

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
TRIAL DIVISION-CIVIL**

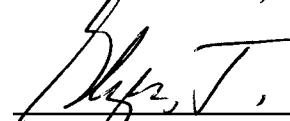
DANIEL HILLANBRAND, SR. and	:	November Term 2018
LEEANNE NATALI,	:	
	:	
Plaintiff,	:	No. 1761
	:	
v.	:	
PENNSYLVANIA CATHOLIC CONFERENCE	:	Commerce Program
a/k/a CATHOLIC CONFERENCE OF	:	
PENNSYLVANIA, DIOCESE OF ALLENTOWN,	:	Control Nos. 19041889/19041788/
DIOCESE OF ALTOONA-JOHNSTOWN,	:	19041946/19041871/19041981/
DIOCESE OF ERIE, DIOCESE OF	:	19041917/19041880/19041980
HARRISBURG/ GREENSBURG,	:	
ARCHDIOCESE OF PHILADELPHIA,	:	
DIOCESE OF PITTSBURGH and	:	
DIOCESE OF SCRANTON,	:	
	:	
Defendants.	:	

**ORDER**

AND NOW, this 20<sup>th</sup> day of June, 2019, upon consideration of defendants' respective preliminary objections to plaintiffs' amended complaint and plaintiffs' response in opposition, replies and the parties submissions per the court's request and in accord with the attached Opinion, it hereby is **ORDERED** that the preliminary <sup>objections</sup> are **Sustained** and the amended complaint is dismissed.

DOCKETED  
JUN 21 2019  
R. POSTELL  
COMMERCE PROGRAM

BY THE COURT,

  
GLAZER, J.

Hillanbrand Etal Vs Pen-ORDRF



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PURSUANT TO Pa.R.C.P. 236(b)

JUN 21

FIRST JUDICIAL DISTRICT OF PA  
USER I.D.: 

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ARCHDIOCESE OF PHILADELPHIA,	:	
DIOCESE OF PITTSBURGH and	:	
DIOCESE OF SCRANTON,	:	
	:	
Defendants.	:	

**OPINION**

Plaintiffs, Daniel Hillanbrand, Sr. and Leeanne Natali (collectively referred to as “Plaintiffs”), bring this action against the Catholic Dioceses of Pennsylvania, including the Dioceses of Allentown, Altoona- Johnstown, Erie, Harrisburg/Greensburg, Pittsburg, Scranton and the Archdiocese of Philadelphia (collectively referred to as “Dioceses”) and the Catholic Conference of Pennsylvania (“Catholic Conference”) for public nuisance and civil conspiracy. For the reasons discussed below, the preliminary objections are sustained and the amended complaint is dismissed.

The amended complaint alleges the following facts: In or about 1982, when plaintiff Daniel Hillanbrand, Sr. (“Hillanbrand”) was approximately 11 or 12 years old, Fr. James Dux, an ordained priest of the Archdiocese of Philadelphia, engaged in unpermitted sexual contact with Hillanbrand. Fr. Dux was employed by various parishes in the Archdiocese of Philadelphia from 1948 to 1976. In approximately 1976, Fr. Dux was transferred to St. John the Baptist in Philadelphia in the Archdiocese of Philadelphia. Fr. Dux remained in ministry at St. John the

Baptist in Philadelphia from approximately 1976 to 1994 during which time Hillanbrand was sexually assaulted by Fr. Dux. The true nature of Fr. Dux as a sexually abusive priest has allegedly not been disclosed publicly by the defendants.

In 2006, Hillanbrand reported that he was sexually abused to Louise Hagner of the Archdiocese of Philadelphia Victim Assistance program. Hillanbrand was not informed by the Archdiocese that Fr. Dux had been diagnosed as a sexual deviate in 1965 and his sexual deviation was known to the Archdiocese of Philadelphia allegedly as a deep-rooted problem of chronic duration. The Archdiocese of Philadelphia allegedly took no action in response to Hillanbrand's report.

In or about 1975 to 1977, when plaintiff Leeanne Natali ("Natali") was approximately 14-16 years old, Fr. Richard McLoughlin engaged in unpermitted sexual contact with Natali. McLoughlin was ordained a priest of the Archdiocese of Philadelphia in approximately 1969. From 1969 to 1994, Fr. McLoughlin was employed at various parishes in the Archdiocese of Philadelphia. From 1977 to 1981, Fr. McLoughlin was the Director of Camp Neumann, a camp for Catholic youth under the jurisdiction of the Archdiocese of Philadelphia located in Jamison, Pennsylvania. Natali was sexually assaulted by Fr. McLoughlin while attending Camp Neumann. Fr. McLoughlin's true nature as a sexually abusive priest has not been publically disclosed by defendants.

