Docket No. 123521

IN THE ILLINOIS SUPREME COURT

JANE DOE, a minor, by her mother and next friend, JANE A. DOE, and by her father and next friend, JOHN DOE; JANE A. DOE, Individually; JOHN DOE, Individually, Plaintiffs-Appellees, v. CHAD COE, an Individual; FOX VALLEY ASSOCIATION ILLINOIS CONFERENCE OF THE UNITED CHURCH OF CHRIST, an Illinois Not-for-Profit Corporation; ILLINOIS CONFERENCE OF THE UNITED CHURCH OF CHRIST, an Illinois Not-for-Profit Corporation; THE UNITED CHURCH OF CHRIST; THE GENERAL SYNOD OF THE UNITED CHURCH OF CHRIST; THE UNITED CHURCH OF CHRIST BOARD, an Ohio Not-for-Profit Corporation, Defendants, and FIRST CONGREGATIONAL CHURCH OF DUNDEE, ILLINOIS, an Illinois Not-for-Profit Corporation, and PASTOR AARON JAMES, an Individual, Defendants-Appellants.	On Appeal From The Illinois Appellate Court, Second Judicial District Docket No. 2-17-0435 There Heard On Appeal From The Circuit Court of Kane County, Illinois No. 2015-L-216 The Honorable James R. Murphy, Judge Presiding

REPLY BRIEF OF DEFENDANTS-APPELLANTS

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REPLY BRIEF OF DEFENDANTS-APPELLANTS

ARGUMENT

Introduction

Plaintiffs acknowledge that a duty to protect another person from criminal attack arises only when the attack is reasonably foreseeable (Br., at 14). The dispute on appeal is what facts must be alleged to satisfy the requirements for pleading reasonable foreseeability and the existence of a duty based on the standard of ordinary care.

Plaintiffs argue that defendants owed a duty because (i) the attack was reasonably foreseeable and (ii) defendants had entered into one or more of the recognized "special relationships" under Illinois law (Br., at 14). Alternatively, plaintiffs argue that defendants voluntarily assumed an undertaking to protect the minor plaintiff (Br., at 14-15). Regardless of whether plaintiffs are basing the duty on a "special relationship" or a voluntary undertaking, plaintiffs did not allege as required specific facts showing that the assault/rape was reasonably foreseeable to the FCCD and James.

I. THE APPELLATE COURT ERRED IN REINSTATING THE NEGLIGENT SUPERVISION COUNTS WITHOUT REQUIRING PLAINTIFFS TO PLEAD SPECIFIC FACTS ESTABLISHING NOTICE OF COE'S UNFITNESS FOR EMPLOYMENT

A. Plaintiffs Did Not Allege Well-Pled Facts To Show That The Particular Assault Was Reasonably Foreseeable To Defendants

The appellate court reviewed plaintiffs' second amended complaint and concluded that: "[i]n all 70 pages of their complaint, plaintiffs failed to allege (1) specific misconduct that (2) was observed by FCCD's agents and (3) was of a nature that placed FCCD on notice of Coe's particular unfitness for the position of youth director." ¶ 87. Defendants agree with the appellate court's description of the state of the record. Had the appellate court applied the law to the pleadings, it would have affirmed the dismissal of the action. Without notice of Coe's particular unfitness for the position of youth director, defendants could not be held liable for negligent supervision as alleged in counts VIII and XIII or for negligent retention as alleged in counts IX and XVI (or for that matter, negligent hiring in count XII) of the second amended complaint.

Plaintiffs' 50-page brief does not even attempt to demonstrate that their second amended complaint alleged well-pled facts setting forth instances of "specific

misconduct" that put defendants on notice of Coe's propensities or particular unfitness. It is precisely because the second amended complaint is devoid of well-pled facts that plaintiffs urge that notice of Coe's particular unfitness is unnecessary to their claims for negligent supervision.

