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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

JOHN RJ DOE, Plaintiff, v. THE ROMAN CATHOLIC BISHOP OF MONTEREY, CALIFORNIA, Defendant and Appellant; MILESTONE COMMUNICATIONS Intervener and Respondent.	H040662 (Monterey County Super. Ct. No. M110724)

This is an appeal brought by the Roman Catholic Bishop of Monterey, California (the Diocese) from an order modifying a protective order. The Diocese had obtained the order during discovery in a 2011 lawsuit filed by John RJ Doe (Doe) alleging sexual abuse by a Roman Catholic priest in Monterey County. The modification was entered in 2013 at the request of respondent Milestone Communications, doing business as the Monterey County Weekly (the Weekly). On appeal, the Diocese contends that (1) the Weekly should not have been permitted to intervene after the underlying action was dismissed and (2) the superior court erred as a matter of law by modifying the protective order. We will affirm the order.

Background

Doe filed his action in February 2011, naming, in addition to the Diocese, the Madonna Parish, located in Monterey County, and one of its priests, Father Edward Fitz-Henry. In Doe's complaint he alleged that he was a minor in 2004 and 2005. During that period, while Doe was a parishioner, altar server, and student, Fitz-Henry had engaged in "sexual conduct and abuse, including harassment and molestation" of Doe and other children. According to the complaint, the Diocese and the parish knew of Fitz-Henry's "dangerous sexual propensities and status as a child molester"; but instead of disclosing this information to its parishioners, including Doe and his parents, those defendants ignored and "covered up" the past abuse and allowed Fitz-Henry to resume contact with children with insufficient supervision.

The Diocese and the parish answered the complaint, and Fitz-Henry did so shortly thereafter. The Diocese (together with the parish) and Fitz-Henry then filed separate motions for a protective order to preclude the disclosure of materials produced in discovery, including Fitz-Henry's personnel file and psychotherapy records as well as previous allegations of sexual abuse involving other priests and other victims and witnesses. Defendants complained that Doe's document requests were overbroad and that they sought privileged and "highly private" information about third parties as well as the litigants. Noting the adverse publicity that had already been generated about this case, defendants sought the protective order "in order to protect the integrity of the fact-finding process and to avoid tainting prospective jurors by allowing Plaintiff to try the case in the media."

On July 20, 2011 the superior court granted defendants' motions. The order stated, in relevant part, "Until further notice, no records produced in discovery shall be disseminated or their contents disclosed to third persons prior to trial or adjudication on the merits." If records were to be attached as exhibits to any court submissions, they had

to be filed under seal pursuant to California Rules of Court, rule 2.551. The court further ruled that Fitz-Henry had not waived the psychotherapist-patient privilege.

The Diocese thereafter produced Fitz-Henry's personnel file, "subject to privilege objections." In connection with his subsequent motion to compel discovery responses, Doe filed several documents under seal; the Diocese did not file any. Doe and the Diocese settled before Doe's motion to compel could be resolved; consequently, no discovery materials were used in any adjudication by the court.

On January 31, 2012, Fitz-Henry filed a cross-complaint against the Diocese based on the Diocese's public disclosures of information relating to the accusations of sexual misconduct, including his receipt of counseling.[1] While that action was pending, Doe and the Diocese settled, and on February 22, 2012, the court clerk entered dismissal of Doe's entire complaint at his request. Fitz-Henry and the Diocese eventually reached a settlement as well, and on May 31, 2013 Fitz-Henry procured dismissal of his cross-complaint.

On May 20 or 21, 2013, the Weekly filed its motion to intervene and to vacate or modify the protective order. Doe's counsel was willing to turn over documents to the Weekly, but he believed that the protective order precluded their disclosure. The Weekly asserted that the First Amendment required courts to 'consider the public interest' in the subject matter and its "right and ability" to report information about the case, citing the "compelling social interests in protecting children from molestation." The Weekly claimed that the existing protective order was invalid because the court had failed to

[1] In his cross-complaint Fitz-Henry alleged breach of the employment contract, breach of the covenant of good faith and fair dealing, breach of the duty to defend an employee, defamation per se, unlawful disclosure of private medical information, intentional and negligent infliction of emotional distress and implied equitable indemnity.

consider the public interest, which it believed outweighed the defendants' interests in privacy and "secrecy," especially because the underlying case had been settled.