In 1991, Natali reported that she was sexually abused to Msgr. William Lynn of the Archdiocese of Philadelphia. Msgr. Lynn represented to Natali that he never learned of sexual abuse involving Fr. McLoughlin previously and allegedly discredited Natali. No action was taken by the Archdiocese of Philadelphia in response to Natali's report and Fr. McLoughlin allegedly continued to work in parishes in the Archdiocese of Philadelphia until 1994. Natali

allegedly learned as a result of the 2005 Philadelphia Grand Jury Report that the Archdiocese of Philadelphia received a report of sexual abuse by Fr. McLoughlin a year prior to her report in 1990.

Plaintiffs allege that defendant dioceses and defendant Catholic Conference failed and continue to fail to report known and/or suspected abuse of children by their agent (s) to the police and law enforcement in violation of their obligations under 23 Pa. C. S. § 6311 and 49 Pa. C. S. § 45.402 and continue to maintain sexually abusive priests in their employment despite knowledge or suspicions of child sex abuse. Plaintiffs further allege that the Catholic Conference's repeated pledges to restore trust for victims of sexual abuse is inconsistent with defendants' policies, practices and actions demonstrating secrecy of information about priests who have sexually assaulted children in Pennsylvania.

Plaintiffs further allege that the dioceses have coordinated their efforts to conceal information pertaining to their sexually abusive agents to the detriment of survivors like plaintiffs. The dioceses allegedly represent that there is no danger of child sex abuse at their facilities and in their programs, they respond to sexual abuse complaints promptly and effectively, they cooperate with civil authorities, they discipline offenders and they provide a means for accountability to ensure the problem of clerical sex abuse is effectively addressed. However, plaintiffs allege that in contravention of these statements defendants continue to adopt policies and practices of covering up criminal activity. Plaintiffs allege that four grand jury reports, the 2005 Grand Jury Report, the 2011 Grand Jury Report, the 2016 Grand Jury Report and the Statewide Grand Jury Report in 2018 highlighted the dioceses alleged common purpose to promote secrecy and endanger the public by failing to keep records and report allegations of

child sexual abuse leveled against their agents. Plaintiffs allege that the dioceses conduct constituted “a playbook to concealing the truth”.

Plaintiffs allege that as a result of defendants’ conduct, each plaintiff has suffered and will continue to suffer great pain of mind and body, severe and permanent emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, humiliation, physical, personal and psychological injuries. Plaintiffs further allege they are prevented from performing normal daily activities, obtaining the full enjoyment of life and will incur expenses for psychological treatment, therapy and counseling and have suffered pecuniary losses due to wage loss and medical expenses.

On November 15, 2018, plaintiffs instituted this action against the dioceses and the Catholic Conference alleging two causes of action against all defendants, public nuisance under the common law and 18 Pa. Stat. § 6504 and civil conspiracy. Defendants filed preliminary objections to the complaint. On March 26, 2019, plaintiffs filed an amended complaint. Thereafter, defendants filed preliminary objections to the amended complaint. The preliminary objections are now ripe for decision.<sup>1</sup>

## **DISCUSSION**

### **I. Plaintiffs lack standing to assert a private cause of action for common law public nuisance.**

In count I of the amended complaint, plaintiffs purport to bring a private cause of action for public nuisance.<sup>2</sup> Plaintiffs allege that defendants created a nuisance by their failure to report

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<sup>1</sup> The parties requested oral argument on the preliminary objections. Oral argument may be granted at the court’s discretion pursuant to Pa. R. Civ. P. 211. Here, oral argument on the preliminary objections was not necessary due to the well written, thoughtful and all-encompassing submissions by all parties.

<sup>2</sup> Plaintiffs titled count I as common law public nuisance and Public Nuisance-18 Pa. Stat. § 6504. Plaintiffs in their omnibus response to defendants’ preliminary objections specifically state that they are

their sexually abusive priests to proper civil and criminal authorities and by concealing their knowledge regarding the sexually abusive priests. The term “nuisance” contemplates the unreasonable use by one person of his personal or real property such as to create an interference with the activities or pursuits of another.<sup>3</sup> Originally, nuisance served two functions. First, it provided a remedy for interference with the use of enjoyment of land. Second, it served a basis for prosecution of those who infringed on the rights of the crown or the rights of the general public.<sup>4</sup> William Prosser wrote:

