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COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON

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DIVISION I  
SEATTLE, WA

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M.H., Appellant,

vs.

Corporation of the Catholic Archbishop of Seattle,  
Respondent

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APPELLANT'S OPENING BRIEF

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## I. INTRODUCTION

M.H. is a victim of childhood sexual abuse planned by Father Edmund Boyle, a Catholic Priest. Father Boyle conspired with another pedophile to perpetrate this sex crime, and actively covered it up. Evidence of conspiracy, albeit circumstantial, is compelling. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980) (Circumstantial evidence is of equal value to direct evidence). It is undisputed that Father Boyle introduced M.H. to her molester, endorsed the molester's trustworthiness to her family, facilitated the molester's opportunity to molest, and actively and passionately covered it up. A reasonable jury can infer Father Boyle, a serial pedophile who was molesting M.H.'s brothers, intended to aid his comrade in pedophilia when he gave him the opportunity to molest M.H., and helped him cover-up his tracks.

The alternative is untenable. It is unreasonable to think Father Boyle was the victim of a striking coincidence. A jury would have to conclude Father Boyle just so happened to meet and build a relationship with a man such that he advocated this man have "alone time" with a 5 year old girl. Then, coincidentally, this man just so happens to molest children – just like Father Boyle. It is simply not a credible version – the only reasonable inference is that, as expert testimony will establish, Boyle

followed the pattern of many serial pedophiles and traded victims with his fellow child molesters in Seattle.

The question for this Court of Appeals is whether the Archdiocese should have foreseen that its fugitive pedophile priest would conspire with a fellow pedophile and aid plans to molest a child. It plainly should have. Given the evidence of facilitation, it makes little difference who *physically* molested M.H. Unreported child rape is both a physical and psychological act. A child must be groomed and manipulated with shame and fear to agree to remain silent about rape. Father Boyle performed the manipulation, and orchestrated the contact with M.H.'s rapist that made M.H.'s physical rape possible. Said bluntly, Boyle raped her mind and engineered the rape of her body. Boyle's psychological manipulation of children, and his proclivity to expose children to pedophilia, his or another's, was foreseeable in the exercise of even a modicum of due care.

Nevertheless, the trial court held that there was no evidence linking the molestation conspirator to the Archdiocese and thus *the actions of the conspirator* were unforeseeable. The trial court held, "Defendant does not have a duty to M.H. for the acts of an unidentified third person who has no provable connection to Defendant." CP 131. The trial court failed to give due weight to the injuries Father Boyle caused, and whether it should have been foreseeable to the Archdiocese that Father Boyle would manipulate,

groom, and prepare M.H. for sexual abuse, willfully expose M.H. to fellow pedophiles Boyle associated with, and cement the grooming process by silencing M.H. after her abuse. M.H. respectfully asks this Court to hold that Boyle's psychological abuse, his engineering of sexual abuse for the perverse benefit of his fellow pedophiles, and his injurious cover-up were reasonably foreseeable. Public policy favors imposing a duty on institutions harboring a convicted child molester to deny such criminals unfettered access to children. This duty reflects the dangers that may come from giving pedophiles unsupervised access to kids, including exposure to other pedophiles and the psychological subjugation that is part and parcel to pedophilic sexual abuse.

In Father Boyle's case, the Archdiocese knew what he was capable of long before he made M.H. a victim of his conspiracy to molest children. Father Boyle's career as a pedophile priest was nothing short of prolific. M.H. met Father Boyle when he was in hiding from the State of Utah and criminal charges for sexual assault of a minor. The Seattle Archdiocese knew it, gave him shelter, and gave him access to its child parishioners. Predictably, Father Boyle molested these children, including three and possibly four of M.H.'s brothers. Father Boyle psychologically manipulated M.H.'s brothers to prevent any reporting and make them accepting of his sexual misconduct and their victimization. Their injuries

were buried, festered, and dominated their development. M.H. suffered the same manipulation before, during, and following victimization by one of Father Boyle's fellow pedophiles. Father Boyle prepared M.H. for the abuse, engineered the abuse, and suppressed her complaints. He imposed on her a lifetime of silence, shame, and festering wounds.

