STATE OF MAINE
AROOSTOOK, ss.

SUPERIOR COURT
CIVIL ACTION
NO. CARSC-CV-25-05

Shannon Simendinger,

Plaintiff

v.

Fort Kent Congregation of Jehovah's Witnesses, Maine

and

Watchtower Bible and Tract Society of New York, Inc.,

Defendants

ORDER ON DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

This matter is before the court on Defendants' Motion for Summary Judgment as to all counts of Plaintiffs' Complaint. The Motion is granted in part and denied in part for the following reasons.

BACKGROUND

The court draws the following facts from the parties' properly supported statements of material facts, which are deemed admitted by M.R. Civ. P. 56(e), (h).

Watchtower Bible and Tract Society of New York, Inc. ("Watchtower"), is a 501(c)(3) corporation organized under the laws of the State of New York. Defs.' S.M.F. ¶ 1. Congregations of Jehovah's Witnesses meet in houses of worship called Kingdom Halls. Defs.' S.M.F. ¶ 2. Watchtower has no local offices in Maine, and it has never owned or operated any Kingdom Hall or congregation of Jehovah's Witnesses in Maine. Defs.' S.M.F. ¶ 3.

Each congregation of Jehovah's Witnesses is overseen by a "body of elders," which is a group of men who each meet the criteria for being an elder as set forth in the Holy Scriptures. Defs.' S.M.F. ¶ 6. Elders are unpaid volunteers. Defs.' S.M.F. ¶ 7.

At all relevant times in this case, Watchtower supported the faith of Jehovah's Witnesses by printing Bible-based literature; providing legal assistance and communicating spiritual guidance to elders on an as-needed basis; arranging for a volunteer minister, known as a circuit overseer, to visit each congregation twice a year; acknowledging appointments of elders and ministerial servants on Watchtower letterhead or with a stamp; securing facilities for large annual gatherings known as District Conventions; and owning housing and offices in New York for use by members of the Jehovah's Witness faith. Defs.' S.M.F. ¶ 8.

The parties dispute the issue of Watchtower's control over local congregations such as the Fort Kent Congregation of Jehovah's Witnesses, Maine (the "Congregation") named as a defendant in this case. Defendants contend – and Plaintiff disagrees – that these congregations are their own separate entities from Watchtower and that at all relevant times in present case, Watchtower did not supervise the day-to-day activities of the Congregation. Defs.' S.M.F. ¶¶ 4-5; Pl.'s Opp'n S.M.F. ¶¶ 4-5. Plaintiff alleges that Watchtower plays a significant oversight role, frequently communicating with and directing elders on a number of matters. *See, e.g.*, Pl.'s S.A.M.F. ¶¶ 35-42.

Watchtower issues written guidelines and policies directing local congregations on topics such as prevention and reporting of child sexual abuse, but neither Watchtower nor the Congregation had any written policies or procedures from 1984 to 1993 for investigating, documenting, responding to, or reporting actual or alleged sexual abuse of a child by any employee or agent of the congregation or for training employees, volunteers, or agents in the prevention of child sexual abuse. Pl.'s S.A.M.F. ¶¶ 53, 126-27. Prior to the late 1990s, Watchtower directed elders to keep reports of child sexual abuse confidential among elders and address the issue through a judicial committee of the congregation. Pl.'s S.A.M.F. ¶ 57.

Plaintiff Shannon Simendinger ("Simendinger") moved to Frenchville, Maine, when she was four years old in approximately 1983. Defs.' S.M.F. ¶ 13. Simendinger's parents were Jehovah's Witnesses and joined the Congregation upon the family's arrival to Maine. Defs.' S.M.F. ¶ 14. Simendinger and her family attended every Fort Kent Kingdom Hall meeting on Tuesdays, Thursdays and Sundays. Defs.' S.M.F. ¶ 15. They also participated in field service every Saturday, which involved knocking on people's doors, telling them about the faith, and attempting to convert them to the faith. Defs.' S.M.F. ¶ 16. When Simendinger and the other congregants participated in the field service, they met at the Fort Kent Kingdom Hall in the morning, and, before departing, they were divided into groups by an elder or ministerial servant, or, if neither were available, the next available male in the Congregation. Defs.' S.M.F. ¶ 17; Pl.'s Opp'n S.M.F. ¶ 17.

As a child, Simendinger often participated in field service with members of the Congregation other than her parents. Pl.'s S.A.M.F. ¶¶ 81-83. It was considered a "privilege" for Simendinger to go on field service with elders because they had superior knowledge of the Bible and were taking her "under their wings." Pl.'s S.A.M.F. ¶ 86. While her father generally did not let her go anywhere alone, he had no misgivings about letting her go on field service with other adults in the Congregation without her parents. Pl.'s S.A.M.F. ¶¶ 85, 98. The parties dispute whether she was ever alone on field service trips with the individuals she alleges sexually abused her. Defs.' Opp'n S.A.M.F. ¶ 83.