There are, then, two and only two kinds of nuisance, which are quite unrelated except in the vague general way that each of them causes inconvenience to someone, and in the common name, which naturally has led the courts to apply to the two some of the same substantive rules of law. A private nuisance is narrowly restricted to the invasion of interests in the use and enjoyment of land. It is only a tort, and the remedy for it lies exclusively with the individual whose rights have been disturbed. A public nuisance is a species of catch-all low-grade criminal offense, consisting of an interference with the rights of the community at large, which may include anything from the blocking of a highway to a gaming-house or indecent exposure. Although as in the case of other crimes, the normal remedy is in the hands of the state, a public nuisance may also be a private one, when it interferes with private land. The seeds of confusion were sown when courts began to hold that a tort action would lie even for a purely public nuisance if the plaintiff had suffered “particular damage.”<sup>5</sup>

*Section 821B of the Restatement of Torts* defines a public nuisance as follows:

- (1) ... an unreasonable interference with a right common to the general public.

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solely seeking a public nuisance claim under the common law and not the penal statute. (Plaintiffs’ memorandum in response to defendants’ preliminary objections pp. 8-18).

<sup>3</sup> *Diess v. Pa. Dept. of Trans.*, 935 A.2d 895, 904 (Pa. Cmwlth. 2007), citing *Groff v. Borough of Sellersville*, 12 Pa. Cmwlth. 315, 314 A.2d 328 (1974).

<sup>4</sup> *City of Philadelphia v. Beretta U.S.A., Corp.* 126 F. Supp. 2d 882, 906 (2000), citing W. Page Keeton, Prosser & Keeton On the Law of Torts § 86 (5<sup>th</sup> Ed. 1984) and Restatement (Second) of Torts § 821 B cmt a (1979).

<sup>5</sup> *Philadelphia Elec. Co. v. Hercules, Inc.*, 762 F.2d 303, 315 (3<sup>rd</sup> Cir. Pa. 1985), quoting Prosser, *Private Action for Public Nuisance*, 52 Va.L.Rev. 997, 999 (1966) (footnotes omitted).

- (2) Circumstances that may sustain a holding that an interference with a public right is unreasonable include the following:
- (a) Whether the conduct involves a significant interference with the public health, the public safety, the public peace, the public comfort or the public convenience, or
  - (b) whether the conduct is proscribed by a statute, ordinance or administrative regulation, or
  - (c) whether the conduct is of a continuing nature or has produced a permanent or long-lasting effect, and, as the actor knows or has reason to know, has a significant effect upon the public right.<sup>6</sup>

A citizen has standing to enjoin a public nuisance, under the common law, if its interest affected by the nuisance is distinguished from, and greater than, that of the general public.<sup>7</sup> The *Restatement (Second) of Torts* § 821C(1) provides:

In order to recover damages in an individual action for a public nuisance, one must have suffered harm of a kind different from that suffered by other members of the public exercising the right common to the general public that was the subject of interference.

The special harm requirement is intended to limit liability arising from an event. Public nuisances, by definition, affect many people. If every person or entity injured from a public nuisance could recover economic or even property damages, liability could be exorbitant; thus, only those plaintiffs who suffer special harm may recover.<sup>8</sup> Pecuniary loss to the plaintiff resulting from the public nuisance is normally a different kind of harm from that suffered by the general public. However, if the pecuniary loss is common to an entire community and the plaintiff suffers it only in a greater degree than others, it is not a different kind of harm and the plaintiff cannot recover for the invasion of the public right.<sup>9</sup>

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<sup>6</sup> *Diess v. Pennsylvania Dept. of Transp.*, 935 A.2d 895, 904 (Pa.Cmwlth.2007) citing *Restatement (Second) Torts* §821B.

<sup>7</sup> *See, Pennsylvania Society for the Prevention of Cruelty to Animals v. Bravo Enterprises, Inc.*, 428 Pa. 350, 237 A.2d 342 (1968).

<sup>8</sup> *Duquesne Light Co. v. Pennsylvania American Water Co.*, 850 A.2d 701, 706 (Pa.Super. 2004)

<sup>9</sup> *Restatement (Second) of Torts* § 821C cmt. h.

In the case *sub judice*, Plaintiffs allege they sustained physical, emotional and/or psychological harm because of defendants' concealment and failure to report unlike any harm suffered by the general public. Additionally, plaintiffs allege they suffered pecuniary loss including medical expenses and/or wage loss as a result of defendants' conduct that is different in kind. This harm alleged by plaintiffs does not constitute a special harm sufficient to create standing to bring a private cause of action for public nuisance.

