

CAUSE NO. 05-06465

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su

C. BROWN,
Plaintiff

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IN THE DISTRICT COURT

VS.

K-192nd JUDICIAL DISTRICT

FIRST BAPTIST CHURCH OF
FARMERS BRANCH and
JAMES A. MOORE,

Defendants.

DALLAS COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES C. Brown ("Plaintiff"), complaining of the First Baptist Church of Farmers Branch and James A. Moore ("Defendants"), and for cause of action would respectfully show the Court as follows:

**I.
DISCOVERY LEVEL**

1. Plaintiff intends to conduct discovery under Level 2 of Rule 190, Texas Rules of Civil Procedure.

**II.
PARTIES**

- 2. Plaintiff, C. Brown, is an individual who is a resident of Texas.
- 3. Defendant, the First Baptist Church of Farmers Branch (FBCFB), is a Texas nonprofit corporation whose office is at 13017 William Dodson Parkway, Dallas, Dallas County, Texas 75234. FBCFB may be served with process by serving its registered agent, Cindy L. Walker, at 13017 William Dodson Parkway, Dallas, Dallas County, Texas 75234. James A. Moore, an individual,

may be served with process at his abode, 4021 Timberidge Drive, Irving, Dallas County, Texas 75038.

**III.
VENUE**

4. A substantial part of the events giving rise to the claims occurred in Dallas County.

**IV.
FACTUAL BACKGROUND**

5. The youth and education minister at the First Baptist Church of Farmers Branch in Dallas County, Texas was formerly a man named Tommy Gilmore. At the time, Gilmore was approximately 28 or 29 years old, married, and a father. Plaintiff was a devout and deeply religious girl who was very active in the church. Beginning shortly after the Plaintiff's 16th birthday, Defendant Gilmore sexually abused and sexually assaulted the Plaintiff, a minor. The abuse and assaults were very serious in nature and they occurred frequently over approximately a seven month period of time during 1968 and 1969. They often occurred at the church and at a church-owned parsonage. They were instituted via the guise of pastoral counseling and they occurred in connection with church events. Gilmore was an agent and employee of FBCFB.

6. Plaintiff sometimes played the piano for the church. One day, she became very distraught and broke down crying at her piano lesson, which occurred in the church sanctuary. Her piano teacher was FBCFB's music minister, James A. Moore. Moore took Plaintiff into his church office to talk with her. There, Plaintiff told Moore about Gilmore's conduct.

7. A few weeks after Plaintiff talked with Moore, Gilmore left FBCFB to begin work in a ministerial position at the First Baptist Church of Tyler. FBCFB minister Glenn Hayden sent Gilmore on his way with praise from the pulpit for being a man of God, and FBCFB gave Gilmore a

**V.
NEGLIGENCE**

8. Defendant FBCFB, through its employees and deacon officers, was negligent and grossly negligent in the following respects: (a) in failing to provide a safe environment for members of the church youth group such as Plaintiff, (b) in failing to provide adequate supervision and monitoring of employee Gilmore who was allowed extensive unsupervised access to minors, (c) in failing to institute and implement policies for the protection of minors, (d) in failing to investigate allegations of inappropriate conduct, (e) in failing to report the crime against Plaintiff to law enforcement personnel, (f) in failing to treat the known abuse as a crime and in failing to recognize that Gilmore was unfit for work as a minister, (g) in failing to recognize the injury and harm done to Plaintiff, and (h) in failing to seek medical assistance and psychological intervention for evaluation and treatment of the injury done to Plaintiff. If Plaintiff had simply stepped on a nail on church property, assistance would have likely been provided. But for the far greater injury of repeated traumatic sexual abuse of a minor, FBCFB provided no assistance whatsoever.

9. Defendant FBCFB bears vicarious liability for the acts and omissions of its agents, employees and deacon officers under the theories of respondeat superior and/or apparent authority. In particular, Defendant FBCFB bears vicarious liability for the acts and omissions of music minister James A. Moore and lead minister Glenn Hayden.