In response, the Diocese first disputed the jurisdiction of the court to hear the Weekly's motion because the complaint—and, it asserted, the cross-complaint—had been dismissed. The protective order had been properly issued, the Diocese maintained, and the court did have jurisdiction to enforce its terms. The Diocese further disputed the Weekly's and the public's right of access to pretrial discovery materials that had never been filed with the court.[2]

On September 10, 2013, the parties appeared in court for oral argument on the motion. The Weekly explained that the current basis of its motion was not the presumptive right of access under the First Amendment—that inquiry applied to filed documents under seal. Instead, the Weekly now argued, the relevant consideration was whether good cause for continued protection of the discovery materials outweighed the public interest in disclosure. Here, in the Weekly's view, no good cause existed for maintaining the protective order because the right to a fair trial was no longer at issue, Doe's case having been settled.

In its opposition, the Diocese argued that this issue could have been adjudicated at the time the protective order was first being discussed. The Diocese pointed to the transcript of that June 2011 hearing: When asked for his position on disclosure, Doe's counsel advised the court that he did not intend "to give documents to the media or press or anything like that. We want to use this information for discovery to prepare our case for trial." The documents were produced in reliance on that assurance, the Diocese

[2] Among the items in dispute were correspondence about Fitz-Henry between the Bishop and parishioners and between the Bishop and other employees, transcripts of and correspondence about investigator's interviews with Fitz-Henry and other witnesses, and recordings and transcripts of the depositions of Fitz-Henry and others.

argued; to allow disclosure now would "turn decades of California law of privacy on its head."

The trial court decided to continue the hearing pending an in camera review of the disputed material. The court made it clear that no documents withheld from Doe based on a claim of privilege were at issue; all the court would be considering was the extent to which Doe could turn over to the Weekly those he had received in the course of discovery. The Diocese thereafter submitted copies of documents the court had requested to facilitate its analysis.

Before the continued hearing, the court issued a "Preliminary Determination After In Camera Review." Having reviewed numerous documents,[3] the court offered its view of the parties' positions. It did not agree with the Diocese that the previous representation by Doe's counsel regarding his intent not to disclose the discovery materials prevented modification of the order on the Weekly's request. The court emphasized that the issue did not involve a First Amendment right of access, forced disclosure, or unsealing of documents submitted for adjudication. Instead, the analysis called for a balancing of interests under the Civil Discovery Act, and in particular, Code of Civil Procedure section 2031.060, subdivision (b).[4]

In its undertaking of that analysis, the court commented that "[t]he mere existence of an allegation of wrongdoing ought not compel a finding of an overriding public interest, for obvious reasons—one would need only make such an allegation, and

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[3] The court stated that it had reviewed four deposition transcripts (including one from Fitz-Henry's deposition), portions of Fitz-Henry's personnel file, letters from parishioners, letters from the Diocese to parishioners and others, transcripts of interviews by an investigator hired by the Diocese, and the investigator's conclusions.

[4] All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

information of a personal nature of an accused, his/her alleged victims, and persons close to them would be thrown into the public domain. The Court feels that generalized statements in cases from other jurisdictions—to the effect that whenever clergy sexual abuse is alleged there results a complete loss of privacy rights for the accused, and alleged victims or witnesses—are themselves not helpful and in fact undercut the notion that the Court must in each instance balance the interests involved in deciding whether disclosure of discovery materials should be prohibited."

The court then engaged in its balancing of the interests involved. The Diocese, the court stated, did not have a recognizable privacy interest of its own. The public interest, on the other hand, was identified as "a public interest in preventing or avoiding future harm and perhaps to a lesser extent in learning of the circumstances of alleged—but not adjudicated—abuse, and at what levels there was an awareness of the same, as well as what action, if any, was taken in response." The court noted that whether the Diocese's responses to the allegations of misconduct were appropriate was "not at issue in this ruling—only whether disclosure of any information in the documents should be prohibited by court order."