Plaintiffs rely on the Criminal Code of 2012, the Abused and Neglected Child Reporting Act (325 ILCS 5/1 *et seq*. (West 2012)) (ANCRA), the Illinois public policy of protecting children as reflected in such decisions as *Doe-3 v. McLean County Unit District No. 5*, 2012 IL 112479, 973 N.E.2d 880, and the two-adult policy in a misguided effort to show that Coe's attack was reasonably foreseeable regardless of defendants' lack of notice of Coe's particular unfitness (Br., at 17, 21-22, 33). Plaintiffs quote from or refer to that portion of the appellate opinion in which it observed that it is "*generally* foreseeable that abuse will occur in programs providing adults with unsupervised access to children, for it is well known that pedophiles are drawn to such opportunities, in churches and elsewhere" (emphasis added). Br., at 21, 26 citing ¶ 99. Every sexual assault of a minor is a crime. By plaintiffs' reasoning, every sex offense would be reasonably foreseeable simply because the Illinois General Assembly has *generally* foreseen that it could happen and enacted a law against its commission. Similarly, the violation of an internal policy against sexual harassment would make every sexual assault reasonably foreseeable to the employer who had the *general* foresight to enact the policy. Plaintiffs' argument, if accepted, would prove too much.

In this connection, plaintiffs are wrong to argue that ANCRA views predators and non-predators as equally suspect (Br., at 22). Although the two-adult policy may treat predators and non-predators alike, nothing in ANCRA adopts the two-adult policy and

makes the two coextensive. Plaintiffs are correct that ANCRA was amended to include members of the clergy as mandated reporters (325 ILCS 5/4 (West 2012)) before the adoption of the two-adult policy; however, the amendment did not require Pastor James to report every violation of the two-adult policy as a credible report of abuse. ANCRA defines an "abused child" for whom a report is to be made to include instances involving: the infliction of "physical injury"; the creation of "a substantial risk of physical injury"; the commission of a "sex offense" or "torture"; the infliction of "excessive corporal punishment"; the sale or giving away of certain controlled substances; or the "involuntary servitude" of a person under the age of 18. 325 ILCS 5/3(a)-(h) (West 2012). By plaintiffs' logic (and the appellate court's), James should have reported the three times that he saw Doe and Coe alone in Coe's office as a violation of the two-adult policy—even when plaintiffs did not allege that any "Inappropriate" contact took place between them (R.C1659-60).

Illinois public policy is found in its constitution, its legislative enactments and its judicial decisions. *Reed v. Farmers Ins. Group*, 188 Ill. 2d 168, 174-75, 720 N.E.2d 1052 (1999). In relation to the judicial branch, the General Assembly, which speaks through the passage of legislation, occupies a "superior position" in determining public policy. *Phoenix Ins. Co. v. Rosen*, 242 Ill. 2d 48, 56, 949 N.E.2d 639 (2011) (citing *Committee for Educational Rights v. Edgar*, 174 Ill. 2d 1, 29-32, 672 N.E.2d 1178 (1996)). This court has long "strictly adhered to the position that the public policy of the state is not to be determined by the varying opinions of laymen, lawyers or judges as to the demands of the interests of the public." (Internal quotation marks omitted.) *Phoenix Ins. Co.*, 242 Ill. 2d at 56 (quoting *Groome v. Freyn Engineering Co.*, 374 Ill. 113, 124, 28 N.E.2d 274

(1940), quoting *Zeigler v. Illinois Trust & Savings Bank*, 245 Ill. 180, 193, 91 N.E. 1041 (1910)). Thus, " '[w]hen the legislature has declared, by law, the public policy of the State, the judicial department must remain silent, and if a modification or change in such policy is desired the law-making department must be applied to, and not the judiciary, whose function is to declare the law but not to make it.' " *Phoenix Ins. Co.*, 242 Ill. 2d at 56 (quoting *Reed*, 188 Ill. 2d at 175 (quoting *Collins v. Metropolitan Life Ins. Co.*, 232 Ill. 37, 44, 83 N.E. 542 (1907)). According to the allegations of the second amended complaint, the two-adult policy was formulated by the United Church of Christ's general counsel and approved by the Illinois Conference of the United Church of Christ (ICUCC), acting not as legislators but in a private capacity (R.C1633). The General Assembly has not declared the two-adult policy to be the law of Illinois. The appellate court wrongly pronounced otherwise when it held that defendants had a duty to enforce the policy, "regardless of their actual or constructive knowledge of Coe's predatory potential." ¶¶ 99, 101.

