

IN THE DISTRICT COURT OF APPEAL

SECOND DISTRICT OF THE STATE OF FLORIDA

CHRIS WILSON,

Appellant,

v.

APPEAL NO. 2D11-6173

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.

LT. Case No. 11-CA-2076

Appellees.

ON APPEAL FROM THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA

Honorable Michael T. McHugh

ANSWER BRIEF OF APPELLEES

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PRELIMINARY STATEMENT

Appellees shall refer to themselves individually by name or collectively as Appellees.

Appellees shall refer to Appellant individually by name or as Appellant.

Appellees refer to Appellant's Initial Brief by the prefix "IB."

Appellees shall refer to the record on appeal by the prefix "R."

STATEMENT OF THE CASE AND FACTS

To the extent Appellant sets forth the facts of this case in a matter which is consistent with the allegations of Appellant's Complaint and the exhibits attached thereto, Appellees do not dispute the factual background of this matter as set forth in Appellant's Initial Brief. As such, Appellees accept the facts as set forth therein. Appellees do, however, dispute any legal characterizations arising from such facts as set forth in the Initial Brief.

Additional facts relating to this appeal which are not set forth in Appellant's Initial Brief, but which are substantially indicative of Appellant's role in teaching the Catholic religion and spreading the church's message to students, are as follows. Specifically, in addition to Appellant's admission that his primary responsibilities included those of a teacher of theology, Appellant's employment contract, attached to the Complaint as Exhibit "A" (R. 17), sets forth the following with respect to Appellant's duties as a teacher of theology:

2. Credentials: As a condition of employment, . . . (b) Teacher must participate in the mandated training required of all employees for Catholic Schools and Centers in the Diocese of Venice. Teacher will also earn the appropriate level of catechetical hours per diocesan school policy.

4. Duties: **Teacher's essential job duties**: Integrated within all of these essential functions of the teaching position is the duty to evangelize the Good News of the Gospels. While you may not be a member of this Catholic Faith community, it is essential to your job that you perform your duties and make decisions in an ethical framework consistent with the Catholic Faith, Teachings and Traditions, so that by your example, you will teach students by spreading the Good News of Jesus Christ.

5. Responsibilities: In addition to the duties and responsibilities as contained in the attached job description, Teacher shall have the following duties: to be accountable to know and carry out the Policies of the Diocesan Department of Education, and the philosophy and objectives of the School; to give full and loyal support to the diocesan and local school administration and its policies; to fulfill the duties inherent in the teaching profession; to strive to become a more competent Teacher by furthering professional growth, by participation in those diocesan and local in-service days as specified by the Principal and to aid in the Christian formation of the students.

6. Teacher Further Agrees: To perform these duties to the best of his/her ability and to support and exemplify in conduct and/or instruction both Catholic doctrine and morality; to refrain from any notion which would reflect discredit on the Roman Catholic Church or be detrimental to its religious doctrines and tenets, and be guided by principles of sound, law-abiding and loyal American citizenship.

The procedural posture of this case is also important. Appellees responded to Appellant's Complaint by filing their Motion to Dismiss on July 28, 2011. R. 34. The Motion to Dismiss was premised upon the ecclesiastical abstention doctrine (or "the ministerial exception") as recognized by Florida courts and numerous other courts.

Appellees' Motion to Dismiss was granted by Order of the trial court dated October 18, 2011. R. 40. Although the Order of October 18, 2011, did not indicate that the dismissal was with prejudice, counsel for Appellant chose not to attempt to amend the Complaint and instead, agreed to the entry of an Amended Order Granting Defendants' Motion to Dismiss, which was entered by the trial

court on November 1, 2011. R. 42. The Amended Order Granting Defendants' Motion to Dismiss states that the dismissal is with prejudice.

This appeal is taken from the Amended Order Granting Defendants' Motion to Dismiss.

ISSUES ON APPEAL

- I. WHETHER THE NATURE OF APPELLANT'S CLAIMS ARE BARRED BY THE MINISTERIAL EXCEPTION.
- II. WHETHER APPELLANT, WHO IS A TEACHER OF THEOLOGY, AND WHOSE RESPONSIBILITIES INCLUDE THE DUTY TO EVANGELIZE THE MESSAGE OF THE CHURCH, SHOULD BE DEEMED A MINISTER FOR PURPOSES OF THE MINISTERIAL EXCEPTION.
- III. WHETHER THE MINISTERIAL EXCEPTION APPLIES TO CLAIMS AGAINST THOSE DEFENDANTS WHO WERE NOT APPELLANT'S EMPLOYER.

