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This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3219-21**

CHARLES MARCELLO,

Plaintiff-Respondent,

v.

**ROMAN CATHOLIC
ARCHDIOCESE OF
PHILADELPHIA,**

Defendant-Appellant,

and

**FATHER PANG TCHEOU,
Executor of the Estate of
RAYMOND O. LENEWEAVER,
deceased,**

Defendants,

and

**ST. MONICA PARISH,
ST. MONICA CHURCH, and
ST. MONICA SCHOOL,**

Defendants-Appellants.

Argued February 14, 2023 – Decided February 28, 2023

Before Judges Sumners, Susswein and Fisher.

On appeal from an interlocutory order of the Superior Court of New Jersey, Law Division, Gloucester County, Docket No. L-1528-19.

Nicholas M. Centrella argued the cause for appellants (Conrad O'Brien PC, attorneys; Nicholas M. Centrella, on the briefs).

John W. Baldante argued the cause for respondent (Levy, Baldante, Finney & Rubenstein, PC, attorneys; John W. Baldante and Mark R. Cohen, on the briefs).

PER CURIAM

On May 13, 2019, Governor Philip D. Murphy signed N.J.S.A. 2A:14-2b into law, thereby providing a two-year window – commencing December 1, 2019, N.J.S.A. 2A:14-2c – for the filing of sexual abuse claims otherwise time-barred by N.J.S.A. 2A:14-2. Plaintiff, who is now sixty-two-years-old, filed a complaint in this matter on December 24, 2019, alleging he was sexually abused by Raymond Leneweaver, now deceased, a priest who served defendants St. Monica Parish, St. Monica Church, and St. Monica School within the Archdiocese of Philadelphia, that plaintiff attended between 1973 and 1975. Plaintiff, who is now a New Jersey resident, claims he was sexually abused by Leneweaver about twenty-five times during that time period, four of those times

at a Seaside Heights beach house to which Leneweaver had taken him. St. Monica Parish, St. Monica Church, and St. Monica School are governed by defendant Archdiocese of Philadelphia, which plaintiff claims, among other things, was negligent in its hiring, retention, and supervision of Leneweaver.

The Archdiocese, St. Monica Parish, St. Monica Church, and St. Monica School (hereafter, "the Archdiocese") promptly moved to dismiss the complaint for lack of personal jurisdiction. On May 6, 2020, the trial judge denied the motion without prejudice so the parties could engage in jurisdictional discovery.

Following the judge's determination that the parties should engage in jurisdictional discovery, multiple discovery problems arose. Eventually, the judge entered an order on December 18, 2020, opening the avenue to discovery into the merits of plaintiff's claims, even though jurisdictional discovery had not been completed and even though the court had not conducted an evidentiary hearing or otherwise ruled on the Archdiocese's contention that our courts may not constitutionally exert personal jurisdiction over it.

More recently, the trial judge considered additional discovery conflicts and, by order entered on May 13, 2022, directed the Archdiocese to: (1) turn over files from the Independent Reconciliation and Reparations Program (the Program), a Pennsylvania-based process established in 2018 to compensate

victims of clergy sexual abuse; and (2) ten-years-worth of information related to abuse allegations that did not involve either Leneweaver or plaintiff. The Archdiocese moved for leave to appeal those aspects of the May 13, 2022 order, and we promptly granted the motion.

Prior to oral argument on this interlocutory appeal, we invited the parties to provide supplemental briefs addressing "whether the trial court erred or abused its discretion in entering the December 18, 2020 order authorizing the conducting of merits discovery simultaneously with the conducting of jurisdictional discovery." The parties accepted our invitation and filed timely supplemental briefs.

Having now fully considered the issues, we conclude the trial judge mistakenly exercised his discretion in authorizing merits-based discovery before determining whether the court may constitutionally exert personal jurisdiction over the Archdiocese. We, thus, reverse that part of the December 18, 2020 order that authorized merits-based discovery and vacate, without prejudice, the May 13, 2022 order that prompted our decision to entertain this interlocutory appeal.