Simendinger claims that she was sexually abused by David Ezzy and Ernest Fyans from approximately 1985 to 1993. Defs.' S.M.F. ¶ 18. Simendinger alleges that she was sexually abused by Daniel Plourde from approximately 1990 to 1993. Defs.' S.M.F. ¶ 19. She describes Ezzy, Fyans, and Plourde abusing her at the Congregation and in their respective residences, including during breaks from field service; Plourde abusing her at his home during bible study sessions; and Fyans abusing her during large gatherings at the Fort Kent Kingdom Hall. Defs.' S.M.F. ¶¶ 20-22, Pl.'s S.A.M.F. ¶¶ 88-92. Defendants deny that this abuse occurred. Defs.' Opp'n S.A.M.F. ¶¶ 88-92. Simendinger moved out of Maine at the end of 1992 or in 1993, ending the alleged abuse by terminating Ezzy's, Fyans's, and Plourde's physical access to her. Defs.' S.M.F. ¶ 23.

Ezzy was a member of the Congregation in the late 1980s to early 1990s, Fyans was a member from sometime in 1980 to the early 1990s, and Plourde became a Jehovah's Witness in 1981 and was a member of the Congregation until 2019. Defs.' S.M.F. ¶¶ 24-25; Pl.'s Opp'n S.M.F. ¶ 24. Ezzy served as an elder from 1989 to 1992. Defs.' S.M.F. ¶ 26. Plourde never served as an elder and the parties dispute whether Fyans ever served as an elder of the Congregation. Defs.' S.M.F. ¶ 27; Pl.'s Opp'n S.M.F. ¶ 27.

Simendinger never told anyone at the Congregation that Ezzy, Plourde, or Fyans had abused her. Defs.' S.M.F. ¶ 28. She said that she was too intimidated to report the sexual abuse by Ezzy, Plourde and Fyans based on the response of presiding elder Richard Marquis at a 1989 Kingdom Hall meeting after she reported different instances of alleged abuse by her stepbrother and his friend. Pl.'s S.A.M.F. ¶¶ 120, 113. Ezzy was also present at that meeting and looked at Simendinger in a way that frightened and intimidated her. S.A.M.F. ¶ 117. The Congregation was first alerted to the allegations of sexual misconduct against Fyans in 2020 as part of a criminal investigation. Defs.' S.M.F. ¶ 29. The Congregation first learned of allegations of sexual misconduct by Plourde and Ezzy when it was served with this lawsuit. Defs.' S.M.F. ¶ 30.

However, Joseph Michaud, a ministerial servant or member of the Congregation who went on to become an elder, was put on notice by elder Richard Marquis, the presiding overseer of the Congregation during at least the 1990s, that Fyans had been accused of sexually assaulting Fyans' daughters. Pl.'s S.A.M.F. ¶¶ 106, 112; Defs.' Opp'n S.A.M.F. ¶ 112. On another occasion, after Marquis and Ezzy became aware of allegations that Simendinger's father sexually abused her, they decided to "keep [their] ears open to see if [they] heard any more. Pl.'s S.A.M.F. ¶ 70. The Congregation ultimately disfellowshipped

Plaintiff's father after several judicial committee hearings about his drinking and stealing from an employer. Pl.'s S.A.M.F. ¶ 97. Additionally, Watchtower and the Congregation's presiding overseer had actual knowledge that Ezzy had "habits of cross-dressing as a woman and masturbation" since at least July 1991 that were "considered problematic" by Watchtower and the Congregation's elders. Pl.'s S.A.M.F. ¶ 101.[1] Another time when Simendinger's father told an elder that his stepson had sexually assaulted his daughters, elder Marquis told him not to go to the police because the matter would be dealt with "within the congregation." Pl.'s S.A.M.F. ¶ 58.

The parties dispute whether Simendinger told Watchtower of the abuse prior to commencing legal action and when Watchtower first learned of the allegations of sexual abuse perpetrated by Fyans, Plourde, and Ezzy. While Defendants maintain that Simendinger never told Watchtower of the allegations, Simendinger asserts that she wrote letters to Watchtower reporting her abuse and also made multiple telephone calls to the service desk at Watchtower, first when she was eighteen or nineteen years old, and again in the 2002-2004 timeframe. Defs.' S.M.F. ¶ 28; Pl.'s Opp'n S.M.F. ¶ 28. According to Defendants, Watchtower first became aware of misconduct by Fyans in October 1996 through communications by another congregation in Massachusetts and first learned of

[1] Defendants admit this assertion but object to its admissibility under Maine Rules of Evidence 401 and 403, arguing that it is not relevant to whether Ezzy sexually assaulted a minor, and, even if it were relevant, it is unfairly prejudicial. Defs.' Opp'n S.A.M.F. ¶ 101. The court finds no basis to exclude this fact from the summary judgment record and has insufficient information at this preliminary stage to determine its admissibility at trial. *See State v. Patterson*, 651 A.2d 362, 367 (Me. 1994) (cautioning "trial courts to refrain from making Rule 403 determinations prior to trial").

allegations against Ezzy and Plourde in 2024 when it received a claim letter from Simendinger's counsel. Defs.' S.M.F. ¶¶ 31-32. Simendinger contends, on the other hand, that she made multiple calls to the Watchtower service desk to tell them of her "serious trauma" as a result of the abuse and named at least Fyans as a perpetrator. Pl.'s Opp'n ¶¶ 31-32.