SUMMARY OF ARGUMENT

The ecclesiastical abstention doctrine prohibits courts from entertaining any dispute which pertains to the internal governance of a church. In short, a court cannot infringe upon a church's decision as to which individuals will serve as its ministers, including whether any such decision was consistent with secular law. The claims asserted in Appellant's Complaint fall within the ministerial exception because they would require the trial court to make a determination regarding whether the termination of Appellant's employment was consistent with church doctrine. Claims of this nature are distinguishable from the cases cited in Appellant's brief, which involve matters pertaining to monies allegedly owed by the church under an employment contract, or third-party tort actions which do not implicate church doctrine.

The trial court's dismissal of Appellant's claims was also appropriate because Appellant is a "minister" for purposes of the ministerial exception. The consensus among courts which have interpreted this issue is that "if the employee's primary duties consist of teaching, spreading the faith, church governance, supervision of a religious order, or supervision or participation in religious ritual and worship, he or she should be considered clergy." EEOC v. The Roman Catholic Diocese of Raleigh, North Carolina, 213 F.3d 795, 801 (4th Cir. 2000). Because Appellant is admittedly a teacher of theology whose primary duties include teaching students

the Catholic faith, he must be deemed a minister for purposes of the ministerial exception.

Appellant's claims against the diocesan defendants are also subject to dismissal because any resolution of those claims necessarily involves inquiry into the rationale behind the church's decision to terminate Appellant's employment. The fact that the remaining defendants were not employers of Appellant is irrelevant because the claims arise out of a dispute involving church doctrine. See, Goodman v. Temple Shir Ami, Inc., 712 So.2d 775 (Fla. 3d DCA 1998).

STANDARD OF REVIEW

This Court reviews orders granting a motion to dismiss under a de novo standard. Peak v. Outward Bound, Inc., 57 So.3d 997 (Fla. 2d DCA 2011).

ARGUMENT

I. APPELLANT'S CLAIMS ARE WITHIN THE SCOPE OF THE MINISTERIAL EXCEPTION BECAUSE THE CLAIMS INVOLVE QUESTIONS OF INTERNAL CHURCH DISCIPLINE.

Appellant's first argument is that the claims he has asserted do not involve questions of internal church discipline and therefore the ministerial exception does not apply. IB. 7-14. This argument ignores the nature of the claims asserted and the basis upon which Appellant seeks legal redress.¹

A. The Ministerial Exception Precludes Courts From Adjudicating any Claims Which Implicate Questions of Religious Doctrines.

The ministerial exception bars consideration of any claims which require a court to determine whether a church acted properly in terminating one of its ministers. This issue was put to rest by the United States Supreme Court in Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity Commission, ___ U.S. ___, 132 S.Ct. 694 (2011). Specifically, the Court observed that "[b]oth Religion Clauses bar the government from interfering with the decision of a religious group to fire one of its ministers." Id. at 702. The Court also indicated that "it is impermissible for the government to contradict a

¹ This Section of the Answer Brief deals only with the question of whether the ministerial exception applies to the nature of the claims asserted in Appellant's Complaint. Section II addresses the issue of whether Appellant should be deemed a "minister" for purposes of the doctrine. Section III addresses the issue of whether the doctrine applies to those Appellees who were not Appellant's employer.

church's determination of who can act as its ministers." Id. at 704. In fact, any claim which would require a court to determine whether a religious institution acted properly in deciding to fire one of its ministers is precluded by the ministerial exception. Courts are not permitted to interfere with decisions relating to an employee's performance of his duties on behalf of a church.

Requiring a church to accept or retain an unwanted minister, or punishing a church for failing to do so, intrudes upon more than a mere employment decision. Such action interferes with the internal governance of the church, depriving the church of control over the selection of those who will personify its beliefs. By imposing an unwanted minister, the state infringes the Free Exercise Clause, which protects a religious group's right to shape its own faith and mission through its appointments.