To be reasonably foreseeable, the particular incident giving rise to the lawsuit must be legally foreseeable rather than generally foreseeable or logically foreseeable. *Robinson v. The Suitery, Ltd.*, 172 Ill. App. 3d 359, 363, 526 N.E.2d 566 (1st Dist. 1988) ("Logical foreseeability and legal foreseeability, however, are not always coexistent"). As one court aptly put it, " ' [e]veryone can foresee the commission of a crime virtually anywhere at any time….The question is not simply whether a criminal event is foreseeable, but whether a *duty* exists to take measures to guard against it' " (emphasis in the original). *Hill v. Charlie Club, Inc.*, 279 Ill. App. 3d 754, 759, 665 N.E.2d 321 (1st Dist. 1996) (quoting *Bence v. Crawford Sav. & Loan Ass'n*, 80 Ill. App. 3d 491, 495, 400

N.E.2d 39 (1st Dist. 1980)). No duty could arise in the first instance unless defendants had notice of Coe's particular unfitness before the attack took place.

Plaintiffs' vague and conclusory allegations regarding Coe's "Inappropriate" behavior did not put defendants on notice of his particular unfitness and give rise to a duty to prevent this particular sexual assault. Plaintiffs refer to the "2011 Confirmation Incident" (R.C1643) in which Coe allowed adolescent girls to sit on his lap and engaged in "Inappropriate bodily contact" (Br., at 19). Contrary to plaintiffs' arguments, Pastor James and the FCCD are not arguing that it was part of Coe's job to have adolescent girls sit on his lap. Rather, the point that plaintiffs continue to miss is that not every violation of the two-adult policy, even assuming for the moment that there was a violation, makes an assault/rape reasonably foreseeable. Not every violation of the policy is equally serious or predictive of future behavior, making whatever happens whenever it happens reasonably foreseeable. As previously argued in defendants' opening brief (Br., at 24-25), plaintiffs did not allege that defendants knew of the 2011 Confirmation Incident before the assault, and when plaintiffs alleged that adults complained about the 2011 Confirmation Incident, it was only during the meeting held on July 3, 2013—after Coe's arrest (R.C1662).

Far from alleging well-pled facts showing defendants' notice of Coe's particular unfitness, plaintiffs did not go beyond characterizing Coe's "bodily contact" during the 2011 Confirmation Incident and the "interaction" witnessed by the volunteer during the VBS program as "Inappropriate" (Br., at 19). Apart from these instances, the allegations appearing in paragraph 286 that "Coe's Inappropriate attentiveness, behavior, or physical contact with Jane Doe was reported to" James during late 2012 and 2013 (R.C1659) were likewise lacking in the facts necessary to establish what the conduct was, and what was

reported to James and known by him. All of the allegations describing Coe's behavior and his attentiveness as "Inappropriate" were vague, conclusory and insufficient to satisfy Illinois fact-pleading standards.

Despite multiple opportunities to plead in the trial court through the briefing of two appeals, plaintiffs have been unable or unwilling to explain why they chose to couch Coe's behavior as "Inappropriate" rather than simply plead the facts of what Coe did that defendants knew or should have known about in time to prevent the assault/rape. Plaintiffs had subpoenaed the investigative files, a protective order had been entered (R.C333-35), and they were not pleading their claims in a factual vacuum.

The cases which plaintiffs cite illustrate the deficiencies in what they alleged here. For example, in *Doe v. Dimovski,* 336 Ill. App. 3d 292, 783 N.E.2d 193 (2d Dist. 2003), cited by plaintiffs (Br., at 16, 22, 23, 24), the appellate court found a complaint alleging negligent retention sufficient to survive a motion to dismiss. *Id*. at 294. There, the complaint alleged that the school district's employee:

> …engaged in a course of inappropriate sexual harassment and abuse and made inappropriate sexual advances and statements to a female student under the age of 18 at Westmont [High School], including expressing his desire to see the student naked, requesting that she perform a strip tease for him, and following her to her place of work and her residence, where the sexual harassment, advances, innuendo, and suggestion continued. *Count V further alleges that the female student and her mother provided this information before November 1998 to…agent[s], servant[s], and employee[s] of the Board*; that neither [agent, servant and employee of the Board]…undertook a thorough investigation of this complaint, informed anybody else of this complaint, undertook measures to prohibit[the employee] from engaging in this inappropriate behavior in the future, or contacted the Department of Children and Family Services (DCFS) about this complaint; and that the Board knew or should have known that [the employee] was engaging in inappropriate sexual conduct with another female student at Westmont and the Board's failure to properly handle this information ultimately led to and precipitated the commencement of the sexual abuse of plaintiff.