Plaintiff initiated this action against Defendants seeking to hold the entities liable for the sexual assaults of Plaintiff by the three individuals, which are alleged to have occurred in the late 1980s and early 1990s when Plaintiff was a minor. Plaintiff asserts the following claims:

1. Sexual Assault/Respondeat Superior;
2. Breach of Fiduciary Duty;
3. Negligence;
4. Negligent Supervision;
5. Reckless Infliction of Emotional Distress;
6. Negligent Infliction of Emotional Distress; and
7. Punitive Damages.[2]

STANDARD OF REVIEW

The summary judgment record consists only of the parties' properly supported statements of material fact and the portions of the record referenced therein. *See Dorsey v. N. Light Health*, 2022 ME 62, ¶ 10, 288 A.3d 386. Summary judgment is appropriate "if the summary judgment record, taken in the light most favorable to the nonmoving party, demonstrates that there is no genuine issue of material fact in dispute and the moving party would be entitled

[2] As punitive damages are a remedy rather than a separate cause of action, the court does not address Count 7 independently. *See Gary v. Stanford Management, LLC*, 2024 ME 46, ¶ 1 n.2, 319 A.3d 1022. As a result of the order herein, the summary judgment granted in favor of Watchtower concludes its involvement in this case.

to a judgment as a matter of law at trial." *Chartier v. Farm Fam. Life Ins. Co.*, 2015 ME 29, ¶ 6, 113 A.3d 234; *see* M.R. Civ. P. 56(c). "A material fact is one that can affect the outcome of the case, and there is a 'genuine issue' when there is sufficient evidence for a fact-finder to choose between competing versions of the fact." *Toto v. Knowles*, 2021 ME 51, ¶ 8, 261 A.3d 233 (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8, 13 A.3d 773).

When the defendant moves for summary judgment, "[s]he must establish that there is no genuine dispute of fact and that the undisputed facts would entitle h[er] to judgment as a matter of law. It then becomes the plaintiff's burden to make out the prima facie case and demonstrate that there are disputed facts." *Toto*, 2021 ME 51, ¶ 9, 261 A.3d 233 (citation modified) (quoting *Est. of Cabatit v. Canders*, 2014 ME 133, ¶ 8, 105 A.3d 439). The plaintiff must present a prima facie case for each challenged element of plaintiff's claim. *See Boivin v. Somatex, Inc.*, 2022 ME 44, ¶ 10, 279 A.3d 393.

"When a motion for summary judgment is made and supported as provided in [M.R. Civ. P. 56], an adverse party may not rest upon the mere allegations or denials of that party's pleading, but must respond by affidavits or as otherwise provided in this rule, setting forth specific facts showing that there is a genuine issue for trial." M. R. Civ. P. 56(e). "If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party." *Id.*

DISCUSSION

A. SEXUAL ASSAULT/RESPONDEAT SUPERIOR

Plaintiff seeks to hold Defendants vicariously liable for her alleged sexual abuse by Ezzy, Fyans, and Plourde. As noted by Defendants, "[a]lthough Count 1 is styled as "Sexual Abuse/Respondeat Superior," [Plaintiff's] allegations invoke a broader vicarious liability claim based on both respondeat superior and apparent authority. *See* Defs.' Mot. Summ. J. 5. A principal may be vicariously liable to a third party harmed by an agent's conduct if the agent (1) "is an employee who commits a tort while acting within the scope of employment" or (2) "commits a tort when acting with apparent authority in dealing with a third party on or purportedly on behalf of the principal." Restatement (Third) of Agency § 7.03(2) (2006).

1. Respondeat Superior

"Under the doctrine of respondeat superior, liability for tortious acts of a servant may be imputed to the master, and the acts of an agent may be imputed to the principal." *DiCentes v. Michaud*, 1998 ME 227, ¶ 11, 719 A.2d 509. Accordingly, an employer may be vicariously liable for the tortious conduct of its employee if the employee's conduct falls within the scope of employment. *Mahar v. StoneWood Transp.*, 2003 ME 63, ¶¶ 13–14, 823 A.2d 540. Section 7.07 of the Restatement (Third) of Agency provides a standard for determining whether an employee is acting within the scope of employment:

> (2) An employee acts within the scope of employment when performing work assigned by the employer or engaging in a course of conduct subject to the employer's control. An employee's act is not within the scope of

employment when it occurs within an independent course of conduct not intended by the employee to serve any purpose of the employer.

