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D.T.,

Plaintiff/Petitioner,

v.

ARCHDIOCESE OF  
PHILADELPHIA and  
MICHAEL J. MCCARTHY,

Defendants/Respondents.

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SUPREME COURT OF NEW JERSEY  
No. \_\_\_\_\_.

Appellate Division  
Docket No.: A-000372-22

Law Division, Atlantic County  
Docket No.: ATL-L-1327-20

Civil Action

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PLAINTIFF-PETITIONER D.T.'S BRIEF IN SUPPORT OF  
MOTION FOR LEAVE TO APPEAL

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**TABLE OF CONTENTS**

	<b>Page</b>
TABLE OF AUTHORITIES.....	iii
STATEMENT OF THE CASE.....	1
A.    Procedural history.....	1
B.    Statement of facts .....	1
STANDARD OF REVIEW.....	2
QUESTION PRESENTED.....	3
REASONS WHY LEAVE TO APPEAL SHOULD BE ALLOWED .....	4
Point One: The Appellate Division’s decision conflicts with decisions of the U.S. Supreme Court and this Court .....	4
1.    The Due Process framework.....	5
2.    The agency framework under New Jersey law .....	8
3.    The record in the case.....	12
Point Two: This matter presents a question of general public importance that has not been decided by this Court .....	18
Point Three: The Appellate Division’s Opinion .....	19
CONCLUSION .....	20
Certification of Counsel	

Appendices:

- A. The Opinion of the Appellate Division, entered on December 7, 2023.
- B. The Opinion of the trial court, entered on August 19, 2022.

## TABLE OF AUTHORITIES

### CASES:

<u>Abbamont v. Piscataway Twp. Bd. of Educ.</u> , 138 N.J. 405 (1994) .....	passim
<u>Brundage v. Estate of Carambio</u> , 195 N.J. 575 (2008) .....	3, 4
<u>Charles Gendler &amp; Co. v. Telecom Equip. Corp.</u> , 102 N.J. 460 (1986) .....	6
<u>Daimler AG v. Bauman</u> , 571 U.S. 117 (2014) .....	21
<u>Ford Motor Company v. Montana Eighth Judicial District Court</u> , 141 S. Ct. 1017 (2021) .....	passim
<u>Grow Co., Inc. v. Chokshi</u> , 403 N.J. Super. 443 (App. Div. 2008) .....	3
<u>Hardwicke v. American Boychoir School</u> , 188 N.J. 69 (2006) .....	passim
<u>Huff v. Cyprus Amax Mins.</u> , 2019 WL 4296778 (App. Div. 2019).....	8
<u>International Shoe Co. v. Washington</u> , 326 U.S. 310 (1945) .....	7, 8
<u>Lehmann v. Toys R Us, Inc.</u> , 132 N.J. 587 (1993) .....	11, 12, 17, 19
<u>Sears Mortg. Co. v. Rose</u> , 134 N.J. 326 (1993) .....	9, 10, 17
<u>World-Wide Volkswagen Corp. v. Woodson</u> , 444 U.S. 286 (1980) .....	7

## STATEMENT OF THE CASE

This is a tort action arising out of personal injuries suffered by D.T. in 1971, when an employee of the Archdiocese of Philadelphia, Father Michael McCarthy, drove Plaintiff to Atlantic County and abused him there.

### **A. Procedural history**

In May 2020, D.T. filed a complaint against the Archdiocese and McCarthy in Atlantic County. D.T. alleged that the Archdiocese negligently supervised McCarthy, and also was vicariously liable for McCarthy's actions. Pa 29-52. The Archdiocese moved to dismiss Plaintiff's claims. In August 2022, the trial court granted the motion, dismissing D.T.'s claims against the Archdiocese for lack of personal jurisdiction. Pa 1. In October 2022, the Appellate Division permitted interlocutory appeal of the August 2022 Order. Pa 935. On December 7, 2023, the Appellate Division affirmed the trial court's Order in a published opinion authored by presiding Judge Gilson, and joined by Judge Berdote Byrne and Judge Bishop-Thompson. This petition follows.

### **B. Statement of facts**

D.T. is a now-66 year old marketing executive who lives in Darien, Illinois with his long-term girlfriend. He has never been married and has no children. Growing up, D.T. and his family lived in Drexel Hill, Pennsylvania. His parents were devout Catholics who raised their son as an active member of

the St. Bernadette Parish church in the Archdiocese of Philadelphia. D.T. also attended the parish schools. Pa 322, 492-93.

D.T. first met McCarthy in 1971, when McCarthy counseled D.T.'s father through the process of converting to Catholicism. McCarthy also got to know D.T. as an altar boy. Unfortunately, D.T.'s father unexpectedly died. Following this tragedy, McCarthy provided pastoral services to assist the family through their grief. McCarthy also offered to serve as father figure and mentor to then-14-year-old D.T., asking D.T.'s mother to allow him to take D.T. "under [his] wing" to "make him a good man," "teach him class," and "make sure he's on the straight and narrow." D.T. testified that he understood McCarthy's outreach to be part of his job as Archdiocesan cleric helping families to "live the right Catholic life." D.T.'s mother was grateful to have McCarthy mentor her son in the difficult period following her husband's death. D.T. testified that, for his mother, "the sun rose and set over Father McCarthy." "She didn't think [priests] would do anything wrong." Pa 493-99, 504-18, 543-44, 766, 808-11.

When McCarthy invited D.T. to Margate, D.T.'s mother permitted her son to be alone with an unrelated male—something she would never have allowed otherwise. McCarthy drove D.T. from Drexel Hill to Margate in July 1971. On the drive, McCarthy talked to D.T. about plans for high school. They talked about D.T.'s father and his family's well-being. When they arrived in Margate,

a different chapter unfolded. McCarthy had placed pornography on the living room table. He encouraged D.T. to consume alcohol. McCarthy told D.T. they would share a bed because another priest was sleeping in the other bedroom. McCarthy undressed D.T. and himself. Once in bed, McCarthy fondled D.T.'s penis. McCarthy placed his own penis between D.T.'s butt cheeks, achieving partial anal penetration. Pa 495-96, 505-08, 514-16, 817-18.

### **STANDARD OF REVIEW**

Under Rule 2:2-4, this Court may grant leave to appeal, in the interest of justice, from an interlocutory order of a [trial] court.” R. 2:2-4. While New Jersey “favors an uninterrupted proceeding at the trial level with a single and complete review” on appeal from final judgment, this Court has considerable discretion to permit an appeal of an interlocutory order. Grow Co., Inc. v. Chokshi, 403 N.J. Super. 443, 459-61 (App. Div. 2008). The Court’s exercise of discretion “turns on whether leave to appeal will prevent the court and the parties from embarking on an improper or unnecessary course of litigation.” *Id.*, citing Brundage v. Estate of Carambio, 195 N.J. 575, 598-600 (2008). The process is not intended “to correct minor injustices.” The moving party must establish that the appeal has merit and that justice calls for the Court’s decision of the issue. *Id.*

In assessing whether prompt appeal promotes the “interest of justice,”

New Jersey courts consider such factors as whether the subject interlocutory order would have dispositive effect on a party or its claims or implicate issues of constitutional magnitude. Brundage, 195 N.J. at 598-600. Other considerations that weigh in favor of granting leave to appeal include whether the order concerns a novel question of law and whether leave to appeal may materially advance ultimate resolution of the case. Id.

### **QUESTION PRESENTED**

D.T. presents a novel question for this Court's review:

Is the Archdiocese of Philadelphia subject to New Jersey's specific jurisdiction given that: (1) the Archdiocese purposefully availed itself of the privilege of conducting business in New Jersey, when its employee-priest McCarthy provided mentorship and counseling services within the scope of his actual or apparent agency in New Jersey; and (2) D.T.'s claims arise out of or relate to the Archdiocese's activities in New Jersey?

*The Appellate Division answered this question in the negative.*

### **REASONS WHY LEAVE TO APPEAL SHOULD BE ALLOWED**

D.T. moves for leave to appeal the Appellate Division's Order for several reasons. *First*, the Appellate Division wrongly rejected personal jurisdiction on the basis that McCarthy never acted within the scope of his actual or apparent agency when bringing D.T. to New Jersey. In that respect, the Court concluded that D.T. was obliged to show, but failed to show, that the Archdiocese: (1) knew of or approved of McCarthy taking plaintiff to Margate; (2) knew of McCarthy's



attraction to young boys before July 1971; and (3) controlled, supervised, or was aware of McCarthy's abuse of D.T. in New Jersey. This heightened threshold is not New Jersey agency law, as explained in cases such as Abbamont v. Piscataway Township, 138 N.J. 405 (1994), and Hardwicke v. American Boychoir School, 188 N.J. 69 (2006). *Second*, the Appellate Division wrongly held that McCarthy actions in bringing D.T. to New Jersey were not attributable to the Archdiocese for purposes of assessing personal jurisdiction regardless of their implications for the downstream issue of potential liability. *Finally*, this matter presents an issue of first impression regarding the jurisdictional implications of an agency relationship that this Court has not previously had opportunity to address. This is recurring jurisdictional issues especially in the context of litigation involving clergy sex abuse; and there are many such cases in the New Jersey courts. Plaintiffs the Court to grant leave to appeal in this matter, order supplemental briefing, and reverse the Appellate Division.

**Point one:           The Appellate Division's decision conflicts with decisions of the U.S. Supreme Court and this Court.**

The U.S. Supreme Court's Due Process jurisprudence provides that a corporation may subject itself to the jurisdiction of a forum through the acts of its agents. In turn, New Jersey law provides that an employee is an agent if he acts with actual or apparent authority from the principal toward another person. This case asks whether these propositions are abrogated in a case involving a

priest who sexually abused a child-parishioner in New Jersey because there record lacks evidence that the Archdiocese specifically directed the trip to New Jersey or authorized the abuse. The Appellate Division wrongly decided that question in the affirmative. Its decision conflicts with this Court’s controlling decisions in Abbamont and Hardwicke. It also conflicts with the U.S. Supreme Court’s decision in Ford Motor Co v. Montana Eighth Jud. Dist. Ct., 141 S. Ct. 1017 (2021). Plaintiff urges the Court to grant leave to appeal, order supplemental briefing, and reverse the Appellate Division’s decision.

**A. The Due Process framework**

This case involves the Archdiocese of Philadelphia which is a nonresident entity that conducts business in Philadelphia and surrounding counties. The question before the Court is whether the Archdiocese subjected itself to New Jersey’s specific jurisdiction under the facts of this case. Rule 4:4-4 authorizes New Jersey Courts to exercise jurisdiction over nonresident corporations “consistent with due process of law,” and to the “uttermost limits permitted by the United States Constitution.” Charles Gendler & Co. v. Telecom Equip., 102 N.J. 460, 469 (1986). Because New Jersey law incorporates federal constitutional standards, any assessment of New Jersey’s exercise of jurisdiction over the Archdiocese must begin with the U.S. Supreme Court jurisprudence regarding the limits of personal jurisdiction under Due Process principles.

As a general matter, the Due Process Clause “limits the power of a state court to render a valid personal judgment against a nonresident defendant.” World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 291 (1980). Addressing these limitations, the U.S. Supreme Court has explained that jurisdiction over a defendant depends on the defendant having such contacts with the forum that maintaining suit in the forum is “reasonable, in the context of our federal system of government,” and “does not offend traditional notions of fair play and substantial justice.” Ford, 141 S. Ct. at 1024, quoting International Shoe Co. v. Washington, 326 U.S. 310, 316-17 (1945). As a practical matter, the Court has given “content to that formulation” by focusing on “the nature and extent of the defendant’s relationship to the forum State.” Id.

Since this case involves specific jurisdiction, the pertinent relationship between a corporate defendant and the forum State must center on “some act by which [the defendant] purposefully avails itself of the privilege of conducting activities within the forum State.” Ford, 141 S. Ct. at 1024-25. The act “must be the defendant’s own choice and not random, isolated, or fortuitous.” Id. In turn, the plaintiff’s claim “must arise out of or relate to the defendant’s contacts” with the forum. Id.