**VI.
BREACH OF FIDUCIARY DUTY**

10. The ministers of FBCFB were in a position of trust with respect to the Plaintiff. In addition to being a minister of the church, Tommy Gilmore was also a counselor to the Plaintiff. He

himself initiated counseling sessions with the Plaintiff after minister Glenn Hayden had talked with Plaintiff's family about some family difficulties. Both as a minister and as a counselor, Gilmore breached his fiduciary duty and used his position of trust to sexually exploit, violate, abuse and assault the Plaintiff. Plaintiff was seriously injured thereby. Music minister James A. Moore also worked in a position of trust and he had a fiduciary duty obligation to act with candor and integrity toward Plaintiff. However, rather than acting in a manner consistent with Plaintiff's well-being, minister James A. Moore acted in a manner consistent with fellow-minister Gilmore's interests by assisting Gilmore in maintaining secrecy. Moore breached his fiduciary duty and Plaintiff was injured thereby.

VII. FRAUD

11. In order to induce Plaintiff's compliance with his sexual demands, Gilmore repeatedly represented that he had prayed about it and that he knew it was God's will. Gilmore told Plaintiff that she should not try to understand because God wanted her to live by faith. Gilmore told Plaintiff that God wanted her to be a helpmate for him. Plaintiff was a very religious and devout young girl who had been raised in the church and who had been raised to respect and trust the church's ministers. Ultimately, she relied on Gilmore's representations, and she set aside her own attempts at understanding and she acceded to his sexual demands.

12. Gilmore's representations were false; he did not have any special knowledge of God's will. Gilmore made the representations intentionally and recklessly, as positive assertions, but without any knowledge of their truth. He made the representations with the intention that the Plaintiff rely on them so that he could gain sexual access to the Plaintiff. The Plaintiff did rely on Gilmore's representations, and she was greatly injured by the fraud.

13. FBCFB bears vicarious liability for the fraud because minister Gilmore was acting in the course and scope of his ministerial employment in providing religious and spiritual counseling, advice, prayer and direction, because FBCFB allowed Gilmore to wear the mantel of the church's apparent authority, and because FBCFB ratified the fraud by reinforcing Gilmore's authority even after knowing of Gilmore's conduct. The very mantel of authority that FBCFB conferred on Gilmore as a minister is the tool of trust that Gilmore used to perpetrate the fraud.

**VIII.
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

14. Gilmore's conduct was extreme and outrageous. For a trusted minister and counselor to sexually abuse and sexually assault a naive 16-year old church girl constitutes extreme and outrageous conduct. In addition, the assaults were sometimes forced in nature. In addition, after months of such conduct, Gilmore repeatedly told the Plaintiff that she was the serpent and that she was Satan's ally. He told her that she harbored Satan, and he made her kneel in his church office while he stood praying to cast Satan from her. This conduct was also extreme and outrageous. The extreme and outrageous conduct caused severe and long-lasting emotional distress to the Plaintiff.

**IX.
SEXUAL ASSAULT AND BATTERY OF A CHILD**

15. Plaintiff was a minor. At the time this cause of action arose, the age of consent was eighteen. Minister Tommy Gilmore committed the sexual abuse, sexual assaults and sexual batteries intentionally and knowingly. He used his mantel of authority as a minister of the church to perpetrate these crimes.