(3) For purposes of this section,
(a) an employee is an agent whose principal controls or has the right to control the manner and means of the agent's performance of work, and
(b) the fact that work is performed gratuitously does not relieve the principal of liability.

Picher v. Roman Cath. Bishop of Portland, 2009 ME 67, ¶ 32, 974 A.2d 286 (quoting Restatement (Third) of Agency § 7.07 (2006)).

The Law Court has emphasized that two general inquiries about employee conduct form the basis for a claim of vicarious liability on the part of an employer:

1. Does the employee conduct at issue consist of "performing work assigned by the employer or engaging in a course of conduct subject to the employer's control"?

2. Does the employee conduct at issue consist of "an independent course of conduct not intended by the employee to serve any purpose of the employer"?

Vargas v. Riverbend Mgmt. LLC, 2024 ME 27, ¶ 27, 314 A.3d 241; *see* Restatement (Third) Of Agency § 7.07(2). "If the employee's conduct does not involve performing work or some other activity subject to the employer's control, it is not within the scope of employment and cannot support a vicarious-liability claim." *Vargas*, 2024 ME 27, ¶ 28, 314 A.3d 241. The court may consider whether the character and extreme nature of the employee's conduct suggest it can be for no other purpose than the employee's own. *Id.* ¶ 29.

In the present case, there is no record evidence that Ezzy, Fyans, or Plourde were employees or agents of Watchtower. As to their relationship to the

Congregation, although there is no evidence of an employment relationship, there is evidence that as congregation members, they were at times agents of the Congregation. Moreover, the fact that Jehovah's Witness elders are volunteers is immaterial, because "the fact that work is performed gratuitously does not relieve a principal of liability." Restatement (Third) of Torts § 7.07(3)(b).

Nonetheless, the alleged abuse by Ezzy, Fyans, and Plourde formed an independent course of conduct outside of Defendants' control and thus cannot support a claim that Defendants are vicariously liable under the doctrine of respondeat superior. *See Vargas*, 2024 ME 27, ¶ 30, 314 A.3d 241 ("[I]ntentional misconduct that is distinct from an employee's actions in performing assigned work . . . is not a risk that an employer can effectively control and its occurrence may be related causally to employment no more than to other relationships and circumstances in an errant employee's life more generally"). Plaintiff has failed to put forth sufficient facts to support a claim that the actions of Ezzy, Fyans, and Plourde at issue in this case were within the scope of any employment relationship with Defendants.

2. *Apparent Authority*

Plaintiff's contention that the misconduct of Ezzy, Fyans, and Plourde was carried out with Defendants' actual or apparent authority is also unpersuasive. The Law Court analyzed vicarious liability for tortious acts of an agent in *Gniadek v. Camp Sunshine at Sebago Lake, Inc.*, noting:

> The Restatement (Third) of Agency § 7.08 (2006) specifically addresses tortious liability for acts of agents cloaked with apparent authority. That section states:

> "A principal is subject to vicarious liability for a tort committed by an agent in dealing or communicating with a third party on or purportedly on behalf of the principal when actions taken by the agent with apparent authority constitute the tort or enable the agent to conceal its commission."

2011 ME 11, ¶ 34, 11 A.3d 308 (quoting Restatement (Third) of Agency § 7.08). The commentary explains that section 7.08 applies to torts such as "fraudulent and negligent misrepresentation, defamation, tortious institution of legal proceedings, and conversion of property obtained by an agent purportedly at the principal's direction." § 7.08 cmt. a. In the commission of these torts, there must be a "close link between an agent's tortious conduct and the agent's apparent authority" in order for the principal to be liable. *Id.* cmt. b. "Thus, a principal is not subject to liability when actions that an agent takes with apparent authority, although connected in some way to the agent's tortious conduct, do not themselves constitute the tort or enable the agent to mask its commission." *Id.* The doctrine does not "encompass assaultive and threatening conduct by an employee who did not purport to act on [their] employer's behalf." *Gniadek*, 2011 ME 11, ¶ 35, 11 A.3d 308.

Here, there is no record evidence to support any contention that either Defendant authorized Ezzy, Fyans, or Plourde to engage in sexual abuse. Defendants are thus entitled to summary judgment on Count 1 of Plaintiff's Complaint.

