

**IN THE DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA
SECOND DISTRICT**

CASE NO. 2D11-6173

L. T. CASE NO.11-CA-002076 (LEE)

CHRIS WILSON,	:
	:
Appellant,	:
	:
vs.	:
	:
BISHOP VEROT CATHOLIC HIGH	:
SCHOOL, INC., FRANK J.	:
DEWANE, individually and as Bishop	:
of the Catholic Diocese in Venice,	:
a corporation sole, and DIOCESE	:
OF VENICE IN FLORIDA, INC.	:
a Florida corporation	:
	:
Appellee.	:
_____	/

ON APPEAL FROM THE TWENTIETH JUDICIAL CIRCUIT
LEE COUNTY, FLORIDA

APPELLANT'S INITIAL BRIEF

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STATEMENT OF THE CASE AND FACTS

The Plaintiff/Appellant, Chris Wilson, seeks reversal of the Lower Court's dismissal with prejudice of his three (3) Count Complaint. The pleadings filed in this action consist of the Appellant's initial Complaint (ROA 1-32) and the Defendants' Motion to Dismiss pursuant to Rule 1.140, Florida Rules of Civil Procedure. The Amended Order granting Defendants' Motion to Dismiss is based upon the application of the "Ecclesiastical Abstention Doctrine". (ROA 42-43) This is based upon a perception by the Court that due to Appellant, Wilson's teaching of theology at Bishop Verot Catholic High School pursuant to his one year contract, Mr. Wilson is a minister of the Church.

The action was brought in three (3) counts. Count I is an action seeking damages for breach of a written employment agreement entered into by and between Appellant, Wilson and Appellee, Bishop Verot Catholic High School, Inc., a Florida corporation (BVCHS, Inc.) which was responsible for the operation of Bishop Verot Catholic High School and was the actual employer of Appellant, Wilson.

Count II is an action against Frank J. Dewane as the Bishop of the Catholic Diocese of Venice in Florida, a corporation sole, Frank J. Dewane, individually and the Diocese of Venice in Florida, Inc., a Florida corporation, (the Diocesan Defendants) alleging a tort action for the tortious interference with contractual

relations.

Count III is an action against the same Diocesan Defendants alleging an action for intentional infliction of emotional distress for retaliation and punishment.

Generally, the Appellant alleges that he was dismissed from his employment due to his reporting of Father Cory Mayer for inappropriate conduct with at least five (5) ninth and tenth grade girls. It is alleged that, under the guise of confession, Father Mayer forced discussions with these students having them admit and describe all acts of masturbation and/or sexual conduct with sufficient detail so that said priest could deliver the appropriate absolution. (ROA 4). The Complaint alleges that the Appellant was required to report same pursuant to the terms of his contract and as a teacher under mandatory reporting requirements. (ROA 4, ¶14).

The Appellant's Complaint clearly establishes that Appellant, Wilson, is a lay person who had an advanced degree in theology and was in his seventh one year renewal of his teaching contract, that he was a Florida certified teacher, that the contract set forth the terms of the employment relationship which included the incorporation of certain policies of the Diocese, a faculty handbook and Pastoral Code of Conduct (ROA 4-5). The Complaint does not allege that Appellant, Wilson occupied a position as a minister of the religious organization BVCHS, Inc. or any facially factual basis for that determination to be made. (ROA 1-32)

The Court in order to apply the “Ecclesiastical Abstention Doctrine” determined that Mr. Wilson by virtue of teaching theology at the High School was acting as a minister of the Church and that the Court would then necessarily inquire into internal matters of Church governance. (ROA 42-43)

The Complaint establishes for the purposes of the Motion to Dismiss that Appellant immediately contacted his supervisor and reported the girls’ claims to the Campus Minister which resulted in an immediate report of the incidents to the Principal. BVCHS, Inc. decided to take no action and Corey Mayer, the next day continued with the providing of confession to students at Bishop Verot High School. (ROA 5) Appellant, Wilson in response to the decision to do nothing and believing that reporting was his moral and legal responsibility as a teacher, in good faith, reported the facts of what occurred to the Department of Children and Family Services on April 17, 2011, who declined intervention after making no investigation, advising Appellant, Wilson, that it did not deal with churches and therefore was outside of its jurisdiction. (ROA 5)

Appellant, Wilson alleges that on May 16, 2011, immediately after BVCHS learned of the report to DCF, Mr. Wilson was told by the school Principal that he had crossed the line by reporting the matter to DCF. Mr. Wilson was fired on May 17, 2011.