X.
AIDING, ABETTING AND CONSPIRING

16. Defendant FBCFB and Defendant James A. Moore bear joint liability because they knew Gilmore's conduct was tortious and criminal, and they conspired with him for the unlawful purpose of concealing the crime. They also conspired with Gilmore to conceal the nature of Gilmore's conduct as constituting intentional torts. Defendant FBCFB and Defendant Moore assisted Gilmore in committing the fraud, the breaches of fiduciary duty and the intentional infliction of emotional distress by failing to help the Plaintiff when she sought help, by encouraging her to keep silent, by praising Gilmore from the pulpit as a man of God even after knowing of his conduct, and by allowing Gilmore to continue as a minister in a bigger church and a better-paying position. They knew of Gilmore's horrific conduct, and by reinforcing and ratifying his authority as a man of God, they assisted his conduct by allowing him to escape accountability. This is analogous to the sort of assistance that one who converts stolen goods to cash provides to a burglar. This sort of assistance gives rise to joint liability for the consequences of the tort. Defendant Moore also assisted FBCFB in its negligent and grossly negligent conduct and in its breach of fiduciary duty. He had the intent to assist FBCFB and his assistance was a substantial factor in the torts and in causing harm to Plaintiff.

IX.
DAMAGES

17. The Defendants' wrongful conduct resulted in and proximately caused injury to the Plaintiff. Plaintiff seeks recovery for the following damages: physical pain and suffering, bodily injury, severe psychological pain and suffering, and past and future emotional distress and mental anguish. Plaintiff also seeks recovery of damages for past and future medical costs and counseling expenses.

18. Plaintiff seeks unliquidated damages that are within the jurisdictional limits of the

court.

19. Plaintiff seeks exemplary damages for the harm caused by Defendants' malice, fraud and/or gross negligence. In accordance with section 41.008 of the Texas Civil Practice & Remedies Code, Plaintiff seeks the recovery of exemplary damages based on conduct that is described as a felony under section 22.011 of the Texas Penal Code.

X. LIMITATIONS TOLLING

20. The discovery rule applies because the psychological trauma of the sexual abuse, assaults and batteries made the wrong and injury that was done to Plaintiff inherently undiscoverable in nature. It was not until Plaintiff's own daughter reached the age of 16 that Plaintiff began the process of resurrecting the memories of what was done to her at that age and of understanding that it was a terrible wrong done against her as opposed to a wrong done by her. Despite the fact that Plaintiff spoke with another minister in the church about what had happened, no one assisted her in any way in understanding that a wrong had been done against her. Instead, minister Gilmore was sent on his way with praise to a better paying position at a bigger church.

21. The wrong done to Plaintiff is objectively verifiable. There were other witnesses at the time who are still alive, including at least one other minister in the church who knew about Gilmore's conduct. There has already been an objective verification in that the Baptist General Convention of Texas has made its own independent determination that sexual abuse took place.

22. Limitations is also tolled by the doctrine of fraudulent concealment. Defendants had actual knowledge of the nature of the wrongdoing and they had a fixed purpose to conceal the nature of that wrong from the Plaintiff. Minister Gilmore expressly told the Plaintiff that their relationship was "special" and condoned by God and that she should not talk about it with anyone else. Even

when Plaintiff did speak of it with another minister in the church, James A. Moore, he told her that it would be best if she did not talk about it with anyone else. And when Gilmore was ready to discard the Plaintiff, he repeatedly told her that the relationship was her fault, that she had harbored Satan, and that she was Satan's ally. Gilmore made the Plaintiff apologize to his wife and say that it was her own fault. The purpose of all this deceitful conduct was to permanently drive into Plaintiff's mind the belief that the sexual conduct was the result of her own wrongdoing, to increase Plaintiff's profound shame and thereby assure her silence, and to prevent Plaintiff from understanding the nature of the wrong against her.

23. Limitations is also tolled by Gilmore's absence from the state under section 16.063 of the Civil Practice and Remedies Code.

**XI.
DEMAND FOR JURY**

24. Plaintiff demands a jury trial.

**X.
PRAYER**

25. For these reasons, Plaintiff asks that the Defendants be cited to appear and answer and, on final trial, that Plaintiff recover judgment for the following:

1. Actual damages
2. Exemplary damages
3. Prejudgment and post-judgment interest
4. Costs of suit
5. All other relief, in law and in equity, to which the Plaintiff may be entitled.