This psychological harm was not only foreseeable to the Archdiocese, it was promoted by the Archdiocese. Father Boyle had been caught, but the Archdiocese helped him hide his sex crimes from the law. Its present effort to disclaim liability for the damage Father Boyle caused M.H. should not be countenanced. M.H. respectfully requests this Court reverse the trial court and hold that the Archdiocese's undisputed duty to control Father Boyle extended to protecting her from his network of pedophiles, and his insistence that children not report to police when they are raped.

## **II. ASSIGNMENT OF ERROR**

The trial Court erred by dismissing Plaintiff's claim for negligence and by finding that the Defendant Seattle Archdiocese's duty to control, supervise, and sequester Edmund Boyle from children did not apply to Edmund Boyle's psychological subjugation of M.H. and his conspiracy to molest her.

### III. STATEMENT OF THE CASE

#### A. Factual Record

Defendants moved for dismissal pursuant to CR 12(c), and as such this Court is not bound by the factual record. *See Davenport v. Washington Educ. Ass'n*, 147 Wn. App. 704, 715-716, 197 P.3d 686 (2008) (holding that Court may assume facts not in evidence to evaluate whether Plaintiffs present a cognizable claim). This Court may, given this standard, assume all facts in favor of the Plaintiff without the benefit of a record. Nevertheless, overwhelming evidence exists that the Archdiocese knew Father Boyle was a dangerous pedophilia, knew he was on the run from the law, and should have known he would cavort with fellow pedophiles and suppress any attempts to report the predictable outcome of exposing children to pedophiles: molestation. The Archdiocese not only knew he would avoid contact with the police, they helped him hide. The Archdiocese knew or should have known that Boyle would manipulate any child he got close to, and certainly the siblings of children he actively molested. M.H., because of this psychological subjugation, became a high commodity item to Boyle's fellow pedophiles: a five year old girl who would not report when she was raped. Father Boyle created that commodity in M.H., and by reasonable inference orchestrated her delivery to his fellow pedophile.

Unrefuted evidence establishes that Father Boyle ingratiated himself with M.H.'s family by virtue of his position as a parish priest, abused that position by molesting M.H.'s brothers, and, by reasonable inference, intentionally exposed M.H. to a comrade in pedophilia with knowledge that she would be molested and would not report her abuse. He then, it is undisputed, silenced her.

Defendant alleges it could not have known that the third person, the actual molester, would do any harm to M.H., and therefore it had no duty to protect her from *him*. Forgotten in that analysis is the deep harm Father Boyle caused -- harm the Archdiocese would have foreseen had it exercised a quantum of concern for the child parishioners it knew Father Boyle targeted.

**1. The Seattle Archdiocese Knew of Father Boyle's Extensive History of Sexually Abusing Children and Facilitated His Run From the Law**

Father Boyle is one of the most notorious and deviant child sexual abusers in the history of the Seattle Archdiocese. Documentation of Father Boyle's pedophilia begins in the Diocese of Reno. In a September 12, 1952, letter from the Monastery of the Servants of the Paraclete to the Bishop of Reno, for example, the Servant General of the Monastery stated that he was "inclined to seek secular activity" in regards to Boyle. CP 59.

The Servant General went on to discuss his involvement with other men under “similar charges” as Boyle’s and wrote:

[W]e find it quite universal that they seem to be lacking in appreciation of the serious situation. As a class they expect to bound back like tennis balls on to the court of priestly activity. I myself would be inclined to favor laicization for any priest, upon objective evidence, for tampering with the virtue of the young, my argument being, from this point onward the charity to the Mystical Body should take precedence over charity to the individual and when a man has so far fallen away from the purpose of the priesthood the very best that should be offered him is his Mass in the seclusion of a monastery. Moreover, in practice, real conversions will be found to be extremely rare. Many bishops believe men are never free from the approximate danger once they have begun. Hence, leaving them on duty or wandering from diocese to diocese is contributing to scandal or at least to the approximate danger of scandal. CP 59.