The court emphasized that the identities of witnesses and other alleged minor victims were not to be disclosed. No disclosure would be permitted of information regarding psychotherapy or counseling, which was presumptively privileged, and the identities of some personnel (beyond their titles) and parishioners of the church were to be withheld. The court thus determined that deposition transcripts could be disclosed with the exception of personal information of any individuals (addresses, phone numbers, health information, names of relatives, etc.). Other documents were also removed from the protective order, with the same redaction of identifying information. The court clarified the restriction as it pertained to Doe himself, in that if Doe wished to disclose his own identity, he was permitted to do so without violating the protective order. Audio recordings of witness interviews were to remain protected.

At the continued hearing on December 9, 2013, the court and counsel discussed the court's tentative conclusions. The Diocese insisted that protection of the public could not be a legitimate interest in 2013, because the alleged incidents had taken place in 1990 and Fitz-Henry was no longer employed by the Diocese. "And publishing what someone from the [D]iocese may have in good faith done in 1990 but should have done something different based upon the sensibilities of 2013 is going to do nothing to protect the public." The Diocese further argued that as a "corporation sole," it was "merely the civil embodiment of the Bishop himself, and, thus, are [sic] much more analogous to an individual, with all attendant privacy rights." Its reliance on Doe's assurances of nondisclosure was also an important consideration in the Diocese's view, because Doe's "back-peddling" would force the Diocese to try the case all over again in the press: "The Weekly is sure to run articles selectively choosing from any and all allegations that can be used to cast aspersions on the Diocese of Monterey. The Diocese of Monterey, in turn, will be forced to choose between the specter of responding publicly and, thus, continue to prolong and extend a matter that was long-ago resolved, or risk the danger that a 'no comment' statement will be seriously misconstrued. Either way, the Diocese of Monterey is sure to face a deluge of negative press coverage from the Weekly without any semblance of an even playing field." Counsel for Fitz-Henry also weighed in, emphasizing that these were all "mere unverified allegations"; "he wasn't found . . . guilty of anything."

The Weekly maintained that the public interest was not merely the safety of the public from this priest, but the interest "in knowing what the [D]iocese knew, at what level, and what actions, if any, were taken in response to that. And that interest remains, regardless of whether the priest involved has left the priesthood." The Weekly argued that if Fitz-Henry believed the Diocese "threw him under the bus by coming out and publicly saying there was credible evidence that he was an abuser, . . . [i]f he [had] wanted to try that, he could have. He chose not to," by settling the cross-complaint.

At the conclusion of the hearing, the court announced that it would adhere to the preliminary ruling and modify the protective order accordingly. Noting that this was "not an easy decision," however, it stayed its final ruling for 45 days from the hearing date in order to permit any party to seek appellate review. This timely appeal by the Diocese followed.

Discussion

The Diocese challenges two aspects of the superior court's decision. First, it contends that the court should not have allowed the Weekly to intervene because its motion was untimely and it had no direct interest in the action. The Diocese then addresses the merits of the modification motion, arguing that in settling the case it had justifiably relied on Doe's representation that he would not disclose the protected materials. Lifting the protective order will, according to the Diocese, violate its privacy rights, confuse the public, provoke a trial in the media, and create a "chilling effect on voluntary disclosures during discovery," making parties in future cases "more aggressive" in withholding documents that might later be disseminated to the public. Although the Diocese's first argument is well taken, we nonetheless conclude that the court could have modified the protective order even without a third party's formal intervention.

1. Intervention

Permissive intervention is authorized by section 387, subdivision (a), which provides, in relevant part: "Upon timely application, any person, who has an interest in the matter in litigation, or in the success of either of the parties, or an interest against both, may intervene in the action or proceeding. An intervention takes place when a third person is permitted to become a party to an action or proceeding between other persons, either by joining the plaintiff in claiming what is sought by the complaint, or by uniting with the defendant in resisting the claims of the plaintiff, or by demanding anything adversely to both the plaintiff and the defendant . . . ."