Respectfully Submitted,

MARTIN & CUKJATI, L.L.P.

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ATTORNEYS FOR PLAINTIFF

CAUSE NO. 05-15669

FILED
2005 JUN 10 PM 12:18
JIM GONZALES
DISTRICT CLERK
DALLAS COUNTY
TEXAS
SECURITY
IN THE DISTRICT COURT
JUDICIAL DISTRICT

C. BROWN,
Plaintiff

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M-298th JUDICIAL DISTRICT

VS.

TOMMY GILMORE a/k/a
THOMAS E. GILMORE,
Defendant.

DALLAS COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES, C. Brown ("Plaintiff"), complaining of Tommy Gilmore a/k/a Thomas E. Gilmore ("Defendant"), and for cause of action would respectfully show the Court as follows:

**I.
DISCOVERY LEVEL**

1. Plaintiff intends to conduct discovery in accordance with Texas Rule of Civil Procedure 190.3 as a Level 2 case.

**II.
PARTIES**

2. Plaintiff, C. Brown, is an individual who is a resident of Texas.

3. Defendant, Tommy Gilmore, is an individual who is a nonresident of Texas whose home address is 2436 Chantilly Terrace, Oviedo, Florida 32765. He became a nonresident after the occurrences that form the basis for the causes of action stated in this petition. Defendant may be served with process by serving two copies on the Texas Secretary of State, Citations Unit, P.O. Box 12079, Austin, Texas 78711-2079, as Defendant's agent for service of process, in accordance with Tex. Civ. Prac. & Rem. Code § 17.044(a)(3).

**III.
VENUE AND JURISDICTION**

4. A substantial part of the events giving rise to the claims occurred in Dallas County.

The amount in controversy exceeds the minimum jurisdictional limit of this Court.

**IV.
FACTUAL BACKGROUND**

5. Defendant Tommy Gilmore was formerly the youth and education minister at the First Baptist Church of Farmers Branch in Dallas County, Texas. At the time, he was approximately 28 or 29 years old, married, and a father. Plaintiff was a devout and deeply religious young girl who was very active in the church. Beginning shortly after the Plaintiff's 16th birthday, Defendant Gilmore sexually abused and sexually assaulted the Plaintiff. The abuse and assaults were very serious in nature and they occurred frequently over approximately a seven month period of time during 1968 and 1969. They often occurred at the church and at a church-owned parsonage.

**V.
SEXUAL ASSAULT AND BATTERY OF A CHILD**

6. Plaintiff was a minor. At the time this cause of action arose, the age of consent was 18. Defendant committed the sexual abuse, sexual assaults and sexual batteries intentionally and knowingly.

**VI.
BREACH OF FIDUCIARY DUTY**

7. As the youth and education minister of the church, Defendant was in a position of trust with respect to the Plaintiff. In addition to being a minister, Defendant was also a counselor to the Plaintiff. The Defendant himself initiated counseling sessions with the Plaintiff after another minister in the church had talked with the Plaintiff's family about some family difficulties.

Defendant breached his fiduciary duties to the Plaintiff by using his position of trust to sexually exploit, violate, abuse and assault the Plaintiff.

VII. FRAUD

8. In order to induce Plaintiff's compliance with his sexual demands, the Defendant repeatedly represented that he had prayed about it and that he knew it was God's will. Defendant told Plaintiff that she should not try to understand because God wanted her to live by faith. Defendant told Plaintiff that God wanted her to be a helpmate for him. Plaintiff was a very religious and devout young girl who had been raised in the church and who had been raised to respect and trust the church's ministers. Ultimately, she relied on the Defendant's representations, and she set aside her own attempts at understanding and she acceded to Defendant's sexual demands.