This wisdom did not prevail. Despite serious concerns about Boyle, in May 1955 the Bishop of Salt Lake City agreed to keep Boyle in his service for a two year period. CP 61. In June 1955, the Bishop of Salt Lake City wrote to the Curia of Reno to inform it that Boyle “fell off the wagon again, very seriously.” CP 63. The Bishop of Salt Lake City went on to note that Boyle had ended up in the county jail and that he “may be accused of a moral crime.” CP 63. In fact, Boyle had been charged with

contributing to the delinquency of four minor children. CP 66. Two of the children were 12 years old, one was 13 years old, and one was fourteen years old. CP 66. Boyle pleaded guilty to the crime, was sentenced to serve six months in the Salt Lake County Jail and fined \$299. CP 68. The Bishop of Salt Lake City then sent Boyle to a “Sanitarium in Seattle.” CP 70. The Bishop of Salt Lake City explained that he sent Boyle to the sanitarium because “[o]therwise, Boyle would be in jail[.]” CP 71. The Bishop of Salt Lake City contacted the Curia of Reno to request that the arrangements be made for Boyle’s release after serving 12 days in the sanitarium. CP 73.

The Bishop of Salt Lake City sent a July 14 letter updating the Curia of Reno on Boyle’s diagnosis from his time in the Seattle sanitarium. CP 76. The Bishop of Salt Lake City stated that a psychiatrist found that Boyle was not a “homosexualist” but had other difficulties that caused him to rebel. CP 76-77.

By letter dated August 2, 1955, the Archdiocese of Seattle notified the Diocese of Reno that Boyle had been staying at St. James Cathedral and that the Bishop of Salt Lake City had provided a Seattle Archdiocesan official with “considerable information with regard to Father Boyle’s problem.” CP 79. M.H.’s family would have the ill fated luck of moving

to the neighborhood of St. James Cathedral, where this pedophile lived with the Archdiocese's knowledge and full support.

In a letter dated August 18, 1955, the Bishop of Reno informed a Seattle Archdiocesan official that there was no chance for Boyle returning to the Curia of Reno. CP 81. The Bishop of Reno wrote:

It is not only a matter of my fear of a repetition of the scandal he caused in Salt Lake City, but the cold fact that there is a docket in the sheriff's office of Washoe County (Reno) which makes his return here impossible. And aside from that, this is no place for a man of his *temperament and inclinations*. CP 81.

The Bishop of Reno went on to write:

While I cannot in conscience recommend him to anyone who might be interested, I would not condemn him utterly. The essential problem with him I honestly feel, is that he, like so many in his position, has never faced up to the reality about himself. . . May I leave it to your discretion to tell him that he cannot return as a priest to Nevada? CP 84-85.

Despite knowledge of Boyle's criminal history and his own bishop's unwillingness to let him return, the Seattle Archdiocese decided to allow Boyle to stay in its employ and "hope[d] that he [had] learned his lesson, and [would] mend his ways." CP 84. A Seattle Archdiocesan official informed the Bishop of Reno that "[i]t is hard for us to say what

the future will hold for this priest, but, from what we have been able to observe, we feel convinced that he should have another chance.” CP 85.

On August 14, 1958, Boyle wrote to the Archbishop of Seattle to request official sanction of the Big Brothers organization. CP 87. As of September 3, 1958, Boyle was serving as a member of the Big Brothers’ board of trustees and the organization’s Screening Committee, despite being a convicted child molester. CP 89.

Later in 1958, Boyle went to Reno to serve under the Diocese of Reno. CP 91. By memorandum dated February 24, 1959, the Archbishop of Seattle was informed that Boyle had suffered a “lapse” while serving in the Diocese of Reno. CP 93. The Bishop of Reno contacted the Seattle Archdiocese and was “pretty anxious” to know whether the Archbishop of Seattle would “take [Boyle] back. CP 93. The Archbishop of Seattle agreed to take Boyle back, despite his knowledge of Boyle’s history of recidivism. CP 95. At or about this time, Boyle befriended M.H.’s mother and soon thereafter began serially molesting M.H.’s three brothers.

In May of 1961, Boyle was released by excardination from his ties to the Reno Diocese so that he would be free to be incardinated in the Seattle Archdiocese. CP 97. The Archbishop of the Seattle Archdiocese then incardinated Boyle into the Seattle Archdiocese. CP 99. Thirty years later, in 1991, the Seattle Archdiocese directly recognized (1) Boyle’s long

history of molesting children and (2) the Seattle Archdiocese's knowledge of Boyle's history. CP 111. In a letter to the Archbishop of Seattle, a priest stated that he had "just completed a review of Father Boyle's secret file for the first time." CP 111. The priest disclosed that Boyle's "secret" file contained information about Boyle's "molesting incident in Reno and the attendant publicity." CP 111. The letter provided:

It is clear that Father Boyle has an extensive history of alcoholism, and enmeshed with this, an equally extensive history of sexual misconduct, both homosexual and heterosexual. The homosexual acting out has been with adolescents. The heterosexual acting out has been with both adolescents and adults. His alcoholism is exacerbated by loneliness and personal crises. Also, it was noted that Father Boyle is at moderate risk to reoffend, which means he is an ongoing danger to the community.