Id. (emphasis added). The appellate court reasoned that "by virtue of the agents' first-hand knowledge when they were notified by the female student and her mother, the Board had constructive notice of the alleged sexual misconduct." *Id*. at 297.

Platson v. NSM, America, Inc., 322 Ill. App. 3d 138, 748 N.E.2d 1278 (2d Dist. 2001), another case cited by plaintiffs (Br., at 15, 23-24), likewise does not support their argument. There, the complaint alleged that the employer knew its employee "would rub and massage plaintiff's shoulders and intentionally brush his body against hers." *Id*. at 141 "A total of at least five supervisors and employees, including plaintiff's supervisor, witnessed the touching." *Id*. According to the allegations, it was "well known" throughout the office that the employee repeatedly sought out plaintiff, a 16-year old work study student, to touch her. *Id*. Despite the employer's knowledge of its employee's conduct, plaintiff's supervisor scheduled her to work alone with the employee, creating a setting in which the employee could assault plaintiff unobserved by a third-party. *Id*. at 141-42. On these allegations of well-pled facts, the appellate court reversed and held that the complaint stated a cause of action for negligent supervision. *Id*. at 144-45.

Plaintiffs' reliance on *Doe-3*, 2012 IL 112479 (Br., at 16-17, 23), is further misplaced. This court held that plaintiffs stated a cause of action for willful and wanton negligence when defendants misrepresented to another school district a school teacher's record which showed that administrators knew of teacher-on-student sexual harassment, abuse and/or "grooming" of minor female students. *Id*. at ¶¶ 5, 19. Although plaintiffs could not allege a special relationship (¶¶ 24-25) or a voluntary undertaking (¶ 26), defendants owed a duty to plaintiffs, who were elementary school students at the school which hired the teacher, based on defendants' misstatement of the teacher's history. ¶ 27.

Unlike this case, *Doe-3* did not involve claims of negligent hiring, supervision or retention, but even so, defendants could be held liable only for misrepresenting their actual knowledge of the teacher's misconduct.

Here, as in every case, the pleadings must contain sufficient facts to support the claim and to inform defendants of the nature, circumstances of and theory behind it. *MacDonald v. Hinton*, 361 Ill. App. 3d 378, 387, 836 N.E.2d 893 (1st Dist. 2005). Unlike *Doe* and *Platson*, plaintiffs in this case did not allege specifically what Pastor James and the FCCD saw, were told, and knew or should have known before Coe sexually assaulted Doe in late 2012 and 2013 (R.C1659). *Platson* is further distinguishable because Coe's behavior with Doe and other youth members was certainly not "well known" to other adults in view of plaintiffs' allegations that Coe's behavior took place when other adults were not present and that he stressed to Doe the need for secrecy (R.C1641-43, R.C1646). Plaintiffs allege nothing that would have put Pastor James and the FCCD on notice of Coe's particular unfitness, as plaintiffs did not even identify the "Inappropriate" behavior or interaction that defendants knew or should have known about before the assault/rape.

B. A Claim For Negligent Supervision Requires Plaintiffs To Allege Well-Pled Facts Showing Both The Opportunity And Necessity Of Exercising Supervision

Plaintiffs' reliance on *Vancura v. Katris*, 238 Ill. 2d 352, 939 N.E.2d 328 (2010), for the proposition that negligent supervision is a separate and distinct cause of action that did not require them to plead defendants' actual or constructive knowledge of Coe's particular unfitness (Br., at 34-35) is misplaced. Plaintiffs have misread this decision.

In *Vancura*, the trial court entered judgment in plaintiff's favor after a bench trial

on two different claims—one brought under the Notary Public Act and a second claim brought for common law negligent supervision and training. *Id*. at 355-56. The appellate court reversed the judgment on the statutory claim but affirmed the judgment on the common law claim. *Id*. at 356. This court affirmed in part, reversed in part, and remanded with directions to enter judgment in defendants' favor on both claims. *Id*. This court noted that plaintiffs relied "primarily on generalized assertions of negligence on the part of" the employer without alleging a "particular duty to supervise." *Id*. at 375. Ultimately, this court held that even assuming that plaintiff's allegations of general negligence in failing to discover the notary's misconduct could establish a cause of action for negligent supervision, which this court did not decide, the Act made clear the legislature's intent to require some knowledge on the employer's part as a prerequisite for imposing liability even for negligent supervision. *Id*. at 380. Plaintiffs have glossed over this language and overstated this court's holding by claiming that notice is not part of a common law claim for negligent supervision.