B. BREACH OF FIDUCIARY DUTY, NEGLIGENCE, and NEGLIGENT SUPERVISION

Counts 2, 3, and 4 of Plaintiff's Complaint for Breach of Fiduciary Duty, Negligence, and Negligent Supervision all have a common element that must be shown: A relationship sufficient to create a duty on the part of Defendants to protect Plaintiff from harm by third parties. *See Meridian Med. Sys., LLC v. Epix Therapeutics, Inc.*, 2021 ME 24, ¶ 12, 250 A.3d 122 ("Under Maine common law, the elements of a breach of fiduciary claim are (1) a fiduciary relationship between the plaintiff and another person, (2) a breach of the other person's fiduciary duty toward the plaintiff, and (3) damages incurred by the plaintiff proximately caused by the breach"); *Jackson v. Tedd-Lait Post No. 75, Am. Legion*, 1999 ME 26, ¶ 8, 723 A.2d 1220 (In cases involving negligence in the form of inaction or nonfeasance, "absent a special relationship, the law imposes no duty to act affirmatively to protect someone from danger unless the dangerous situation was created by the defendant"); *Bell ex rel. Bell v. Dawson*, 2013 ME 108, ¶ 19, 82 A.3d 827 ("The tort of negligent supervision first requires that the defendant owe a duty of supervision to the plaintiff . . . [that] arises from a special relationship, such as a custodial relationship, between the parties"). Plaintiff must therefore show a special relationship between her and Defendants as a threshold matter for Counts 2, 3, and 4.

The Law Court has "recognized that those fiduciary relationships in which there exists a 'great disparity of position and influence between the parties' would qualify as a 'special relation'" for the purposes of a negligent supervision claim. *Dragomir v. Spring Harbor Hosp.*, 2009 ME 51, ¶ 19, 970 A.2d 310 (quoting *Fortin v. Roman Cath. Bishop of Portland*, 2005 ME 57, ¶¶ 34, 37, 871 A.2d 1208). In such a claim, the "factual foundations of an alleged fiduciary relationship must be pled with specificity." *Bryan R. v. Watchtower Bible & Tract Soc. of New York*, *Inc.*, 1999 ME 144, ¶ 21, 738 A.2d 839. Another such "special relationship" would be a custodial relationship, which "exists between 'those who are required by law to take physical custody of another or who voluntarily do so, such as to deprive the other of their normal opportunities for protection.'" *Gniadek*, 2011 ME 11, ¶ 24, 11 A.3d 308 (quoting *Drogomir*, 2009 ME 51, ¶ 18, 970 A.2d 310). The court will analyze each such relation on the facts of this case.

1. *Special Fiduciary Relationship*

The elements of a fiduciary relationship are "(1) the actual placing of trust and confidence in fact by one party in another, and (2) a great disparity of position and influence between the parties at issue." *Bryan R.*, 1999 ME 144, ¶ 19, 738 A.2d 839.

First, there certainly existed a great disparity of position and influence between the Congregation and Plaintiff when she was a minor, stemming from her age alone as well as the leadership structure of the Congregation. Similar to the plaintiff in *Fortin v. Roman Cath. Bishop of Portland*, who the Law Court concluded had a fiduciary relationship with the church, Simendinger was "subject to the supervision, control, and authority of the [Congregation] on a daily basis. At its very core, this is a relationship marked by the 'great disparity of position and influence between the parties' that is a hallmark of a fiduciary relationship." 2005 ME 57, ¶ 34, 871 A.2d 1208 (quoting *Morris v. Resolution Trust Corp.*, 622 A.2d 708, 712 (Me. 1993)). The *Fortin* Court further emphasized that "[a]n established and close connection between a child and an organization, whether religious, academic, or otherwise, is a reasonable basis, informed by both common sense and common experience, to impose a duty on the organization to prevent harm to the child." *Fortin*, 2005 ME 57, ¶ 37, 871 A.2d 1208.

As to the second element, Plaintiff provides prima facie evidence that in placing her trust and confidence in Plourde, Fyans, and Ezzy during special activities like bible study at their homes and field service, she thereby also placed her trust in the Congregation that afforded these individuals their roles as elders or unofficial church leaders. While her father generally did not let her go anywhere alone, he had no misgivings about letting her go on field service with other adults in the Congregation without her parents. In charging Plourde, Fyans, and Ezzy with Simendinger's religious training, education, and supervision when she was a child, the Congregation had knowledge and sponsorship of their relationship with Plaintiff. *See Fortin*, 2005 ME 57, ¶¶ 31-33, 871 A.2d 1208 (holding that "plaintiff's assertion of a particularized involvement in the activities of the church as both a parochial school student and an altar boy distinguishes his status from that of a general member of the Diocese").

Plaintiff's placement of trust in the Congregation is further underscored by the role of the Congregation's elders and judicial committees in handling sexual assault allegations. When elders Marquis and Ezzy learned of allegations that Simendinger's father was sexually abusing her, they decided to "keep [their] ears open to see if [they] heard any more." On another occasion, Elder Marquis told Simendinger's father not to report to police that his stepson had allegedly sexually assaulted Simendinger, because the matter would be dealt with internally.