The Complaint seeks monetary damages, does not seek reinstatement and

does not allege that any of the issues in this matter deals with the interpretation, evaluation or inquiry into religious principles or dogma.

Count II of the Complaint sets forth the essential allegations necessary for an action for tortious interference of contractual relations and specifically alleges that the Defendants in said count are not parties to the contract, however, used their position, influence and power to have the employer, BVCHS, Inc. breach the agreement. (ROA 10-12) Count II specifically alleges that the Defendants are third parties, does not allege any employment with or by the Diocesan Defendants, does not allege any facts which can be construed to create a ministerial relationship between the Diocesan Defendants and Appellant. Likewise, Count III, an action for intentional infliction of emotional distress alleges no employment relationship between the Diocesan Defendants and Appellant, Wilson, contains no allegations suggesting a ministerial relationship with the Diocesan Defendants or allege any matters which would call upon the Trial Court to resolve issues of religious doctrine. (ROA 13-16)

SUMMARY OF ARGUMENT

The Appellant, Chris Wilson, Plaintiff below, seeks reversal of the granting of a Motion to Dismiss with prejudice relating to subject matter jurisdiction. This Court has jurisdiction in that the Complaint seeks damages under the terms of a written contract of employment between the Plaintiff, a lay teacher and a parochial school, Defendant, Bishop Verot Catholic High School, Inc. The issues do not involve any First Amendment Establishment or Free Exercise matters. The contract issue can be resolved with the application of neutral principles of law by the Circuit Court. Civil Courts have traditionally handled contract claims which do not cause the Court to determine religious principles and dogma, even when the parties are the religious organization and one of its ministers. Generally, a religious organization can voluntarily burden itself with obligations by entering into contractual relations and such contracts are uniformly handled in state courts with the application of neutral principles of property law.

The Trial Court on the Motion to Dismiss improperly determined that the Appellant, a lay individual teaching theology at the school is a minister of Bishop Verot Catholic High School. The Court failed to consider the appropriate or necessary facts or conduct any evidentiary hearing in order to determine whether or not Mr. Wilson is a minister of his employer. The Court did not consider any of those matters which the United States Supreme Court considered, in a recent

decision in making its factual analysis of the same question. The Lower Court's determination is unsupported, conflicts with the allegations of the Complaint and offers no basis for its conclusion. The issue as to ministerial status should be raised by affirmative defense and not by a Motion to Dismiss pursuant to the recent Supreme Court decision cited within.

In that the Diocesan Defendants, Frank J. Dewane, as Bishop of the Catholic Diocese of Venice, a corporation sole and Diocese of Venice in Florida, Inc., a Florida corporation and Defendant, Frank J. Dewane, individually are sued only in Counts II and III, for tortious interference with contractual relations and intentional infliction of emotional distress, respectively, they cannot challenge the subject matter jurisdiction. There exists no relationship with Plaintiff, Wilson in that they are not parties to the employment agreement and the Complaint alleges that said Defendants are third parties. The allegations contain nothing which can be construed as creating an employment or ministerial relationship which forms the basis of the Ministerial Exception Doctrine.

STANDARD OF REVIEW

The standard of review of the Motion to Dismiss is de novo. Florida Department of Corrections v. Abril, 969 So.2d 201 (Fla. 2007). For purposes of reviewing a Motion to Dismiss the allegations of the Complaint are assumed to be true and all reasonable inferences arising therefrom are allowed in favor of the Plaintiff. Wallace v. Dean, 3 So.3d 1035 (Fla. 2009).

ARGUMENT

I. THE CIRCUIT COURT HAS SUBJECT MATTER JURISDICTION OVER AN ACTION FOR BREACH OF A WRITTEN CONTRACT OF EMPLOYMENT WHICH DOES NOT INVOLVE A THEOLOGICAL CONTROVERSY OR A DETERMINATION OF ECCLESIASTICAL GOVERNANCE OR RELIGIOUS DOGMA.