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Father Boyle's file contains specific recommendations that he not live alone, but rather, that he be placed in some community setting where his needs can be met – needs for community, acceptance, structure and routine. If these are not met, he is at greater risk to drink again, and then to reoffend. CP 111.

Despite these recommendations, Father Boyle was allowed free reign, and predictably found new victims in the children of St. James Parish.

**2. Father Boyle Used his Position as a St. James Parish Priest to Gain the Trust of M.H.'s Family, Establish a Supervisory Role over M.H. and her Family Members, Sexually Abuse M.H.'s Family Members, and Facilitate and Promote the Sexual Abuse of M.H.**

Despite the Seattle Archdiocese's knowledge of Father Boyle's long, documented history of "tampering with the virtue of the young," the Seattle Archdiocese allowed Father Boyle to (1) form a close relationship with M.H.'s family, (2) gain the trust of M.H.'s mother and other family members, (3) form a father like relationship with M.H. and her siblings, (4) establish supervisory authority and control over M.H.'s family, (4) sexually abuse members of M.H.'s family, and (5) facilitate and promote the sexual abuse of M.H. Further, the Seattle Archdiocese's actions and/or omissions allowed Father Boyle to use his position of authority over M.H. and her family to silence her disclosure of the abuse.

Father Boyle was closely involved with M.H.'s family. CP 37-39, 111. M.H.'s family was involved with the Catholic Church. CP 37-39. Moreover, they lived in close proximity to the cathedral, where Father Boyle worked and lived. CP 37-39. M.H.'s family attended church at the cathedral and met Father Boyle through his involvement as an associate pastor at the cathedral Parish. CP 37-39. Father Boyle's status as a priest within the Seattle Archdiocese caused M.H. to trust and look up to Father Boyle. CP 37-39.

Although Father Boyle was a priest within the Seattle Archdiocese, he developed a close (CP 70), romantic relationship with M.H.'s mother. CP 34-36, 37-39. Father Boyle told the children he was planning on leaving the priesthood and marrying M.H.'s mother. CP 34-36. Father Boyle was a constant fixture in M.H.'s family's life. CP 37-39, 75. Father Boyle established a close relationship with M.H.'s brothers. CP 34, 38-39, 77. Father Boyle would pick up M.H.'s brothers from the Briscoe Memorial School (a boarding school operated by the Seattle Archdiocese) and take them to their mother's house for visitations. CP 76. Father Boyle would also take M.H.'s brothers home for holidays, such as Thanksgiving. CP 76. When they were young, M.H.'s brothers looked up to Father Boyle. CP 34-36, 37-39, 77. When he was a young boy, one of M.H.'s brothers believed Father Boyle was his "friend, ..., father, ... confidante, . . . confessor[, and] everything [he] didn't have as far as a little boy wanted, which was a father." CP 77. Father Boyle established himself as a "father figure" to M.H.'s family by taking the children to games or shopping and/or giving them money. CP 77. Members of M.H.'s family viewed the relationship with Father Boyle as "special." CP 77. When M.H. was younger, she looked up to Father Boyle as a father figure and a well respected member of the Catholic Church who was to be trusted and obeyed. CP 39.

At one point, Father Boyle told M.H.'s siblings that he had established supervisory control over them. CP 77. Father Boyle told M.H.'s siblings he had managed to intercede on their behalf with the Department of Welfare and the Superior Court in order to establish this supervisory control. CP 77. Father Boyle also told M.H.'s siblings that he would have a say in whether they would be able to stay at home or have to return to the Briscoe School. CP 77. M.H.'s mother allowed M.H. and her siblings to be alone with Father Boyle. CP 38. When M.H. was young, M.H.'s mother went to jail and the hospital, and when she was in the hospital, Boyle watched over M.H. and her siblings. CP 34-36. Boyle would provide groceries for the family in exchange for sex with one of M.H.'s brothers. CP 34-36. Father Boyle sexually abused M.H.'s brothers on multiple occasions. CP 34-36. Father Boyle would use his position as a priest and the trust he had established with M.H.'s family to get one of M.H.'s brothers alone in order to provide him with alcohol and cigarettes and sexually abuse him. CP 34-36.

