

ENDORSED

IN THE FIRST JUDICIAL DISTRICT COURT
STATE OF NEW MEXICO
COUNTY OF SANTA FE

AUG 03 1995

NO. SF-95-1741 (a)

FIRST JUDICIAL DISTRICT COURT
SANTA FE, RIO ARRIBA &
LOS ALAMOS COUNTIES
P.O. Box 2268
Santa Fe, NM 87504-2268

ALONZO MALONE,

Plaintiff,

against

ST. MICHAEL'S COLLEGE, a New Mexico
corporation, ESTATE OF BROTHER ABDON,
and NOSF, INC. a Louisiana Corporation,

Defendants.

COMPLAINT FOR SEXUAL ABUSE AND RELATED CLAIMS

COMES NOW the Plaintiff, by and through his undersigned counsel, and for his Complaint For Sexual Abuse and Related Claims against the Defendants, states as follows:

1. Plaintiff, Alonzo Malone at all times material hereto was a resident of Santa Fe County, State of New Mexico, and currently resides in Albuquerque, Bernalillo County, State of New Mexico. Plaintiff was a minor child at the time the events material hereto occurred.
2. Defendant St. Michael's College is a New Mexico corporation, (hereinafter "St. Michael's"), and was at all times material hereto authorized to do business and is doing business in Santa Fe County, New Mexico. St. Michael's now owns and operates, and at all material times herein has owned and operated and has control over St. Michael's School. The Christian Brothers is an order of priests which assigns its Brothers to St. Michael's as teachers and counselors. The Christian Brothers and St. Michael's College supervises all its Brothers and their activities.

3. Defendant, NOSF Inc. ("NOSF") is a Louisiana corporation, previously named Brothers of the Christian School of Lafayette, Louisiana, Inc., is and was at all times material hereto authorized to do business and doing business in Lafayette, Louisiana. NOSF assigns its Brothers to and is in charge of various schools in its provence which includes St. Michael's High School in Santa Fe. NOSF supervises and directs the actions of the Christian Brothers that oversee St. Michael's High School.

4. Brother Abdon (hereinafter "Abdon) is deceased. At all times material hereto, Abdon was a resident of Santa Fe County, New Mexico, and a Brother and teacher at St. Michael's. His estate is listed as a Defendant.

5. In his official capacities as a Brother and teacher at St. Michael's, Abdon came into contact with Plaintiff and Plaintiff's family.

6. Plaintiff was raised by his mother in a devoutly Roman Catholic family whose members were baptized, confirmed and regularly celebrated weekly Mass, receiving the holy sacraments through the Roman Catholic Church. Plaintiff had been taught by the Church to dispense with logic, and to believe and rely upon the teachings of the Church in an act of faith. As such, Plaintiff developed great admiration and respect for and obedience to Roman Catholic Brothers. Plaintiff attended St. Michaels when Abdon, was a Brother and teacher at St. Michaels.

7. Plaintiff's mother believed that St. Michaels, run by priests of the order of Christian Brothers and NOSF, would be a

positive influence on her son's development and felt that his welfare would be provided for by the Christian Brothers.

8. Plaintiff's mother entrusted her child's physical, emotional and spiritual welfare to St. Michael's and NOSF when she enrolled her son in St. Michaels, having no idea that Brother Abdon had the type of psycho-sexual problems complained of herein.

9. At the material times herein Abdon was a member and Brother of the Christian Brothers Order and NOSF, employed by said organizations as a teacher and counselor of the young men attending St. Michaels. Abdon was under the direct supervision and control of St. Michael's and NOSF.

10. Abdon took advantage of his access to Plaintiff and Plaintiff's respect, reverence and admiration for his teachers, the Catholic Church and its clergy, by independently performing non-consensual sex acts on Plaintiff. Upon information and belief, St. Michael's and NOSF were aware of, or should have known that Abdon was abusing Plaintiff and others. Upon information and belief, St. Michael's and NOSF were aware, or should have known, that Abdon was a pedophile and knew, or should have known, what Abdon was doing to Plaintiff and others, yet did nothing to protect Plaintiff and others from Abdon's sexual and psychological abuse and allowed him to continue to associate with young men.

11. On, about and/or following Abdon's sexual abuse of Plaintiff, St. Michael's and NOSF knew, or should have known, that Abdon had sexually and psychologically abused Plaintiff, yet St. Michael's and NOSF failed to take any steps to mitigate Plaintiff's

damages through the provision of therapeutic or psychological assistance and treatment or otherwise and instead supervised and/or participated in a cover-up of Abdon's deviant and unlawful activities and/or failed to ascertain that Plaintiff was a victim of Abdon's sexual and psychological abuse so that emotional and psychological treatment could be provided to Plaintiff and his family.

12. As a direct result of the aforesaid conduct by Defendants, Plaintiff has suffered, and will continue to suffer, severe emotional distress, embarrassment, humiliation and loss of self-esteem. Plaintiff was prevented, and will continue to be prevented, from performing his normal daily activities and obtaining the full enjoyment of life, has sustained loss of earnings and earning capacity, has incurred and/or will incur expenses for medical and psychological treatment, therapy and counseling, and has incurred and will continue to incur other related damages.