There is no intra-church dispute between Appellant Wilson and Appellee, Bishop Verot Catholic High School, Inc. in that the Complaint is secular in nature, seeks monetary damages for a breach of its terms, does not seek reinstatement, is not a religious controversy and the Appellant seeks simply to enforce those rights which were granted under the terms of the contract. It is clearly established that a religious organization such as BVCHS, Inc. is free to burden its activities voluntarily through contracts and that such contracts are fully enforceable in a Civil Court unless enforcement would require an impermissible inquiry into church doctrine and rises to the level of an ecclesiastical matter. Watson v. Jones, (1872, 80 U.S.) 13 Wall. 679, 20 L.Ed. 666. It should be noted that Watson v. Jones,

from a historical perspective, is one of the earliest U.S. Supreme Court decisions dealing with the ability of a secular court to review “theological controversy, church discipline, ecclesiastical governance or the conformity of the members of the church to the standards of morals required”. Watson v. Jones, granted to the ecclesiastical authority the determination of matters of religious dogma, doctrine and church discipline. The ruling was accompanied by the caution that in any jurisdictional analysis the Court must consider the nature and substance of the claim to determine if the claim involves a prohibited inquiry. Patton v. Jones, 212 S.W. 3d 541 (Tex. App. 2006).

The Lower Court’s position urged by Bishop Verot Catholic High School that the Appellant is a minister of the church is not supported by the allegations of the Complaint, cannot be extrapolated from an individual’s employment as a teacher of theology and therefore, the application of any ecclesiastic abstention doctrine should be determined pursuant to the analysis reflected in the Florida Supreme Court in Malicki v. Doe, 814 So.2d 347 (Fla. 2002). This Florida Supreme Court decision contains the most thorough analysis of this issue and presents a good historical perspective as to the development of the Free Exercise and Establishment Clauses. The most consistent factors in the analysis as to whether or not the civil judicial system can consider a claim involving a religious organization requires a determination as to whether or not it is necessary for a

Court to determine religious dogma, principles or whether or not the Court will excessively entangle itself in the ecclesiastical governance. The argument presented by BVCHS, Inc. is an attempt to use a now popular ministerial exception doctrine. This doctrine is normally used in response to government initiated laws concerning discrimination and other employment issues. Appellant, Wilson's allegation that he is a lay individual teaching a theology class, does not make him a minister of the school or make this an intra-church dispute or one that necessarily requires questions of internal church discipline, faith and organization that are governed by ecclesiastical rule, custom or law. The issue for the Trial Court is whether or not there was a breach of the terms of the written contract and if so, what monetary damages are available to Appellant, Wilson. There is no claim for reinstatement. The Trial Court's ruling did not reflect the analysis required under Malicki v. Doe in determining subject matter jurisdiction. Malicki held that the constitutional guarantees contained in the Free Exercise Clause and Establishment Clause of the First Amendment are made applicable to the States through the Fourteenth Amendment. In the context of the Free Exercise (entanglement) issues, government regulation can occur in the form of both statutory law and Court action through civil lawsuits. According to Malicki, before the constitutional right to the Free Exercise of religion is implicated, the threshold inquiry is whether the conduct sought to be regulated is rooted in religious belief. The allegations of the

Complaint do not support any basis for the conclusion that the firing of Appellant, Wilson for reporting the inappropriate conduct pursuant to both the contract requirements and what Mr. Wilson perceived as statutorily mandated reporting, in any way implicates religious belief. Malicki also held that if it is shown that the conduct which is subject to government regulation (via civil lawsuit) is rooted in religious belief, the Court may still proceed if same can be done by the application of laws neutral on its face and in its purpose.

The Lower Court's Order "finds the holding in Archdiocese of Miami, Inc. v. Minagorri, 954 So. 2d 640 (Fla. 3d DCA 2007) controlling". In Minagorri, the Plaintiff was the principal at St. Kevin Catholic School, was employed by the Archdiocese of Miami was assaulted and battered by Father Jesus Saldana and when she complained to the Archdiocese the Archdiocese retaliated by terminating her employment. The issue before the Court was whether or not the private sector Whistle Blower Act was the making of a law respecting an establishment of religion or prohibiting the free exercise thereof. The Court determined that there was no subject matter jurisdiction in that the Whistle Blower Act would intrude upon the selection and relationships of the ministers of the church. Most significantly and what distinguishes Minagorri from Mr. Wilson's case is that Yolanda Minagorri was the principal, employed by the Archdiocese and either stipulated or otherwise conceded that she was acting in a ministerial capacity for

