STATE OF MICHIGAN

COURT OF APPEALS

BRIEN DUX, MARIE DUX, PHYLLIS BAUSANO, AMY MCGUCKIN, MARY MCGUCKIN, CHARLIE MCGUCKIN, NANCY MCAULEY, DAVID KLEMMER, ROSMARIE ROBERTSON, JASON PYLAR, KAREN PYLAR, ROBERT REILLY, JEAN REILLY, JOHN ALLASIO, EMILY ALLASIO, KATHRYN ALLASIO, and NANCY FLORES,

Plaintiffs-Appellants,

and

TAMARA BERTOLLINI, DAVID ALLASIO, and SUE ALLASIO,

Plaintiffs,

v

G. MICHAEL BUGARIN and ROMAN CATHOLIC ARCHBISHOP OF THE ARCHDIOCESE OF DETROIT,

Defendants-Appellees.

UNPUBLISHED
December 21, 2021

No. 355505
Wayne Circuit Court
LC No. 20-001579-NO

Before: K. F. KELLY, P.J., and JANSEN and RICK, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court's order granting summary disposition in favor of defendants. Finding no errors warranting reversal, we affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

This case arises out of a dispute after Fr. Perrone was removed from The Assumption of the Blessed Virgin Mary Parish (Assumption Grotto), a Roman Catholic parish within the Archdiocese of Detroit (Archdiocese). Plaintiffs are members of Assumption Grotto, where Fr. Perrone served as pastor for over 20 years.

According to plaintiffs, the wife of an unnamed man, referred to as John Doe, called the Archdiocese to report that Doe had been sexually abused by Fr. Perrone 40 years earlier. G. Michael Bugarin and James Smith investigated the abuse allegations on behalf of the Archdiocese. Smith contacted Macomb County Detective Sergeant Nancy LePage to report the allegations. LePage conducted an in-person interview with Doe, who told LePage that Fr. Perrone sexually assaulted him. Plaintiffs claim Bugarin fabricated a "rape allegation" that he then presented to the Archdiocese Review Board, which authorized a press release stating that it found Doe's allegations credible.

Plaintiffs filed suit, asserting one count each of intentional infliction of emotional distress (IIED) and fraud. In their IIED count, plaintiffs claimed defendants' statement that the allegations of sexual abuse were credible was an "extreme and outrageous act." In their fraud count, plaintiffs alleged the Archdiocese asked its parishioners, including plaintiffs, to donate money to the Catholic Services Appeal (CSA). Plaintiffs alleged the Archdiocese represented the donations would be used for church ministry and would not be used to settle claims "of any nature" against the Archdiocese.

Defendants moved for summary disposition under MCR 2.116(C)(8), arguing the First Amendment to the United States Constitution, US Const, Am I, prohibited the trial court from adjudicating the dispute. Defendants also argued plaintiffs otherwise failed to state a claim for IIED and fraud. For their part, plaintiffs asserted the First Amendment did not bar their claims and that their complaint stated claims for relief. The trial court entered an order granting defendants' motion, stating "Plaintiff's [sic] amended complaint is hereby dismissed as Plaintiffs have failed to assert a valid cause of action in this court." This appeal followed.

II. STANDARD OF REVIEW

This Court reviews de novo questions of constitutional law. *Rafaeli, LLC v Oakland Co*, 505 Mich 429, 448; 952 NW2d 434 (2020). "This Court . . . [also] reviews de novo a trial court's decision on a motion for summary disposition." *Dell v Citizens Ins Co of America*, 312 Mich App 734, 739; 880 NW2d 280 (2015). Defendants moved for summary disposition under MCR 2.116(C)(8):

> A motion under MCR 2.116(C)(8) tests the legal sufficiency of the complaint. All well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant. A motion under MCR 2.116(C)(8) may be granted only where the claims alleged are so clearly unenforceable as a matter of law that no factual development could possibly justify recovery. When deciding a motion brought under this section, a court considers only the pleadings. [*Dell*, 312 Mich App at 739-740.]

"A party may not support a motion under subrule (C)(8) with documentary evidence such as affidavits, depositions, or admissions." *Dalley v Dykema Gossett PLLC*, 287 Mich App 296, 305; 788 NW2d 679 (2010). "Conclusory statements, unsupported by factual allegations, are insufficient to state a cause of action." *Churella v Pioneer State Mut Ins Co*, 258 Mich App 260, 272; 671 NW2d 125 (2003).