The U.S. Supreme Court has made clear that a corporate defendant may subject itself to specific jurisdiction through the actions of an agent in the forum.

Ford, 141 S. Ct. at 1024. This principle goes back to the dawn of the modern jurisprudence on jurisdiction. In International Shoe, the Supreme Court specifically recognized that a corporation conducts activities in a forum through its agents. See International Shoe, 326 U.S. at 316. As the Court explained, “[s]ince the corporate personality is a fiction . . . it is clear that unlike an individual its ‘presence’ without, as well as within, the state of its origin can be manifested only by activities carried on in its behalf by those who are authorized to act for it.” Id. The Court reaffirmed this point in Ford when it grounded a personal jurisdiction analysis in a detailed analysis of the forum-specific actions of corporate agents. Ford, 141 S. Ct. at 1023-25. The Court relied heavily on record evidence showing that Ford dealerships bought and sold Fords, sold parts and repair services, and engaged in promotional activities in Montana. Ford, 141 S. Ct. at 1024. The Supreme Court had no difficulty in characterizing these actions as business practices performed in the course of serving Ford’s interests. Id. These actions established Ford’s purposeful availment of Montana. When considering the “arise from or relate to” prong of personal jurisdiction, the Court again relied on actions by Ford’s agents when determining that plaintiff’s injuries in Montana arose from or related to Ford’s contacts with Montana. Id. at 1025-26.

In Ford, the Court never suggested that jurisdiction in Montana depended

on evidence that Ford had specifically “directed” its agent to engage in allegedly tortious conduct there. Indeed, all alleged tortious conduct had occurred entirely outside Montana. The Court made clear that no tortious conduct even need have occurred in Montana for jurisdiction to be triggered there, so long as the cause of action related to Ford’s acts through its agents in Montana. Id. at 1026. Through its careful analysis, the Court confirmed that corporations act through their agents and that a defendant may subject itself to a forum’s specific jurisdiction through an agent’s actions.

**B. The agency framework under New Jersey law**

New Jersey law harmonizes with the U.S. Supreme Court’s recognition that the conduct of agents can support jurisdiction against a principal. See Huff v. Cyprus Amax Mins., 2019 WL 4296778, at \*3 n.1 (App. Div. 2019). Two principles of attribution are relevant here for purposes of personal jurisdiction: actual authority and apparent authority. Sears Mortg. v. Rose, 134 N.J. 326, 337-38 (1993). In Sears, this Court described the general principles that underpin actual and apparent authority. The Court said that an actual “agency relationship is created when one party consents to have another act on its behalf, with the principal controlling and directing the acts of the agent.” Id. As to apparent agency, a person may be an agent based on manifestations by the principal. Id. “[D]irect control of principal over agent is not absolutely necessary; a court must

examine the totality of the circumstances to determine whether an agency relationship existed even though the principal did not have direct control over the agent.” *Id.* Thus, apparent authority will be “inferred from the nature or extent of the function to be performed, the general course of conducting the business, or from particular circumstances in the case.” *Id.* In Sears, this Court emphasized that “[o]f particular importance is whether a third party has relied on the agent’s apparent authority to act for a principal.” *Id.* Whether determining actual or apparent agency, a Court must look at the “totality of circumstances,” including the “conduct” of the purported principal and agent, as defining “their factual relationship.” *Id.* Once actual or apparent agency is established, an agent’s acts performed within the scope of the agency are attributable to the principal, whether tortious or non-tortious. See Abbamont, 138 N.J. at 416-19.

Abbamont explained that an employee acts within the scope of employment if the action is “of the kind [that the servant] is employed to perform; it occurs substantially within the authorized time and space limits; [and] it is actuated, at least in part, by a purpose to serve the master.” *Id.* at 416. This Court rejected that only “illegal” acts of which the principal knows and to which the principal consented may be attributed to the principal. Rather, if an “illegal” act is performed within the scope of employment, it may be attributed to the principal under “traditional principles of agency.” *Id.* at 419-20.

This Court has applied these principles of agency in the context of sexual abuse. For instance, in Lehmann v. Toys'R'Us, 132 N.J. 587 (1993), a plaintiff brought a civil action against her former employer, alleging that her former supervisor subjected her to sexual comments and touching. She alleged statutory claims, and common law negligence and intentional tort claims. Id. at 593-99. This Court held that the supervisor's acts were attributable to the employer. The Court reasoned that "if an employer delegates the authority to control the work environment to a supervisor and that supervisor abuses that delegated authority," then the acts of the employee are attributable to the employer and potential liability will follow. Id. at 620. The Court added that the misconduct of an employee could be attributed to the employer where "there was an inadequate harassment policy, or a policy was improperly enforced," whether or not the employer had notice of the harassment. Id. at 623.

The Supreme Court built on Lehmann when deciding Hardwicke. There, the plaintiff sued a boarding school for sexual assaults by a music teacher. The abuse took place over two years while the plaintiff was a student at the boarding school and over the summer off school grounds. Hardwicke, 188 N.J. at 74-76. Plaintiff claimed that the teacher was an apparent agent of the school and, therefore, the school was vicariously liable for the misconduct of its teacher. The school said it could not be liable for the abuser's acts because they were

outside of the scope of employment. This Court held that the teacher's misconduct was attributable to the school, even any abuse that took place away from the campus over the summer, because the teacher had used the apparent authority conferred by his employment to gain access to the victim. Id. at 101-02. The Court described relevant factors as whether (1) the school gave authority to the teacher to control the situation about which the student complained; (2) the teacher exercised that authority; (3) the exercise of authority resulted in violation of plaintiff's rights; and (4) the authority delegated by the school to the teacher aided the teacher in injuring plaintiff. Applying those factors, the Court held that the teacher exercised apparent authority on behalf of the school even when sexually abusing a student, such that the school was potentially liable for his conduct. Id.

As developed in this Court's cases, agency provides a sturdy basis in New Jersey law for attributing the actions of an agent to the principal. The consequences of that relationship may differ depending on the issue presented. Whether an agency relationship ultimately may give rise to potential liability, an agency relationship also may inform the threshold question of personal jurisdiction analysis under the jurisprudence of the U.S. Supreme Court. See Restatement (Third) of Agency Intro. Note (2006) ("[T]he legal consequences that [agency] doctrines attribute to a principal are not consequences of agency



doctrine itself but of other bodies of law[.]”) For example, in International Shoe and Ford, there was no dispute about the agency relationship between the defendants and their employees. In both cases, the evidence regarding agency informed the Supreme Court’s analysis of whether a corporate principal was subject to a state’s personal jurisdiction based on the actions of agents in the respective forum. Both cases made clear that an agent may act on behalf of a corporation to establish purposeful availment and that a claim may arise from or relate to the corporation’s acts in the forum. Simply, put corporations are subject to personal jurisdiction based on their agents’ conduct in a forum.

**C. The record evidence.**

Here, there is no question that McCarthy was an employee of the Archdiocese. So the question on appeal is whether McCarthy’s actions were within the scope of his actual or apparent agency and therefore are attributable to the Archdiocese under New Jersey’s law of agency given the parties’ relationship.

On that question, D.T. developed a factual record that included the deposition testimony of Archdiocese designee Daniel J. Kutys pertaining to policies and procedures of the Archdiocese, McCarthy, and D.T. Taken together, the record shows that McCarthy brought D.T. to New Jersey within the scope of

his actual or apparent agency as a priest of the Archdiocese and hence that the Archdiocese engaged in a sustained course of activities in New Jersey.

In the 1960s and 1970s, the Archdiocese functioned through its agents like any other quasi-corporate entity. These Archdiocesan agents included the employees who operated with the job title of “priest.” The Archdiocese had no “specific” or “written” policies describing the scope of priests’ duties and obligations, including as they pertained to providing pastoral and spiritual counseling to children, interacting with children, or travelling with child-parishioners outside the parish. Priests instead had autonomy in terms of performing regular aspects of their jobs. The Archdiocese routinely sent assignment letters broadly charging newly-appointed priests with their job assignment—that they are “called to know and love the people you serve, to care for the poor and needy, to teach the youth, to attend the sick and dying, and to assist in the over-all maintenance of the parish.” Pa 477, 535-42, 821.

Kutys agreed that the Archdiocese charged its priests employee-priests with a broad pastoral mission in the period of time applicable to this case (1971). This encompassed “any type of outreach to people, to parishioners, to people that are served in ministry.” Thus, outreach took “on many forms” and “frequently extend[ed] even beyond the boundaries of one parish or diocese.” Outreach included counseling families in the parish. Regarding outreach, the

Archdiocese placed particular emphasis on mentorship and ministry to young parishioners. A priest's job included building mentorship relationships with young parishioners and helping parishioners when they were "in need." The Archdiocese targeted special attention to altar servers and parish students, including D.T. who was both altar server and parish student. As McCarthy testified, that "job" also included consoling a child-parishioner who had lost a father. Pa 507, 540-41, 564-65, 608, 766-69, 821.

In deposition, McCarthy confirmed that he routinely acted as a mentor for teenage parishioners. In that role, he took six to eight teenage parishioners to New Jersey with permission from their parents and the knowledge of his superiors in St. Bernadette's Parish and at Cardinal O'Hara High School where he taught. McCarthy testified that he drove kids to New Jersey "as part of [his] role as a role model or mentor in their life." Pa 768-69, 801, 859. Consistent with McCarthy's testimony, D.T. testified that he understood those trips as arising strictly from the relationship between a priest and parishioner.. Underscoring the official nature of these trips was the fact that McCarthy routinely expected parishioners, including D.T., to address him by his title "Father McCarthy" or "Father Mike," whether alone or around others while in Margate. Pa 506-07, 515, 768, 817.

Thus, when McCarthy took D.T. to Margate in 1971, the trip took place within a context in which the Archdiocese expected the priest to care for the youth as part of their job. In turn, the Archdiocese advertised the priests as capable of “treat[ing] contemporary problems” by relying not “on their own wisdom” but by speaking “the word of Christ” to parishioners. Pa 694-95, 699. The youth were to “look to priests as their teachers and leaders” and “by nature” to trust their priests and follow them with “filial love.” This approach built Catholic doctrine that encouraged parishioners and child-parishioners to view priests with complete trust and reverence. Pa 611. Kutys agreed that the only reason parishioners would permit priests to take their children on overnight trips was because of the priests’ position with the Archdiocese. Pa 561.

It was within this context that parishioners reported the abuse of their children to the Archdiocese, rather than the police department. Because of these reports, the Archdiocese knew McCarthy was a pedophile no later than 1991. Upon receiving that notice, the Archdiocese addressed McCarthy’s pedophilia as workplace incidents that required a workplace response. That is, the Archdiocese continued to pay McCarthy salary and benefits for more than a decade after learning he was a pedophile. The Archdiocese “laicized” McCarthy in 2006 after a Philadelphia grand jury issued an extensive report concerning

sexual abuse of children by Catholic priests in the Archdiocese of Philadelphia. Pa 392-403. But the Archdiocese never reported McCarthy to the police. Id.

This record supports a conclusion that McCarthy's acts in New Jersey fell within the scope of his work as an agent of the Archdiocese. In Abbamont, this Court explained that the scope of a person's employment is properly determined by what the employee was expected to do on the job for the employer's benefit. Abbamont, 138 N.J. at 416. In Lehman, this Court held that an employee acted within the scope of his agency when the employer had delegated latitude to control a work environment, even when the employee abused that delegated authority. See Lehmann, 132 N.J. at 619-20. Here, the Archdiocese expected McCarthy to perform outreach as part of his Archdiocesan job. The Archdiocese delegated to McCarthy substantial latitude in how he performed that outreach, including the counseling of child-parishioners. It provided him with broad discretion when choosing the venue for mentoring and pastoral opportunities. Under these circumstances, McCarthy's driving D.T. to New Jersey in 1971 did not take place outside his job. The events in New Jersey were conducted within the scope of his priestly duties and taken with Archdiocesan approval.