The "interest" referred to in section 387 "must be in the matter in litigation and of such a direct and immediate character that the intervener will either gain or lose by the direct legal operation and effect of the judgment." (Elliott v. Superior Court (1914) 168 Cal. 727, 734; Allen v. California Water & Tel. Co. (1947) 31 Cal.2d 104, 109.) Accordingly, "[w]hen the proper procedures are followed, the trial court has the discretion to permit a nonparty to intervene in litigation pending between others, provided that (1) the nonparty has a direct and immediate interest in the action; (2) the intervention will not enlarge the issues in the litigation; and (3) the reasons for intervention outweigh any opposition by the parties presently in the action." (Noya v. A.W. Coulter Trucking (2006) 143 Cal.App.4th 838, 842; Truck Ins. Exchange v. Superior Court (1997) 60 Cal.App.4th 342, 346; US Ecology, Inc. v. State of California (2001) 92 Cal.App.4th 113, 139.) An interest is not "direct and immediate" but is " ' "consequential and thus insufficient for intervention when the action in which intervention is sought does not directly affect it although the results of the action may indirectly benefit or harm its owner." [Citation.]' " (Siena Court Homeowners Assn. v. Green Valley Corp. (2008) 164 Cal.App.4th 1416, 1424, 1428.) An order granting intervention is reviewed for abuse of discretion. (Gray v. Begley (2010) 182 Cal.App.4th 1509, 1521.) To the extent that any of the statutory language requires interpretation, however, the appellate court independently determines the issue. (Sisemore v. Master Financial, Inc. (2007) 151 Cal.App.4th 1386, 1411.)

Section 387 "should be liberally construed in favor of intervention." (Lincoln National Life Ins. Co. v. State Bd. of Equalization (1994) 30 Cal.App.4th 1411, 1423; accord, City of Malibu v. California Coastal Com. (2005) 128 Cal.App.4th 897, 902.) "The right to intervene granted by section 387, subdivision (a) is not absolute, however; intervention is properly permitted only if the requirements of the statute have been satisfied." (Simpson Redwood Co. v. State of California (1987) 196 Cal.App.3d 1192, 1199.)

In this case we agree with the Diocese that the Weekly's motion did not meet the statutory criteria. Section 387 first requires "timely application." Here, the central part of the action was over when the hearing and decision took place; Doe had settled with the defendants and his complaint had been dismissed. Fitz-Henry's cross-action against the Diocese had also ended: His cross-complaint was dismissed shortly after the Weekly filed its motion, but well before June 26, 2013, the date of the first hearing on the matter. The Weekly's motion, therefore, was not timely because there was nothing left in which to intervene.

Moreover, the central requirements for intervention were not met. Section 387 requires, in addition to timeliness, "an interest in the matter in litigation, or in the success of either of the parties, or an interest against both." The interest required by section 387 "must be direct and not consequential, and it must be an interest which is proper to be determined in the action in which the intervention is sought." (Isaacs v. Jones (1898) 121 Cal. 257, 261; City and County of San Francisco v. State of California (2005) 128 Cal.App.4th 1030, 1037.) Here, the Weekly could not show a direct interest in any party's success or an interest against all of them. The Weekly had only a peripheral interest in this case, which was to make public the basis of Doe's allegations against the Diocese and Fitz-Henry. It had no stake in either party's success, nor could it at the time of its motion, because, with no ongoing litigation, there was no longer any success to be had by any party. This falls short of the statutory requirement of "an interest in the matter in litigation, or in the success of either of the parties, or an interest against both" that is required for intervention. (§ 387, subd. (a), italics added.) Because there was no pending proceeding, the Weekly's intervention did not enable it to "become a party to an action or proceeding between other persons, either by joining the plaintiff in claiming what is sought by the complaint, or by uniting with the defendant in resisting the claims of the plaintiff, or by demanding anything adversely to both the plaintiff and the defendant." (Ibid.) Thus, intervention did not serve the purposes of intervention, "to

protect the interests of others who may be affected by the judgment and to obviate delay and multiplicity of actions." (People ex rel. Rominger v. County of Trinity (1983) 147 Cal.App.3d 655, 660.)[5]