CAUSE OF ACTION

COUNT I

(Battery/Estate of Abdon/St. Michael's and NOSF)

13. Plaintiff re-alleges paragraphs 1 through 12 hereinabove in full.

14. In performing his duties as a Brother and teacher, Abdon was under a duty to touch and relate to Plaintiff only in those ways that reasonable Catholic Brothers and teachers would believe,

under all the circumstances, had been consented to, and was legal and spiritually appropriate. The conduct of Abdon, as set forth hereinabove, constituted breaches of the aforesaid duty and batteries by Abdon upon Plaintiff, which batteries included rape and sexual and psychological assault and abuse and other unlawful contact with Plaintiff, which proximately caused Plaintiff to suffer the above-referenced damages.

15. The conduct of Abdon as set forth hereinabove, occurred while he was employed by St. Michael's and NOSF, acting within the course and scope of his employment. St. Michael's and NOSF are, therefore, responsible for the injuries to Plaintiff proximately resulting from the aforesaid conduct by Abdon.

WHEREFORE, on Count I, Plaintiff prays for damages from the Estate of Abdon, St. Michael's and NOSF in an appropriate amount together with prejudgment interest, post-judgment interest, costs and such further relief as the Court deems proper.

COUNT II
(*Negligent Failure to Warn/St. Michael's and NOSF*)

16. Plaintiff re-alleges paragraphs 1 through 15 hereinabove in full.

17. At all times material hereto, St. Michael's and NOSF, knew of Abdon's aberrant behaviors, and knew that they had a duty to warn the students of St. Michael's School that they were likely to be subjected to Abdon and his aberrant sexual propensities. St. Michael's and NSOF failed to issue said warnings.

18. The negligent conduct of St. Michael's and NOSF, as set forth hereinabove, constituted a breach of the aforesaid duty, which breach proximately caused Plaintiff to suffer the above-referenced damages.

WHEREFORE, on Count II, Plaintiff prays for damages from St. Michael's and NOSF in an appropriate amount together with pre-judgment interest, post-judgment interest, costs and such further relief as the court deems proper.

COUNT III
(*Negligent and Intentional Infliction of Emotional Distress/St. Michael's, NOSF, and Estate of Abdon*)

19. Plaintiff re-alleges paragraphs 1 through 18 hereinabove in full.

20. The foregoing conduct by Abdon, St. Michael's and NOSF constitutes negligent and/or intentional infliction of emotional distress upon Plaintiff, and caused Plaintiff to suffer the foregoing damages.

21. The conduct of Abdon occurred while he was employed by St. Michael's and NOSF acting within the course and scope of his employment. St. Michael's and NOSF are, therefore, responsible for the injuries to Plaintiff proximately resulting from the aforesaid conduct by Abdon.

22. Moreover, the actions and inactions of St. Michael's and NOSF, as set forth hereinabove, constitute a separate and independent basis for concluding that St. Michael's and NOSF

negligently and/or intentionally inflicted emotional distress upon Plaintiff and caused Plaintiff to suffer the foregoing damages.

WHEREFORE, on Count III, Plaintiff prays for damages from the Estate of Abdon, Michael's and NOSF in an appropriate amount, together with prejudgment interest, post-judgment interest, costs, and such further relief as the Court deems proper.

COUNT IV
(*Negligent Hiring, Placement and Supervision/
St. Michael's and NOSF*)

23. Plaintiff re-alleges paragraphs 1 through 22 hereinabove in full.

24. At all times material hereto, and when they first sexually abused and sexually exploited Plaintiff, Abdon was under the supervision, employ and control of St. Michael's and NOSF.

25. St. Michael's and NOSF, their agents and employees, knew, or should have known, of Abdon's sexual proclivities, propensities, and unlawful actions. Despite such actual knowledge, St. Michael's and NOSF employed Abdon in a position wherein their unlawful conduct was repeated upon Plaintiff. St. Michael's and NOSF further failed to provide reasonable supervision of Abdon.

26. As a direct result of the negligent hiring, placement and failure to supervise Abdon by St. Michael's and NOSF, Plaintiff has suffered the aforesaid injuries.

WHEREFORE, on Count IV, Plaintiff prays for damages from St. Michael's and NOSF in an appropriate amount, together with prejudgment interest, post-judgment interest, costs and such further relief as the Court deems proper.

COUNT V
(Fraud/St. Michael's and NOSF)

27. Plaintiff realleges paragraphs 1 through 26 hereinabove in full.

28. By holding Abdon out to the public as trustworthy Brothers, teachers and counselors, despite knowledge to the contrary, St. Michael's and NOSF fraudulently intended to and did induce Plaintiff to remain in and financially support St. Michael's.

29. Plaintiff relied on said conduct by St. Michael's and NOSF, treating Abdon with respect and obedience, thereby becoming subjected to Abdon's unlawful behavior and the aforesaid damages.