At a minimum Rogers acted with apparent authority when bringing D.T. to Margate. See Sears, 134 N.J. at 337-38. In Hardwicke, this Court held that a school retained its agency relationship toward a teacher who used the authority

conferred by his employment position to gain access to and sexually abuse a youth. Hardwicke, 188 N.J. at 101-02. As in Hardwicke, McCarthy's access to D.T. flowed from his work as an Archdiocesan priest. D.T. and his mother believed that McCarthy had authority to act on behalf of the Archdiocese with respect to his trip to New Jersey with D.T. Indeed, as Kutys explained, parents were encouraged to trust their children to the priests, even when the priests took the children on overnight trips for counseling, mentoring, and other pastoral purposes at the New Jersey shore. McCarthy's employment conferred on him the authority to develop a relationship with D.T. within which McCarthy eventually took D.T. to New Jersey and abused him there. The Archdiocese likewise placed McCarthy in a position of authority over the child such that it was no surprise that D.T. failed to report the abuse even to his family. On top of all of this, the Archdiocese treated complaints against priests for sexual abuse of children as an employment matter to be addressed internally by the Archdiocesan management (not as a criminal matter to be reported to police). D.T.'s actions in New Jersey are attributable to the Archdiocese on these grounds as well. See id.

While this case involves different downstream implications than Lehmann or Hardwicke (jurisdiction rather than potential liability), the legal principles of agency are exactly the same. In both cases, employees acted within the scope of

their actual or apparent agency when developing relationships with those who they would sexually abuse. In both cases, even the abusive acts of the employees were attributable to the principals. Here, the Archdiocese charged its employee-priests with cultivating relationships with parish families and developing mentorship relationships with parish youth. Within the context of that work, McCarthy developed a relationship with D.T.'s family and took D.T. to New Jersey. Under Abbamont, Lehmann, and Hardwicke, the Archdiocese would have an agency relationship with McCarthy regarding this actions in New Jersey if no tortious conduct had occurred. See Abbamont, 138 N.J. at 416. The agency relationship agency exists just the same despite the abuse that McCarthy actually inflicted on D.T. See Lehmann, 132 N.J. at 619-20; Hardwicke, 188 N.J. at 101 & n.13. Given the proper attribution of McCarthy's actions in New Jersey to the Archdiocese, it follows that the Archdiocese has acted in New Jersey in a manner that subjects it New Jersey's specific jurisdiction. Ford, 141 S. Ct. at 1022-23.

In the end, the principle that validated the attribution of the employees' acts to the principals in Abbamont, Lehmann, and Hardwicke should have validated personal jurisdiction here. The Appellate Division decided this question wrongly. This Court should grant leave to appeal to confirm the application of its agency law to principles to personal jurisdiction.

**Point two: This matter presents a question of general public importance that has not been decided by this Court.**

Granting leave to appeal in this case will enable this Court to consider whether New Jersey’s law of agency applies consistently regardless of the ultimate purpose to which the agency analysis is applied (e.g., liability or jurisdiction). While this Court has decided agency principles in the context of potential liability, the application of those principles in the context of the threshold jurisdictional inquiry is a novel issue for this Court. A decision by the Court on this important issue would provide useful clarity for future cases. In particular, multiple suits are pending against the Archdiocese of Philadelphia in New Jersey that arise from priests’ misconduct with child-parishioners under circumstances similar to those of D.T. These cases also involve questions of jurisdiction and ultimately the Archdiocese’s responsibility for decades-long misconduct of priests in New Jersey. Permitting appeal in this case provides the Court with opportunity to decide these sensitive and current issues. Plaintiffs urge the Court to accept appeal given the sensitivity both of the legal issues and the circumstances of the instant litigation.

**Point Three: The Appellate Division’s Opinion**

The Appellate Division made several mistakes when rejecting the exercise of jurisdiction. *First*, the Appellate Division sought to distinguish Hardwicke on the basis that while “individuals may be agents for one purpose, [that] does not



mean that they are agents for every purpose.” Opinion at 16, citing Daimler AG v. Bauman, 571 U.S. 117, 135 (2014). While it may be true that most employees generally are not on the clock 24/7, when an employee acts within the scope of his actual or apparent agency, his acts are attributable to the principal. A principal’s acts through an agent in the forum gives rise to jurisdiction under cases such as Ford. Daimler is a general jurisdiction case that does not address or alter New Jersey principles of attribution under agency law. Here, the Archdiocese structured its workforce with a broad mission and general directions regarding the hours and venue for providing mentoring and spiritual care to parishioners. Its choices have consequences, including that, through McCarthy, the Archdiocese acted in New Jersey with respect to D.T. Jurisdiction follows under cases such as Ford and International Shoe.

*Second*, the Appellate Division court wrongly held that the Archdiocese did not purposefully avail itself of the privilege of conducting activities in New Jersey by focusing only on McCarthy’s abusive actions in New Jersey and the lack of evidence the Archdiocese knew of prior assaults by McCarthy so as to restrict or strip him of his priestly duties. Opinion at 17. Due Process jurisprudence does not require notice of the agent’s propensity to commit a tort as basis for specific jurisdiction in a State. See Ford, 141 S. Ct. at 1022-25. Indeed, no tortious conduct need occur in the forum at all. Neither does New

Jersey agency law require such notice for the agent's acts within the scope of agency to be attributable to the principal. See Abbamont, 138 N.J. at 419-20. Plaintiff urges the Court to grant leave to appeal to clarify these points of law as well.

## VI. CONCLUSION

The motion should be granted.

Respectfully submitted,

**Kline & Specter, P.C.**

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Dated: January 8, 2024

## **Appendix “A”**

The Opinion of the Appellate Division, entered on December 7, 2023

**RECORD IMPOUNDED**

**NOT FOR PUBLICATION WITHOUT THE  
APPROVAL OF THE APPELLATE DIVISION**

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-0372-22

D.T.,

Plaintiff-Appellant,

v.

ARCHDIOCESE OF  
PHILADELPHIA and  
MICHAEL J. MCCARTHY,

Defendants-Respondents.

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**APPROVED FOR PUBLICATION**

**December 7, 2023**

**APPELLATE DIVISION**

Argued October 10, 2023 – Decided December 7, 2023

Before Judges Gilson, Berdote Byrne, and Bishop-Thompson.

On appeal from an interlocutory order of the Superior Court of New Jersey, Law Division, Atlantic County, Docket No. L-1327-20.

Ruxandra M. Laidacker argued the cause for appellant (Kline & Specter, PC, attorneys; Charles L. Becker, David K. Inscho, Lorraine H. Donnelly, and Ruxandra M. Laidacker, on the briefs).

Nicholas M. Centrella argued the cause for respondent Archdiocese of Philadelphia (Clark Hill PLC, attorneys; Nicholas M. Centrella, on the brief).

The opinion of the court was delivered by

GILSON, P.J.A.D.

Plaintiff D.T. alleges that Michael McCarthy, a former Catholic priest, sexually abused him in New Jersey in 1971.<sup>1</sup> At that time, plaintiff was fourteen years old, and McCarthy was serving as a priest and teacher in the Archdiocese of Philadelphia (the Archdiocese). Plaintiff appeals from an order dismissing his claims against the Archdiocese for lack of personal jurisdiction. Because there are no facts establishing that the Archdiocese purposefully availed itself of any benefits in or from New Jersey related to McCarthy's alleged abuse of plaintiff, we affirm.

I.

We discern the facts from the record developed during jurisdictional discovery. The Archdiocese is an unincorporated, religious, non-profit association that operates in Pennsylvania. Its principal place of administration is in Philadelphia, and it oversees Catholic parishes in five Pennsylvania counties. The Archdiocese does not oversee or operate any churches, parishes, or religious facilities in New Jersey. It also does not assign priests to any parishes in New Jersey.

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<sup>1</sup> Plaintiff used his initials in his complaint. We use initials to protect privacy interests concerning allegations of child sexual abuse. See R. 1:38-3(c)(9).

The Archdiocese does not currently own any real property in New Jersey. In the past, the Archdiocese did own several properties in New Jersey that were given to it, but those properties were sold before 2013. The Archdiocese also owned and operated two properties in Ventnor, New Jersey, which it used as vacation homes for priests. The Ventnor properties were acquired in 1963 and sold in 2012 and 2013.

McCarthy began working as a parish priest and teacher for the Archdiocese in 1965. From 1965 to 1989, he taught at Cardinal O'Hara High School in Springfield, Pennsylvania. McCarthy lived at the St. Bernadette Parish in Drexel Hill, Pennsylvania, from 1965 to 1975, where he also served as a priest.

It was while McCarthy was serving as a priest in Drexel Hill, Pennsylvania, that he came to know plaintiff and plaintiff's family. In 1971, McCarthy counseled plaintiff's family when plaintiff's parents decided to renew their wedding vows and baptize plaintiff's father as part of the ceremony. McCarthy also ministered to the family when plaintiff's father became ill and died in 1971. At that time, McCarthy offered to mentor plaintiff, who was then fourteen years old.

In July 1971, McCarthy invited plaintiff to go with him to a home McCarthy used in Margate, New Jersey.<sup>2</sup> Plaintiff's mother gave permission, and McCarthy and plaintiff then drove to the Margate home. When they arrived, plaintiff alleges that McCarthy showed him pornography, encouraged him to drink alcohol, and sexually assaulted him.

Plaintiff also alleges that the Archdiocese was "on notice" of McCarthy's propensity for sexually abusing young boys beginning in 1986. McCarthy resigned as a parish priest in 1993. The following year, the Archdiocese placed McCarthy on leave, and in 2003, McCarthy retired from serving as a priest.

In 2005, a Philadelphia grand jury issued a report concerning sexual abuse of minors by priests in the Archdiocese. McCarthy was identified as one of the perpetrators. The report stated that the Archdiocese received allegations of sexual abuse by McCarthy in 1986, 1991, and 1992. The report also included summaries of witnesses' testimony, several of whom described sexual abuse by McCarthy at the home in Margate.<sup>3</sup> The following year, in 2006, the

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<sup>2</sup> The record is not entirely clear, but one of McCarthy's relatives appears to have originally owned the home in Margate. McCarthy purchased the home in 1973. It is undisputed that the Archdiocese did not own or conduct any activities at the home in Margate.

<sup>3</sup> The Archdiocese contends that the grand jury report is hearsay and should not be considered. We deem the report relevant discovery related to the question of

Archdiocese "laicized" McCarthy; meaning that McCarthy was dismissed from the clerical state and lost all rights and obligations associated with ordination. Glossary of Terms, The Diocese of Springfield, Mass., <https://diospringfield.org/osevaglossaryofterms/> (last visited Nov. 30, 2023) (defining "laicization").

In May 2020, plaintiff filed this complaint against McCarthy and the Archdiocese in New Jersey. Plaintiff alleged that defendants negligently provided pastoral services to him when McCarthy sexually abused plaintiff in New Jersey. Plaintiff also contended that the Archdiocese was vicariously liable for McCarthy's tortious acts and that the Archdiocese was negligent in hiring and supervising McCarthy. In addition, plaintiff asserted a claim for assault and battery against McCarthy.

In November 2020, the trial court granted the Archdiocese's motion to dismiss plaintiff's claims against it for lack of personal jurisdiction. The court also denied plaintiff's request for jurisdictional discovery.

We granted plaintiff's motion for leave to appeal and, on January 11, 2021, summarily vacated and reversed the trial court's order of November 17, 2020.

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personal jurisdiction over the Archdiocese. In doing so, we take no position on whether the report is hearsay or whether it would be admissible for other purposes.



We remanded the matter so that jurisdictional discovery could be conducted. Order on Motion, D.T. v. Archdiocese of Phila., No. 0188-20 (App. Div. Jan. 11, 2021). The Supreme Court denied the Archdiocese's motion for leave to appeal.

On remand, the parties conducted jurisdictional discovery. Thereafter, the Archdiocese again moved to dismiss the claims against it for lack of personal jurisdiction. On December 6, 2021, the trial court entered an order granting that motion. The court also entered an order granting the Archdiocese's motion to dismiss McCarthy's crossclaims against it.

