Summary of SC98307, *John Doe 122 v. Marianist Province of the United States and Chaminade College Preparatory Inc. and Father Martin Solma*
Appeal from the St. Louis circuit court, Judge Kristine Allen Kerr
Argued and submitted May 6, 2020; opinion issued April 6, 2021

Attorneys: Doe was represented by Kenneth M. Chackes of Ken Chackes LLC in St. Louis, (314) 872-8420. The school was represented by Alexandra S. Haar, Gerard T. Noce and Justin L. Assouad of HeplerBroom LLC in St. Louis, (314) 241-6160.

Several organizations filed briefs as friends of the Court. The Missouri Coalition Against Domestic and Sexual Violence and SNAP were represented by Rebecca M. Randles of Randles Mata LLC in Kansas City, (816) 931-9901. The Thomas More Society and Christian Legal Society were represented by Timothy Belz and J. Matthew Belz of Clayton Plaza Law Group in St. Louis, (314) 726-2800.

This summary is not part of the opinion of the Court. It is provided by communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A man appeals from a judgment entered in favor of a religious order and his former high school, at which he alleges he was sexually abused in the 1970s. In a 6-0 decision written by Judge Paul C. Wilson, the Supreme Court of Missouri affirms the judgment in part, vacates it in part and remands (sends back) the case to the circuit court. This Court's precedent prevents the man's negligent failure to supervise clergy claims; however, the man submitted circumstantial evidence in response to the summary judgment motion to support his intentional failure to supervise clergy claim.

Facts: John Doe 122 sued Marianist Province of the United States and a Marianist high school, Chaminade College Preparatory Inc. (collectively, the school), alleging he was sexually abused in 1971 by John Woulfe, a now-deceased Marianist brother who worked as a guidance counselor at the school. Doe sought damages for claims including negligent supervision of clergy, intentional failure to supervise clergy and negligent failure to supervise children. The school sought summary judgment (judgment on the court filings, without a trial). Doe objected, alleging information in Woulfe's personnel file contained euphemistic or coded language indicating his sexual abuse of minors was known at the time he was transferred to the school. Doe further alleged the records reflect Woulfe ultimately was removed from the school due to sexual abuse of a student. The school moved to strike substantial portions of the evidence Doe submitted in response to the summary judgment motion. The circuit court granted the school summary judgment, holding that this Court's 1997 decision in *Gibson v. Brewer* required dismissal of Doe's negligence claims as a matter of law and that there was no competent evidence supporting Doe's claim of intentional failure to supervise clergy. Doe appeals.

AFFIRMED IN PART; VACATED IN PART; REMANDED.

Court en banc holds: (1) The circuit court properly entered summary judgment on Doe's negligent supervision of clergy claims. In *Gibson*, this Court refused to recognize negligent

failure to supervise clergy as a cause of action, reasoning it has the potential to violate the First Amendment. Although case law from other states has rejected this Court's holding in *Gibson*, this Court is bound by its prior decisions and those of the United States Supreme Court, neither of which establish a discernable change in direction from this Court's prior reasoning. Pursuant to the doctrine of *stare decisis*, this Court upholds its decision in *Gibson*.

(2) The circuit court erroneously entered summary judgment on Doe's intentional failure to supervise clergy claim. At issue is whether the school supervisors knew harm was certain or substantially certain to result and whether the school disregarded that known risk. In response to the summary judgment motion, Doe submitted circumstantial evidence from an expert that records in Woulfe's personnel file contained coded or euphemistic language indicating he previously had sexually abused minors. Such evidence, if believed by a jury, is sufficient to support Doe's intentional failure to supervise clergy claim.