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Bankruptcy judge to hear victim test cases in Milwaukee

Marie Rohde | Feb. 22, 2013
Milwaukee

A handful of the sexual abuse survivors who filed claims against the Milwaukee archdiocese in federal bankruptcy court will go to trial as test cases to determine how many of the 574 who say they were assaulted are eligible for damages. To date, lawyers for the archdiocese have challenged more than 400 of the claims, saying they should be dismissed.

The decision came in a hearing that was the latest development in the 25-month bankruptcy case and occurred as the archdiocese warned it would run out of money to fully fund its operations by April.

In addition to the dispute over which victims would be eligible for damages, the church has become embroiled in an argument with lawyers for the claimants who say the church is hiding millions of dollars from the court.

In relation to the bankruptcy, Cardinal Timothy Dolan of New York, the former archbishop of Milwaukee, underwent a three-hour deposition Wednesday in New York. A judge could decide as early as April 4 a request made by lawyers for the claimants that his testimony be made public as well as earlier depositions of retired Archbishop Rembert Weakland and Auxiliary Bishop Richard Sklba.

Susan V. Kelley*, the bankruptcy judge hearing the case, told lawyers during a hearing Thursday that all the challenges to victims' claims could not be heard in court. She told lawyers for the archdiocese to pick two cases as representative of each of several groups of claimants. The victims and the claims they made will go to trial in her court as part of the bankruptcy.

Jeffrey Anderson, a Minnesota lawyer who has long represented many of the abuse survivors, told a group of his clients after the hearing that "it doesn't mean that all the cases are going to be thrown out" if the test cases are tossed. His associate, Michael Finnegan, said about 10 cases would go to trial.

James Stang, a bankruptcy lawyer representing the committee of those who filed claims, said in court he had a similar role representing victims in Oregon and Delaware church bankruptcy proceedings and had not faced anywhere near the number of challenges to claims elsewhere. He said he had run checks on every claim in connection with all the cases he has handled, including Milwaukee, "to see if people were scamming the system." Out of the thousands of claims, he said he found only a few.

Frank LoCoco, the lead lawyer representing the archdiocese, said the issues in Milwaukee are not like those elsewhere. The question is not so much whether the abuse occurred but whether the statute of limitations and other legal issues prevent the cases from proceeding unchallenged.

"There is no dispute that the abuse happened, that it was awful," LoCoco said. "In a court of law, we talk about justice, not charity."

At the same hearing, the judge reversed an earlier decision she made that would have allowed a victim who had

settled a claim for a relatively small amount of money through mediation to receive additional damages through the bankruptcy.

"You could appeal (the decision)," Kelley said to the claimant's lawyers. "That is a very compelling story that you have to tell. I'm not saying that the man was not abused. There was no question that the man was abused."

Kelley did not give details of the man's case, but a number of deaf children who were allegedly abused at a archdiocesan boarding school by Fr. Lawrence Murphy have made bankruptcy claims despite settlements. The abuse and the church's handling of the case made international headlines when Cardinal Joseph Ratzinger, now Pope Benedict XVI, was linked to the decision not to defrock Murphy.

In an unusual move, Kelley also approved a request by the archdiocese that they be allowed to honor financial agreements made with other victims through a mediation program. She said the church could pay $92,000 to victims -- a maximum of $17,000 but averaging $11,500 -- as part of settlements that are not a part of the bankruptcy. She approved similar requests earlier and each time noted that if the archdiocese becomes administratively insolvent, the victims will have to repay the awards.

Stang objected, saying it could put victims in the position of having to sue other victims to achieve an equitable distribution of the assets. Kelley agreed, saying, "I think it would be extremely horrible."

Stang said of Kelley's decision: "It's very painful. It puts us in a difficult position. We could have to make the terrible choice of having to recover from a victim."

Meanwhile, the archdiocese said it is nearly broke because it is required under bankruptcy law to pay legal fees for the claimants and costs associated with the proceeding that reportedly already exceed $9 million, not including payments to its own lawyers. The situation is so dire that the church asserts it will not be able to meet its operating expenses beginning in April. LoCoco said he would have a financial plan for how the archdiocese would deal with the claims within 60 days. When questioned by the judge, he stopped short of promising a plan would be ready.