On January 14, 2022, we granted plaintiff's second motion for leave to appeal and summarily vacated the trial court's December 6, 2021 order. Order on Motion, D.T. v. Archdiocese of Phila., No. 1234-21 (App. Div. Jan. 14, 2022). We remanded the matter and directed the trial court to "create a proper record" concerning the Archdiocese's ownership of property in New Jersey. In the order, we stated in relevant part:

After receiving competent proofs regarding [the Archdiocese's ownership of real property in New Jersey], the [trial] court shall [then] reconsider its decision based on this fully developed record and address whether the nature and extent of the Archdiocese's past ownership of property in New Jersey, during relevant time periods, shows that the

Archdiocese purposefully availed itself of the privilege of conducting activities with New Jersey.

Thereafter, we denied the Archdiocese's motion for reconsideration, and the Supreme Court denied the Archdiocese's motion for leave to appeal.

Following the second remand, the parties conducted additional discovery concerning the Archdiocese's former ownership of property in New Jersey. The Archdiocese produced records and submitted a certification from a representative of its Office of Property Services that described the real property the Archdiocese had previously owned in New Jersey. That discovery established that plaintiff had never been to any of those New Jersey properties and there was no evidence that McCarthy had ever sexually assaulted plaintiff at any of those properties.

The Archdiocese then moved for a third time to dismiss the claims against it for lack of personal jurisdiction. On August 19, 2022, the trial court issued an order and a statement of reasons granting that motion. The trial court found that the Archdiocese's past ownership of property in New Jersey did not constitute purposeful availment of any benefit from New Jersey related to McCarthy's alleged sexual abuse of plaintiff. The trial court also found that the Archdiocese had not purposefully availed itself of any benefit in New Jersey related to plaintiff's allegations because those allegations "only involve[d] the

unilateral act[s] of [McCarthy]" and did not involve deliberate conduct by the Archdiocese. In its written decision, the trial court also rejected plaintiff's "agency" theory of jurisdiction, finding that there was "no credible evidence the Archdiocese's supervisory activities purposefully targeted New Jersey." In addition, the trial court found that plaintiff's claims did not arise out of or relate to any contact the Archdiocese had with New Jersey.

Thereafter, plaintiff moved for, and we granted, leave to appeal the August 19, 2022 order dismissing the claims against the Archdiocese for lack of personal jurisdiction. Plaintiff's claims against McCarthy are still pending.

## II.

On appeal, plaintiff makes two arguments. First, he contends that the Archdiocese is subject to specific jurisdiction in New Jersey through the actions of McCarthy, who was an "agent" of the Archdiocese. In that regard, plaintiff asserts that the Archdiocese "purposefully availed itself of the privilege of conducting activities in New Jersey through the conduct of priests like McCarthy." Plaintiff goes on to contend that McCarthy's "pastoral and mentoring activities" were not beyond the scope of the agency the Archdiocese conferred on him as a priest. Second, plaintiff argues that the trial court erred when it focused only on McCarthy's abusive actions in New Jersey.

Having considered these arguments in light of the record and governing law, we reject them. The facts disclosed during jurisdictional discovery established that the Archdiocese is not subject to jurisdiction in New Jersey because it did not purposefully avail itself of activities in New Jersey sufficient to satisfy the "minimum contacts" required for personal jurisdiction. See Int'l Shoe Co. v. Washington, 326 U.S. 310, 316-17 (1945).

A. The Law Concerning Personal Jurisdiction.

Personal jurisdiction is a "'mixed question of law and fact' that must be resolved at the outset, 'before the matter may proceed.'" Rippon v. Smigel, 449 N.J. Super. 344, 359 (App. Div. 2017) (quoting Citibank, N.A. v. Est. of Simpson, 290 N.J. Super. 519, 532 (App. Div. 1996)). We review a trial court's findings of fact with respect to jurisdiction "to determine if those findings are supported by substantial, credible evidence in the record," but conclusions of law are reviewed de novo. Id. at 358. "A trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995).

"A New Jersey court may exercise in personam jurisdiction over a non-resident defendant 'consistent with due process of law.'" Bayway Refin. Co. v.

State Utils., Inc., 333 N.J. Super. 420, 428 (App. Div. 2000) (quoting R. 4:4-4(b)(1)). New Jersey courts "exercise jurisdiction over non[-]resident defendants 'to the uttermost limits permitted by the United States Constitution.'" Jardim v. Overlay, 461 N.J. Super. 367, 377 (App. Div. 2019) (quoting Avdel Corp. v. Mecure, 58 N.J. 264, 268 (1971)).

To be subject to personal jurisdiction in a forum state, due process requires that the non-resident defendant "have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" Int'l Shoe Co., 326 U.S. at 316 (quoting Milliken v. Meyer, 311 U.S. 457, 463 (1940)); Blakey v. Cont'l Airlines, Inc., 164 N.J. 38, 65 (2000). "[T]he requisite quality and quantum of contacts is dependent on whether general or specific jurisdiction is asserted." Citibank, 290 N.J. Super. at 526. General jurisdiction "requires affiliations 'so 'continuous and systematic' as to render'" a non-resident organizational defendant "'essentially at home in the forum State.'" Daimler AG v. Bauman, 571 U.S. 117, 133 n.11 (2014) (quoting Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915, 919 (2011)). The parties agree that the Archdiocese is not subject to general jurisdiction in New Jersey. Accordingly, we focus on whether there is specific jurisdiction.

To determine whether a non-resident defendant may be subject to specific personal jurisdiction, courts examine the "relationship among the defendant, the forum, and the litigation." Lebel v. Everglades Marina, Inc., 115 N.J. 317, 323 (1989) (quoting Shaffer v. Heitner, 433 U.S. 186, 204 (1977)). "In order for a state court to exercise [specific] jurisdiction over a non[-]resident defendant, the lawsuit 'must aris[e] out of or relat[e] to the defendant's contacts with the forum.'" Jardim, 461 N.J. Super. at 376 (third and fourth alterations in original) (quoting Daimler, 571 U.S. at 127); accord Waste Mgmt., Inc. v. Admiral Ins. Co., 138 N.J. 106, 119 (1994), cert. denied, 513 U.S. 1183 (1995); see also Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct., 592 U.S. \_\_\_\_, 141 S. Ct. 1017, 1025 (2021).

"The 'minimum contacts' requirement is satisfied so long as the contacts resulted from the defendant's purposeful conduct and not the unilateral activities of the plaintiff." Lebel, 115 N.J. at 323 (citing World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297-98 (1980)); see also Waste Mgmt., 138 N.J. at 126 (explaining that "the existence of minimum contacts turns on the presence or absence of intentional acts of the defendant to avail itself of some benefit of a forum state"). The contacts "must be the defendant's own choice and not 'random, isolated, or fortuitous.'" Ford, 141 S. Ct. at 1025 (quoting Keeton v.

Hustler Mag., Inc., 465 U.S. 770, 774 (1984)). Moreover, courts determine, based on the defendant's "'conduct and connection' with the forum state . . . whether the defendant should 'reasonably anticipate being haled into court [in the forum state].'" Bayway Refin., 333 N.J. Super. at 429 (alteration in original) (quoting World-Wide Volkswagen, 444 U.S. at 297).

In determining whether the requirement to comport with "fair play and substantial justice" is satisfied, courts evaluate several factors. Asahi Metal Indus. Co. v. Superior Ct., 480 U.S. 102, 113 (1987). A court "must consider the burden on the defendant, the interests of the forum State, and the plaintiff's interest in obtaining relief." Ibid. A court must also weigh "the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and the shared interest of the several States in furthering fundamental substantive social policies." Ibid. (quoting World-Wide Volkswagen, 444 U.S. at 292).

B. The Lack of Specific Jurisdiction Over the Archdiocese.

Neither the Archdiocese's former ownership of properties in New Jersey nor its supervision over McCarthy as one of its priests established specific jurisdiction over the Archdiocese in New Jersey related to McCarthy's alleged sexual abuse of plaintiff in New Jersey.

1. The Archdiocese's Former Ownership of Property in New Jersey.

There is no evidence that the Archdiocese's former ownership of real properties in New Jersey had any relation to plaintiff's allegation of abuse by McCarthy. Plaintiff has certified that he was abused by McCarthy at a private home McCarthy was using in Margate, New Jersey in 1971. The Archdiocese's former ownership of other properties in New Jersey was not related to McCarthy's use of the home in Margate. Nor did plaintiff allege that McCarthy used the former properties to sexually abuse plaintiff. Specific jurisdiction requires "a connection between the forum and the specific claims at issue." Bristol-Myers Squibb Co. v. Superior Ct., 582 U.S. 255, 265 (2017).

The facts of Doe 1 v. Archdiocese of Phila., in which the Law Division held the Archdiocese had the requisite minimum contacts with New Jersey to confer personal jurisdiction, are distinguishable. 461 N.J. Super. 406 (Law Div. 2019). In Doe 1 the Law Division took judicial notice that, from 1963 to 2013, the Archdiocese owned properties in Ventnor and that the Diocese of Trenton, New Jersey was "partners" with the Pennsylvania seminary that the priest alleged to have abused Doe 1 attended. Id. at 424. The court also noted the Archdiocese's property was "located only a few miles from the alleged location of the abuse." Ibid. Unlike in Doe 1, there is no evidence in this record that



plaintiff's parish was "partnered" with any New Jersey diocese or parish. Further, there is no indication that any sexual abuse of plaintiff occurred at the Archdiocese's properties. In short, the Archdiocese's former ownership of property, absent a connection to plaintiff's cause of action, is insufficient to establish personal jurisdiction.

2. The Archdiocese's Supervision and Employment of McCarthy.

There is no evidence that the Archdiocese controlled, supervised, or was even aware of McCarthy's alleged sexual assault of plaintiff in New Jersey. The record does not contain any evidence that the Archdiocese had been notified of McCarthy's attraction to young boys in or before 1971. Indeed, plaintiff concedes that the Archdiocese was first on notice of McCarthy's propensity to sexually abuse young boys in 1986.

Moreover, there was no evidence that the Archdiocese knew of, approved, or sanctioned McCarthy taking plaintiff to a private home in Margate. Accordingly, there is no evidence demonstrating that the Archdiocese purposefully availed itself of any benefit or activity in New Jersey in connection with plaintiff's allegations against McCarthy.

We reject plaintiff's agency argument because the facts do not support it. Plaintiff contends the Archdiocese employed and controlled McCarthy at all

times when he was a priest of the Archdiocese. Plaintiff then argues that McCarthy was counseling and ministering to plaintiff when he brought him to New Jersey and sexually assaulted him.

Initially, we note that determining personal jurisdiction is a separate question from determining vicarious liability. See Ford, 141 S. Ct. at 1026 (explaining that the United States Supreme Court has "never framed the specific jurisdiction inquiry as always requiring proof of causation—i.e., proof that the plaintiff's claim came about because of the defendant's in-state conduct"). Nevertheless, the authorized acts of an agent can establish personal jurisdiction over the principal. See Daimler, 571 U.S. at 135 n.13.

To hold a principal vicariously liable for an agent's tortious conduct, the agent must be acting within the scope of his or her employment and responsibilities. Haviland v. Lourdes Med. Ctr. of Burlington Cnty., Inc., 250 N.J. 368, 378 (2022); Abbamont v. Piscataway Twp. Bd. of Educ., 138 N.J. 405, 416 (1994). "An employee is acting within the scope of employment if the action is 'of the kind'" that the employee is hired to perform; "it occurs substantially within the authorized time and space limits;" and "it is actuated, at least in part, by a purpose to serve the [employer]." Abbamont, 138 N.J. at 416 (quoting Di Cosala v. Kay, 91 N.J. 159, 169 (1982)).

