

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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CA 22-01894

PRESENT: SMITH, J.P., MONTOUR, OGDEN, AND KEANE, JJ.

PB-20 DOE, PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

ST. NICODEMUS LUTHERAN CHURCH, DEFENDANT-RESPONDENT,
UPSTATE NEW YORK SYNOD OF THE EVANGELICAL LUTHERAN
CHURCH IN AMERICA, DEFENDANT-RESPONDENT-APPELLANT,
AND EVANGELICAL LUTHERAN CHURCH IN AMERICA, DEFENDANT.
(ACTION NO. 1.)

PB-21 DOE, PLAINTIFF-APPELLANT,

V

ST. NICODEMUS LUTHERAN CHURCH, DEFENDANT-RESPONDENT,
UPSTATE NEW YORK SYNOD OF THE EVANGELICAL LUTHERAN
CHURCH IN AMERICA, DEFENDANT-RESPONDENT-APPELLANT,
AND EVANGELICAL LUTHERAN CHURCH IN AMERICA, DEFENDANT.
(ACTION NO. 2.)
(APPEAL NO. 2.)

PHILLIPS & PAOLICELLI, LLP, NEW YORK CITY (VICTORIA E. PHILLIPS OF
COUNSEL), FOR PLAINTIFFS-APPELLANTS.

CHELUS, HERDZIK, SPEYER & MONTE, P.C., BUFFALO (RICHARD J. ZIELINSKI
OF COUNSEL), FOR DEFENDANT-RESPONDENT-APPELLANT.

BOND, SCHOENECK & KING PLLC, BUFFALO (KEVIN G. COPE OF COUNSEL), FOR
DEFENDANT-RESPONDENT.

Appeal and cross-appeal from an order of the Supreme Court, Erie
County (Deborah A. Chimes, J.), entered November 16, 2022. The order
granted in part and denied in part the motion of defendant Upstate New
York Synod of the Evangelical Lutheran Church in America for summary
judgment.

It is hereby ORDERED that the order so appealed from is
unanimously modified on the law by denying those parts of the motion
of defendant Upstate New York Synod of the Evangelical Lutheran Church
in America seeking summary judgment dismissing plaintiffs' first
causes of action insofar as they assert claims for negligent
retention, supervision, or direction and those parts seeking summary
judgment dismissing plaintiffs' second causes of action insofar as
they assert claims for fraudulent or negligent misrepresentation and

reinstating those claims against it and as modified the order is affirmed without costs.

Same memorandum as in *PB-20 Doe v St. Nicodemus Lutheran Church* ([appeal No. 1] – AD3d – [June 14, 2024] [4th Dept 2024]).

Entered: June 14, 2024

Ann Dillon Flynn
Clerk of the Court