30. Moreover, St. Michael's and NOSF, defrauded Plaintiff of his right to pursue redress for damages by covering up Abdon's deviant propensities, by failing to disclose the wrongfulness of these propensities to Plaintiff or to his mother, by failing to secure psychological treatment for Plaintiff.

31. The aforesaid fraudulent conduct by Defendants St. Michael's and NOSF has caused Plaintiff to suffer the aforesaid damages.

WHEREFORE, on Count V, Plaintiff prays for damages from St. Michael's and NOSF in an appropriate amount, together with prejudgment interest, post-judgment interest, costs and such further relief as the Court deems proper.

COUNT VI

(Negligent Entrustment/St. Michael's and NOSF)

32. Plaintiff re-alleges paragraphs 1 through 33 hereinabove in full.

33. St. Michael's and NOSF are religious organizations which were responsible for, among other things, the physical and spiritual well-being of the children who were students at St. Michael's. St. Michael's and NOSF were entrusted with the care, psychological welfare, and physical safety of these children, one of whom was Plaintiff.

34. St. Michael's and NOSF violated this duty of care to Plaintiff by negligently entrusting Plaintiff with Abdon, a known child molester, who sexually and emotionally abused Plaintiff while Plaintiff was entrusted to his care.

35. Said negligent entrustment has caused Plaintiff to suffer the aforesaid damages.

WHEREFORE, on Count VI, Plaintiff prays for damages from St. Michael's and NOSF in an appropriate amount together with prejudgment interest, post-judgment interest, costs and such further relief as the Court deems proper.

COUNT VII

(Duty To Control/St. Michael's and NOSF)

36. Plaintiff re-alleges paragraphs 1 through 35 hereinabove in full.

37. The foregoing conduct by St. Michael's and NOSF constitutes a breach of the duty to control an individual with a

dangerous propensity, as a result of which Plaintiff has suffered the damages described hereinabove.

WHEREFORE, on Count VII, Plaintiff prays for actual damages from St. Michael's and NOSF in an appropriate amount, together with prejudgment and post-judgment interest, costs, together with punitive damages upon a finding that aforesaid conduct was willful, intentional, grossly negligent, and such further relief as the Court deems proper.

COUNT VIII
(Negligence/St. Michael's and NOSF)

38. Plaintiff re-alleges paragraphs 1 through 37 hereinabove in full.

39. Upon information and belief, St. Michael's and NOSF knew of Abdon's dangerous and exploitative propensities, his history as a molester of student children, and his unfitness and incompetence to serve as a teacher and counselor. Despite such knowledge, St. Michael's and NOSF negligently and recklessly sponsored Abdon for a position of trust and authority as a teacher and counselor where he was able to commit wrongful and negligent acts against Plaintiff as described herein. St. Michael's and NOSF negligently and recklessly failed to remove Abdon's faculties to operate as a Catholic teacher and counselor; negligently and recklessly failed to report Abdon's sexual molestation of the children to law enforcement authorities; negligently and recklessly failed to institute other pertinent proceedings against Abdon; negligently and recklessly continued to hold Abdon out and allow Abdon to hold himself out to Plaintiff and others as a fit and competent Roman

Catholic Brother, teacher and counselor; recklessly employed Abdon and then negligently and recklessly assisted Abdon in suppressing public knowledge of Abdon's prior history of sexual molestation of students, and negligently and recklessly failed to provide warning to Plaintiff or his family.

40. As a direct result of the aforesaid conduct by St. Michael's and NOSF, Plaintiff has suffered the injuries stated above.

WHEREFORE, on Count VIII, Plaintiff prays for actual damages from St. Michael's and NOSF in an appropriate amount, together with prejudgment and post-judgment interest, costs, together with punitive damages upon a finding that aforesaid conduct was willful, intentional, grossly negligent, and such further relief as the Court deems proper.

COUNT IX
(Punitive Damages/Estate of Abdon,
St. Michael's and NOSF)

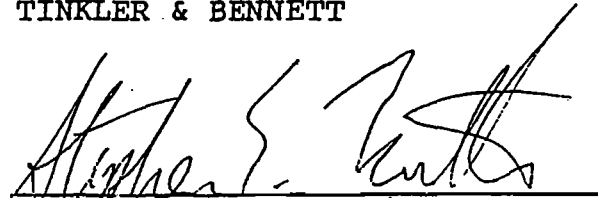
41. Plaintiff re-alleges paragraphs 1 through 40 hereinabove in full.

42. The above-referenced conduct of the Defendants, and each of them, was willful, intentional, reckless and grossly negligent thereby entitling Plaintiff to recover punitive damages from the Defendants, and each of them, for the purpose of punishing these Defendants and to set an example for society which will deter others from the commission of like offenses.

WHEREFORE, on Count IX, Plaintiff prays for punitive damages from the Estate Abdon, St. Michael's and NOSF in an appropriate amount, together with prejudgment interest, post-judgment interest, costs, and such further relief as the Court deems proper.

Respectfully submitted,

TINKLER & BENNETT

A handwritten signature in black ink, appearing to read "Stephen E. Tinkler", is written over a horizontal line.

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ATTORNEYS FOR PLAINTIFF