### **3. Father Boyle Conspired With a Fellow Pedophile to Sexually Abuse M.H. and Insisted on Her Silence**

In approximately 1960, the same time period in which Father Boyle was sexually molesting M.H.'s brothers, Father Boyle conspired to sexually abuse M.H. by using his position as a priest and the trust he had

developed with M.H.'s mother and family to allow a fellow pedophile unsupervised access to M.H. in order to sexually abuse her. In order to facilitate M.H.'s sexual abuse, Boyle brought the abuser, another man, and a woman to M.H.'s house. CP 38. M.H. believed the two men were involved with the church in some way. CP 38. The abuser offered to drive M.H. to get supplies for a picnic that Boyle had arranged, and Boyle assured M.H.'s mother that this would be a good idea. CP 38. Because of that assurance, M.H.'s mother allowed the unknown man to drive M.H. to the picnic. CP 38. M.H.'s mother would not have allowed M.H. to go with the unknown man without Father Boyle's assurance that it would be alright. CP 38. The abuser, the other man, M.H., and one of M.H.'s brothers drove off together. CP 38. Father Boyle stayed with M.H.'s mother, M.H.'s younger brother, and the woman who came with Father Boyle. CP 38.

Prior to arriving at the picnic, the two men took M.H. and her brother to an apartment building near St. James Cathedral in Seattle. CP 38. Over M.H.'s protests, the abuser took M.H. into an apartment. CP 38. M.H. cried for her brother, whom the man separated her from. CP 38. Inside the apartment, the man sexually abused M.H. CP 38. The abuse took place on the kitchen table in an apartment near St. James Cathedral.

CP 38. M.H. could see the cathedral out the window while she was being abused. CP 38.

At the picnic after the sexual abuse occurred, M.H. told her mother about the sexual abuse. CP 39. M.H.'s mother told her to tell Boyle about the abuse. CP 39. Later that evening, M.H. told Father Boyle about the abuse. CP 39. Boyle comforted M.H. when she told him about the abuse, but he also instructed her that she must never tell anyone else about the abuse. CP 39. Father Boyle acted very upset, comforted M.H., and assured her that he would never let anyone do anything like that to her again. CP 39. After he told M.H. not to tell anyone else about the sexual abuse, Father Boyle prayed with M.H. and asked God for forgiveness and to watch over M.H. CP 39. While praying, Father Boyle told M.H. she was special to him and that he would look after her. CP 39. M.H. looked up to Father Boyle and revered him greatly at the time. CP 39. Boyle did not report the abuse to the authorities.

Father Boyle often told M.H. that he was trying to do the best for M.H. and her family. CP 39. Father Boyle used his position as a priest within the Seattle Archdiocese to befriend M.H.'s mother so that he could molest her children and subject them to sexual molestation. CP 39. Father Boyle sexually molested three of M.H.'s brothers, and he may have molested a fourth brother who is now deceased. CP 37-39.

## **B. Procedural Posture**

The Defendant Archdiocese moved for a dismissal of M.H.'s negligence claim pursuant to CR 12(c) stating two grounds: first the Archdiocese owed no duty to protect its child parishioner from a "third person" molester and second any breach of such a duty is not the "legal cause" of M.H.'s abuse. CP 1-9. The trial court granted the motion to dismiss the negligence claim, and its order appeared to rely solely on Defendant's first argument that it had no duty. CP 127-131. Plaintiff timely appealed and assigns error to the Order of dismissal. CP 132-140. In an abundance of caution, Plaintiff provides argument responsive to Defendant's second basis for dismissal, the absence of "legal causation," though it does not appear this was relied on by the trial court.

## **IV. ARGUMENT**

### **A. Standard of Review**

The Defendant Seattle Archdiocese sought dismissal pursuant to CR 12(c), claiming M.H. failed to state a claim upon which relief could be granted when she alleged the Archdiocese negligently supervised its employee Father Boyle. Plaintiff introduced evidence documenting the history of Father Boyle's sexual misconduct, and the Seattle Archdiocese's complicity in concealing that criminal misconduct from lawful authority. Helpful though this evidence is, on a CR 12(c) motion

the Court is not bound by the evidence in the record, particularly where neither party has conducted discovery. Instead, this Court is obligated to consider whether *any* facts consistent with those alleged in the complaint could support M.H.'s claims.