Id. at 706. See also, Malicki v. Doe, 814 So.2d 347, 357 (Fla. 2002) (stating that ministerial exception applies to ecclesiastical disputes involving "discipline, faith, internal organization or ecclesiastical rule, custom or law"); Archdiocese of Miami, Inc. v. Minagorri, 954 So.2d 640 (Fla. 3d DCA 2007) (stating that the ministerial exception "precludes courts from exercising jurisdiction where an employment decision concerns a member of the clergy or an employee in a ministerial position"); Goodman v. Temple Shir Ami, Inc., 712 So.2d 775 (Fla. 3d DCA 1998) (stating that court could not review any issue regarding whether a religious disagreement constituted a "valid" basis for termination of employee's services); Malichi v. Archdiocese of Miami, 945 So.2d 526, 528 (Fla. 1st DCA 2007)

(holding that ecclesiastical abstention doctrine protects a church from state interference in its internal employment disputes): Southeastern Conference Ass'n of Seventh-Day Adventists, Inc. v. Dennis, 862 So.2d 842, 844 (Fla. 4th DCA 2003) (stating that "civil courts must abstain from deciding ministerial employment disputes or reviewing decisions of religious judicatory bodies concerning the employment of clergy"); (EEOC v. The Roman Catholic Diocese of Raleigh, North Carolina, 213 F.3d 795, 800 (4th Cir. 2000) ("courts have repeatedly emphasized the constitutional imperative of governmental non-interference with the ministerial employment decisions of churches.").

Notably, the doctrine serves to bar not only breach of contract claims based upon the decision to terminate a minister, but also any other claims arising out of a church's decision to terminate one of its ministers, including related tort claims. Dennis, 862 So.2d at 844 (granting writ of prohibition in favor of church with respect to negligence claim alleging that church "failed to follow its own internal procedures" in dealing with allegations that respondent made unwelcome sexual advances to members of congregation); Alicea-Hernandez v. Catholic Bishop of Chicago, 320 F.3d 698, 703 (7th Cir. 2003) (affirming dismissal of discrimination claims and rejecting plaintiff's argument that the court must make a determination as to whether the alleged discrimination was secular in nature because the ministerial exception applies "without regard to the type of claims being

brought."); Ogle v. Church of God, 153 Fed. Appx. 371 (6th Cir. 2005) (holding that ministerial exception applies not only to breach of contract claims but also to any tort claims which "implicate the [church's] internal disciplinary proceedings."); are Klouda v. Southwestern Baptist Theological Seminary, 543 F. Supp. 2d 594, 611 (N.D. Tex. 2008) (stating that if the employee is deemed a minister, the court cannot review the church's termination decision, regardless of whether the claims are ecclesiastical in nature because the church "must be free to decide for itself, free of interference of the courts, matters of church governance, such as the identities of those who will be permitted to teach courses in the preparation of students for church ministry.").

B. Appellant's Claims Implicate Questions of Religious Doctrines and are Thereby Precluded by the Ministerial Exception.

In order for the trial court to resolve the claims asserted in Appellant's Complaint, it would have to "immerse itself in religious doctrines and concepts." Goodman, 712 So.2d at 777. Plaintiff's initial allegations, which are incorporated into all subsequent counts, claim that after Appellant reported Father Mayer's allegedly inappropriate conduct, Principal Cavell "stated that he had direct contact on the matter with the Bishop and it was the Diocese's position that Father Mayer could ask these question as an examination of conscience concerning the Ten Commandments . . ." R. 6; par. 23. Appellant contends, however, that "by virtue of his (Appellant's) orientation, training and the governing policies [he] knew that

the behavior displayed by Father Mayer was in direct violation of the Code of Pastoral Conduct for all Diocesan personnel . . ." R. 6; par. 24.

Thus, in order to resolve Appellant's claims, the trial court would necessarily be forced to examine the Pastoral Code of Conduct and make a determination as to whether there had been a violation. In short, Appellant is asking the court to decide which interpretation of the Catholic faith is correct, including whether the termination was supported by church doctrine or merely based upon secular animus. This is exactly the type of inquiry which the ministerial exception forbids.

For example, in Count I, for breach of contract, Appellant alleges that "BVCHS, Inc. has not exercised its discretion in good faith in fulfilling its obligations under the terms of the Agreement in that the stated basis for termination, insubordination, is fraudulent and is an attempt to retaliate for the reporting of Father Mayer's conduct as set forth hereinabove." R. 8-9; par. 35. By its very terms, Count I reveals that the trial court would need to make a determination as to whether Appellant's termination was consistent with church doctrine. Such a determination is not permitted. See, Dennis, 862 So.2d at 843-44 (granting writ of prohibition in negligence claim against church, which was premised upon allegations that church failed to follow its own internal procedures, because "courts must abstain from deciding ministerial employment disputes or reviewing decisions of religious judicatory bodies concerning the employment of

clergy"): Minagorri, 954 So.2d at 642 (holding that ministerial exception applied to plaintiff's claim alleging that defendant's decision to terminate plaintiff's employment was retaliatory).