Nevertheless, aside from its challenge to the intervention on procedural grounds, the Diocese does not cite authority precluding the Weekly's standing to request access to the discovery materials. The court was presented with an issue over which the parties themselves disagreed: Doe wished to release the documents, while the Diocese vigorously opposed it. Whether or not the procedural device of intervention was correct, the modification order itself can be reviewed for jurisdictional and substantive sufficiency. (See, e.g., Mercury Interactive Corp. v. Klein (2007) 158 Cal.App.4th 60, 70-71 [media's informal request followed by formal motion to unseal]; cf. Overstock.com, Inc. v. Goldman Sachs Group, Inc. (2014) 231 Cal.App.4th 471, 489 [participation as amicus curiae, not by intervention, is the proper way for media to seek unsealing of records].) We must therefore proceed to the parties' discussion of those issues.

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[5] The cases cited by the Weekly do not compel a different conclusion. In Fagan v. Superior Court (2003) 111 Cal.App.4th 607, 611, In re Marriage of Burkle (2006) 135 Cal.App.4th 1045, 1049, and Cheyenne K. v. Superior Court (1989) 208 Cal.App.3d 331, 333, the court did not address the criteria for intervention under section 387. In Truck Ins. Exchange v. Superior Court, supra, 60 Cal.App.4th 342 the petitioner stood to lose its right to pursue equitable contribution from the co-insurers once a default judgment was entered. In both Noya v. A.W. Coulter Trucking, supra, 143 Cal.App.4th 838, and Reliance Ins. Co. v. Superior Court (2000) 84 Cal.App.4th 383 the insurer might ultimately have been required to pay the judgment in the underlying action. Here, the Weekly had no direct interest in the underlying case comparable to that of the would-be interveners in Truck Insurance Exchange, Noya, and Reliance. Moreover, as noted above, Doe's action against the Diocese and Fitz-Henry had ended, as had the related dispute between the Diocese and Fitz-Henry.

2. The Court's Jurisdiction

In its reply brief, the Diocese returns to an argument raised below but nowhere to be found in its opening brief: that the court lacked jurisdiction to entertain the Weekly's motion to modify the protective order because the entire action had been dismissed. According to the Diocese, the order modifying the protective order was void.

The Weekly opposes this court's consideration of this issue, as it was not raised in the Diocese's opening brief. We see no conceivable excuse for this omission. Still more indefensible is the omission of the evidence on which the argument is based, the order dismissing Fitz-Henry's cross-complaint. The clerk entered Fitz-Henry's dismissal on May 31, 2013, but no documentary evidence of that act appears to have been provided even to the lower court, and this court received a copy of the dismissal only in a supplemental appendix submitted by the Diocese with its reply brief. Furthermore, the Diocese's written response to the court's preliminary ruling did not include a challenge to the court's jurisdiction, and its oral arguments at the December 9, 2013 hearing were confined to the merits of the motion to vacate or modify.

Notwithstanding our reluctance to entertain a new theory on appeal and new evidence, both of which could have been presented earlier, we note that the Diocese's challenge is purportedly directed at the fundamental jurisdiction of the superior court to act. Moreover, the Weekly has had an opportunity to answer the Diocese's new argument by supplemental brief; and in that brief it does not dispute the authenticity of the accompanying clerk's entry of dismissal. Consequently, consideration of the new argument causes no prejudice to the Weekly's substantive rights.

The Diocese's position, however, cannot succeed in any event. At the hearing on June 17, 2011 the court indicated that it intended to preclude any dissemination of the discovery records at issue "prior to trial or adjudication." The protective order itself stated that the records and their contents were not to be disclosed to any third person "[u]ntil further notice." The restriction was thus temporary in its nature, having been

made to ensure a fair trial free of juror bias. California's Civil Discovery Act, and specifically section 2031.060, must be construed "both broadly in furtherance of a right of public access and narrowly to the extent they limit such access right."[6] (Mercury Interactive Corp. v. Klein, supra, 158 Cal.App.4th at p. 107, citing Cal. Const., art. I, § 3, subd. (b)(2).) Thus, the superior court had continuing authority to "make any order that justice requires to protect any party or other person from unwarranted annoyance, embarrassment, or oppression, or undue burden and expense," including vacation or modification of the order as circumstances changed. (§ 2031.060, subd. (b); see also Mercury Interactive Corp. v. Klein, supra, at p. 107 [designation of exhibits as "confidential" under stipulated protective order during discovery could be re-evaluated under the Civil Discovery Act].)