When reviewing a trial court's ruling on a motion for judgment on the pleadings brought under CR 12(c), we must take the facts alleged in the complaint, *as well as hypothetical facts consistent therewith*, in the light most favorable to the nonmoving party. Here then, we review questions of fact by taking the facts and inferences, *both real and hypothetical*, in the light most favorable to the plaintiffs. In contrast, we review questions of law de novo (i.e., without deferring to the trial court's reasoning or result).

*Davenport v. Washington Educ. Ass'n*, 147 Wn.App. 704, 715-716, 197 P.3d 686 (2008) (emphasis added; citations omitted).

In this case, Plaintiff alleges the circumstantial evidence overwhelmingly establishes that Father Edmund Boyle cavorted and conspired with fellow pedophiles and, consistent with such perverse criminal enterprises, exposed M.H. to these other pedophiles. M.H. is entitled to the favorable inferences of the evidence, but even more than that is entitled to any hypothetical facts this Court may adopt to examine whether it is legally possible for the Archdiocese to be held liable for allowing an unrepentant child molester unfettered access to a child.

This case presents two questions for this Court. First, did the Archdiocese owe a duty to control its employee Father Boyle and take reasonable steps to prevent him from conspiring with fellow pedophiles to rape its parishioner M.H.? Second, was the Archdiocese's decision to give Father Boyle unfettered access to children, and aid his efforts to conceal his pedophilia, a legal cause of M.H.'s molestation? Both questions are reviewed de novo, *See Davenport, supra*, and should be answered in the affirmative. Both questions turn on whether Father Boyle's conspiracy to molest children was or should have been foreseeable.

**B. The Archdiocese Had a Duty to Report Father Boyle to Authorities and Isolate him From Children**

Under traditional negligence principles, whether a defendant owes a duty to a plaintiff is a question of law and depends on mixed considerations of "logic, common sense, justice, policy, and precedent." *Keates v. City of Vancouver*, 73 Wn. App. 257, 265, 869 P.2d 88, *review denied*, 124 Wn.2d 1026, 883 P.2d 327 (1994). In its briefing before the trial court, the Archdiocese argues it did not owe M.H. a duty to protect her from third persons over whom it had no control. The trial court held, "Defendant does not have a duty to M.H. for the acts of an unidentified third person who has no provable connection to Defendant." CP 131. This is not in dispute, but was the focus of Defendant's briefing and the

trial court's ruling. Instead, the question is whether the Archdioceses' acknowledged duty to control Edmund Boyle, its employee and agent, included the duty to prevent or at least discourage him from conspiring with another pedophile to molest the sister of three boys he was himself molesting. The issue is not whether the Archdiocese knew or should be expected to know about the propensities of this unknown molester, but rather whether it knew Father Boyle was at risk to manipulate children and expose them to fellow pedophiles.

The basic duty of a Church to control its priest, notably those given the imprimatur of the Church and placed in a community of vulnerable parishioners, is reflected in *C.J.C. v. Corporation of Catholic Bishop of Yakima*, 138 Wn.2d 699, 985 P.2d 262 (1999), which the Archdiocese describes as the "seminal case in Washington on church sex abuse cases." CP 2. Therein the Supreme Court held that the duty to protect parishioners may derive from the special relationship between the Church and its parishioner, or from "a special relationship between the defendant and the intentional tortfeasor." 138 Wn.2d at 721.

The Archdiocese does not deny its duty to control Father Boyle, nor its duty to protect its parishioner, M.H., from Father Boyle. It simply misapprehends how it failed M.H. The Archdiocese moved for dismissal because it claimed, rightly, it had no duty to control the stranger who

raped M.H. and could not foresee the dangers of a man it did not know. However, the proper focus is on whether or not the Archdiocese could foresee that Father Boyle would conspire with *any* pedophile, even a pedophile the Archdiocese knew nothing about. The Archdiocese knew Father Boyle was a prolific and unrepentant pedophile and should have know of his sexual interest in a single mother's 3 boys. The Archdiocese could not deny a gross breach of its duty with respect these boys. Its present claim of innocence with respect their sister, M.H., ignores the fact that he performed every act of psychological subjugation preparing M.H. for abuse, and orchestrated the events to make M.H.'s molestation possible. The Archdiocese does not escape liability because its employee's tortious conduct included coconspirators. The Archdiocese allowed a diseased pedophile to descend upon M.H. It should have foreseen the varied forms of abuse he would inflict: psychological grooming and subjugation, direct molestation, conspiracy to molest, and a fierce cover-up. Father Boyle's preference for boys spared M.H. Boyle's direct sexual acts, but she could not escape his psychological manipulation nor his decision to orchestrate her abuse in concert with fellow pedophiles. This was, and should have been, foreseeable.