There is also evidence that the Congregation knew of Plaintiff's family issues, including her father's alcohol use that caused him to ultimately be disfellowshipped. In an analogous case, the Law Court found that parents' illness heightened the church's responsibility for supervision of their child and contributed to the finding of a fiduciary relationship between the child and the church entity. *See Fortin*, 2005 ME 57, ¶ 31, 871 A.2d 1208 (explaining that "defendants knew that the parents of [plaintiff] . . . suffered from illness that limited to some degree their involvement in raising their son. The defendants were trusted with a special relationship in terms of the religious training and education of [plaintiff]. Defendants violated said special relationship and trust"). The actions of the leadership in the Congregation likewise can be seen to demonstrate a heightened role in the welfare and safety of Simendinger when she was a minor.

While the Law Court has declined to recognize a general duty on the part of a church entity to protect members from each other, *Bryan R.*, 1999 ME 144, ¶ 17, 738 A.2d 839, Plaintiff here alleges with sufficient particularity a special fiduciary relationship with the Congregation distinguishable from that of any other member of the Congregation by nature of her position as a child in troubled family circumstances who entrusted her well-being and rigorous religious education to its care. *Compare Gniadek,* 2011 ME 11, ¶ 22, 11 A.3d 308 (concluding that plaintiff's relationship with a summer camp "was indistinguishable from that of other campers") and *Bryan R.*, 1999 ME 144, ¶ 22, 738 A.2d 839 (holding that "[t]he allegation that [plaintiff] placed 'substantial trust and confidence' in the elders of the church and trusted them 'to protect him and guide him' does not set forth the factual foundations for a special responsibility on the part of the church") *with Fortin*, 2005 ME 57, ¶¶ 31-39, 871 A.2d 1208 (finding a fiduciary relationship existed between plaintiff and the church when the Diocese had known the plaintiff's parents were ill and therefore limited in their ability to raise him and had been specially entrusted with plaintiff's religious training and education on a daily basis through his involvement with the church as a parochial school student and altar boy).

Plaintiff has failed to allege with sufficient particularity a special fiduciary relationship with Watchtower. Plaintiff's connection to Watchtower was tenuous at best and there is no evidence of placement of her trust and confidence in Watchtower.

2. *Special Custodial Relationship*

A custodial relationship giving rise to a duty "exists between 'those who are required by law to take physical custody of another or who voluntarily do so, such as to deprive the other of their normal opportunities for protection.'" *Gniadek*, 2011 ME 11, ¶ 24, 11 A.3d 308 (quoting *Drogomir*, 2009 ME 51, ¶ 18, 970 A.2d 310). The Law Court has clarified that "[t]he scope of the duty arising from a custodial relationship is circumscribed by temporal and geographic limitations. A duty exists only where the special relationship is intact and the risk of harm, or further harm, arises in the course of that relation." *Id.* ¶ 25.

In the present case, while Defendants deny that Plourde, Ezzy, and Fyans sexually abused Plaintiff, Simendinger claims she was sexually abused by Plourde at his residence when her father brought her there for bible studies, by Fyans during field service trips, and by Ezzy at his home and in the men's bathroom of the Congregation. There is a dispute of material fact as to whether Simendinger was ever alone during field service with the individuals who allegedly abused her, but Simendinger's father indicated that he had no qualms about allowing her on field service with other adults in the Congregation without her parents.

Plaintiff does not allege that Watchtower, as opposed to Ezzy, Fyans, or Plourde, took physical custody of her during the relevant period. However, the allegations do appear to be sufficient to establish that the Congregation voluntarily took physical custody of her, through its agents, during activities that it sanctioned, thereby depriving her of the protection normally provided by a child's parents. *See Bell ex rel. Bell*, 2013 ME 108, ¶ 19, 82 A.3d 827. Because the alleged instances of abuse occurred on church property or in the course of church-sponsored activities like bible study and field service, the special custodial relationship was intact and created a duty on the party of Congregation to protect Plaintiff from further harm. *See Gniadek*, 2011 ME 11, ¶ 25, 11 A.3d 308.

3. Foreseeable Risk of Harm[3]

The next inquiry is whether Plaintiff has established that the Congregation knew or should have known of the risk posed by Ezzy, Fyans, or Plourde during the relevant period. In *Fortin*, the Law Court explained this additional inquiry in the context of fiduciary duties:

> Such a relationship gives rise to a duty to protect on the part of the Diocese *if* the Diocese has reason to believe that a priest . . . poses a substantial risk of harm to a child in [plaintiff's) circumstances. The duty does not exist simply because of [plaintiff's] status as a student and alter boy, but because of the added assertion that the Diocese *knew or should have known* of the risk of harm posed by the priest who abused [him].

Fortin, 2005 ME 57, ¶ 38, 871 A.2d 1208 (emphasis added).

Although Simendinger never told anyone at the Congregation that Ezzy, Plourde, or Fyans abused her, there is evidence in the record to support a finding that the Congregation knew or should have known about the risks posed specifically by Ezzy and Fyans. This is because Joseph Michaud, a ministerial servant or member of the Congregation who went on to become an elder, was put on notice by presiding overseer and elder Richard Marquis that Fyans had been

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[3] As there has been an insufficient showing of a special relationship between Plaintiff and Watchtower, the court need not address the issue of foreseeability as it applies to the national entity. The court does, however, make the following observations.