If an agent is acting outside the scope of his or her employment, the employer may be held vicariously liable if it "delegates the authority to control the work environment to a supervisor and that supervisor abuses that delegated authority." Lehmann v. Toys 'R' Us, Inc., 132 N.J. 587, 620 (1993). That inquiry requires the factfinder to determine that: "(1) the employer gave the authority to the supervisor to control the situation about which the plaintiff complains; (2) the supervisor exercised that authority; (3) the exercise of authority resulted in a violation . . . ; and (4) the authority delegated by the employer to the supervisor aided the supervisor in injuring the plaintiff." Hardwicke v. Am. Boychoir Sch., 188 N.J. 69, 101-02 (2006).

Moreover, that individuals may be agents for one purpose, does not mean that they are agents for every purpose. See Daimler, 571 U.S. at 135; see, e.g., Thompson v. Roman Cath. Archbishop of Wash., 735 F. Supp. 2d 121, 129-30 (D. Del. 2010) (explaining that a priest did not act within the scope of his employment because he performed the claimed act of sexual abuse for his own gratification and not at the direction of the diocese); Doe v. Liberatore, 478 F. Supp. 2d 742, 758 (M.D. Pa. 2007) (stating that it is "clear that [the priest's] sexual molestation of [p]laintiff was not within the scope or nature of his employment as a priest").

McCarthy was not acting within the scope of his responsibilities as a priest when he sexually assaulted plaintiff. In addition, in 1971, the Archdiocese had no knowledge of prior sexual assaults by McCarthy, and, therefore, at least at that time, would have had no reason to restrict or strip him of his priestly duties. Further, there is no evidence that the Archdiocese delegated to McCarthy the authority to control plaintiff by counseling and ministering to plaintiff in his private home in New Jersey. Instead, the facts establish that plaintiff's mother gave McCarthy permission to take plaintiff to the home in Margate.

In reaching this holding, we have considered the New Jersey Legislature's 2019 enactment of the Child Victims Act (CV Act). L. 2019, c. 120. The CV Act provides a two-year revival window for victims to file otherwise time-barred claims for sexual abuses committed against them while minors. N.J.S.A. 2A:14-2b(a). The CV Act also amended the Charitable Immunity Act to allow retroactive liability against religious and other charitable organizations. N.J.S.A. 2A:53A-7(c); N.J.S.A. 2A:14-2b(b). While the CV Act evidences New Jersey's strong public policy to protect and compensate children who were sexually abused, the CV Act does not change the federal constitutional due process protections concerning personal jurisdiction. Accordingly, to sue a non-

resident defendant in New Jersey, the non-resident defendant must still be subject to personal jurisdiction in New Jersey.

Our holding is also consistent with rulings by other courts that have considered whether Catholic dioceses, including the Archdiocese, are subject to personal jurisdiction because of alleged sexual abuses committed by priests.<sup>4</sup> Like this case, those cases depended on the specific jurisdictional facts involved. The facts in this case are analogous to the facts in the cases that have held there is no personal jurisdiction. See Cath. Diocese of Green Bay, Inc., v. John Doe 119, 349 P.3d 518 (Nev. 2015) (holding there was no personal jurisdiction over the Catholic Diocese of Green Bay because the priest alleged to have committed sexual abuse unilaterally sought employment in Nevada and the Diocese did not maintain control or supervision over the priest's day-to-day work); Tercero v. Roman Cath. Diocese of Norwich, 48 P.3d 50 (N.M. 2002) (concluding there was no jurisdiction over the non-resident Diocese of Norwich because at the time of the alleged abuse, the Diocese had little, if any, connection to, participation with, or control over the priest or the treatment center it had sent him to for therapy); Archdiocese of Detroit v. Green, 899 So. 2d 322 (Fla. Dist.

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<sup>4</sup> The parties cite to several unpublished opinions. We, however, do not rely on or cite to unpublished opinions because they do not constitute binding precedent. R. 1:36-3.

Ct. App. 2004) (finding no basis for jurisdiction on an agency theory when a priest unilaterally moved to Florida and the Diocese later gave permission for his incardination without any knowledge of the allegations of sexual misconduct); Doe v. Roman Cath. Diocese of Boise, Inc., 918 P.2d 17 (N.M. Ct. App. 1996) (holding the Diocese of Boise was not subject to suit in New Mexico because giving a priest permission to leave Idaho without retaining any control over his ministerial duties did not constitute a purposeful act).

By contrast, the facts of this case are distinguishable from the facts in cases where courts have found personal jurisdiction. See Archdiocese of Milwaukee v. Superior Ct., 5 Cal. Rptr. 3d 154 (Cal. Ct. App. 2003) (finding personal jurisdiction where the Milwaukee Archdiocese excardinated a priest convicted of sexual perversion in Wisconsin and knowingly facilitated his incardination in California despite the risk of harm to young boys); John Does 1—9 v. Compcare, Inc., 763 P.2d 1237 (Wash. Ct. App. 1988) (holding personal jurisdiction existed where the Diocese of Lafayette in Louisiana relocated a priest it had suspended for sexual misconduct with minors for treatment at a Jesuit House in Spokane to avoid harmful publicity and additional legal consequences stemming from his pedophilic problems).

Finally, we also reject plaintiff's vague contentions concerning sexual abuses by other priests of the Archdiocese. Initially, we note that there is no evidence or even an allegation that activities by other priests affected plaintiff. More critically, as we have analyzed, to establish specific jurisdiction in this case, plaintiff must establish that the Archdiocese purposefully availed itself of benefits from New Jersey related to McCarthy's alleged sexual abuse of plaintiff. Non-specific allegations about sexual abuse of other children by other priests of the Archdiocese do not provide such proof.

Affirmed.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.



CLERK OF THE APPELLATE DIVISION

## **Appendix “B”**

The Opinion of the trial court, entered on August 19, 2022.



**FILED**

AUG 19 2022

08/19/2022 Order and Memorandum (granting motion to dismiss and dismissing Plaintiff's claims against Defendant Archdiocese of Philadelphia)  
PREPARED BY THE COURT

JOHN C. PORTO, P.J.Cv.

D.T.,

Plaintiff,

v.

ARCHDIOCESE OF PHILADELPHIA and  
MICHAEL J. MCCARTHY,

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
ATLANTIC COUNTY

DOCKET NO.: ATL-L-001327-20

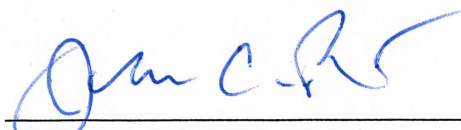
**ORDER**

**THIS MATTER** having been brought before the Court upon Defendant, Archdiocese of Philadelphia's Renewed Motion to Dismiss for Lack of Personal Jurisdiction, and the Court having considered the matter, and for good cause shown:

**IT IS** on this 19th day of August 2022, **ORDERED** that:

1. The Archdiocese of Philadelphia's Motion is **GRANTED** for the reasons set forth in the Memorandum of Decision accompanying this Order; and
2. Plaintiff's claims and Defendant Michael J. McCarthy's cross-claims against the Archdiocese of Philadelphia are **DISMISSED** with prejudice.

**IT IS FURTHER ORDERED** that service of this Order shall be effectuated upon all parties upon its upload to eCourts and pursuant to Rule 1:5-1(a), movant shall serve a copy of this Order on all parties not served electronically within seven (7) days of the date of this Order.



JOHN C. PORTO, P.J.Cv.

Opposed

Unopposed



**NOT FOR PUBLICATION WITHOUT THE APPROVAL  
OF THE COMMITTEE ON OPINIONS**

JOHN C. PORTO, P.J.Cv.

1201 Bacharach Boulevard  
Atlantic City, N.J. 08401-4527  
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**MEMORANDUM OF DECISION ON MOTION  
Pursuant to Rule 1:6-2(f)**

**TO:** Nicholas M. Centrella, Esquire                      John Curtis Agner, Esquire  
Conrad O'Brien, P.C.    *Attorneys for Defendant, Michael J.  
Attorney for Defendant, Archdiocese                      McCarthy  
of Philadelphia, MOVANT*

David K. Inscho, Esquire  
Lorraine H. Donnelly, Esquire  
Kline & Specter, P.C.  
*Attorneys for Plaintiff, D.T.*

**RE:** D.T. v. Archdiocese of Philadelphia,                      **DOCKET NO.** ATL-L-1327-20  
et al.

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**NATURE OF MOTION: Defendant, Archdiocese of Philadelphia's Renewed Motion to Dismiss Plaintiff's Complaint pursuant to R. 4:6-2(b) for Lack of Personal Jurisdiction**

**HAVING CAREFULLY REVIEWED THE MOVING PAPERS AND THE RESPONSES FILED, I RULED ON THE ABOVE CAPTIONED MOTION AS FOLLOWS:**

**Nature of Motion and Procedural History**

The procedural history was recited in prior Memorandums of Decision; however, this Court provides the following for context.

This litigation arises out of alleged childhood sexual abuse in 1971 when Plaintiff was fourteen years old. On May 12, 2020, Plaintiff filed his five Count

Complaint against the Archdiocese of Philadelphia (“Archdiocese”) and Michael J. McCarthy (“McCarthy”)<sup>1</sup> (collectively “Defendants”).

In 1971, McCarthy was a priest<sup>2</sup> assigned as a faculty member at the Cardinal O’Hara High School. At that time, he allegedly sexually assaulted Plaintiff in Margate, New Jersey at the home owned by McCarthy.

The discovery end date was August 1, 2022. Arbitration is scheduled for September 21, 2022.

On September 20, 2021, Archdiocese renewed its motion to dismiss Plaintiff’s Complaint for lack of personal jurisdiction and also refiled a motion to dismiss the cross-claims of McCarthy. On October 12, 2021, Plaintiff filed his opposition. McCarthy filed his opposition on October 6, 2021. The Archdiocese filed its reply on October 18, 2021.

The Court conducted oral argument on November 16, 2021, and thereafter entered orders on December 6, 2021 granting the motions, dismissing Plaintiff’s Complaint, and dismissing the cross-claims of McCarthy. Plaintiff filed an interlocutory appeal.

On January 14, 2022, the Appellate Division reversed this Court’s order and remanded the case. The Appellate Division directed specific discovery to be provided to this Court to establish a complete record for review. Co-Defendant McCarthy did not appeal the Court’s decision dismissing his cross-claims against Archdiocese.

On June 15, 2022, Defendant Archdiocese filed the instant renewed motion to dismiss for lack of personal jurisdiction under Rule 4:6-2(b). On June 30, 2022, Plaintiff and Defendant McCarthy filed opposition.

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<sup>1</sup> The Court refers to Co-Defendant Michael J. McCarthy by his last name for reference purposes only. No disrespect or familiarity is intended.

<sup>2</sup> McCarthy was a priest within the Archdiocese from 1965 until he was laicized in 2006.

The Court conducted telephonic oral argument on August 9, 2022.

This Decision expands upon as well as incorporates the previous analysis found in prior Memorandums of Decision issued in this matter.

### Parties' Contentions<sup>3</sup>

#### **Archdiocese**

Defendant Archdiocese counsel submits this Court should again dismiss the Archdiocese for lack of jurisdiction—for the third time. Most recently, the Appellate Division remanded for an examination of the Archdiocese's property records on the theory that this could support the "purposeful availment" requirement. However, additional discovery into the Archdiocese's property records revealed nothing new. As Plaintiff and the Court already know, the Archdiocese previously owned a property in Ventnor, New Jersey that was used as a vacation retreat. This property—like other properties that the Archdiocese briefly owned—is not alleged to have anything to do with Plaintiff's claims, as this Court previously held. Importantly, the Appellate Division did not disturb this Court's holding (and supporting factual findings) that Plaintiff's claims do not "arise out of or relate to" the Archdiocese's contacts with New Jersey—including former property ownership. The Appellate Division also did not disturb other key aspects of this Court's prior dismissal holding, such as:

- "[T]his Court rejects any agency theory of jurisdiction" because, among other reasons, there is no evidence that the Archdiocese directed McCarthy, the accused priest, to "assault this plaintiff" in New Jersey.
- "Plaintiff's claim does not arise out of or relate to the Defendant's forum related activities. The Court finds on this record the alleged

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<sup>3</sup> The Court summarizes the contentions of counsel in their briefs and arguments put forth at oral argument.

assault committed by McCarthy on this Plaintiff was random, isolated and not at the direction of the Archdiocese.”