9. The Defendant's representations were false; he did not have any special knowledge of God's will. The Defendant made the representations intentionally and recklessly, as positive assertions, but without any knowledge of their truth. The Defendant made the representations with the intention that the Plaintiff rely on them so that he could gain sexual access to the Plaintiff. The Plaintiff did rely on Defendant's representations, and she was greatly injured by the Defendant's fraud.

VIII. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

10. The Defendant's intentional and reckless conduct was extreme and outrageous. For a trusted minister and counselor to sexually abuse and sexually assault a naive 16-year old church girl constitutes extreme and outrageous conduct. In addition, the assaults were sometimes forced in nature. In addition, after months of such conduct, the Defendant repeatedly told the Plaintiff that she

was the serpent and that she was Satan's ally. He told her that she harbored Satan, and he made her kneel in his office while he stood praying to cast Satan from her. This conduct was also extreme and outrageous. The Defendant's conduct caused severe and long-lasting emotional distress to the Plaintiff.

IX. DAMAGES

11. The Defendant's egregiously wrongful conduct resulted in and proximately caused injury to the Plaintiff. Plaintiff seeks recovery for the following damages: physical pain and suffering, severe psychological pain and suffering, and past and future emotional distress and mental anguish. Plaintiff also seeks recovery of damages for past and future medical costs and counseling expenses.

12. Plaintiff seeks unliquidated damages that are within the jurisdictional limits of the court.

13. Plaintiff seeks exemplary damages for the harm caused by Defendant's malice, fraud and/or gross negligence.

X. LIMITATIONS TOLLING

14. The discovery rule applies because the psychological trauma of Defendant's abuse and assaults made the wrong and injury that was done to Plaintiff inherently undiscoverable in nature. It was not until Plaintiff's own daughter reached the age of 16 that Plaintiff began the process of resurrecting the memories of what was done to her at that age and of understanding that it was a terrible wrong done against her as opposed to a wrong done by her. Despite the fact that Plaintiff spoke with another minister in the church about what had happened, no one assisted her in any way

in understanding that a wrong had been done against her. Instead, Defendant was sent on his way with praise to a better paying position at a bigger church.

15. The wrong done to Plaintiff by Defendant is objectively verifiable. There were other witnesses at the time, including at least one other minister in the church who knew about Defendant's conduct. There has already been an objective verification in that the Baptist General Convention of Texas has made its own independent determination that the abuse took place.

16. Limitations is also tolled by the doctrine of fraudulent concealment. The Defendant had actual knowledge of the nature of his wrongdoing and he had a fixed purpose to conceal the nature of that wrong from the Plaintiff. He expressly told the Plaintiff that their relationship was "special" and condoned by God and that she should not talk about it with anyone else. And when he was ready to discard the Plaintiff, he repeatedly told her that the relationship was her fault, that she had harbored Satan, and that she was Satan's ally. The Defendant made the Plaintiff apologize to his wife and say that it was her own fault. The purpose of this deceitful conduct was to drive into Plaintiff's mind the belief that the sexual conduct was the result of her own wrongdoing, to increase Plaintiff's profound shame and assure her silence, and to prevent Plaintiff from understanding the nature of Defendant's wrong against her.

17. Limitations is also tolled by Defendant's absence from the state under section 16.063 of the Civil Practice and Remedies Code.

**XI.
DEMAND FOR JURY**

18. Plaintiff demands a jury trial.

**X.
PRAYER**

19. For these reasons, Plaintiff asks that the Defendant be cited to appear and answer and, on final trial, that Plaintiff recover judgment for the following:

- a. Actual damages
- b. Exemplary damages
- c. Prejudgment and post-judgment interest
- d. Costs of suit
- e. All other relief, in law and in equity, to which the Plaintiff may be entitled.

Respectfully Submitted,

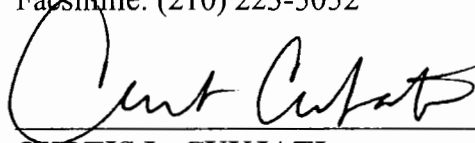
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