The fact that Appellant is not seeking reinstatement of his employment is irrelevant. Allowing Appellant to recover damages based upon the church's employment decision would effectively allow Appellant to do indirectly what he cannot do directly, i.e., punish the church for its hiring or firing decision. The Supreme Court specifically rejected a similar argument in Hosanna-Tabor:

Perich no longer seeks reinstatement, having abandoned that relief before this court. But that is immaterial. Perich continues to seek front pay in lieu of reinstatement, back pay, compensatory and punitive damages, and attorney's fees. An award of such relief would operate as a penalty on the Church for terminating an unwanted minister, and would be no less prohibited by the First Amendment than an order overturning the termination.

Id. at 709.

Thus, because Appellant seeks to penalize BVCHS for its decision to terminate Appellant's employment, and because any ruling on Count I would require the court to pass upon church doctrine, the claim falls within the ministerial exception and is barred.

Count II was properly dismissed for the same reason. This is a claim for tortious interference with contractual relations against Dewane, individually, and as bishop of the Catholic Diocese in Venice, Florida. R. 10. This count is premised

upon an allegation that Dewane "intentionally used his/its power and position to procure the contractual breach, to wit: termination of Plaintiff, Wilson, without justification or privilege and as punishment, retaliation and a lesson to others similarly situated within the Venice Diocese." R. 11; par. 45. This count cannot be resolved without a determination of whether the termination was consistent with church doctrine. This determination is not permitted. Dennis, 862 So.2d at 843-44 (holding that negligence claim was precluded by the ministerial exception because the court would be forced to pass on whether the church properly followed its own doctrines); Jenkins v. Trinity Evangelical Lutheran Church, 825 N.E. 2d 1206, 1214 (Ill. App. 2005) (affirming dismissal of claim for tortious interference with contract because "allegations of jealousy and lack of authority or justification would require the court to explore the rules, policies and decisions of the church. We will not interfere with the administration and discipline of religious bodies.").

The final count, Count III, of Appellant's Complaint is for intentional infliction of emotional distress against Dewane individually and as Bishop of the Diocese. R. 13. Once again, the count is premised upon allegations that Dewane "intentionally used his/its power and position to procure the termination of Plaintiff, Wilson, as punishment, retaliation and a lesson to others similarly situated within the Venice Diocese." R. 14; par. 55. Like Counts I and II, in order to rule on this count, the trial court would be forced to make an examination as to

whether Appellees' decision to terminate Appellant's employment was consistent with church doctrine or whether it was based upon some ulterior motive. See, Alicea-Hernandez v. Catholic Bishop of Chicago, 320 F.3d 698 (7th Cir. 2003) (holding that a church need not proffer any religious justification for its decision to terminate ministerial employee because "[t]o rule otherwise would enmesh the court in endless inquiries as to whether each discriminatory act was based in Church doctrine or simply secular animus"); Ogle v. Church of God, 153 Fed. Appx. 371 (6th Cir. 2005) (affirming dismissal of claims, including claims for breach of implied contract, tortious interference with business relationship and intentional infliction of emotional distress because all claims "implicate the [church's] internal disciplinary proceedings."); Skrzypczak v. Roman Catholic Diocese of Tulsa, 611 F.3d 1238, 1245 (10th Cir. 2010) (holding that ministerial exception applied to claim for intentional infliction of emotional distress because allowing such a claim to proceed would require the court to determine whether termination decision was based upon church doctrine or merely secular animus).

In light of the foregoing, Appellant's claims fall within the ministerial exception and require dismissal.

