

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: March 3, 2022

532596

J.M. ,

Appellant,

v

MEMORANDUM AND ORDER

CHURCH OF OUR LADY OF THE
ANNUNCIATION et al.,
Respondents.

Calendar Date: January 7, 2022

Before: Garry, P.J., Egan Jr., Aarons and Colangelo, JJ.

Brennan & White, LLP, Queensbury (William J. White of counsel), for appellant.

Tobin & Dempf, LLP, Albany (Michael L. Costello of counsel), for respondents.

Egan Jr., J.

Appeal from an order of the Supreme Court (Mackey, J.), entered November 13, 2020 in Warren County, which granted defendants' motion to dismiss the complaint.

From 1985 to 1992, plaintiff was sexually abused by a priest stationed at defendant Church of Our Lady of the Annunciation, a parish church within defendant Roman Catholic Diocese of Albany (hereinafter the Diocese). In 2008, then-counsel for plaintiff alerted counsel for the Diocese to the abuse, as well as similar abuse inflicted upon his brother, and requested reimbursement for counseling expenses both plaintiff

and his brother had incurred. Plaintiff's then-counsel entered into settlement negotiations on behalf of both plaintiff and his brother and, in 2016, reached an agreement under which the Diocese paid plaintiff \$90,000 and plaintiff, in return, executed a general release.

On January 30, 2020, plaintiff commenced this action against defendants within the revived statute of limitations for certain child sexual abuse cases (see CPLR 214-g, as added by L 2019, ch 11, § 3), asserting various claims for damages. In lieu of serving an answer, defendants moved to dismiss the complaint upon the ground that plaintiff could not maintain the action because of the 2016 release (see CPLR 3211 [a] [5]). Supreme Court granted defendants' motion, and plaintiff appeals.

The pertinent facts, documents and arguments presented here are identical to those presented upon the appeal from the contemporaneous order of Supreme Court granting defendants' motion to dismiss the complaint in the action commenced by plaintiff's brother as barred by the 2016 release executed by him. Thus, for the reasons stated in M.M. v Church of Our Lady of the Annunciation (___ AD3d ___ [decided herewith]), we affirm.

Garry, P.J., Aarons and Colangelo, JJ., concur.

ORDERED that the order is affirmed, with costs.

ENTER:



Robert D. Mayberger
Clerk of the Court