Plaintiffs fail in their attempts to distinguish the requirements for pleading negligent supervision outside the employment relationship from the requirements for pleading negligent supervision within the relationship (Br., at 37). Plaintiffs agree that knowledge is required outside the employment relationship as recognized in *Norskog v. Pfiel*, 197 Ill. 2d 60, 755 N.E.2d (2001), a case arising out of parental supervision of a child, but they offer no principled reason why it should not also be required within the employment relationship as is true of claims for negligent hiring and negligent retention. All plaintiffs can offer is that hiring and retention have a "temporal aspect" which they claim is absent in supervision (Br., at 36). *Mueller v. Community Consolidated School*

District 54, 287 Ill. App. 3d 337, 668 N.E.2d 660 (1st Dist. 1997), on which plaintiffs rely, did not draw this "temporal" distinction or make the "temporal aspect" outcome-determinative. There, the appellate court held that plaintiff alleged a claim for negligent supervision in addition to a claim for negligent hiring when the school failed to perform a background check or supervise a wrestling coach after hiring him, despite a statutory duty to do so. *Id.* at 343. The school was not protected by the Tort Immunity Act because the criminal background check was mandatory, not discretionary. *Id*. at 345-46. *Mueller* does not support plaintiffs' contrived distinction here. Supervision may have a "temporal aspect" as it occurs during the time period after hiring and before retention, but that alone would not support elimination of the notice that plaintiffs recognize is required for negligent hiring and negligent retention claims. It would be anomalous to require an employer's notice of unfitness before hiring but not at all times after hiring.

Finally, plaintiffs minimize the effect that the appellate court's holding would have on schools, churches, youth groups, athletic teams or other organizations by claiming that they already owe a duty based on their special relationships or voluntary undertakings (Br., at 37-38). Plaintiffs and the appellate court have lost sight of the fact that the duty arises only when the particular incident is reasonably foreseeable regardless of whether plaintiff is alleging a special relationship or a voluntary undertaking. *See e.g*., *Doe v. Goff*, 306 Ill. App. 3d 1131, 1134, 716 N.E.2d 323 (3d Dist. 1999) (referring to reasonable foreseeability as an "additional requirement"); *Hernandez v. Rapid Bus Co.*, 267 Ill. App. 3d 519, 524-25, 641 N.E.2d 886 (1st Dist. 1994) (observing that even under a voluntary undertaking, "the occurrence for which tort recovery is sought must have been reasonably foreseeable"). If this court adopts the appellate court's opinion, schools,

churches, youth groups, athletic teams and any other organization in which adults interact with children will face a far-reaching liability regardless of whether they have adopted the two-adult policy. Here, as the appellate court acknowledged, James and the FCCD could be held liable based on the most innocuous violation of the two-adult policy and without their actual or constructive knowledge of Coe's particular unfitness. ¶¶ 99, 101. Such a result would be unwise, unprecedented and contrary to Illinois public policy as reflected in the case law requiring notice of unfitness outside and within the employment relationship.

C. The Two-Adult Policy Did Not Create A Legal Duty To Protect Against A Particular Assault That Was Not Reasonably Foreseeable

This court has stated that a "narrow construction" of a voluntary undertaking is "supported by public policy." *Frye v. Medicare–Glaser Corp.*, 153 Ill. 2d 26, 33-35, 605 N.E.2d 557 (1992). Under the two-adult policy, defendants did not assume a duty greater than that owed at common law to protect Doe against reasonably foreseeable assaults. Plaintiffs point to nothing in the two-adult policy that guaranteed her safety from any assault regardless of whether it was legally unforeseeable.

Plaintiffs misread *Hernandez*, which they cite in support of their voluntary undertaking theory (Br., at 27-28). *Hernandez* actually supports defendants. *Hernandez* recognizes that "even under circumstances that might arguably give rise to the application of section 324A, *the occurrence for which tort recovery is sought must have been reasonably foreseeable*" (emphasis added). *Id.* at 525. Nowhere did plaintiffs allege specific facts suggesting that their programs and the abuse-prevention policies included a voluntary undertaking by James and the FCCD to protect members of the youth group

from harm that was not reasonably foreseeable. By proceeding on a voluntary undertaking theory, plaintiffs could not avoid having to allege well-pled facts establishing the reasonable foreseeability of the assault/rape. The trial court's dismissal of counts VIII and XIII should be affirmed.