C. The Cases Relied Upon By Appellant in Arguing that the Ministerial Exception Does Not Apply are Distinguishable.

The cases relied upon by Appellant are not persuasive because those cases, to the extent they find the ministerial exception inapplicable, do not involve issues of church governance or determinations relating to the church's selection of its ministers. The case of Goodman v. Temple Shir Ami, Inc., 712 So.2d 775 (Fla. 3d DCA 1998) demonstrates the distinction between cases which fall within the exception and those which do not. The facts of the Goodman case are as follows: the plaintiff, Goodman, sued his employer, Temple, and one of Temple's board members, Ashenoff. Goodman initially served a three year employment contract with Temple and alleged in his lawsuit that Temple improperly refused to honor a second three year contract based upon false statements which Ashenoff made about Goodman to members of the Temple board. Goodman asserted four claims: (1) against Temple for failing to honor the second three year contract; (2) against Temple and Ashenoff for defamatory statements made in connection with the termination of Goodman; (3) against Ashenoff for tortious interference with Goodman's employment contract with Temple; and (4) against Temple for money allegedly owing to Goodman for services performed during Goodman's initial three year employment contract. The trial court dismissed all of Goodman's claims. The appellate court affirmed as to all counts except the claim for money owing under

the initial contract. In affirming as to the first three counts, the appellate court determined that "[i]n order for the trial court to have resolved these disputes, it would have had to immerse itself in religious doctrines and concepts and 'determine' whether the religious disagreements were a 'valid' basis for the termination of Rabbi Goodman's services." Id. at 777. The court further noted that "[i]nquiring into the adequacy of the religious reasoning behind the dismissal of a spiritual leader is not a proper task for a civil court." Id. However, as to the fourth count, for sums owed, the appellate court determined that this was merely an issue of whether compensation was due to Goodman and "does not create excessive entanglements with religious beliefs, and does not preclude civil court intervention." Id.

Thus, the Goodman court drew a clear distinction. Claims which require a court to analyze whether there is religious justification for the dismissal of a minister are precluded by the ministerial exception because such an inquiry requires the courts to delve into matters of internal church discipline. However, a claim merely for unpaid sums owed pursuant to an employment contract does not create such involvement and is not precluded. See also, Dennis, 862 So.2d at 844 ("[W]here religious organizations establish rules for their internal discipline and governance, and tribunals for adjudicating disputes over these matters, 'the Constitution requires that civil courts accept their decisions as binding upon

them.”) (quoting Crowder v. S. Baptist Convention, 828 F.2d 718, 724 (11th Cir. 1987).

The case of Jenkins v. Trinity Evangelical Lutheran Church, 825 N.E. 2d 1206 (Ill. App. 2005), involved the same rationale as the claim for sums owed in Goodman. Simply put, the court determined that the plaintiff's claim was not barred by the ministerial exception because the plaintiff was merely seeking to recover monies allegedly owed pursuant to an employment contract. Id. at 1212.

The Florida Supreme Court's decision in Malicki v. Doe, 814 So.2d 347 (Fla. 2002), stems from a different factual background but is not inconsistent with the legal principles set forth in Goodman or with the trial court's ruling in our case. The Malicki case did not involve a claim of improper termination of an employee. Rather, in Malicki, the plaintiffs were parishioners (not ministers of the church) who sued the Church based on theories of negligent hiring and negligent retention, claiming that they were sexually assaulted by one of the church's clergy, Malicki. At issue in the case was whether common law tort claims of this nature are barred by the ministerial exception. Id. at 351. For purposes of analyzing the applicability of the ministerial exception, the Court framed the issue as follows: "A court thus must determine whether the dispute is an ecclesiastical one about 'discipline, faith, internal organization, or ecclesiastical rule, custom or law,' or whether it is a case in which [it] should hold religious organizations liable in civil

courts for 'purely secular disputes between third parties and a particular defendant, albeit a religiously affiliated organization.'" Id. at 357 [citing Bell v. Presbyterian Church, 126 F.3d 328, 331 (4th Cir. 1997)] (internal quotations omitted). The Court ultimately determined that the parishioners' claims were not barred. Id. at 365. In reaching this decision, the Court observed that the church made no claim that the failure to control the conduct of Malicki was grounded in a sincerely held religious belief or practice. Id. at 361. In short, Malicki's alleged conduct was not a part of the church's practices or dogma. Consequently, the court did not "run the risk of displacing the free religious choices of defendants by placing its weight behind a particular religious belief." Id. at 363. Therefore the claims could be resolved without intruding into the church's internal practices. Compare, Archdiocese of Miami, Inc. v. Minagorri, 954 So.2d 640, 644 n.1 (Fla. 3d DCA 2007) (expressly finding that claim for improper termination under whistleblower act was distinguishable from claim in Malicki, which it described as "third-party tort actions brought by parishioners against their respective churches based upon alleged sexual misconduct by a clergy member").