Even if viewed outside the Civil Discovery Act, the court had "inherent power" to vacate or modify the restriction, as it was in its nature injunctive. (See Civ. Code, § 3424, § 533 [court may modify or dissolve injunction upon material change in facts or law, or where "ends of justice would be served"]; Union Interchange, Inc. v. Savage (1959) 52 Cal.2d 601, 604 [court has power to modify preventive injunction, whether permanent or preliminary].) Thus, even if the court lacked jurisdiction to permit intervention by a third party in an action that no longer existed, it nonetheless retained

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[6] California Constitution article I, section 3, subdivision (b)(2) states: "A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access. A statute, court rule, or other authority adopted after the effective date of this subdivision that limits the right of access shall be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest. Subdivision (b)(3) cautions, however, "Nothing in this subdivision supersedes or modifies the right of privacy guaranteed by Section 1 or affects the construction of any statute, court rule, or other authority to the extent that it protects that right to privacy, including any statutory procedures governing discovery or disclosure of information . . . ."

jurisdiction to modify or vacate its own protective order with a change in the facts, the law, or other circumstances in the interests of justice. (See Sontag Chain Stores Co. v. Superior Court (1941) 18 Cal.2d 92, 95 [court has "inherent power" to vacate or modify restriction upon "change in the controlling facts upon which the injunction rested, or the law has been changed, modified or extended, or where there the ends of justice would be served by modification"]; Palo Alto-Menlo Park Yellow Cab Co. v. Santa Clara County Transit Dist. (1976) 65 Cal.App.3d 121, 130 ["court of equity has inherent power to modify an injunction in adaptation to changed conditions"]; cf. Public Citizen v. Liggett Group, Inc. (1st Cir. 1988) 858 F.2d 775, 782-783 [protective order acted as an injunction, which the court had inherent power to modify in light of changed circumstances].) Whether viewed as an issue of jurisdiction or one of general timeliness, the question of whether to allow modification was properly before the court.

3. Modification of the Protective Order

"The state has two substantial interests in regulating pretrial discovery. The first is to facilitate the search for truth and promote justice. The second is to protect the legitimate privacy interests of the litigants and third parties." (Stadish v. Superior Court (1999) 71 Cal.App.4th 1130, 1145; accord, Nativi v. Deutsche Bank National Trust Co. (2014) 223 Cal.App.4th 261, 317.) The 2011 protective order reflected a recognition of these two interests. The defendants' original request was made (1) to protect the privacy of Fitz-Henry, the Diocese, and third parties who had made complaints to the Diocese of child sexual abuse by Fitz-Henry and (2) to prevent any discovery materials from influencing public opinion and tainting the jury pool. At the June 2011 hearing on defendants' motion the court acknowledged the danger of contaminating the jury pool. At the hearing two years later on the Weekly's motion to vacate or modify the protective order, the court explained that "at the time the protective order was made, the public interest and general right of the public to know or a media right of access was considered, but only to the extent that taint of the jury pool was at risk." Although any further right

of access could still be considered, the court noted that "the issue about tainting the jury pool . . . no longer remains as an obstacle." Thus, the litigation having ended, the superior court found a "material change in the facts upon which the [protective order] was granted." (Civ. Code, § 3424, § 533; Sontag Chain Stores Co. v. Superior Court, supra, 18 Cal.2d at p. 95.)

The underlying action having been dismissed, the court assumed the task of determining whether justice required the continued protection against disclosure as originally ordered on July 20, 2011. That determination was for the court to make in the exercise of its discretion. "Accordingly, we may not set aside the order unless the trial court exceeded the bounds of reason—that is, no judge could have reasonably reached the challenged result. [Citations.] 'We could therefore disagree with the trial court's conclusion, but if the trial court's conclusion was a reasonable exercise of its discretion, we are not free to substitute our discretion for that of the trial court.' " (Perez v. County Of Santa Clara (2003) 111 Cal.App.4th 671, 678 disapproved on another point in Williams v. Chino Valley Independent Fire Dist. (2015) 61 Cal.4th 97, 115.)