- Regarding Hardwicke v. American Boychoir School, 188 N.J. 69 (2006) and Lehmann v. Toys R Us, Inc., 132 N.J. 587 (1993), “[t]his Court does not find those cases support any finding of specific jurisdiction in this case[.]”
- “Nor does this Court find any support in relying on canon law or any individual faith based ecclesiastical pronouncement to support specific jurisdiction,” because “Plaintiff’s argument in this regard does not treat the Archdiocese fairly as it relies on the tenets of this one particular religious faith.”

Counsel argues these holdings and factual findings remain valid. Counsel contends the latest round of jurisdictional discovery could not possibly change the Court’s analysis to allow for the exercise of specific personal jurisdiction. Even if property records could show “purposeful availment” in this case (they cannot), nothing warrants changing the Court’s prior holding (and supporting factual findings) that Plaintiff’s claims do not “arise out of or relate to” the Archdiocese’s contacts with New Jersey—which is fatal to personal jurisdiction under the Due Process Clause.

In support, counsel argues the following points:

- A. The Archdiocese’s former New Jersey property ownership does not support jurisdiction.
- B. There is no general jurisdiction.
- C. There is no specific jurisdiction.
  1. There is no jurisdiction because the Archdiocese did not purposely direct any relevant conduct towards New Jersey.

2. There is no jurisdiction because Plaintiff's claims do not "arise out of or relate to" any New Jersey contacts by the Archdiocese.
3. The Exercise of Personal Jurisdiction Would Offend "Traditional Notions of Fair Play and Substantial Justice."

D. The Court Should Again Reject Plaintiff's "Jurisdiction by Agency" Theory.

E. "Vicarious Liability" is irrelevant to personal jurisdiction.

F. Plaintiff's other attempts to manufacture personal jurisdiction fail because they violate the First Amendment.

Following the Appellate Division's order, counsel submits, after a diligent search, the Archdiocese now produced all its records of past New Jersey real property ownership, along with a certification explaining those records from its Office of Property Services, which maintains its real estate records. (See Exhibit I, Schneider Certif.) The only New Jersey property ever used by the Archdiocese was a vacation home for priests in Ventnor, New Jersey<sup>4</sup>, which the Archdiocese sold in 2012 and 2013. (Id. ¶¶ 8-13.) The property consisted of two parcels in Ventnor: 114 South Princeton Avenue and 105 Princeton Avenue. As the Court previously held, this property was "unrelated" to this lawsuit. (Exhibit G, Memo. of Decision at p. 15-16.) The Archdiocese briefly owned other properties from the 1960s to the present, but they were not used (e.g., occupied) by the Archdiocese. (Exhibit I ¶¶ 14-19.) Instead, over the years, the Archdiocese received charitable donations (e.g., bequests) of several New Jersey properties, which were then sold to raise funds. (Id.) For instance, the Archdiocese was bequeathed a Hamilton Township condominium

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<sup>4</sup> The ownership of this property was discussed in Doe v. Archdiocese of Philadelphia, 461 N.J. Super. 406 (Law Div. 2019).

unit in December 1998, which was sold in June 1999. (Id. ¶ 17, Exhibit J attached thereto.) in another example, in 2006, a one-week Atlantic City time share was donated to an Archdiocese school's parent-teacher association. (Id. ¶ 16, Exhibit H attached thereto.) Counsel argues these New Jersey properties had nothing to do with this lawsuit.

During oral argument, counsel also informed the Court that following the parties' submissions in this matter, in factually similar cases, two Superior Court Judges in Ocean County held that New Jersey does not have personal jurisdiction over the Archdiocese.<sup>5</sup>

## **Plaintiff**

In opposition, Plaintiff's counsel submits the following points:

- The Archdiocese is responsible for the New Jersey actions of its agent, Father McCarthy.
- Jurisdictional Discovery Established that Acts of McCarthy in New Jersey Are Attributable to the Archdiocese and Establish Minimum Contacts.

1. Jurisdictional discovery has established that bringing D.T. to the New Jersey, for the stated purpose of mentoring him, is within the scope of McCarthy's position as a priest and establishes minimum contacts.

2. Jurisdictional discovery established that McCarthy used his position as a priest to bring D.T. to N.J. making the

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<sup>5</sup>The Honorable Mark A. Troncone, J.S.C., OCN-L-2963-19, June 20, 2022; the Honorable Judge Valter H. Must, J.S.C., OCN-L-108-20, June 28, 2022. These unpublished decisions were not considered by this Court in rendering this Decision.

McCarthy's acts attributable to Archdiocese under New Jersey agency law.

3. The obligation to supervise McCarthy while ministering to youth extends to trips where priests bring minor-parishioners to New Jersey in their role as priests.

- The exercise of jurisdiction does not offend traditional notions of fair play and substantial justice.
- The Archdiocese's argument that agency requires explicit direction to an employee is not supported by New Jersey agency law.

Counsel certifies:

- 16. In response to the Appellate Division's Order of January 14, 2022, the Archdiocese produced a certification from Philip Schneider Regarding Records of Real Property Ownership in New Jersey along with a copy of the deeds of said properties, which is attached as Exhibit "FF."
- 17. From 1963 through 2013, the Archdiocese owned two properties in Ventnor, New Jersey, located at 114 and 105 South Princeton Street, which were known as "Villa St. Joseph by the Sea" and were used as vacation homes for the priests. See Exhibit "FF."
- 18. From the 1970's through 2002, the Archdiocese also acquired via bequest several other properties in New Jersey which were sold for profits. See Exhibit "FF."
- 19. Defendants also served Responses to Plaintiff's Interrogatories and Notice to Produce (Set III), answering that in December of 2013, a victim reported to the Archdiocese that in



1987 he was abused by an Archdiocese priest at the “Villa St. Joseph by the Sea.” See a copy of Defendant’s responses, attached as Exhibit “GG.”

- 20. Defendants also produced documents prepared by the Archdiocese regarding the report of abuse alleging sexual assault that occurred at Villa St. Joseph by the Sea, attached as Exhibit “HH.”
- 21. Pursuant to the report of abuse, a priest obtained permission from a child-parishioner’s parents to take the 13 year old child parishioner to the Villa St. Joseph in Ventnor New Jersey to “help close the shore house up.” After using his position as a priest to take the child to the shore house, the survivor reported that the priest anally raped him. See Exhibit “HH” at p. 1.
- 22. The Archdiocese purportedly investigated these allegations, but in 2014 Archbishop Chaput found them unsubstantiated. See Exhibits GG and HH at p. 27.
- 23. In addition, Defendant McCarthy admits that any contact that he had with plaintiff and his family were strictly within his role as a Priest and spiritual advisor. See a true and correct Certification of Michael McCarthy dated November 24, 2020, attached as Exhibit II.

Counsel argues this further jurisdictional discovery underscored the Archdiocese is subject to the personal jurisdiction of the New Jersey Courts in this case. In particular, it established McCarthy and more than twenty other priests<sup>6</sup> routinely used their positions within the Archdiocese to bring children to the New

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<sup>6</sup> The Plaintiff’s assertion misconstrues the minimum contacts focus on “the relationship among the defendant, the forum, and the litigation.” Shaffer v. Heitner, 433 U.S. 186, 204 (1977).

Jersey shore and then abused them there (including D.T.). Jurisdictional discovery showed when McCarthy and others brought those children to New Jersey, they were acting within their duties and responsibilities as Archdiocesan employees to provide pastoral care to youth. It also showed McCarthy and other priests used the trust engendered by their jobs to facilitate their ability to bring D.T. and other children to New Jersey for pastoral care purposes. Discovery also established the Archdiocese owned two properties in New Jersey known as “Villa St. Joseph by the Sea,” which its priests used for vacation purposes as extensions of their duties for the Archdiocese from 1963 – 2013, which includes the year that D.T. was abused in this case. All of this further established the requisite contacts between the Archdiocese and New Jersey through the Archdiocese’s agents that justifies the exercise of personal jurisdiction in this case.

### **McCarthy**

Co-Defendant McCarthy’s counsel filed opposition and contends his client incorporates his arguments in his Opposition to the Motion & Affidavit filed on 9-24- 20<sup>7</sup> and in his Brief in Support of Opposition, with Exhibits<sup>8</sup>, and all Plaintiff’s arguments and proofs in opposition. McCarthy asserts that jurisdiction should be found both under specific jurisdiction, as asserted by Plaintiff, and found under general jurisdiction. These arguments are for jurisdictional purposes only, without waiving the right to contest any of the evidence in his defense during subsequent proceedings. McCarthy also continues to assert that the Archdiocese is an indispensable party, and this Court should provide the appropriate decision in that regard. The Complaint alleges one indivisible harm, committed by separate actors and actions by separate defendants.

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<sup>7</sup> (eCourts filing LCV20201687330)

<sup>8</sup> (eCourts filing #s LCV2020153978 and LCV20202154005 )

### Discussion

On January 14, 2022, the Appellate Division entered its order remanding this matter, stating:

Upon reviewing the trial court's memorandum of decision, this court noted that the trial court specifically found that "[t]he Archdiocese does not own property in New Jersey[,]" but then added a footnote that stated, "The Archdiocese previously owned real property in Ventnor, N.J." The footnote did not include a record cite.

A proper review of the trial court's dismissal order cannot occur based on an inadequate or incomplete record. We therefore remand this matter for the trial court to create a proper record regarding this "previously owned real property in Ventnor, N.J.," including a full description of the property, copies of the deed or deeds whereby the Archdiocese acquired and sold the property, the assessed value of the property for the last year the Archdiocese owned the property, and the Archdiocese's use of the property. In addition, the trial court shall determine if the Archdiocese owned any other property in New Jersey between July 1971 (the time when plaintiff alleges Father McCarthy abused plaintiff him [sic] at Father McCarthy's home in Margate) and May 12, 2020 (the date plaintiff filed his complaint); if so, the same information shall be documented for each such property owned by the Archdiocese during this time period.

After receiving competent proofs regarding these issues, the motion court shall than [sic] reconsider its decision based on this fully developed record and address whether the nature and extent of the Archdiocese's past ownership of property in New Jersey, during relevant time periods, shows that the Archdiocese purposefully availed itself of the privilege of conducting activities with New Jersey. See Int'l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945);

Jardim v. Overlay, 461 N.J. Super. 367, 379 (App. Div. 2019).<sup>9</sup> We do not retain jurisdiction.

Therefore, the issue before this Court on this second remand is “whether the nature and extent of the Archdiocese's past ownership of property in New Jersey, during relevant time periods, shows that the Archdiocese purposefully availed itself of the privilege of conducting activities with New Jersey.” In accordance with the remand, this Court considered all of the positions anew; however, as outlined below, this Court finds the Defendant’s motion must be granted.

The basis of the Defendant’s motion is again premised on R. 4:6-2(b) lack of jurisdiction. "A court's jurisdiction is 'a mixed question of law and fact' that must be resolved at the outset, 'before the matter may proceed . . . .' " Rippon v. Smigel, 449 N.J. Super. 344, 359 (App. Div. 2017) (citation omitted.) Additionally, the Appellate Division’s Jardim decision provides an excellent introduction on this jurisdiction issue:

Long before the Internet was invented, the United States Supreme Court held that the Due Process Clause of the Fourteenth Amendment limits the personal jurisdiction of state courts over nonresident civil defendants. Pennoyer v. Neff, 95 U.S. 714, 733, (1877). In its seminal 1945 opinion in International Shoe Co. v. Washington, 326 U.S. 310, 316-17 (1945), the Court instructed that a nonresident defendant must have certain "minimum contacts" with the forum state, "such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" (quoting Milliken v. Meyer, 311 U.S. 457, 463 (1940)). The "primary focus of [the] personal jurisdiction inquiry is the defendant's relationship to the forum state." Bristol-Myers Squibb Co. v. Superior Court of California, 137 S. Ct. 1773, 1779 (2017). Analytically, the Court recognizes two types of jurisdiction: "general (sometimes

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<sup>9</sup> This case discusses personal jurisdiction related to retail transactions conducted over the internet and otherwise factually distinguishable.

called 'all-purpose') jurisdiction and 'specific' (sometimes called 'case-linked') jurisdiction." Id., \_\_ U.S. at \_\_, 137 S. Ct. at 1780 (citing Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915, 919, 131 S. Ct. 2846, 180 L. Ed. 2d 796 (2011)).

