEMENT IS ON OUR WEBSITE.
TAKE FS
LUBBOCK POLICE ALSO RESPONDED TO THE LIST OF NAMES RELEASED..
THEY SAY QUOTE IN PART..

FS= Full Screen | VO= Video Over | SOT= Sound Bite | PKG= Package

THEY "ARE CURRENTLY SEARCHING THROUGH RECORDS.
AT THIS TIME, LPD DOES NOT APPEAR TO HAVE ANY PAST OR CURRENT INVESTIGATIONS OF ABUSE OCCURRING WITHIN THE CITY OF LUBBOCK BY THESE INDIVIDUALS."
HUGE
MARI
THE DIOCESE SAYS IF YOU OR ANYONE YOU KNOW HAS BEEN ABUSED BY SOMEONE ACTING IN THE NAME OF THE CATHOLIC CHURCH..
REPORT THEM TO THE VICTIM'S ASSISTANCE COORDINATOR OF THE DIOCESE.

March 25, 2019 KLBK 10 P.M.

FS/VO

(Diocese FSVO)
TAKE FS
TERRI
A LUBBOCK MAN IS SUING THE CATHOLIC DIOCESE OF LUBBOCK--
JESUS GUERRERO SAYS THE CHURCH FALSELY ACCUSED HIM OF SEXUAL ABUSE.
TAKE VO
ALL OF THE TEXAS DIOCESES WERE ORDERED TO RELEASE THE NAMES OF "CREIDBLY ACCUSED" CLERGY.
GUERRERO WAS ON THE LIST.
HE WAS LISTED AS A DEACON THAT WAS REMOVED FROM MINISTRY.
ONE PART OF THE LAWSUIT SAID GUERRERO WAS NEVER ACCUSED OF SEXUAL ABUSE OR BEEN INVESTIGATED IN ANY WAY FOR MISCONDUCT AGAINST A MINOR.
THE LAWSUIT SEEKS 1-MILLION DOLLARS OR MORE.

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Associated Case Party: Jesus Guerrero

Name

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