Appellant cites Petruska v. Gannon University, 462 F.2d 294 (3d Cir. 2006), for the proposition that the ministerial exception will not bar certain claims for breach of contract. In this case, the court determined that the plaintiff could maintain a claim for breach of contract, where the plaintiff alleged that her contract

entitled her to "serve on the President's Staff and lead the Chaplain's Division" but that the church had breached these obligations by changing the plaintiff's employment responsibilities. Id. at 310. As a preliminary matter, the case is distinguishable because the claim did not create an issue as to the church's "right to select its ministers" as does the instant case. Id. In other words, Petruska did not involve a claim that the plaintiff's termination was contrary to church doctrine. Rather, the claim merely involved an issue of whether the church allowed the plaintiff to perform the duties which it was contractually obligated to have her perform. Additionally, the analysis in Petruska appears to have been rejected by most other courts and appears to have been overruled by the Supreme Court in Hosanna. For example, Chief Justice Roberts observed that the rationale for Perich's termination was irrelevant, even if it was pretextual:

The EEOC and Perich suggest that Hosanna-Tabor's asserted religious reason for firing Perich--that she violated the Synod's commitment to internal dispute resolution--was pretextual. That suggestion misses the point of the ministerial exception. The purpose of the exception is not to safeguard a church's decision to fire a minister only when it is made for a religious reason. The exception instead ensures that the authority to select and control who will minister to the faithful--a matter "strictly ecclesiastical"--is the church's alone.

Hosanna-Tabor, 132 S.Ct. at 709. Additionally, in his concurring opinion, Justice Alito discusses in detail that courts are forbidden from inquiring into whether an employee's termination is truly supported by religious doctrine or whether religion is merely being used as a pretext behind some non-permissible motivation for the

termination. In fact, Justice Alito confirms that it is appropriate to forgo this "pretext inquiry" in favor of judicial abstention:

Hosanna-Tabor discharged respondent because she threatened to file suit against the church in a civil court. This threat contravened the Lutheran doctrine that disputes among Christians should be resolved internally without resort to the civil court system and all the legal wrangling it entails. In Hosanna-Tabor's view, respondent's disregard for this doctrine compromised her religious function, disqualifying her from serving effectively as a voice for the church's faith. Respondent does not dispute that the Lutheran Church subscribes to a doctrine of internal dispute resolution, but she argues that this was a mere pretext for her firing, which was really done for nonreligious reasons.

For civil courts to engage in the pretext inquiry that respondent and the Solicitor General urge us to sanction would dangerously undermine the religious autonomy that lower court case law has now protected for nearly four decades. In order to probe the *real reason* for respondent's firing, a civil court - - and perhaps a jury - - would be required to make a judgment about church doctrine. . . . But whatever the truth of the matter might be, the mere adjudication of such questions would pose grave problems for religious autonomy: It would require calling witnesses to testify about the importance and priority of the religious doctrine in question, with a civil factfinder sitting in ultimate judgment of what the accused church really believes, and how important that belief is in the church's overall mission.

Id. at 715. (Justice Alito concurring) (Emphasis in original). See also, Goodman v. Temple Shir Ami, Inc., 712 So.2d 775 (Fla. 3d DCA 1998) (stating that court could not review any issue regarding whether a religious disagreement constituted a "valid" basis for termination of employee's services).

Appellant's argument that the termination of his employment was not consistent with church doctrine implicates the very concerns that form the basis for

the ministerial abstention doctrine. Specifically, Appellant alleges that his termination was not consistent with church doctrine, but was in fact the result of "an attempt to retaliate for the reporting of Father Mayer's conduct as set forth hereinabove." R. 9; par. 35. It is not the place for a civil court to make such a determination. Otherwise, a court or factfinder would be in a position to pass judgment upon doctrinal issues that must remain the exclusive province of the church. This is the very "pretext inquiry" which was rejected in Hosanna-Tabor and which has been rejected in the State of Florida as set forth in Goodman.

In light of the foregoing, all of the claims set forth in Appellant's Complaint implicate issues involving church governance and would require the trial court to evaluate whether the Appellees properly followed the church's internal procedures in reaching the decision to terminate Appellant's employment. Claims of this nature are barred by the ministerial exception and the Complaint was properly dismissed.

II. THE TRIAL COURT PROPERLY DETERMINED THAT APPELLANT IS A MINISTER.

A. Any Employee Whose Primary Responsibilities Involve Teaching or Spreading the Message of the Church is Deemed a Minister.