The harm sustained from an act is foreseeable "if the risk from which it results was known or in the exercise of reasonable care should

have been know.” *Travis v. Bohannon*, 128 Wn. App. 231, 238, 115 P.3d 342 (2005). Consistent with this analysis, the Archdiocese should have exercised reasonable care and considered the risk that Father Boyle may gravitate towards other pedophiles, and agree to help them find and groom victims. His career as a pedophile was prolific and unrepentant. The Archdiocese has responded to this by mistakenly claiming that the fact it did not know the ultimate coconspirators insulates it from liability for their conduct. Ignored in this analysis is the fact that their agent, Father Boyle, brought M.H. to the pedophile conspiracy having established the necessary psychological domination to assure that she could be molested without risk of reporting. The foreseeable risk was not that the Archdiocese should have been concerned about the pedophilia of an unknown assailant, but rather that it should have been concerned that Father Boyle would expose children over whom he established psychological dominion to other pedophiles. It is akin to an employer acknowledging the risk that a drug addict will know and cavort with other drug addicts. It was plainly predictable.

Additionally, harm is foreseeable if the harm can reasonably be perceived as being within the field of danger covered by the specific duty owed by the defendant. *See Skeie v. Mercer Trucking Co, Inc.*, 115 Wn. App. 144, 61 P.3d 1207 (2003). Liability extends to foreseeable results

from unforeseeable causes; it is not necessary to foresee the exact manner in which the injury may be sustained. *King v. City of Seattle*, 84 Wn.2d 239, 248, 525 P.2d 228 (1974). The Archdiocese knew, with zero ambiguity, that it was exposing its child parishioner, M.H., to a child rapist. This is a dangerous thing to do, even if the precise manner in which the child rapist harms a child cannot be known ahead of time. Exposure to a pedophile conspiracy is, consistent with *Skeie*, “within the field of danger” a reasonable employer protects against when it honors its duty to supervise its pedophile employees. The Archdiocese need not have known who Father Boyle would expose M.H. to, but it should have known there was some risk he would indeed expose her to someone intent on molesting her, would plan and facilitate the molestation, and would actively cover it up. That is what serial pedophiles do.

The Archdiocese may certainly deny that it should have known there was some risk Father Boyle would facilitate sexual abuse of the child sister of the 3 boys he was actively molesting and over whom he had near total control. Under such circumstances, foreseeability is normally an issue for a jury, and a court will decide it as an issue of law only where reasonable minds cannot differ. *Estate of Jones v. State*, 107 Wn. App. 510, 517-18, 15 P.3d 180 (2000). A reasonable person could expect that the Archdiocese would be aware of the risk that a

pedophile might expose children under their care to other pedophiles. As such, the trial court erred in denying that the Archdiocese owed M.H. a duty to protect her from its pedophile priest, Father Boyle.

In addition to and independent of the risk Father Boyle would conspire with other pedophiles to molest M.H., the Archdiocese was aware of the risk that he would suppress reporting. This is an independent harm. Even if the Archdiocese is not liable for Father Boyle's conspiracy to promote M.H.'s molestation by psychologically grooming her for it and orchestrating a fellow pedophile's unsupervised access to a five year old girl, it had a duty to its child parishioners to train its staff to *allow* children, if not encourage them, to report sexual victimization. The Archdiocese knew Father Boyle would never allow the authorities to investigate M.H.'s sexual abuse because he would be exposed. The Archdiocese knew this, because the Archdiocese was helping and encouraging Father Boyle hide from a sex crime conviction in Utah. Such fugitives should not shepherd children, for it is predictable that they will suppress appropriate reporting.

