

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

REVEREND FATHER VASILE SUSAN,)	
)	
Plaintiff,)	
)	
v.)	Case No. 05 CH 7360
)	
ROMANIAN ORTHODOX EPISCOPATE OF AMERICA, a not-for-profit corporation, RT. REV. NATHANIEL (WILLIAM) POPP, and V. REV. FR. SIMON PAVEL,)	
)	
Defendants.)	

ORDER

This case came before the Court for hearing on Defendants Romanian Orthodox Episcopate of America and Nathaniel Popp’s Motion to Reconsider. Also before the Court is subpoena Respondents Metropolitan Jonah and Archbishop Job’s Motion to Quash Subpoenas and to Set Briefing Schedule. The Court has received and reviewed Defendants’ Motion to Reconsider, Respondents’ Motion to Quash, Respondents’ Memorandum in Support of Motion to Quash, Plaintiff’s Response in Opposition, and Respondents’ Reply. The Court has reviewed the exhibits, the relevant case law, and the pertinent statutory law. The Court has also considered the oral argument of counsel.

THE COURT FINDS AS FOLLOWS:

1. Plaintiff is a Romanian priest who was permanently assigned to St. Mary’s Parish in Chicago, Illinois in 1993. In 2003, Defendant Archbishop Popp allegedly falsely accused Plaintiff of disloyalty and threatened to remove him from St. Mary’s and exclude him from the Romanian Orthodox Episcopate of America. Subsequently, in 2004, Plaintiff was released from his position with St. Mary’s. Though Plaintiff requested proceedings under the Church’s internal

disciplinary system, those requests were ignored. Plaintiff then brought this lawsuit, which alleges breach of contract, promissory estoppel, and tortious interference and asks for injunctive relief.

2. The Court has considered the applicability of the ecclesiastical abstention doctrine at least five times in this case. First, the Court considered the doctrine on April 5, 2006, when it denied Defendants' Motion to Dismiss under Section 2-619 of the Code of Civil Procedure, finding that the doctrine did not apply to this case. Second, the Court considered the doctrine on March 8, 2007, when it denied Defendants' second Motion to Dismiss, again finding that the doctrine did not apply. Third, the Court considered the doctrine on July 2, 2008, upon granting Plaintiff's Motion to Strike Defendants' Motion for Summary Judgment. Fourth, during the initial hearing on Respondents' Motion to Quash on September 14, 2009, the Court again considered the doctrine when it entered and continued the Motion for further hearing. Defendants filed their Motion to Reconsider on September 21, 2009, and joined the Respondents' Motion to Quash on October 8, 2009.

3. In each of the above instances where the Defendants have raised the ecclesiastical abstention doctrine, the Court has found that it did not apply. Defendants and Respondents now ask this Court to reverse its prior findings concerning the doctrine and find that it does apply. The Court will first consider Defendants' Motion to Reconsider and then will consider Respondents' Motion to Quash. The arguments in both Motions are substantially similar.

4. The ecclesiastical abstention doctrine is rooted in both the free exercise and the establishment clause of the first amendment.¹ *Bruss v. Przybylo*, 385 Ill. App. 3d 399, 406 (2d Dist. 2008). The first amendment bars any secular court from involving itself in the

¹ The first amendment is, of course, applicable to the states through the fourteenth amendment. *Employment Div., Dep't of Human Res. v. Smith*, 494 U.S. 872, 876-77 (1990). Illinois also has its own constitutional protections for free exercise and the prohibition of establishment. ILL. CONST. 1970, Art. 1, § 3.

ecclesiastical controversies that may arise in a religious body or organization. *Duncan v. Peterson*, 359 Ill. App. 3d 1034, 1043 (2d Dist. 2005). Thus, where resolution of ecclesiastical disputes cannot be made without extensive inquiry into religious law and polity, the first and fourteenth amendments require that civil courts not disturb the decisions of the highest ecclesiastical tribunal within a church, but must accept such decisions as binding. Courts can, however, resolve a dispute that arises within a church setting if that dispute does not require determination of any doctrinal issues. *Id.* (citing *Ervin v. Lilydale Progressive Missionary Baptist Church*, 351 Ill. App. 3d 41, 43 (1st Dist. 2004)). It is not the intent of the first amendment that civil and property rights should be unenforceable in civil courts simply because the parties involved are a church and its members, officers, or ministry. *Id.*

5. The purpose of a motion to reconsider is to bring to a court's attention: (1) newly discovered evidence which was not available at the time of the first hearing; (2) changes in the law; or (3) errors in the court's previous application of existing law. *O'Connor v. County of Cook*, 337 Ill. App. 3d 902, 911 (1st Dist. 2003). Defendants base their Motion on the recent decision of the First District Appellate Court in *Steppek v. Doe*, 392 Ill. App. 3d 739 (1st Dist. 2009), and the recent decision of the Second District Appellate Court in *Bruss v. Przybylo*, 385 Ill. App. 3d 399 (2d Dist. 2008). Defendants also maintain that this Court misapplied the law in its prior rulings on the issue.

6. Defendants first argue that the Plaintiff's claims involve attacks on Defendants' actions relating to clergy administration and discipline and that, as indicated in *Steppek*, neutral principles of tort or contract law do not avoid the essential reality that the Court is being asked to examine, question, and interfere with the regulation of ecclesiastical activity. Therefore, Defendants argue, this Court lacks subject matter jurisdiction to hear the case.

7. Defendants next argue that Archbishop Nathaniel's action in removing Plaintiff from the ranks of the clergy, which form the basis for this lawsuit, was within his pastoral authority and based upon canon law. According to *Bruss*, this Court should thus recognize that it lacks subject matter jurisdiction to entertain the dispute.