It is difficult to conceive of a more vital role to church undertakings than that of a teacher of theology. Courts addressing this issue have consistently determined that a person in Appellant's position, with Appellant's responsibilities,

must be considered clergy and therefore subject to the ministerial exception. In fact, many cases which have analyzed the issue of whether a particular individual should be considered clergy, have used Appellant's position, a teacher of theology, as the most obvious example of what must constitute clergy.

Perhaps the most notable discussion of this issue was set forth by the Fourth Circuit Court of Appeals in EEOC v. The Roman Catholic Diocese of Raleigh, North Carolina, 213 F.3d 795 (4th Cir. 2000). This case, like many others, identified teaching, and particularly the teaching of theology, as the polestar in terms of importance, in determining whether a position should be deemed clergy under the ministerial exception. The case involved a claim of gender discrimination, in which the Diocese had allegedly discriminated against Joyce Austin ("Austin") by reassigning certain of Austin's professional responsibilities to men. Austin was the Director of Music Ministry for the school. Her duties included teaching at the school, directing choirs, training cantors, and playing music at various events, such as weddings and funerals. The district court dismissed the action pursuant to the ministerial exception and the EEOC appealed. The primary issue addressed by the Fourth Circuit Court of Appeals was whether Austin should be considered a "minister" for purposes of the doctrine.

Ultimately, the Fourth Circuit affirmed the district court's dismissal of the EEOC's gender discrimination claim based upon its determination that Austin's

primary duties "consisted of the selection, presentation, and teaching of music, which is integral to the spiritual and pastoral mission of the Catholic Church and many other religious traditions. . . ." In reaching its decision that Austin was a minister, the court further observed as follows:

Our inquiry focuses on the 'function of the position' at issue and not on categorical notions of who is or is not a "minister." For example, we have expressly rejected any view that ordination is a prerequisite to the application of the exception, and courts have routinely applied the exception in cases involving persons other than ordained ministers. The general rule is that "if the employee's primary duties consist of *teaching*, spreading the faith, church governance, supervision of a religious order, or supervision or participation in religious ritual and worship, he or she should be considered clergy." A court must therefore determine whether a position is important to the spiritual and pastoral mission of the church in order to decide whether the ministerial exception applies.

Id. at 801 (emphasis added) (internal citations omitted). Further, in rejecting the EEOC's arguments that Austin's position was not essentially religious in nature, the court determined that "[t]he music ministry and teaching positions at issue are ministerial because the positions are "important to the spiritual and pastoral mission of the church." Id. at 802. See also, Rayburn v. General Conference of Seventh-Day Adventists, 772 F.2d 1164, 1169 (4th Cir. 1985) (affirming summary judgment against applicant for position as associate in pastoral care in claim under Title VII based on ministerial exception and reasoning "if the employee's primary duties consist of teaching, spreading the faith, church governance, supervision of a

religious order, or supervision or participation in religious ritual and worship, he or she should be considered 'clergy'.")

Other courts have reached the same conclusion when addressing employees whose responsibilities include teaching the faith. While merely serving as "exemplars of practicing Christians" is not a sufficient basis to invoke the doctrine, EEOC v. Mississippi College, 626 F.2d 477, 485 (5th Cir. 1980), there is a consistency with respect to cases involving employees who serve a role associated with teaching or otherwise spreading the church's message. Specifically, courts which have addressed this issue have uniformly determined that a person's role in spreading the church's religious message must be a governing factor in determining whether the individual should be deemed a minister. See, Alicea-Hernandez v. Catholic Bishop of Chicago, 320 F.3d 698 (7th Cir. 2003) (holding that doctrine applied to position of press secretary because a "press secretary is critical in message dissemination, and a church's message, of course, is of singular importance."); Powell v. Stafford, 859 F.Supp. 1343, 1346 (D. Colo. 1994) (applying ministerial exception to high school theology teacher); Starkman v. Evans, 198 F.3d 173 (5th Cir. 1999) (finding that choir director qualified as minister for purposes of the doctrine in light of the "highly important role" which religious music plays in the spiritual mission of the church); EEOC v.

Southwestern Baptist Theological Seminary, 651 F.2d 277 (5th Cir. 1981) (holding that Seminary faculty members were properly deemed ministers).