The harm that plaintiffs allegedly suffered as a result of defendants' actions or omissions, physical, emotional and pecuniary, is the same harm suffered by other members of the general public who were abused. What distinguishes plaintiffs' alleged harm from the general public is plaintiffs' susceptibility to suffer greater emotional and pecuniary loss as a result of their prior abuse. While this susceptibility differentiates their damages from those sustained by the general public, the difference is only in degree, not in kind. Differences in degree are not sufficient to create standing for individuals to bring a private public nuisance claim.<sup>10</sup> Since plaintiffs' special harm is not different in kind from that sustained by other members of the public, plaintiffs have no standing to maintain a private action for the alleged public nuisance and count I is dismissed.<sup>11</sup>

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<sup>10</sup> This court is not persuaded by nor does it agree with the reasoning set forth in the Minnesota state court slip opinion, *Doe 10, Doe 37 & Doe 38 v. Diocese of New Ulm*, Nos. 08-CV-14-863 and 08-CV-13-1084 (Minn. Dist. Ct. Brown Cty. March 27, 2015) which held that claims of economic harm were different from prior similar claims made by other plaintiffs in prior priest abuse child sexual abuse nuisance lawsuits. The alleged economic harm is akin to the emotional and physical harm alleged herein, different in degree but not different in kind. While pecuniary loss resulting from the public nuisance is usually a different kind of harm from that suffered from by the general public, here the pecuniary loss alleged by plaintiffs, wage loss and medical expenses, is common to the entire community.

<sup>11</sup> Additionally, plaintiffs lack standing to bring a claim for public nuisance against the Dioceses of Allentown, Altoona/Johnstown, Erie, Harrisburg/Greensburg, Pittsburg, and Scranton and the Catholic Conference since they failed to allege any facts that they have been aggrieved by these defendants and suffered a substantial, direct and immediate injury as a result. *See, Markham v. Wolf*, 136 A.3d 134 (Pa. 2016).



## **II. Plaintiffs' civil conspiracy claim in Count II fails as a matter of law.**

Count II of the amended complaint purports to state a claim for civil conspiracy. In order to state a claim for civil conspiracy, plaintiffs must allege that each defendant entered into an unlawful agreement for the express purpose of committing either a criminal act or an intentional tort.<sup>12</sup> Additionally, plaintiffs must allege facts showing concerted action or agreement.<sup>13</sup> Furthermore, plaintiffs must allege facts to show malice, i.e. of each defendant's intent to injure plaintiffs.<sup>14</sup>

Here, the claim for civil conspiracy fails as a matter of law because plaintiffs have no legally valid underlying tort claim. No civil cause of action for conspiracy can exist unless the conduct that was the subject of the conspiracy is actionable. Absent a civil cause of action for a particular act, there can be no cause of action for civil conspiracy to commit that act.<sup>15</sup> Here, because the court finds that plaintiffs' lack standing to bring a private cause of action for a public nuisance, no cause of action against defendants for civil conspiracy may exist. As such, the preliminary objection to count II, conspiracy, is sustained.<sup>16</sup>

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<sup>12</sup> *Burnside v Abbot Laboratories*, 351 Pa. Super. 264, 278, 505 A.2d 973, 981 (1985).

<sup>13</sup> *Id.*

<sup>14</sup> *Thompson Coal Co. v. Pike Coal Co.*, 488 Pa. 198, 211, 412 A.2d 466, 472 (1979).

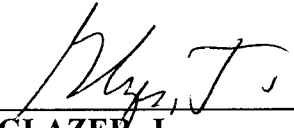
<sup>15</sup> *Goldstein v. Phillip Morris, Inc.*, 854 A.2d 585, 590-591 (Pa. Super. 2004).

<sup>16</sup> Plaintiffs submitted to this court by letter dated June 19, 2019 a recent decision of the Superior Court captioned *Rice v. Diocese of Altoona-Johnstown*, 2019 Pa. Super. 186 (2019) for consideration in disposing of these preliminary objections. *Rice* is distinguishable and not applicable to the case at hand. In *Rice*, the plaintiff sued the Diocese for fraud, constructive fraud and civil conspiracy. While the Superior Court in *Rice* recognized that a survivor of clergy sexual abuse may suffer additional harm upon learning of the institution's concealment, the question as to whether that additional harm was distinct from others in community was not addressed since no claim for public nuisance existed. Moreover, the court in *Rice* specifically addressed the question of whether plaintiff's complaint was barred by the statute of limitations, a defense which is not before this court.

## **CONCLUSION**

For the foregoing reasons, defendants' respective preliminary objections are sustained and the amended complaint is dismissed.

**BY THE COURT,**

  
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**GLAZER, J.**