In evaluating the necessity of a protective order, a court exercising its discretion considers " 'the purpose of the information sought, the effect that disclosure will have on the parties and on the trial, the nature of the objections urged by the party resisting disclosure, and ability of the court to make an alternative order which may grant partial disclosure, disclosure in another form, or disclosure only in the event that the party seeking the information undertakes certain specified burdens which appear just under the circumstances.' " (Valley Bank of Nevada v. Superior Court (1975) 15 Cal.3d 652, 658.) It is evident that the superior court took these factors into account, both in its original

2011 order and in its 2013 modification order.[7] It recognized the initial necessity of precluding public exposure before trial; but by 2013 that necessity was no longer applicable. The court then undertook to balance the interests of the media and the public against the privacy interests of Fitz-Henry, Diocese personnel, and the alleged victims identified in the discovery materials.[8] (Cf. In re The Clergy Cases I., supra, 188 Cal.App.4th 1224, 1235 [balancing "compelling social interests in disclosure of information relating to sexual predators of children" against privacy interests in confidential files of individual friars who settled multi-plaintiff sexual abuse case].) As noted earlier, the court emphasized that an allegation of wrongdoing should not by itself create a public interest that would override the privacy interests of the accused and

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[7] We reject the Weekly's suggestion that the original order was not based on good cause; it is obvious from the arguments made by the parties and the resulting order that the court impliedly found a sufficient basis for the protective order, and its ruling was well within its discretion. (See Stadish v. Superior Court, supra, 71 Cal.App.4th at p. 1145 ["The trial court is in the best position to weigh fairly the competing needs and interests of parties affected by discovery"]; compare Nativi v. Deutsche Bank National Trust Co., supra, 223 Cal.App.4th at p. 317 [abuse of discretion in restricting pretrial disclosure of documents based on vague, conclusory, and overly broad declaration].)

[8] In the order eventually adopted at the December 2013 hearing the court declined to recognize a separate privacy interest of the Diocese. In its 2011 motion the Diocese asserted its duty to protect the privacy right of its priests and employees by resisting disclosure of private information from its personnel files. It did not, however, specifically assert its own separate privacy interest, either in that motion or it in its opposition to the Weekly's 2013 motion for modification. We note nonetheless that "[t]he diverse and somewhat amorphous character of the privacy right necessarily requires that privacy interests be specifically identified and carefully compared with competing or countervailing privacy and nonprivacy interests in a 'balancing test.' The comparison and balancing of diverse interests is central to the privacy jurisprudence of both common and constitutional law." (Hill v. National Collegiate Athletic Assn. (1994) 7 Cal. 4th 1, 37.) " '[I]n applying the Hill balancing test, trial courts necessarily have broad discretion to weigh and balance the competing interests.' " (In re The Clergy Cases I (2010) 188 Cal. App. 4th 1224, 1235, quoting Pioneer Electronics (USA), Inc. v. Superior Court (2007) 40 Cal. 4th 360, 371.)

any alleged victims or witnesses. The court therefore rejected "generalized statements" to the contrary in decisions from other jurisdictions as "not helpful," because they "undercut the notion that the Court must in each instance balance the interests involved in deciding whether disclosure of discovery materials should be prohibited." In its eventual ruling, adopted at the December 9, 2013 hearing, the court identified the public interest, "to the extent that" it existed, as "a public interest in preventing or avoiding future harm and perhaps to a lesser extent in learning of the circumstances of alleged—but not adjudicated—abuse, and at what levels there was an awareness of the same, as well as what action, if any, was taken in response."