8. The Court finds that neither *Steppek* nor *Bruss* are applicable to this case, and that the Court did not err in its previous application of the law. *Steppek* concerned statements of unnamed individuals who filed internal child abuse charges against Catholic priests. The *Steppek* court held that "where doctrinal controversy is not involved in a church dispute, mandatory deference to religious authority is not required by the first amendment and the court may choose from a variety of approaches to resolve the dispute." *Steppek*, 392 Ill. App. 3d at 754-55. However, the court went on to find that:

While it is possible that resolution of plaintiff's claims would not require any interpretation of the Catholic Church's doctrine, resolving this dispute would involve the secular court interfering with the Church's internal disciplinary proceedings where plaintiff's claims are based on the Does' statements, which were provided solely within the Church's proceedings. Irrespective of the fact that a court or jury could apply "neutral principles of law" to the Does' alleged statements to determine whether they were defamatory, those statements were published exclusively within the context of the Church's disciplinary proceedings. Therefore, ... this court is bound to step aside and permit the Church to consider the veracity of the Does' charges of sexual abuse through the Church's process.

Id. at 755. The court also specifically distinguished *Duncan v. Peterson*, 359 Ill. App. 3d 1034 (2d Dist. 2005), finding that unlike the complaint in *Steppek*, the complaint in *Duncan* was based on statements made outside the confines of an internal disciplinary process. *Id.* at 754.

9. Here, Plaintiff's claims are not based on statements made in the context of disciplinary proceedings; indeed, Plaintiff's primary complaint is that no disciplinary proceeding was ever

instituted against him. Plaintiff's claims are more closely akin to those in *Duncan*, a case which *Steppek* tacitly approved.

10. The second case cited by Defendants is *Bruss v. Przybylo*, a Second District case. 385 Ill. App. 3d 399 (2d Dist. 2008). Because there is ample First District, Illinois Supreme Court, and United States Supreme Court case law on this issue, this Court is not bound by *Bruss*. Furthermore, this Court does not find *Bruss* persuasive.

11. Instead, this Court finds that the controlling case on this issue is *Ervin v. Lilydale Progressive Missionary Baptist Church*, 351 Ill. App. 3d 41 (1st Dist. 2004), where the First District held that “the first and fourteenth amendments do not prohibit court intervention when the church fails to follow the procedures it has, itself, enacted...” *Id.* at 46. The court held that the ecclesiastical abstention doctrine did not apply, reasoning that “[t]he trial court did not need to inquire into religious doctrine and religious law to decide whether the joint boards violated the bylaws when they purported to terminate Reverend Ervin’s service as pastor.” *Id.* Plaintiff’s claims in this case are analogous to those of the pastor in *Ervin*: the attempted removal of Plaintiff as the priest of the parish was procedurally improper under the church’s own bylaws.

12. Finally, Defendants place particular emphasis on a United States Supreme Court opinion issued in 1976, *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976). *Milivojevich* has been subject to more than thirty years of analysis and interpretation, and is cited in nearly all of the Illinois case law presented by the parties, including *Ervin*. The First District has interpreted *Milivojevich* and its progeny as permitting court review of church matters where the court is not required to make a searching inquiry into church canonical law. *See Grace Evangelical Lutheran Church of River Forest v. Lutheran Church-Missouri Synod*, 118 Ill. App. 3d 151, 158 (1st Dist. 1983) (holding that the ecclesiastical abstention doctrine applied because it

was not readily ascertainable whether the church was hierarchal or congregational, and the court would be forced to conduct a searching inquiry into the church's polity based on conflicting doctrinal evidence). Here, the Court is being asked to do nothing more than read the church's by-laws and require a church to abide by them. No "searching inquiry" into canonical texts is required. As such, this Court finds that the ecclesiastical abstention doctrine still does not apply to this case.

13. Respondents, in their Motion to Quash Subpoenas and to Set Briefing Schedule make similar arguments to those raised in Defendants' Motion to Reconsider. Respondents argue that this Court should quash the subpoenas served on Metropolitan Jonah and Reverend Job² because Plaintiff's claims pertain entirely to the church's government, faith, and doctrine, including the regulation and discipline of its clergy. Respondents argue that a civil court determination of Plaintiff's ecclesiastical status and whether the Roman Orthodox Episcopate of America followed its own Constitution and By-laws in deciding to release Plaintiff is a "quintessentially religious matter that would require this Court to make an extensive inquiry into religious laws and practices." Thus, Respondents argue, that because of the nature of Plaintiff's claims, this Court lacks subject matter jurisdiction over this case. Respondents also cite to *Steppek v. Doe*, 392 Ill. App. 3d 739, and *Bruss v. Przybylo*, 385 Ill. App. 3d 895, as dispositive of this case.

14. For the reasons set forth above, these cases are not persuasive. Therefore, this Court does have subject matter jurisdiction to hear this case and will not quash the subpoenas.

IT IS, THEREFORE, HEREBY ORDERED AS FOLLOWS:

1. Defendants' Motion to Reconsider is denied.

² Reverend Job has since passed away, but Metropolitan Jonah continues to pursue the Motion to Quash his subpoena.

2. Respondents Metropolitan Jonah and Archbishop Job's Motion to Quash Subpoenas and to Set Briefing Schedule is denied.

3. This case is set for status on December 15, 2010 at 10:30 A.M.

ENTERED:
ENTERED
JUDGE DOROTHY KIRIE KINNAIRD-0276
DEC 03 2010
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

December 3, 2010

Judge Dorothy Kirie Kinnaird, No. 276