Stang questioned why the archdiocese had not sold or even marketed an array of property, such as a suburban Franklin parcel once intended to be developed as a cemetery. It's valued at $4.4 million.

"We've been here two years," Stang said. "When are you going to do that?"

LoCoco responded that some of the properties "are not in good neighborhoods." The judge interjected, noting a property in suburban New Berlin: "Is that not a good neighborhood?"

LoCoco said the church has been working with realtors but does not want to sell at fire sale prices. He said the church had been trying to sell the Cousins Center, a complex on a 44-acre site that houses the archdiocesan offices.

"In a different market, it would sell very quickly," LoCoco said, adding that archdiocesan officials had been in a discussion that morning with the Milwaukee Bucks, the professional basketball team that leases the Cousins Center gym for its practice sessions.

It would not be the first time that the Cousins Center figured into a legal settlement over sexual abuse. In 2006, the archdiocese agreed to pay $17 million to settle a California lawsuit with 10 victims of two Milwaukee priests who were relocated there after Milwaukee church officials learned of their sexual misconduct with minors. Of the $17 million, insurance companies paid $8.75 million of the tab and the archdiocese announced it would sell the Cousins Center to pay a large part of the debt.

Later, as part of the bankruptcy in Milwaukee, the archdiocese claimed it had never owned the property. Instead, it has been listed on financial statements since 2004 as being owned by the De Sales Preparatory Seminary Inc., the separate entity that had operated a now-defunct high school at that location. The archdiocese told the *Milwaukee Journal Sentinel* that it pays about $650,000 a year in upkeep but does not pay rent on the property.

Around the same time, then-Archbishop Dolan transferred $55 million to a trust fund to oversee the care of eight cemeteries the archdiocese owns. Another $74 million was moved into a restricted fund for parishes. While Kelley said "arguably there was something 'fishy' about the transfer" of the parish funds, the claimants could not sue to recover the money.

The question of the cemetery funds is still being debated in court. Stang is asking for an assessment of "what it will really cost to maintain the cemeteries."

Officials have said the transfers were appropriate. Dolan is now the cardinal archbishop of New York.

While the Milwaukee archdiocese had faced a bevy of lawsuits over sexual assault allegations, a pair of cases decided by the Wisconsin Supreme Court in the mid-1990s found that the church was immune from lawsuits over the negligent supervision of priests involved in sexual abuse. In 2007, a door to victim lawsuits opened a bit when the high court ruled that the church could be sued in the sex abuse cases for fraud.

In January 2011, the archdiocese became the eighth in the country to file for bankruptcy protection, just weeks after the announced failure of mediation to settle a number of cases that were pending in state court.

While state courts dismissed insurance companies from cases that were pending at the time the bankruptcy was filed, the issue is unresolved in bankruptcy court.

Stang noted at the hearing that lawyers for claimants only recently learned of the existence of insurance policies issued by Lloyd's of London and Stonewall Insurance. Kelley agreed that determining if those policies cover any of the claims must be a priority.

Peter Isely, a spokesman for the Survivors Network of those Abused by Priests, issued a press release after the hearing, saying in part: "It was learned today that it appears that archdiocesan lawyers had struck a deal under the table with insurance companies so that, if all other court costs cease, their legal fees to fight victim's cases would continue to be compensated. In fact, it appears lawyers for the archdiocese have already received significant legal payments by the insurance companies.

"Archbishop Jerome Listecki of Milwaukee, since filing for bankruptcy, has made little or no effort to pursue insurance coverage for victims," the statement continued, "even though Catholics have been paying insurance for years. Why? Because now we know archdiocesan lawyers are being paid by proxy to represent, absurdly, both the insurance carriers as well as the archdiocese. Kelley did not rule on this and other matters related to legal fees today but is expected to do so soon."

**An earlier version of this story misspelled the judge's last name.*

[Marie Rohde is a freelance journalist in Milwaukee.]

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