[Jardim, 461 N.J. Super. at 375]

New Jersey courts "may exercise in personam jurisdiction over a non-resident defendant 'consistent with due process of law.'" Bayway Refining Co. v. State Utils., Inc., 333 N.J. Super. 420, 428 (App. Div. 2000) (alterations in original omitted) (quoting R. 4:4-4(b)(1)). This state's long-arm jurisdiction extends to the "outermost limits permitted by the United States Constitution." Avdel Corp. v. Mecure, 58 N.J. 264, 268 (1971). When a defendant challenges personal jurisdiction, "the plaintiff bears the burden of demonstrating that the defendant's contacts with the forum state are sufficient to confer personal jurisdiction on the court." Jacobs v. Walt Disney World, Co., 309 N.J. Super. 443, 454 (App. Div. 1998). This burden may be accomplished by way of "sworn affidavits, certifications, or testimony." Jacobs, 309 N.J. Super. at 454 (citations omitted.) While plaintiff must put forth actual proofs, not mere allegations, disputed issues are construed in favor of the plaintiff. Patterson by Patterson v. FBI, 893 F.2d 595, 603 (3d Cir.1990). "[T]he jurisdictional test is not to be applied mechanically[.]" Charles Gendler & Co. v. Telecom Equip. Co., 102 N.J. 460, 470 (1986), but is "fact-specific" and conducted "case-by-case[.]" Jardim v. Overley, 461 N.J. Super. 367, 377 (App. Div. 2019) (citation omitted.). "The requisite quality and quantum of contacts is dependent on whether general or specific jurisdiction is asserted . . . ." Citibank, N.A. v. Estate of Simpson, 290 N.J. Super. 519, 526 (App. Div. 1996).

The Archdiocese was and is a Roman Catholic non-profit organization with its principal place of business in Philadelphia, Pennsylvania and is a nonresident defendant. Jurisdiction for nonresident defendants exists through either general or specific means. Jacobs v. Walt Disney World, Co., 309 N.J. Super. at 452. The Archdiocese contends only specific jurisdiction is in serious dispute<sup>10</sup>. Plaintiff submits, “the issue presented is whether McCarthy’s non-resident employer at the time of the abuse, the Archdiocese of the [sic] Philadelphia, is subject to this Court’s personal jurisdiction over claims arising from the abuse.” See Pl. Br. at p. 1. However, for purposes of completeness, the Court will briefly address general jurisdiction.

To attach general jurisdiction, a defendant's activities must be "so continuous and systematic as to render [it] essentially at home in the forum State." FDASmart, Inc. v. Dishman Pharm. & Chems., Ltd., 448 N.J. Super. 195, 202 (App. Div. 2016) (alteration in original) (citation omitted) (quoting Daimler AG v. Bauman, 571 U.S. 117, 128 (2014)). “General jurisdiction extends to ‘any and all claims’ brought against a defendant.” Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915, 919 (2011). To exercise general jurisdiction, a court must be satisfied with facts or evidence indicating that the individual or corporation has affiliations with the forum state that must be so continuous and systematic as to render the individual or corporation ‘at home’ in the forum state. Daimler AG v. Bauman, 571 U.S. at 127. Specifically, a corporation is at home (1) in the state of incorporation; and (2) in the state where the corporation maintains its principal place of business. Malik v. Cabot Oil & Gas, 710 F. App’x 561, 563 (3d. Cir. 2017). However, “in an exceptional case, a corporation’s operations in a forum other than the state of incorporation or the

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<sup>10</sup> See Archdiocese Br. at p. 10.

principal place of business may be substantial and of such a nature that it is considered 'at home' in that State." Daimler, 571 U.S. at 139 n.19.

Specific jurisdiction "is established when a defendant's acts within the forum-state give rise to the cause of action." McDonnell v. Illinois, 319 N.J. Super. 324 (App. Div. 1999). See also Waste Mgmt., Inc. v. Admiral Ins. Co., 138 N.J. 106, 119 (1994), cert. denied, 513 U.S. 1183 (1995). For this analysis, the "minimum contacts inquiry must focus on 'the relationship among the defendant, the forum, and the litigation.'" Lebel v. Everglades Marina, Inc., 115 N.J. 317, 323 (1989) (quoting Shaffer v. Heitner, 433 U.S. 186, 204 (1977)). The minimum contacts requirement is satisfied if "the contacts expressly resulted from the defendant's purposeful conduct and not the unilateral activities of the plaintiff." Ibid. (citing World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297-98 (1980)). "In determining whether the defendant's contacts are purposeful, a court must examine the defendant's 'conduct and connection' with the forum state and determine whether the defendant should 'reasonably anticipate being haled into court [in the forum state]'" Bayway Refining Co., 333 N.J. Super. at 429 (alteration in original) (quoting World-Wide Volkswagen Corp., 444 U.S. at 297). "The purposeful availment requirement ensures that an out-of-state defendant 'will not be compelled to participate in litigation in a foreign jurisdiction 'on the basis of random, fortuitous, or attenuated contacts or as a result of the unilateral activity of some other party.'" YA Global Invs., L.P. v. Cliff, 419 N.J. Super. 1, 9 (App. Div. 2011) (quoting Waste Mgmt., 138 N.J. at 121). Nevertheless, "... the cause of action 'must arise out of contacts that the 'defendant himself' creates with the forum state.'" Walden v. Fiore, 571 U.S. 277, 284 (2014). "[F]oreseeability<sup>11</sup> alone has never been a sufficient benchmark for personal jurisdiction under the Due Process clause." World-Wide

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<sup>11</sup> "This is not to say, of course, that foreseeability is wholly irrelevant." World-Wide Volkswagen Corp., 444 U.S. at 297.

Volkswagen Corp., 444 U.S. at 295. “These rules derive from and reflect two sets of values—treating defendants fairly and protecting ‘interstate federalism.’” Id. at 293.

This inquiry must be conducted on a case-by-case basis. Shah v. Shah, 184 N.J. 125, 138 (2005). Specifically, this Court should consider:

the burden on the defendant, the interests of the forum State, and the plaintiff's interest in obtaining relief. It must also weigh in its determination "the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and the shared interest of the several States in furthering fundamental substantive social policies."

[Asahi Metal Indus. Co. v. Superior Court of Cal., 480 U.S. 102, 113 (1987) (quoting World-Wide Volkswagen Corp., 444 U.S. at 292.)]

In this Court’s prior Memorandum of Decision it cited to Ford Motor Co. v. Mont. Eighth Judicial Dist. Court, 141 S. Ct. 1017 (2021). Since that decision was the Supreme Court’s most recent decision on jurisdiction, it is important to again incorporate that decision here. In Ford, the Court held “the connection between the plaintiffs' claims and Ford's activities in the forum States is close enough to support specific jurisdiction.” Id. at 1032. In that case, there were two motor vehicle accidents. One occurred in Montana, and the other occurred in Minnesota. Ford moved to dismiss the two suits for lack of personal jurisdiction, on similar grounds. The two state Supreme Courts rejected Ford’s arguments. Id. at 1023. The United States Supreme Court reiterated:

The Fourteenth Amendment’s Due Process Clause limits a state court’s power to exercise jurisdiction over a defendant. The canonical decision in this area remains International Shoe Co. v. Washington, 326 U. S. 310 (1945). There, the Court held that a tribunal’s authority depends on the defendant’s having such “contacts” with



the forum State that “the maintenance of the suit” is “reasonable, in the context of our federal system of government,” and “does not offend traditional notions of fair play and substantial justice.” Id., at 316-317.

[Id. at 1024.]

The Court also took the opportunity to discuss and explain specific jurisdiction:

It covers defendants less intimately connected with a State, but only as to a narrower class of claims. The contacts needed for this kind of jurisdiction often go by the name “purposeful availment.” The defendant, we have said, must take “some act by which [it] purposefully avails itself of the privilege of conducting activities within the forum State.” The contacts must be the defendant’s own choice and not “random, isolated, or fortuitous. They must show that the defendant deliberately “reached out beyond” its home—by, for example, “exploit[ing] a market” in the forum State or entering a contractual relationship centered there. Yet even then—because the defendant is not “at home”—the forum State may exercise jurisdiction in only certain cases. The plaintiff’s claims, we have often stated, “must arise out of or relate to the defendant’s contacts” with the forum. Or put just a bit differently, “there must be ‘an affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence that takes place in the forum State and is therefore subject to the State’s regulation. (internal quotations omitted.)

[Id. at 1025.]

The Court also noted Ford conceded “purposeful availment” of the two State’s markets. Id. at 1028. The Court found through marketing and contract enforcement etc., “Ford had systematically served a market in Montana and Minnesota for the very vehicles that the plaintiffs allege malfunctioned and injured them in those States. So there is a strong “relationship among the defendant, the forum, and the

litigation”—the “essential foundation” of specific jurisdiction.” Ibid. So, due to the “reach of Ford’s Montana and Minnesota contacts—underscore the aptness of finding jurisdiction here, even though the cars at issue were first sold out of state.” Id. at 1029. The Court also found “allowing jurisdiction in these cases treats Ford fairly”. Ibid. The Supreme Court also added, “ ...because that exercise of jurisdiction is so reasonable, it is also predictable—and thus allows Ford to “structure [its] primary conduct” to lessen or even avoid the costs of state-court litigation.” Id. at 1030. Lastly, the Court added “interstate federalism” supports jurisdiction over these suits in Montana and Minnesota. Ibid. “Those States have significant interests at stake—‘providing [their] residents with a convenient forum for redressing injuries inflicted by out-of-state actors,’ as well as enforcing their own safety regulations.” Ibid. For the critical analysis it is clear the Supreme Court confined its analysis to the actions of Ford in the subject states.

For this reconsideration motion, the first step is to determine whether the Archdiocese had the requisite minimum contacts with New Jersey. See Shah, 184 N.J. at 138. Then, “[i]n order for a state court to exercise [specific] jurisdiction over a nonresident defendant, the lawsuit must aris[e] out of or relate to the defendant’s contacts with the forum” Jardim v. Overley, 461 N.J. Super. at 379. (citation omitted.) The mere presence in the forum state of defendant’s property that is unrelated to the cause of action is insufficient to establish personal jurisdiction. Burnham v. Superior Court of Cal., 495 U.S. 604, 620 (1990); Shaffer v. Heitner, 433 U.S. at 213; see also Lebel, 115 N.J. at 323.

During oral argument, the attorneys again addressed Hardwicke v. American Boychoir School, 188 N.J. 69 (2006). Plaintiff relies on this case to support a finding of jurisdiction. In Hardwicke, our Supreme Court held the Child Sex Abuse Act (the “CSAA”) “imposes responsibility on those in the best position to know of the abuse and stop it; application of section 219 of the Restatement to plaintiff’s

common-law claims advances those goals.” Id. at 102. Accordingly, the Court found, in order to protect vulnerable children from victimization, a boarding school could be liable for sexual abuse of a student even though the acts of sexual abuse are outside the "scope of agency." However, the abuse in Hardwicke as well as its holding are distinguishable. The abuse in Hardwicke occurred on “at the School, on School-sponsored field trips and in Hanson's car, among other places<sup>12</sup>.” Id. at 76.

