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Abuse Hotline Does Not Create a Duty to Victim

By Robert T. Denny, *Litigation News* Contributing Editor – May 1, 2014

Establishing a help line to assist clergy in handling abusive situations does not create a duty to aid victims. *MacGregor v. Walker*. However, organizations providing beneficial services owe an affirmative duty to protect individuals from physical harm when their negligent provision of services places the individuals in a “worse position” than if the services had never been rendered. For service organizations, the decision leaves them exposed to potential lawsuits.

Creation of an Abuse Help Line

The Church of Jesus Christ of Latter-day Saints set-up a help line available 24 hours a day, 365 days a year to assist clergy who learn of potentially abusive situations. Attorneys and counseling professionals staff the help line to assist clergy “with the complex emotional, psychological, and legal issues that must be addressed in order to protect the victim.” The help line employees do not know the victims’ names or communicate with them. Only clergy have access to the help line, and whether clergy comply with its guidance is left to the discretion of the clergy.

Lawsuit Against the Church

From age 12 to 15, the plaintiff was involved in sexual relationships with older teenagers that qualified as abusive under Utah law. She consulted with her bishop two different times regarding one of these relationships. The bishop allegedly “told her to pray, read her scriptures, and stop seeing [the boy]” but did not call the help line for any of the issues related to the plaintiff, even though he was familiar with the help line.

The plaintiff brought suit against the bishop and the church, arguing that by establishing the help line, “the church voluntarily undertook a duty to help [the plaintiff] and all other church members who are victims of child abuse.” The church moved for summary judgment, arguing it owed no duty to plaintiff. The trial court granted the motion on the ground that the church was “immune from suit under the First Amendment in the U.S. Constitution.”

On appeal, the Utah Supreme Court decided the case on basic tort principles. The court recognized that generally there is “no affirmative duty to act to protect another from harm.” However, under Section 323 of the Restatement (Second) of Torts, liability may accrue “for physical harm” when voluntarily rendering services to another if the failure to exercise reasonable care “increases the risk of such harm.” While Section 323 also imposes liability if harm results due to reliance on the services, the plaintiff did not assert such a claim.

The court held that Section 323 did not apply to the plaintiff, however, because regardless of whether the help line rendered a service to abuse victims, its creation did not increase their risk of harm. Rather, Section 323 would only apply when the alleged negligence placed the plaintiff “in a worse position than [s]he would have been in had the undertaking not occurred.” The court held that the church owed no duty and found that imposing a duty on the church would be contrary to public policy because it “would chill efforts to prevent abuse and assist victims.”

Increased Risk of Physical Harm Critical to Liability

In analyzing the impact of this decision, it is important to recognize that “the help line itself wasn’t really designed specifically to help the victim,” notes [Rudy Perrino](#), Los Angeles, CA, cochair of the [ABA Section of Litigation’s Commercial and Business Litigation Committee](#). The help line “was really designed to help the clergy understand what their legal duties were and understand how to counsel and guide in that sort of grey area where this case fell in terms of what should have been done to protect the plaintiff,” he continues.

“If the plaintiff knew about the help line and the church had promoted it publicly, perhaps that would have given her a stronger argument for imposing a tort duty,” adds [Stephen J. Siegel](#), Chicago, IL, cochair of the Section of Litigation’s Commercial and Business Litigation Committee. For instance, there would need to be action “that either would have made the plaintiff’s situation worse or induced reliance on the church’s actions as a volunteer, where the volunteer didn’t come through in the manner that was advertised publicly and known to the victim,” argues Siegel.

However, the court's "legal reasoning could go the other way and be just as persuasive if not more persuasive," argues [Dori Ann Hanswirth](#), New York, NY, cochair of the Section's Commercial and Business Litigation Committee. This is because the court "side step[s] what [the plaintiff] was really trying to complain about," which was that she did not get the help she needed and that the clergy could have used the help line, Hanswirth adds.

Nonetheless, from a public policy perspective, the court "got it right," concludes Hanswirth. "No one could say definitively that imposing a duty in the circumstances of this case would have had a chilling effect, but logically if you imposed liability then doing so could have that negative effect on other organizations that directly or indirectly aid abuse victims," adds Siegel.

Overall, service organizations "need to be aware of and thoughtful about the fact that where there's a suspicion that their action or inaction could increase the risk of physical harm to the individual that they do need to do something affirmatively to protect them," concludes Perrino.

Keywords: abuse, clergy, duty, volunteers

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» [MacGregor v. Walker](#), No. 20120452, 2014 UT 2 (Utah Jan. 28, 2014).

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