On this record we cannot find an arbitrary or unreasonable exercise of the superior court's discretion. The court identified relevant privacy and public interests,[9] and it carefully screened the materials to ensure that individual identities were protected. To the extent that the Doe had (through counsel) assured the court that he would not disclose the discovery documents, Doe adhered to that representation. The Diocese's assumption that it could rely on the permanence of the protection was not reasonable, both under the law and under the terms of the order itself, which was subject to modification upon "further notice." The court was not bound by Doe's stated intent in any event; once the litigation ended, the preservation of an impartial jury pool (and thus of defendants' right to a fair trial), which was the predominant reason for the protective order, was no longer a

[9] We need not enter into the debate between the parties regarding the extent to which the Diocese has its own legally recognized privacy interest in the discovery materials. As we commented recently, the existence and parameters of a corporation's privacy rights is unsettled in our jurisprudence. (Nativi v. Deutsche Bank National Trust Co., supra, 223 Cal.App.4th at p. 314, fn. 16, quoting Volkswagen of America, Inc. v. Superior Court (2006) 139 Cal.App.4th 1481, 1492, fn. 9.) But even if we accept the Diocese's position—that it does (contrary to the Weekly's assertion) enjoy "some" protectable privacy interest which is merely "different" from that of an individual—the outcome of our analysis is the same.

reason for the restriction. (Cf. Public Citizen v. Liggett Group, Inc., supra, 858 F.2d at p. 790 [purpose of blanket protective order was to promote fair trial free of pretrial publicity, not to guarantee "perpetual secrecy"]; Pansy v. Borough of Stroudsburg (3rd Cir. 1994) 23 F.3d 772, 790, citing Beckman Indus. Inc. v. International Ins. Co. (9th Cir. 1992) 966 F.2d 470, 476 [reliance on blanket orders is less justifiable because they are by nature overinclusive].)

Nor can we find the necessarily chilling effect on discovery that the Diocese predicts. As the court pointed out, competing interests must be weighed each time a protective order is sought to restrict release of discovery materials to third parties. That this balancing favored limited disclosure in this case does not mean that access will be granted in a future case under different circumstances.

The Diocese is understandably concerned that "[t]he impact from abrogation of the protective order . . . will be immediate and devastating," in that it will be "forced to submit to media bashing based upon an incomplete record or be required to 'try the case in the press.' The Weekly and other newspapers are sure to run articles selectively choosing from . . . partial documents or deposition quips that can be used to cast aspersions on the Diocese." The Diocese is convinced that the issues resolved by settlement will be prolonged by the "deluge of negative press coverage." It repeats the argument it made below, that it should not be "forced to choose" whether to respond publicly and thereby prolong this matter long after the underlying case was dismissed or, instead, "risk[s] the danger that a 'no comment' statement will be seriously misconstrued."

We cannot, however, presume the inevitability of this scenario. The possibility of unfavorable press coverage does not mean that the Weekly's readers would necessarily accept a negative slant imposed on the subject or be confused about its relevance. While some readers may find the Weekly's reporting newsworthy and of current concern, others might question its accuracy, reject it as sensationalistic journalism, or regard the subject

as obsolete and uninteresting in light of the 10-year interval since the underlying events and the termination of Fitz-Henry's service. And the Diocese, should it choose to respond, is well equipped to repel any statements it believes to be inaccurate or in the nature of unwarranted "smear tactics." The superior court was entitled to accord these concerns less weight than the public interest in "avoiding future harm" through knowledge of the Diocese's awareness of and response to alleged clergy misconduct—even while filtered through the post hoc (and possibly even speculative and unreliable) reporting by the media.

We thus conclude that the superior court did not abuse its discretion in determining that the protected discovery materials in the litigation between Doe and the Diocese could be disclosed to the Weekly. Whether this court would have decided this question differently is not controlling if the lower court has acted within the bounds of the discretion accorded it. (See O'Donoghue v. Superior Court (2013) 219 Cal.App.4th 245, 269 ["that another court might reasonably have reached a different result on this issue . . . does not demonstrate an abuse of discretion"], citing Guimei v. General Electric Co. (2009) 172 Cal.App.4th 689, 696 ["as long as there exists 'a reasonable or even fairly debatable justification, under the law, for the action taken, such action will not be . . . set aside' "].) In light of the deference we must accord the superior court's decision, and finding no arbitrary or unreasonable exercise of its discretion, we must uphold the ruling modifying the protective order.

Disposition

The order is affirmed.

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ELIA, J.

WE CONCUR:

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RUSHING, P. J.

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WALSH, J.*