Today's decision is motivated by the fact that more than two years have elapsed since a ruling on the personal-jurisdiction issue was put off so that the parties could engage in discovery about their jurisdictional disputes. To be sure,

the judge properly allowed discovery about the jurisdictional conflict and recognized the potential need for an evidentiary hearing to resolve any disputed facts. See Citibank, N.A. v. Simpson, 290 N.J. Super. 519, 532 (App. Div. 1996) (holding that, while the question of personal jurisdiction "is a mixed question of law and fact," "it cannot be resolved on pleadings and certifications" when the facts are disputed but instead "must be resolved by a preliminary evidential hearing after affording the parties an appropriate opportunity for discovery"); see also Meeker v. Meeker, 52 N.J. 59, 72 (1968); Rippon v. Smigel, 449 N.J. Super. 344, 359-62 (App. Div. 2017).

But it goes without saying that the inquiries necessary to develop or resolve the jurisdictional dispute should precede discovery into areas irrelevant to that undertaking. Not only is a nonresident entitled to an expeditious disposition of a jurisdictional defense before being compelled to provide merits-based discovery, but the forum also has an interest in not having its resources expended or burdened by matters that should be litigated elsewhere. This case, as we have noted, has been pending in the trial court since December 2019, and the jurisdictional issue has gone unresolved since May 2020, and yet the parties still don't have a determination about whether the claims against the Archdiocese may be litigated here. Instead, the parties remain engaged in discovery beyond

the bounds of the jurisdictional questions and are now asking our courts to decide difficult questions such as whether the Program's records are discoverable, a question that may pivot on whether the Program's processes may be understood to be a mediation – a fact the parties dispute – that may further turn on or be influenced by a resolution of a choice-of-law issue that has also been posed.

We choose not to reach the issues initially presented in this interlocutory appeal about the discoverability of records emanating from the Program or records about other sexual abuse claims unrelated to either Leneweaver or plaintiff. We have taken this approach not because the issues are difficult but because their disposition may be unnecessary in that we are not convinced the disputed records are presently relevant to a full and fair disposition of the jurisdictional dispute.

We reach this conclusion as well because too much time has elapsed since the trial judge correctly recognized that jurisdictional discovery was warranted. At oral argument, the Archdiocese conceded Leneweaver was their agent. There also appears to be no dispute that the Archdiocese placed Leneweaver in a position to tend to the flock that attended St. Monica Parish and St. Monica School. And there appears to be no dispute that plaintiff was a member of that

flock. Moreover, plaintiff has alleged he was brought across state lines into New Jersey and was sexually abused there by Leneweaver during that same time frame. To the extent there may be other evidence relevant to the jurisdictional questions posed by the Archdiocese, the parties have had more than sufficient time to seek its turnover. The time has come for the trial judge to determine whether there is a genuine dispute over the propriety of exercising personal jurisdiction over the Archdiocese; if there is, there should be no further undue delay in the conducting of an evidentiary hearing to resolve that dispute.

We therefore vacate the May 13, 2022 order, reverse that part of the December 18, 2020 order that permitted merits-based discovery, and remand for the completion of any remaining jurisdictional discovery within sixty days, as well as the scheduling of an evidentiary hearing, if required, as soon thereafter as practicable.¹ We neither offer nor intimate any view about whether personal jurisdiction may be exerted in this case.

¹ We noted above that the discovery compelled by the May 13, 2022 order did not appear to us to be "presently" relevant to the jurisdictional dispute. This determination is without prejudice because it may be – depending on the other facts disclosed as the parties renew the jurisdictional dispute and depending on the judge's view of the jurisdictional dispute – that the relevance of this disputed material will become more apparent. Should that circumstance arise, we do not foreclose either a renewal of plaintiff's application for the disputed discovery or, if ordered, our future consideration of the propriety of such a determination on a timely application for leave to appeal.

Vacated in part, reversed in part, and remanded for further proceedings in conformity with this opinion. We do not retain jurisdiction.

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



CLERK OF THE APPELLATE DIVISION