The parties dispute whether Simendinger told the national entity of the abuse prior to commencing legal action. It is not clear from the record when exactly Watchtower first learned of the allegations of sexual abuse perpetrated by Fyans, Plourde, and Ezzy. While Defendants maintain that Simendinger never told Watchtower of the allegations, Simendinger asserts that she wrote letters to Watchtower reporting her abuse and also made multiple telephone calls to the service desk at Watchtower. The earliest possible time Plaintiff alleges she informed Watchtower of the abuse by Ezzy, Fyans, or Plourde is when she was eighteen or nineteen, which would have been 1997 or 1998. She alleges that the abuse occurred between 1985 and 1993. Thus, all knowledge or information related to the misconduct was only brought to Watchtower's attention many years after the alleged abuse had come to an end.

accused of sexually assaulting Fyans' daughters. Pl.'s S.A.M.F. ¶¶ 106, 112; Defs.' Opp'n S.A.M.F. ¶ 112.

There is sufficient evidence that the Congregation had knowledge that at least Fyans had been accused of sexually abusing children, from which they could reasonably view Fyans as posing a danger to Plaintiff, a minor who was heavily involved in church-sponsored activities and programs. While the parties dispute whether Fyans was in fact or held himself out to be an elder, he can be seen to have been acting as agent of the Congregation when participating in church-sponsored programs. The Congregation knew or should have known of his participation and therefore that he had occasion to interact with Plaintiff.

In addition to finding support in the record for the existence of special fiduciary and custodial relationships between Simendinger and the Congregation, the court further observes that substantial risk of harm to Plaintiff should have been foreseeable to the Congregation given what it knew about Fyans. From this knowledge a duty arose to protect Simendinger.

4. *Remaining Elements of Breach of Fiduciary Duty, Negligence, and Negligent Supervision Claims*

Plaintiff puts forth sufficient facts to establish the threshold requirement for Counts 2, 3, and 4 of her Complaint: A special relationship between Plaintiff and the Congregation and foreseeable risk of harm posed by Fyans sufficient to create a duty on the part of the Congregation to protect Simendinger. Accordingly, the court briefly considers the remaining requirements for Plaintiff's breach of fiduciary duty, negligence, and negligent supervision claims.

"[T]he elements of a breach of fiduciary claim are (1) a fiduciary relationship between the plaintiff and another person, (2) a breach of the other person's fiduciary duty toward the plaintiff, and (3) damages incurred by the plaintiff proximately caused by the breach." *Meridian Med. Sys., LLC v. Epix Therapeutics, Inc.*, 2021 ME 24, ¶ 12, 250 A.3d 122. Having shown a fiduciary relationship with the Congregation, Plaintiff also establishes facts to adequately show a corresponding breach of fiduciary duty, that is, the Congregation failed to protect her from reasonably foreseeable harm, as well as damages resulting from the alleged sexual abuse.

Turning to the negligence count, courts have evolved from early common law to recognize causes of action for nonfeasance or inaction. *Bryan R.*, 1999 ME 144, ¶ 13, 738 A.2d 839. In such cases, the law will impose a duty to act affirmatively to protect someone from harm provided that a special relationship exists between the parties or the dangerous situation was created by the defendant. *Id.* ¶ 14. Here, Plaintiff offers evidence to support her contention that the Congregation both had a common law duty to protect Plaintiff from harm as a result of the parties' requisite special relationship and failed to act affirmatively to honor Plaintiff's right to protection in the course of her participation in church-sponsored programming. *See id.* Beyond "keep[ing] [their] ears open to see if [they] heard any more" after learning of separate allegations of abuse inflicted on Simendinger by her own family, the record shows no evidence that the Congregation and its elders ever took any action to protect her from the alleged sexual abuse at issue in this case.

Finally, as to negligent supervision, "if a plaintiff asserts the existence of facts that, if proven, establish a special relationship with a defendant in accordance with section 315(b) of the Restatement (Second) of Torts, an action may be maintained against the defendant for negligent supervision liability in accordance with section 317 of the Restatement." *Fortin*, 2005 ME 57, ¶ 39, 871 A.2d 1208. Section 317 of the Restatement states the following:

> A master is under a duty to exercise reasonable care so to control his servant while acting outside the scope of his employment as to prevent him from intentionally harming others or from so conducting himself as to create an unreasonable risk of bodily harm to them, if
> (a) the servant
>> (i) is upon the premises in possession of the master or upon which the servant is privileged to enter only as his servant, or
>> (ii) is using a chattel of the master, and
>
> (b) the master
>> (i) knows or has reason to know that he has the ability to control his servant, and
>> (ii) knows or should know of the necessity and opportunity for exercising such control.

Restatement (Second) of Torts § 317 (1965).