the Church. Appellant disputes his status as a minister and there exist no allegations in his Complaint that Mr. Wilson was in a ministerial position with the BVCHS. The Trial Court's Order stated that the Plaintiff (Wilson) was in a "ministerial position" as defined by the applicable case law. The Court cites to Malichi v. Archdiocese of Miami, 945 So.2d 526 (Fla. 1st DCA 2006) and Minagorri. Neither case presents an issue as to what factors would constitute a minister of a religious organization. In Malichi the Petitioner was an incardinated cleric (a priest) and Ms. Minagorri was a principal, employed by the Diocese and conceded that she was in a ministerial position. The Malichi decision noted that the subject of priest's employment relationship of his church is not *per se* barred by the church autonomy doctrine and required that the Archdiocese must first show why consideration of the Appellant's workers' compensation claim requires adjudication of an ecclesiastical matter.

Courts throughout various jurisdictions within the United States and particularly in Florida have permitted clergy, ministers, rabbis and ministerial employees to pursue, in State Court actions for breach of contract for compensation due and for reimbursement of expenses advanced. In Rabbi Robert A. Goodman v. Temple Shir Ami, Inc., 712 So.2d 775 (3d DCA Fla. 1998) the Third District affirmed a Trial Court's decision to dismiss various claims brought by the Rabbi finding that Goodman's claims were ecclesiastical in nature and

created excessive entanglements with religious beliefs. The Court, however, allowed the action for a breach of the Rabbi's contract finding that the claim for compensation and failure to reimburse expenses did not create excessive entanglement with religion and thus does not preclude civil court intervention. See Minker v. Baltimore Annual Conference of United Methodist Church, 894 F. 2d 1354 (D.C. Cir. 1990) (a church is always free to burden its activities voluntarily through contract and such contracts are fully enforceable in civil court).

In Jenkins v. Trinity Evangelical Lutheran Church, 825 N.E. 2d 1206 (Ill. App. 3d 2005) an action was brought by an Associate Pastor against the church and the head pastor for claims which included an action for breach of contract. The Trial Court dismissed the Complaint for lack of subject matter jurisdiction. The Associate Pastor appealed, the Appellate Court determined that the Trial Court did have jurisdiction over the breach of contract claim arising out of the promise of salary and benefits and that the alleged agreement between the parties was a civil controversy rather than a canonical or ecclesiastical controversy. The Appellate Court determined that the dispute fit within the neutral principles that would allow a civil court to hear the claim. The Court cited Jones v. Wolf, 443 U.S. 595, 99 S.Ct. 3020 (1979) stating that neutral principles of law may be applied to property and contract disputes. The Court went on to say that the neutral principles must be completely secular in operation, rely exclusively on objective, well established

concepts of property law and that Courts can resolve disputes that arise within a church setting if the dispute does not require determination of any doctrinal issues. If the analysis can be done in a secular manner, civil courts may exercise jurisdiction. The Court stated that a dispute over payments due under an employment contract is justiciable in the civil courts. The Illinois Court stated that it was not the intent of the First Amendment to make civil and property rights unenforceable simply because the parties involved might be church, church members, officers or ministry of the church. The Church can contract with its own pastors just as with outside parties and agreements for wages and benefits are governed by principles of civil contract law. The Court restated the principle that a church is always free to burden its activities voluntarily through contracts and such contracts are fully enforceable in civil court.

In Petruska v. Gannon University, 462 F.3d 294 (3d Cir. 2006) the Court dealt with a claim by a former chaplain for a private Catholic Diocesan College who sued the College and certain related individuals asserting claims for gender discrimination and retaliation in violation of Title VII as well as for breach of contract. The Trial Court dismissed the suit for lack of subject matter jurisdiction. The Third Circuit stated that this 2006 case represented the apparent first impression for the Third Circuit as to the effect of a ministerial exception. The Court ruled that as to the breach of contract claim filed by the Chaplain, the

ministerial exception did not apply and the establishment clause did not compel the dismissal of a contract claim. The Court specifically held that the application of State law for a claim for breach of contract asserted by a Chaplain against the Catholic Diocesan College would not violate the Free Exercise Clause given that it was the enforcement of a willingly made promise, supported by consideration, was not a state imposed limit upon the College's Free Exercise rights and therefore the ministerial exception does not operate to bar the former Chaplain's claim that the College breached her contract. The Third Circuit's rationale echoes the procedure set forth by the Florida Supreme Court in Malicki v. Doe, 814 So.2d 347 (Fla. 2002) the application of neutral principles of law. See also Rayburn v. Gen'l. Conf. of Seventh Day Adventist, 772 F.2d 1164 (4th Circuit 1985). In Welter v. Seton Hall University, 128 N.J. 279, 608 A.2d 206 (N.J. 1991) the New Jersey Supreme Court held that civil courts have jurisdiction of contract claims when inquiry is not required into religious dogma or dependent on doctrinal matters.