**C. The Archdiocese's Failure to Supervise and Control  
Father Boyle Was the Legal Cause of His Conspiracy to Molest  
M.H.**

The Archdiocese, in its briefing before the trial court, repeated that it did not know the individual who performed the sex act on M.H., and

therefore it is “unjust” to impose liability upon it. It argues it should not be deemed the “legal cause” of M.H.’s abuse despite its decision to entrust M.H. to the care of a serial child rapist. Again, the Archdiocese fails to appreciate how it failed M.H. Its negligence derives not from its failure to supervise the unknown molester, but from its failure to supervise Father Boyle, whose ties to fellow child molesters should have been predicted, if not investigated. The Archdioceses’ request that this Court hold that public policy favors protecting institutions that harbor sexual predators when these predators conspire to, rather than directly engage in, sexual crimes against children is irresponsible. It is also contrary to the Washington Supreme Court’s declaration that, “[a]s a matter of public policy, the protection of children is a high priority.” *C.J.C.* 138 Wn.2d at 722. There is a “strong public policy in favor of protecting children against acts of sexual abuse.” *C.J.C.* 138 Wn.2d at 726.

Legal causation is grounded “in policy determinations as to how far the consequences of a defendant's acts should extend.” *Schooley v. Pinch's Deli Market, Inc.*, 134 Wn.2d 468, 478, 951 P.2d 749 (1998). The focus in legal causation analysis is on “whether, as a matter of policy, the connection between the ultimate result and the act of the defendant is too remote or insubstantial to impose liability.” *Id.* at 478-79. This inquiry depends upon “mixed considerations of logic, common sense, justice,

policy, and precedent.” *King*, 84 Wn.2d at 250. Here, it is logical and fair to assert that the Seattle Archdiocese’s negligence enabled Father Boyle to establish himself as a “father figure” with M.H.’s family which was a proximate cause of M.H.’s sexual abuse. Father Boyle facilitated and promoted it, and could not have succeeded had he been supervised or, more appropriately, sequestered from children.

It is not an attenuated assertion that a priest with a history of sexual improprieties would facilitate the sexual abuse of a child, even if he did not abuse the child himself, if he was allowed to gain control over the child’s family. By letting Father Boyle have access to M.H.’s family, gain her mother’s trust, and gain her trust, the Seattle Archdiocese allowed Father Boyle’s conspiracy to molest M.H. succeed. He would not have had the opportunity to make first contact with M.H., let alone to groom, prepare, and subject M.H. to a fate that befell so many other children who had the misfortune of knowing Father Boyle. The Archdiocese could have prevented the tragedy that befell M.H., but thought more of protecting Father Boyle and his lifestyle. Neither logic, common sense, policy, nor justice compel this Court to ignore that fact.

## V. CONCLUSION

Father Boyle was a well known child molester. The injuries a child molester inflicts on a child begin with grooming, lead to sexual

abuse, and conclude with suppression of reporting. Father Boyle did to M.H. all but the discrete sexual act, and that act could not have happened, and likely would not have been risked, had Father Boyle not secured his position of psychological domination over M.H. and her family. In addition, Father Boyle orchestrated the events that gave his fellow pedophile the opportunity to molest M.H. He is guilty as a conspirator, and that horrific misconduct was foreseeable to the Archdiocese exercising even a hint of due care. The Archdiocese provided Father Boyle with material support and lent its prestige and ecclesiastic authority to him by allowing him the title and vestiges of the priesthood. In so doing it accepted the duty to control him for the safety of its parishioners. This duty included protecting M.H. from being fed to a conspiracy of pedophiles, and manipulated in to silence. M.H. respectfully requests this Court reverse the decision of the trial court, and allow a jury to decide whether Father Boyle's conduct was foreseeable.

Dated this 18<sup>th</sup> day of March, 2010.

Respectfully submitted,

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By

3.7.7  
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**CERTIFICATE OF SERVICE**

I, Linnea Butler, certify under penalty of perjury under the laws of the State of Washington that the following is true and correct:

A. I am a United States Citizen, over the age of 18 years, not a party to this cause, and competent to testify to the matters set forth herein.

B. I am employed by the law firm of Pfau Cochran Vertetis Kosnoff, PLLC. 701 Fifth Avenue, Suite 4730, Seattle, WA 98104, attorneys for plaintiff/respondent.

C. On March 18,, 2010, I caused a copy *Appellant's Opening Brief* to be served upon the following via  Faxed  Mailed  Hand-Delivered  Legal Messenger.

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SEATTLE, WA

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Dated this 18th day of March, 2010.

  
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