II. THE APPELLATE COURT ERRED IN REINSTATING THE NEGLIGENT HIRING COUNT AGAINST FCCD WHEN PLAINTIFFS DID NOT PLEAD FACTS SHOWING THAT FCCD KNEW OR SHOULD HAVE KNOWN THAT COE HAD A PARTICULAR UNFITNESS FOR EMPLOYMENT AS DIRECTOR OF YOUTH MINISTRIES

Plaintiffs are wrong to state that the appellate court here "correctly held that FCC is liable for harm resulting from the negligent hiring of Coe" (Br., at 38). The appellate court did not rule on the merits of the negligent-hiring claim, nor could it do so at the pleading stage. The appellate court did nothing more than assume the truth of the allegations without acting as finder of fact. ¶ 72.

Plaintiffs argue that their claim proceeds on two propositions—(1) that a person who habitually engages in consuming child pornography is unfit to serve as youth director; and (2) that consuming child pornography violates any church policy (Br., at 39). Defendants agree with both propositions but those propositions are not the issue here; rather, the issue is whether plaintiffs alleged facts to establish Coe's particular unfitness before he was hired in May 2009.

Plaintiffs alleged that a "cursory" Google search in May 2009 would have revealed Coe's online history of visiting child pornography sites (Br., at 41). Although reasonable inferences can be drawn at the pleading stage, the allegations themselves must be plausible. It is implausible that the websites a person visits online could be readily discovered by a "basic, cursory" Google search of the person's name. Certainly nothing

that plaintiffs alleged about Coe's sexual proclivities demonstrates that a "basic, cursory" Google search would lead to his user name and online history. Even though plaintiffs insist that Coe's online history could be easily discovered, plaintiffs did not identify in any pleading what websites Coe visited before he was hired in May 2009. If Coe's online history were as easily discovered by a "basic, Google" search as plaintiffs led the appellate court to believe, plaintiffs presumably would have been able to name the websites in their pleadings. Today, a "basic, Google" search of which this court can take judicial notice for "Chad Coe" leads to recent news stories about his criminal prosecution, conviction, seven-year sentence and the appellate opinion below, but unsurprisingly not to any website Coe allegedly visited before or after he was hired. Information acquired from mainstream Internet sites is sufficiently reliable to be the subject of judicial notice. *Kopnick v. JL Woode Management Co., LLC*, 2017 IL App (1st) 152054, ¶ 26, 76 N.E.3d 105.

The absence of anything suspicious in Coe's background that could have been verified before he was hired as youth director distinguishes this case from other cases where liability has been found. *See, e.g., Malorney v. B&L Motor Freight, Inc.*, 146 Ill. App. 3d 265, 267, 496 N.E.2d 1086 (1st Dist. 1986). Plaintiffs did not allege that when Coe was hired, he had a criminal history, had sexually assaulted minors, had prior relationships with them or engaged in other conduct that made him a danger to children, let alone that the FCCD should have known about a criminal history, his relationships or other similarly dangerous conduct before he was hired. As plaintiffs did not name a website that could have been discovered in May 2009 through a "basic, Google" search of "Chad Coe" and his user name, plaintiffs did not allege facts showing that Coe's

particular unfitness could have been discovered before he was hired. The trial court's dismissal of count XII should be affirmed.

III. THE APPELLATE COURT DID NOT COMMIT ANY ERROR IN DISMISSING PLAINTIFFS' NEGLIGENT RETENTION COUNT WHEN PLAINTIFFS DID NOT PLEAD FACTS SHOWING THAT FCCD HAD ACTUAL OR CONSTRUCTIVE KNOWLEDGE OF COE'S PARTICULAR UNFITNESS

As for their claim for negligent retention, unlike their claims for negligent supervision, plaintiffs agree that they had to allege well-pled facts showing notice, but they complain that the lower courts wrongly required them to plead "detailed evidence" (Br., at 43) or "evidentiary facts" of notice (Br., at 45). Nothing could be further from the truth. One of the cases cited by plaintiffs, *Doe v. Dimovski*, 336 Ill. App. 3d 292, discussed above (at 7-8), is a good example of what facts plaintiffs should have pled to support them claim for negligent retention. There, the appellate court held that plaintiff stated a cause of action for negligent retention when the count alleged the nature of the sexual misconduct and that it had been reported to agents and employees of the school board before a certain date. *Id*. at 294. Here, by contrast, plaintiffs never alleged what Coe's misconduct was other than to call it "Inappropriate" throughout the pleadings.