Here, Plaintiff asserts a prima facie case that the Congregation was under a duty to exercise reasonable care to control Fyans, Plourde, and Ezzy to prevent them from intentionally abusing Simendinger when these individuals were on church premises perpetrating sexual abuse. As explained above, the Congregation knew or had reason to know that it had the ability to control church leaders operating as its agents and knew that at least Fyans posed a risk to children based on prior allegations of abuse such that control was necessary.

Overall, viewing in the light most favorable to Plaintiff, *Chartier*, 2015 ME 29, ¶ 6, 113 A.3d 234, Simendinger adequately alleges evidence of the existence of a special relationship – fiduciary and at times, custodial – between Plaintiff and the Congregation that created a duty on the part of the Congregation to protect Plaintiff from the harmful conduct of third parties, *i.e.*, Fyans, Plourde, and Ezzy. Since Plaintiff sufficiently supports her claim of a fiduciary relationship as well as the other elements required for viable claims of breach of fiduciary duty, negligence, and negligent supervision, the Congregation is not entitled to summary judgment as to Counts 2, 3, and 4.

As discussed above, the factual assertions regarding Watchtower are insufficient to impose liability upon it for the conduct at issue in this case. Therefore, Watchtower is entitled to summary judgment as to Counts 2, 3, and 4.

C. RECKLESS INFLICTION OF EMOTIONAL DISTRESS AND NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

The court considers Counts 5 and 6 together. In Count 5, Plaintiff asserts a claim for reckless infliction of emotional distress (RIED). The following four elements must be met in a successful claim for RIED:

> (1) the defendant intentionally or recklessly inflicted severe emotional distress or was certain or substantially certain that such distress would result from her conduct; (2) the conduct was so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious, utterly intolerable in a civilized community; (3) the actions of the defendant caused the plaintiff's emotional distress; and (4) the emotional distress suffered by the plaintiff was so severe that no reasonable person could be expected to endure it.

Argereow v. Weisberg, 2018 ME 140, ¶ 27, 195 A.3d 1210 (quoting *Curtis v. Porter*, 2001 ME 158, ¶ 10, 784 A.2d 18).

Plaintiff makes a negligent infliction of emotional distress (NIED) claim in Count 6. To state a NIED claim, "plaintiff must set forth facts from which it could be concluded that (1) the defendant owed a duty to the plaintiff; (2) the defendant breached that duty; (3) the plaintiff was harmed; and (4) the breach caused the plaintiff's harm." *Curtis*, 2001 ME 158, ¶ 18, 784 A.2d 18. "Only where a particular duty based upon the unique relationship of the parties has been established may a defendant be held responsible, absent some other wrongdoing, for harming the emotional well-being of another." *Bryan R.*, 1999 ME 144, ¶ 31, 738 A.2d 839.

The Law Court has previously declined to recognize "a relationship between churches and their members of the type that would give rise to a duty to avoid psychic injury to those members" because it "could not do so without inquiring into the ecclesiastical relationship whose components are not within the purview of the secular courts." *Id.* ¶ 32. The Court elaborated that "[i]n order [for a plaintiff] to prevail on [an] intentional infliction of emotional distress claim, [the court] would [be] required to address 'the church's failure to excommunicate [the plaintiff's alleged abuser], its failure to shun him, and its eventual decision to allow [him] to . . . resume a position of leadership and respect within the church.'" *Fortin*, 2005 ME 57, ¶ 26 n.6, 871 A.2d 1208 (quoting *Bryan R.*, 1999 ME 144, ¶ 26, 738 A.2d 839). Such an undertaking by a secular Court would constitute an impermissible encroachment upon religious structure or doctrine: "'A religious organization's decisions and actions when providing advice, counsel, or religious discipline to its members will be based on the particular religious beliefs of the organization' and such an inquiry 'would insert the State . . . in a fashion wholly forbidden by the Free Exercise Clause of the First Amendment.'" *Id.* (quoting *Bryan R.*, 1999 ME 144, ¶ 28, 738 A.2d 839).

In light of this precedent on similar allegations, the court finds that both Count 5 and Count 6 do not survive summary judgment.

CONCLUSION

For the foregoing reasons, the entry is:

1. Summary judgment is **GRANTED** in favor of Watchtower as to Count 1, Count 2, Count 3, Count 4, Count 5, and Count 6.

2. Summary judgment is **GRANTED** in favor of the Congregation as to Count 1, Count 5, and Count 6.

3. Summary judgment is **DENIED** as to the Congregation as to Count 2, Count 3, and Count 4.

The parties are ordered to reconvene for ADR and must do so by November 6, 2026, and file the appropriate ADR report.

This matter shall be set for a trial management conference on November 20, 2026, at 8:00 a.m. by ZOOM.

The Clerk is directed to incorporate this Order into the docket by reference pursuant to Maine Rule of Civil Procedure 79(a).

Dated: July 29, 2026

Justice, Maine Superior Court