II. THE COURT IMPROPERLY DETERMINED THE APPELLANT TO BE A MINISTER OF BISHOP VEROT CATHOLIC HIGH SCHOOL.

The issue as to ministerial status, if not facially apparent from the allegations of the Complaint or consented to by the parties, is a question of fact on a case by case basis. Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity Commission, et al., 132 S.Ct. 694 (2012).

The Supreme Court of the United States in Hosanna-Tabor, supra, recently issued an opinion which we were hopeful would shed some light on whether or not the ministerial exception applies to claims for breach of contract and would more explicitly set forth those facts which would be indicia of one who serves as a minister to a religious organization. The issue as stated by Chief Justice Roberts was whether the Establishment and Free Exercise Clauses of the First Amendment bar a claim for employment discrimination when the employer is a religious group and the claimant is one of the group's ministers. Chief Justice Roberts traced the history and evolution of the First Amendment relative to both the Establishment Clause and the Free Exercise Clause and the inability of the court system or the government to pass laws which interfere with the freedom of a religious organization to select its ministers and further stated that this freedom to select its ministers is implicated by suits alleging employment discrimination. Justice Roberts confirmed that the ministerial exception exists and the state generated laws

would infringe upon the right of the religious group to shape its own faith and mission through its appointments.

After confirming the existence of the Ministerial Exception Doctrine the Court attempted to address the issue as to what makes one a minister of a religious organization. All Chief Justice Roberts could state was that the Court was reluctant to adopt a rigid formula for deciding when an employee qualifies as a minister and therefore stated that one could only conclude that the exception covers Ms. Perich given all the circumstances of her employment. This appears to dictate the determination by the Court based upon the facts of each case.

Chief Justice Roberts in determining the ministerial status of Cheryl Perich described her “calling”, her training and designation as a minister, the granting of title as a minister, the commission granted by the Church, the holding of services, conducting a prayer, choice of liturgy and the delegation to conduct religious functions. A review of the background and other factors which led to the Court’s decision that Ms. Perich was a minister indicates that simply being a teacher of theology at a parochial school does not support the Lower Court’s decision concerning Mr. Wilson.

Also of importance, is the manner and method of the presentation of a defense of ministerial exception. Justice Roberts addresses this specific matter in footnote number 4 in which the Chief Justice acknowledges a split of authority

concerning whether or not the defense of ministerial exception is properly raised by Motions to Dismiss or by affirmative defense. Justice Roberts in citing Morrison v. National Australia Bank Ltd., 130 S.Ct. 2869 (2010), stated that the exception operates as an affirmative defense and not a jurisdictional bar. Chief Justice offered the following which appears as footnote number 4:

A conflict has arisen in the Courts of Appeals over whether the ministerial exception is a jurisdictional bar or a defense on the merits. Compare *Hollins* (treating the exception as jurisdictional); and *Tomic v. Catholic Diocese of Peoria* (same) with *Petruska* (treating the exception as an affirmative defense); *Bryce* (same); and *Natal* (same). We conclude that the exception operates as an affirmative defense to an otherwise cognizable claim, not a jurisdictional bar. That is because the issue presented by the exception is “whether the allegations the plaintiff makes entitle him to relief,” not whether the court has “power to hear [the] case.” *Morrison v. National Australia Bank Ltd.*, 561 U.S. ____ (2010) (slip-op., at 4-5) (internal quotation marks omitted). District courts have power to consider ADA claims in cases of this sort, and to decide whether the claim can proceed or is instead barred by the ministerial exception.

The question of ministerial status is a question of fact and should be raised by affirmative defense. The allegations of the Complaint do not establish facts which would facially establish ministerial status. In fairness to the Lower Court, the Supreme Court decision was recently published, not available at the time of our hearing.