Plaintiffs argue that many of the facts regarding who saw what, when and where are within defendants' knowledge (Br., at 45). Their argument is flatly at odds with their allegations that Coe's behavior took place when other adults were not present and that he stressed to Doe the need for secrecy (R.C1641-43, R.C1646). Plaintiffs were in possession of the DCFS report which contained the complete interview that investigators had with Pastor James, as one of their counsel stated on the record during a hearing held on May 12, 2016 (R.P14-15). The minor plaintiff certainly knew what the "interaction"

was that she had with Coe at the VBS program in June 2013. Plaintiffs had materials obtained through discovery from the Kane County State's Attorney Office's criminal file for Coe early in the litigation as reflected in the protective order that the trial court entered on September 15, 2015 (R.C333-35). If plaintiffs did not have these materials, there would have been no reason for the trial court to enter the protective order.

Plaintiffs' brief is fifty pages long; their second amended complaint was well over 500 paragraphs, even excluding the paragraphs that were previously stricken (R.C1626-95). If plaintiffs had specific facts to allege on the issue of notice, pursuant to section 2-603 of the Code of Civil Procedure (735 ILCS 5/2-603 (West 2013)), they could have filed a plain and concise statement of the particulars establishing the notice. Instead, plaintiffs repeatedly alleged that Coe engaged in "Inappropriate" contact with Doe and with other members of the Youth Group without further stating what the "Inappropriate" behavior was and what about it made the assault/rape reasonably foreseeable in time for Pastor James and the FCCD to prevent it. As it stands, no matter how many times allegations of Coe's "Inappropriate" contact or behavior are repeated, they do not meet the fact-pleading requirements for stating a cause of action.

IV. THE APPELLATE COURT PROPERLY UPHELD THE TRIAL COURT'S RULING STRIKING POST-ASSAULT ALLEGATIONS THAT DID NOT SHOW THAT THE ASSAULT WAS REASONABLY FORESEEABLE

Prior to plaintiffs' filing of the second amended complaint, Pastor James and the FCCD filed a separate motion to strike certain paragraphs of the amended complaint that in conclusory fashion alleged that they "knew or should have known" of Coe's wrongful acts, and that other paragraphs concerning events after Doe's assault/rape were immaterial to the issue of their knowledge (R.C840-42). After briefing (R.C1062-73,

R.C1164-70), the trial court granted this motion and ordered stricken certain allegations of the amended complaint on grounds that they were conclusory as to what James and FCCD "knew or should have known" about Coe's "grooming" and "inappropriate" behavior and as to certain events that took place after Doe's assault/rape (R.C1393; R.P185, R.P187-89).

The appellate court noted on appeal that plaintiffs challenged only that portion of the order that struck their post-assault/rape allegations as supporting their allegations that James and the FCCD acted willfully and wantonly. ¶¶ 56-57. The appellate court rejected plaintiffs' arguments and affirmed the trial court's ruling striking the post-assault/rape allegations because they did not show willful and wantonness "*prior* to the rape" (emphasis in the original). ¶ 58.

On appeal to this court, plaintiffs seek reversal of the "blanket" striking of allegations relating to the post-assault/rape allegations of the amended complaint to the extent they are "relevant" to plaintiffs' claim for punitive damages (Br., at 48). Plaintiffs purportedly identify these allegations as paragraphs 1-3, 23-35, 48-54, 74-83, 168-203, 208-24, 243, 304-45 of the amended complaint without discussing the specifics of these allegations and demonstrating how they support a claim of willful and wanton negligence (Br., at 48). By failing to develop any further argument on these stricken paragraphs, plaintiffs have waived review of that portion of the trial court's order striking these allegations and that portion of the appellate court's opinion affirming the trial court's ruling. ¶¶ 56-58. *Sobczak v. General Motors, Corp*., 373 Ill. App. 3d 910, 924, 871 N.E.2d 82 (1st Dist. 2007) ("a conclusory and undeveloped argument does not meet the requirements" of Rule 341 and results in waiver of the argument).