III. ANALYSIS

In their first issue on appeal, plaintiffs challenge the trial court's decision to grant defendants' motion for summary disposition on the basis that the ecclesiastical abstention doctrine did not prevent the trial court from adjudicating their claims. Plaintiffs assert the doctrine is not applicable to the facts of this case because no questions of church doctrine or policy need to be examined to resolve their claims. With respect to plaintiffs' arguments concerning their IIED claim, we reject their arguments, and affirm the order of the trial court. And while we agree with plaintiffs that the ecclesiastical abstention doctrine did not prevent the trial court from adjudicating the fraud claim, as will be discussed below, we conclude that count was properly dismissed for failure to state a claim.

The religion clause of First Amendment states: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." US Const, Am I. By virtue of the Fourteenth Amendment to the United States Constitution, the religion clause also applies to Michigan law. *Winkler v Marist Fathers of Detroit*, 500 Mich 327, 337 n 4; 901 NW2d 566 (2017). Under the religion clause, courts are "severely circumscribed by the First and Fourteenth Amendments to the United States Constitution . . . in resolution of disputes between a church and its members." *Pilgrim's Rest Baptist Church v Pearson*, 310 Mich App 318, 323; 872 NW2d 16 (2015), overruled in part in *Winkler*, 500 Mich at 337-340.

The ecclesiastical abstention doctrine arises from the religion clause of the First Amendment. *Winkler*, 500 Mich at 337. Under the ecclesiastical abstention doctrine, a court may not "substitute its opinion in lieu of that of the authorized tribunals of the church in ecclesiastical matters." *First Protestant Reformed Church of Grand Rapids v DeWolf*, 344 Mich 624, 631; 75 NW2d 19 (1956). The doctrine

> reflects [the] Court's longstanding recognition that it would be inconsistent with complete and untrammeled religious liberty for civil courts to enter into a consideration of church doctrine or church discipline, to inquire into the regularity of the proceedings of church tribunals having cognizance of such matters, or to determine whether a resolution was passed in accordance with the canon law of the church, except insofar as it may be necessary to do so, in determining whether or not it was the church that acted therein. [*Winkler*, 500 Mich at 337-338.]

The ecclesiastical abstention doctrine does not, however, completely divest civil courts of jurisdiction over matters concerning religious institutions. *Id*. at 339. Thus, "application of the ecclesiastical abstention doctrine is not determined by reference to the category or class of case the plaintiff has stated," and "[w]hether a claim sounds in property, tort, or tax, for instance, is not dispositive." *Id*. at 341. "What matters instead is whether the actual adjudication of a particular legal claim would require the resolution of ecclesiastical questions; if so, the court must abstain

from resolving those questions itself, defer to the religious entity's resolution of such questions, and adjudicate the claim accordingly." *Id.*

To state a prima facie cause of action for IIED, "the plaintiff must present evidence of (1) the defendant's extreme and outrageous conduct, (2) the defendant's intent or recklessness, (3) causation, and (4) the severe emotional distress of the plaintiff." *Dalley*, 287 Mich App at 321 (quotation marks and citation omitted). "Liability attaches only when a plaintiff can demonstrate that the defendant's conduct is so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious and utterly intolerable in a civilized community." *Walsh v Taylor*, 263 Mich App 618, 634; 689 NW2d 506 (2004) (quotation marks and citations omitted). "[I]nsults, indignities, threats, annoyances, petty oppressions, or other trivialities do not give rise to liability for intentional infliction of emotional distress." *Dalley*, 287 Mich App at 321 (quotation marks and citation omitted).

Plaintiffs claim they suffered extreme emotional distress as a result of Bugarin issuing a statement in which the Archdiocese claimed it found Doe's claims credible. The trial court properly dismissed plaintiffs' IIED claim because resolution of that claim would require the trial court to delve into matters of ecclesiastical policy concerning how the Archdiocese investigates and evaluates claims of sexual abuse made against its clergy. In other words, whether Bugarin's conduct was extreme and outrageous depends on how the Archdiocese evaluated Doe's claims of sexual abuse, to determine whether they were, in fact, credible. Resolution of the claim would also require the trial court to assess the Archdiocese's meaning of "credibility," and whether that comports with commensurate standards under civil law. Thus, any inquiry into the means and methods by which the Archdiocese evaluates such claims would require the trial court to inquire into ecclesiastical matters forbidden under the First Amendment. See *Winkler*, 500 Mich at 338.

In addition, resolution of plaintiffs' claims would require the trial court to determine whether the method by which the Archdiocese communicated with its parish constituted extreme and outrageous conduct. Such an inquiry by the trial court would also be improper under the First Amendment because it would, in effect, be equivalent to second guessing the Archdiocese's decisions regarding how to best communicate allegations within its clergy with its parish. See *Fowler v Rhode Island*, 345 US 67, 70; 73 S Ct 526; 97 L Ed 828 (1953) (holding it is not "in the competence of courts under our constitutional scheme to approve, disapprove, classify, regulate, or in any manner control sermons delivered at religious meetings."). The trial court, therefore, properly concluded plaintiffs failed to state a claim for IIED because such a claim was barred by the ecclesiastical abstention doctrine.