Appellant does not dispute the existence of a ministerial exception for clergy and other clerics. Appellant maintains the position that the Trial Court erred when the Court determined, as a matter of law, based upon the allegations that a teacher

at a Catholic High School for the purposes of the ministerial exception, is a minister of the employer school corporation. The contract is attached as part of the Complaint and sets forth in part those obligations of Appellant, Wilson in teaching theology. The allegations of the Complaint establish an employment relationship but does not grant any special office, control, ministry, commission, grant of faculties, position within the Diocese, ability to hold services, masses, conduct prayer, choose liturgy, selection of hymns, the grant of any title, delegation to conduct any religious functions, no ordination and is considered a lay teacher.

The Lower Court erred in classifying Appellant as a minister without consideration as to the nature of the religious functions which would be incidental to the role as a minister. The alleged fact that Mr. Wilson has a one year written contract which is subject to renewal by the principal is certainly in opposition to the conclusion of the Lower Court.

Additionally unfortunate, is the Supreme Court's decision to severely limit the holding as it would relate to causes of action other than the employment discrimination cases. The Court stated as follows:

The case before us is an employment discrimination suit brought on behalf of a minister, challenging her church's decision to fire her. Today we hold only that the ministerial exception bars such a suit. We express no view on whether the exception bars other types of suits, including actions by employees alleging breach of contract or tortious conduct by their religious employers. There will be time enough to address the applicability of the exception to other circumstances if and when they arise.

III. THE MINISTERIAL ABSTENTION DOCTRINE IS NOT AVAILABLE TO THE DIOCESAN DEFENDANTS, FRANK J. DEWANE, INDIVIDUALLY AND AS BISHOP OF THE CATHOLIC DIOCESE IN VENICE FLORIDA, A CORPORATION SOLE AND THE DEFENDANT DIOCESE OF VENICE IN FLORIDA, INC., A FLORIDA CORPORATION IN THAT THERE EXISTS NO MINISTERIAL RELATIONSHIP BETWEEN SAID ENTITIES AND THE APPELLANT, WILSON.

Chief Justice Roberts set forth those factors which caused the Supreme Court to conclude that Ms. Perich was in fact a minister of the Hosanna-Tabor Evangelical Lutheran Church. It is apparent that there must be an employment relationship with a person or entity claiming the ministerial exception. In that the allegations of Mr. Wilson's Complaint must be taken as true, said allegations provide that the written contract of employment was with the high school, Bishop Verot Catholic High School, Inc., that Bishop Verot Catholic High School, Inc. is a separate and distinct legal entity established in order to separate its actions and activities from the Diocese of Venice (ROA 12), that BVCHS, Inc. performs the services relating to the operation of the Catholic High School, is responsible for employment of faculty members (ROA 3), and of significance the Complaint makes no allegations from which one could speculate that Appellant, Wilson was an employee, minister of, performed services for or received payment from the Diocesan Defendants.

There exists no basis which would support the Lower Court's determination

that Mr. Wilson was a minister of the Diocesan Defendants.

The Diocesan Defendants have not contested by Motion or otherwise the sufficiency of the allegations in the actions against them in Count II and Count III, relying upon a jurisdictional argument and therefore, no issue exists as to the stating of a cause of action.

CONCLUSION

The claim for breach of contract against the employer, Bishop Verot Catholic High School, Inc. does not involve questions which would implicate First Amendment issues. Civil actions for damages due to breach of contract are treated by the application of neutral principles of law and the Catholic school voluntarily burdened itself with obligations pursuant to contract. This claim is cognizable in the civil arena.

The Lower Court's Order dismissing the Appellant's claim with prejudice due to lack of subject matter jurisdiction is in error due to the improper classification, without an evidentiary hearing or stipulation of the parties that the Appellant is a minister of the entities raising the Ministerial Exception Doctrine. The Complaint contains insufficient factual allegations that would support such a classification and the issue should be presented in the form of an affirmative defense.

The Diocesan Defendants may not raise the ministerial exception in that there is no allegation of any employment or other relationship with said

Defendants. Absent an employment relationship the ministerial exception cannot exist.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing Initial Brief has been furnished via U.S. mail to **J. Matthew Belcastro, Esquire**, Henderson, Franklin, Starnes & Holt, P.A., Post Office Box 280, Ft. Myers, FL 33902-0280, this 1st day of March, 2012.

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Initial Brief complies with the font and spacing requirements of Rule 9.210, Florida Rules of Appellate Procedure.

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