Without explaining how, plaintiffs summarily claim that all of these paragraphs related to: (i) a lack of understanding by Pastor James and the FCCD regarding abuse-prevention training, policies and procedures or (ii) helped establish that they were "already aware" of Coe's "Inappropriate conduct" with the minor plaintiff (Br., at 50). The basis of the trial court's ruling which the appellate court affirmed was not that plaintiffs failed to allege sufficient facts relating to defendants' understanding of training, internal policies and procedures, but rather that plaintiffs did not adequately allege facts to show that Pastor James and the FCCD had actual or constructive knowledge of Coe's unfitness and the opportunity to prevent the assault/rape.

Unlike the other paragraphs plaintiffs set forth above, paragraphs 208-24 and 304-45 referred to events that took place after the assault/rape—the messages that Doe shared with her friend, Sally; the confrontation between Sally's father and Coe; the Costa Rica trip that began on June 22, 2013; Doe's conversations with her mother between June 28, 2013 and July 1, 2013; the DCFS investigation and Coe's arrest on July 3, 2013; the meetings held at FCC Dundee on July 3, 2013 and August 25, 2013; and Coe's second arrest on December 18, 2013 (R.C784-85, R.C796-800). As the appellate court properly determined (¶ 58), these allegations were not material to whether Pastor James and the FCCD had notice of Coe's unfitness in time to prevent the assault/rape before it happened on June 14, 2013. Plaintiffs do not show how they do. None of the allegations set forth specific facts showing that Pastor James and the FCCD knew or should have known of Coe's particular unfitness and the reasonable foreseeability of the assault/rape before it took place. Those portions of the appellate opinion (¶¶ 56-58) and the trial court ruling (R.C1393) striking the post-assault/rape allegations should be affirmed.

CONCLUSION

For all of the reasons set forth in this reply brief, the additional brief and the petition for leave to appeal, defendants-appellants, First Congregational Church of Dundee, Illinois, and Pastor Aaron James, respectfully request that this Court reverse in part and affirm in part the opinion and judgment of the Illinois Appellate Court, Second Judicial District, filed on March 30, 2018, and reinstate in its entirety the dismissal order of the Circuit Court of Kane County entered on May 11, 2017.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this reply brief conforms to the requirements of Rules 341(a) and (b) of the Supreme Court Rules. The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities and the Rule 341(c) certificate of compliance, is 19 pages.

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Docket No. 123521

IN THE ILLINOIS SUPREME COURT

JANE DOE, a minor, by her mother and next friend, JANE A. DOE, and by her father and next friend, JOHN DOE; JANE A. DOE, Individually; JOHN DOE, Individually, Plaintiffs-Appellees, v. CHAD COE, an Individual; FOX VALLEY ASSOCIATION ILLINOIS CONFERENCE OF THE UNITED CHURCH OF CHRIST, an Illinois Not-for-Profit Corporation; ILLINOIS CONFERENCE OF THE UNITED CHURCH OF CHRIST, an Illinois Not-for-Profit Corporation; THE UNITED CHURCH OF CHRIST; THE GENERAL SYNOD OF THE UNITED CHURCH OF CHRIST; THE UNITED CHURCH OF CHRIST BOARD, an Ohio Not-for-Profit Corporation, Defendants, and FIRST CONGREGATIONAL CHURCH OF DUNDEE, ILLINOIS, an Illinois Not-for-Profit Corporation, and PASTOR AARON JAMES, an Individual, Defendants-Appellants.	On Appeal From The Illinois Appellate Court, Second Judicial District Docket No. 2-17-0435 There Heard On Appeal From The Circuit Court of Kane County, Illinois No. 2015-L-216 The Honorable James R. Murphy, Judge Presiding

NOTICE OF FILING

TO: See attached Service List

PLEASE BE ADVISED that on this 19th day of December, 2018, we caused to be electronically filed with the Clerk of the Illinois Supreme Court, the attached reply brief of defendants-appellants, a copy of which, along with this notice of filing with affidavit of service, is herewith served upon all attorneys of record.

Respectfully submitted,

By: /s/ Michael Resis
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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

AFFIDAVIT OF SERVICE

I, Jacqueline Y. Smith, a non-attorney, on oath state that I served this notice via electronic mail to the attorneys listed on the attached Service List at their email address prior to 5:00 p.m. on December 19, 2018.

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

/s/ Jacqueline Y. Smith
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