Importantly, Hardwicke clearly does not address personal jurisdiction, as all of the parties were New Jersey residents and jurisdiction was not at issue. Therefore, the Court does not find the decision instructive for purposes of resolving this instant motion on jurisdiction. The Plaintiff’s reliance on agency law is based upon the theory under which Plaintiff could potentially hold the Archdiocese liable and is relevant for the merits of Plaintiff’s claims. At this point, the Court is not addressing the merits of Plaintiff’s claims and is only addressing whether Archdiocese purposefully availed itself for purposes of personal jurisdiction. The Due Process Clause of the Fourteenth Amendment limits the personal jurisdiction of state courts over nonresident civil defendants. This Court finds this agency argument based on Hardwicke does not and cannot expand the Fourteenth Amendment in that regard to support Plaintiff’s jurisdictional argument.

### **Analysis**

The Court does not find the Archdiocese’s past ownership of property in New Jersey, during relevant time periods, alters in any way this Court’s previous analytical approach and decision for the reasons set forth below. This Court’s focus was on "the relationship among the defendant, the forum, and the litigation." Lebel, 115 N.J. at 323 quoting Shaffer, 433 U.S. at 204.

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<sup>12</sup> “Other places” are not specified by the Court.

The Defendant's Counsel submitted the following information related to their client's past property ownership in New Jersey:

- After a diligent search, the Archdiocese now produced all its records of past New Jersey real property ownership, along with a certification explaining those records from its Office of Property Services, which maintains its real estate records. (See Archdiocese Exhibit I, Schneider Certif.)
- The only New Jersey property ever used by the Archdiocese was a vacation home for priests in Ventnor, New Jersey, which the Archdiocese sold in 2012 and 2013. (Id. ¶¶ 8-13.)
- From 1963 through 2013, the Archdiocese owned two properties in Ventnor, New Jersey, located at 114 and 105 South Princeton Street, which were known as "Villa St. Joseph by the Sea" and were used as vacation homes for the priests. (See Plaintiff's Exhibit "FF.")
- The Archdiocese briefly owned other properties from the 1960s to the present, but they were not used (e.g., occupied) by the Archdiocese. (See Archdiocese Exhibit I, ¶¶ 14-19.)
- From the 1970's through 2002, the Archdiocese also acquired via bequest several other properties in New Jersey that were sold for profit. (See Plaintiff's Exhibit "FF.")
- Over the years, the Archdiocese received charitable donations (e.g., bequests) of several New Jersey properties, which were then sold to raise funds. (See Archdiocese Exhibit I ¶¶ 14-19.)
- For instance, the Archdiocese was bequeathed a Hamilton Township condominium unit in December 1998, which was sold in June 1999. (Id. ¶ 17, Exhibit J attached thereto.)

- To provide another example, in 2006, a one-week Atlantic City time share was donated to an Archdiocese school's parent-teacher association. (Id. ¶ 16, Exhibit H attached thereto.)

These excerpts were taken by counsel from the Certification of Philip Schneider, the Director of the Office of Property Services for the Archdiocese of Philadelphia ("Philip Cert."). The Philip Cert is attached to Archdiocese's Motion at Exhibit I, and Plaintiff's Motion at Exhibit FF.

The Philip Cert., in relevant part, provides:

4. The Archdiocese of Philadelphia does not own real property in New Jersey, and has not owned real property in New Jersey since 2013, as discussed below.
5. Based upon my review the Archdiocese's real property records within the Archdiocese, the only properties the Archdiocese ever used in New Jersey were both located on South Princeton Street in Ventnor, New Jersey. I have set forth below the relevant ownership and usage details for each property.
6. A property at 114 South Princeton Avenue in Ventnor, New Jersey was purchased by the Archdiocese on June 2, 1963 for the \$1,000. My understanding is that this transaction was essentially a donation, with \$1,000 being a nominal sum.
7. As was customary for real property acquired or sold by the Archdiocese, the 114 South Princeton Avenue property was titled in the name of Archbishop John Krol. A copy of a deed showing this transaction is attached as Exhibit A.
8. The Archdiocese sold the 114 South Princeton Avenue property on November 30, 2012 for \$3,973,000. A deed showing the sale of the property is attached as Exhibit B.

9. A property at 105 South Princeton Avenue in Ventnor, New Jersey was purchased by Archbishop Krol, acting on behalf of the Archdiocese, on April 8, 1963 for \$19,000. A copy of a deed showing this transaction is attached as Exhibit C.

10. The Archdiocese sold the 105 South Princeton Avenue on November 18, 2013 for \$836,000. A deed evidencing the sale of the property is attached as Exhibit D.

11. During the time the Archdiocese owned the 114 and 105 South Princeton Street properties (1963-2013), the Ventnor properties were used by the Archdiocese as a vacation home for priests, including many retired priests. During this time, these properties were known as Villa St. Joseph by the Sea.

12. Although the South Princeton Avenue properties were the only New Jersey properties used by the Archdiocese from the 1960s to 2013, it is my understanding that, from time to time during this period, there have been charitable donations of New Jersey real property to the Archdiocese (e.g., gifts or bequeathments). In those circumstances, the Archdiocese did not use the donated properties. Rather, it was the practice of the Archdiocese to sell those properties to raise funds.

13. Because these properties were never used by the Archdiocese, the Office for Property Services does not have records of all these transactions. After conducting a diligent search, I have set forth below all the information maintained by the Archdiocese for these transactions.

14. The Archdiocese acquired via bequest a 39-acre tract of land in Williamstown, New Jersey from Father Alphonsus Bennett Conway in the 1970s. The last Will and Testament of Fr. Conway is attached hereto as Exhibit E. Fr. Conway had run an alcohol rehabilitation program on the land and directed in his will that the property should

continue to be used for that purpose. After Fr. Conway's death on February 12, 1970, the Archdiocese leased the land for \$1.00 to Maryville, Inc., the private organization that built and ran the alcohol treatment center on the property. The Archdiocese sold the property to Maryville Inc., for \$85,000 in 1987. The deed showing the sale of the property is attached as Exhibit F.

15. The Archdiocese acquired a property located at 115 Oxford Street in Ventnor, New Jersey from the Estate of Hannah G. Hogan in 1978. The Archdiocese sold the property in 1981 for \$545,000 which resulted in net proceeds to the Archdiocese of \$381,326 after accounting for costs of demolition, security, and real estate taxes. A June 17, 1998 memorandum describing the history of this property together with the 1981 deed of sale is attached as Exhibit G.

16. On August 22, 2006, a one-week time share in a condominium unit in Atlantic City, New Jersey was donated to St. Frances Cabrini Home and School Association, a parent- teacher organization supporting St. Frances Cabrini Catholic School, a former school within the Archdiocese. The deed showing this donation is attached as Exhibit H. According to my understanding, this time share was sold on March 24, 2009 for \$1,600.00. The Archdiocese does not have any documentation showing the sale.

17. The Archdiocese received as a donation on December 24, 1998 a condominium unit at Harding Run (Unit Q125) in Hamilton, New Jersey. The deed showing this donation is attached as Exhibit I. The property was sold on June 4, 1999 for \$53,000. The deed evidencing the Archdiocese's sale of this property is attached as Exhibit J.

18. The Archdiocese received as a donation on September 18, 2002 a property in Mt. Laurel, New Jersey, identified as Block 1310, Lot 2 and Block 1304, Lot 7. The deed evidencing this donation is attached as Exhibit K.

The Archdiocese sold the property on January 31, 2005 for \$790,000. The Archdiocese has not been able to locate the deed of sale.

19. If any Archdiocese-owned New Jersey properties (other than the Princeton Avenue properties in Ventnor) were occupied or used by the Archdiocese, my office would have records to reflect that information. However, after a diligent search, I have not uncovered anything showing that the Archdiocese used any other real property in New Jersey.

[See Philip Cert. at pp. 2-4.]

The Court accepts the aforementioned information on the prior property ownership of the Archdiocese.

#### General Jurisdiction

The Court finds it clear that New Jersey does not nor can it exercise general jurisdiction against the Archdiocese in this matter. The fact that the Archdiocese owned property in New Jersey does not serve to essentially render the Archdiocese “at home” in this State. Further, it does not show that the Archdiocese’s presence in New Jersey was “continuous and systematic”. The Archdiocese is located entirely in Pennsylvania-its only place of administration. Specifically, the Court finds the ownership and use of the Archdiocese’s former Ventnor properties as a vacation home for its priests is an insufficient affiliation with New Jersey and is not so continuous and systematic as to render the Archdiocese “at home” in New Jersey. Similarly, with regard to the other properties obtained from bequests or gifts from others that were not used by the Archdiocese; the Court also finds the conduct/transaction of selling the bequeathed properties to raise funds does not render the Archdiocese “at home” in New Jersey. To subject the Archdiocese to personal jurisdiction on general jurisdiction grounds as a result of ownership of



vacation homes for its priests, or based upon ownership of property from gifts, donations, or bequests offends the traditional notions of fair play and substantial justice.

*Specific Jurisdiction*

This Court notes the Appellate Division specifically referenced Jardim, but it is more appropriate to also focus this discussion analysis on the United States Supreme Court's Ford decision. To reiterate, “[t]he contacts needed for this kind of jurisdiction often go by the name ‘purposeful availment.’” Ford, 141 S. Ct. at 105. Specifically, as stated above:

The defendant, we have said, must take “some act by which [it] purposefully avails itself of the privilege of conducting activities within the forum State.” The contacts must be the defendant’s own choice and not “random, isolated, or fortuitous. They must show that the defendant deliberately “reached out beyond” its home—by, for example, “exploit[ing] a market” in the forum State or entering a contractual relationship centered there. Yet even then—because the defendant is not “at home”—the forum State may exercise jurisdiction in only certain cases. The plaintiff’s claims, we have often stated, “must arise out of or relate to the defendant’s contacts” with the forum. Or put just a bit differently, “there must be ‘an affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence that takes place in the forum State and is therefore subject to the State’s regulation. (internal quotations omitted.)

[Id. at 1025.]

This Court considered as well as reconsidered the aforementioned properties owned by the Archdiocese at the relevant time period. The Archdiocese was the owner of real property in New Jersey. The Court finds the Archdiocese did not take any act

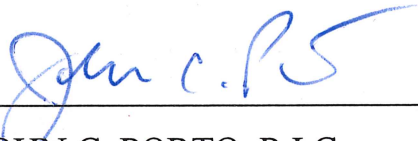
to which it purposefully availed itself of the privilege of conducting activities in New Jersey through its ownership of that property.

The relevant fact(s) with regard to the Plaintiff's claims only involve the unilateral act(s) of the Co-defendant on one singular occasion in New Jersey. This Court finds the Plaintiff's claims do not arise out of or relate to the property owned by the Archdiocese; said claims occurred in another property owned by the Co-Defendant in an adjacent municipality. The stated purpose of the Co-Defendant was to abuse Plaintiff in the Co-Defendant's Margate home-private property owned by the Co-Defendant. As succinctly reiterated in Lebel, 115 N.J. at 323, the mere presence of the Archdiocese's property in New Jersey during the relevant time period that was unquestionably unrelated to the Plaintiff's cause of action is insufficient to establish personal jurisdiction. This Court finds that is the situation in this litigation, and militates in favor of granting this motion.

This Court further finds the agency theory proposed by the Plaintiff does not effect this analysis and it does not expand the Due Process Clause of the Fourteenth Amendment in favor of jurisdiction. Indeed, there is no credible evidence the Archdiocese's supervisory activities purposefully targeted New Jersey as there is no evidence the Co-Defendant transported the Plaintiff to New Jersey for any religious or official purpose. The Fourteenth Amendment "limits personal jurisdiction of state courts over nonresident civil defendants." Jardim, 461 N.J. Super. at 375 (citations omitted.) On this fully developed record, this Court finds the exercise of jurisdiction is not reasonable under the circumstances and does not comport with notions of "fair play and substantial justice." Id. at 376.

Accordingly, the Archdiocese's motion to dismiss the Plaintiff's Complaint is granted with prejudice. The cross-claims asserted by Co-Defendant McCarthy are also dismissed with prejudice.

An appropriate Order is entered on eCourts. Conformed copies accompany this Memorandum of Decision.



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JOHN C. PORTO, P.J.Cv.

Date: August 19, 2022