Plaintiffs' second cause of action asserted against defendants was for fraud related to the Archdiocese's solicitation of CSA donations. Plaintiffs claim the Archdiocese committed fraud when the Archdiocese stated the CSA donations would be used for charitable ministries, and were not and would not be used to settle claims "of any nature" against it. According to plaintiffs, the Archdiocese made a false representation because the CSA donations were used to pay for the investigation into Fr. Perrone and to pay for mental health treatment for Doe after he made the allegations. Thus, plaintiffs argue the Archdiocese lied and omitted material facts when it sought the CSA donations. For their part, defendants argue that resolution of the claim would require the trial court to evaluate how the Archdiocese spends its funds, which is improper under the First Amendment. We agree, in part, with plaintiffs.

The elements of common-law fraud are:

> (1) the defendant made a material representation; (2) the representation was false; (3) when the defendant made the representation, the defendant knew that it was false, or made it recklessly, without knowledge of its truth as a positive assertion; (4) the defendant made the representation with the intention that the plaintiff would act upon it; (5) the plaintiff acted in reliance upon it; and (6) the plaintiff suffered damage. [*Maurer v Freemont Ins Co*, 325 Mich App 685, 695; 926 NW2d 848 (2018) (quotation marks and citation omitted).]

Contrary to defendants' arguments, resolution of part of plaintiffs' fraud claim would not impermissibly permit the trial court to second guess how the Archdiocese spends its money. In order to adjudicate plaintiffs' claim that the CSA donations were not and would not be used to settle claims against the Archdiocese, the trial court would only be required to decide whether the Archdiocese's statement was true or false when made. Such an inquiry by the trial court would not involve delving into internal church policies or otherwise "substitut[ing] its opinion in lieu of that of the authorized tribunals of the church in ecclesiastical matters." *DeWolf*, 344 Mich at 631. The inquiry would not relate to the propriety of how the donations were spent, but rather whether the Archdiocese lied about their purpose when it solicited them. This does not cross the line imposed by the First Amendment.

On the other hand, plaintiffs' claim they were defrauded on the basis of the statement the CSA donations would be used for church ministry, which would require the trial court to inquire into internal church policy as to what was meant, ecclesiastically, by the term "ministry." Whether that term, for purposes of the Archdiocese, properly included funding an investigation into sex abuse claims or providing treatment for potential victims would necessitate the trial court to improperly inquire into internal church matters to determine whether the statement—that the donations would be used for "ministry"—was true or false. See *id*. Thus, plaintiffs' fraud claim on the basis of this statement was properly dismissed under the ecclesiastical abstention doctrine.

Turning then to whether plaintiffs otherwise stated a claim for fraud on the basis of the statement that CSA donations would not be used to settle claims against the Archdiocese, plaintiffs' claim is premised on the theory that the Archdiocese had a duty to disclose the information about the true purpose of the donations.

"Michigan courts have recognized that silence cannot constitute actionable fraud unless it occurred under circumstances where there was a legal duty of disclosure." *M & D, Inc*, 231 Mich App at 29. "[I]n order for silent fraud to be actionable, the party having a legal or equitable duty to disclose must have concealed the material fact with an intent to defraud." *Maurer*, 325 Mich App at 695. Plaintiff does not identify any legal duty under which religious institutions are required to divulge how their general funds are to be used after funded by donations. By failing to identify and plead a legal duty under which the Archdiocese was required to disclose the information, plaintiffs failed to state a claim for fraud. See *id*.

In addition, the statement that the funds would not be used prospectively to settle claims against the Archdiocese was a promise about what the Archdiocese would do in the future. Statements of future promises generally cannot form the basis of a fraud claim. See *Derderian v*

Genesys Health Care Sys, 263 Mich App 364, 378; 689 NW2d 145 (2004) ("Generally, a claim of fraud cannot be based on a promise of future conduct."). Instead, a person aggrieved by such a promise has an action in contract, not tort. *Hi-Way Motor Co v Int'l Harvester Co*, 398 Mich 330, 336; 247 NW2d 813 (1976) ("Future promises are contractual and do not constitute fraud."). Accordingly, plaintiffs failed to state a claim for relief for fraud.

Affirmed. Defendants, as the prevailing parties, may tax costs.

/s/ Kirsten Frank Kelly
/s/ Kathleen Jansen
/s/ Michelle M. Rick