B. The Allegations of the Complaint and Attached Exhibits Reflect that Appellant is a Minister as a Matter of Law.

Appellant's responsibilities as a teacher of theology compel a finding that Appellant is a minister. Appellant admits in his Complaint that he has been a teacher of theology for more than six (6) years. R. 3; par. 8. His contract for employment provides, among other things, that he has a "duty to evangelize the Good News of the Gospel"; "make decisions in an ethical framework consistent with the Catholic Faith"; "teach students by spreading the Good News of Jesus Christ"; "to support and exemplify in conduct and/or instruction both Catholic doctrine and morality"; "to refrain from any notion which would reflect discredit on the Roman Catholic Church or be detrimental to its religious doctrines and tenets." R. 17-18. Appellant was also required to undergo religious training and "earn the appropriate level of catechetical hours per diocesan school policy." It simply strains credulity to suggest that these duties are not "important to the spiritual and pastoral mission of the church." The Roman Catholic Diocese of Raleigh, North Carolina, 213 F.3d at 802.

Contrary to Appellant's argument, the Supreme Court in Hosanna-Tabor did not make a finding that the question of whether an employee will be deemed a minister necessarily constitutes a question of fact. Instead, the Supreme Court

made a legal determination that the claimant in that case must be deemed a minister. In reaching this decision, the Court was guided by Perich's role in spreading the church's message:

Perich's job duties reflected a role in conveying the Church's message and carrying out its mission. Hosanna-Tabor expressly charged her with "lead[ing] others toward Christian maturity" and "teach[ing] faithfully the Word of God, the Sacred Scriptures In fulfilling these responsibilities, Perich taught her students religion four days a week, and led them in prayer three times a day. . . . As a source of religious instruction, Perich performed an important role in *transmitting the Lutheran faith to the next generation.*

Id. at 708 (Emphasis added).

Thus, the Supreme Court placed a substantial emphasis on Perich's duties in teaching the religious faith. Significantly, the Court's determination that Perich was a minister came despite the fact that "her religious duties consumed only 45 minutes of each working day, and that the rest of her day was devoted to teaching secular subjects." Id. Thus, clearly Perich's role of teaching the religious faith was of overriding concern to the Court.

The significance that the Supreme Court placed upon Perich's role as a teacher of religion is also emphasized in Justice Alito's concurring opinion. Not only does Justice Alito describe the significance that the Supreme Court attaches to Perich's responsibility as a teacher of religion, he underscores teaching in particular as one of the most significant considerations in evaluating whether an individual is to be considered a minister:

Different religions will have different views on exactly what qualifies as an important religious position, but it is nonetheless possible to identify a general category of "employees" whose functions are essential to the independence of practically all religious groups. These include those who serve in positions of leadership, those who perform important religious ceremonies and rituals, and those who are entrusted with teaching and conveying the tenets of the faith to the next generation.

Id. at 712 (Justice Alito, concurring).

To suggest that there is some issue of fact as to the nature of Appellant's employment obligations and his duties to the church, is to ignore the reality of Appellant's position. He is a teacher of theology. He is "entrusted with teaching and conveying the tenets of the faith to the next generation." The significance of Appellant's duty to teach the church's doctrine is made explicit in his employment contract, which states: *it is essential to your job* that you perform your duties and make decisions in an ethical framework consistent with the Catholic Faith, Teachings and Traditions, so that by your example, you will teach students by spreading the Good News of Jesus Christ. R. 17. (Emphasis added). In short, Appellant's job is to teach religion and spread the church's message to his students. These duties represent the very essence of what courts have consistently analyzed in determining whether an individual should be deemed a minister. See generally, Starkman, 198 F.3d at 176 (stating that the "ministerial exception encompasses all employees of a religious institution, whether ordained or not, whose primary

functions serve its spiritual and pastoral mission."); EEOC v. Catholic University of America, 83 F.3d 455, 461 (D.C. Cir. 1996) (ministerial exception applies "to lay employees of religious institutions whose "primary duties consist of teaching, spreading the faith, church governance, supervision of a religious order, or supervision or participation in religious ritual and worship . . .") [quoting Rayburn v. General Conference of Seventh-Day Adventists, 772 F.2d 1164, 1169 (4th Cir. 1985)].

In light of Appellant's duties as a teacher of theology, and the significance of those duties in conveying the religious tenets of the church to his students, Appellant must be deemed a minister.

III. APPELLANT'S CLAIMS AGAINST THE DIOCESAN DEFENDANTS ARE ALSO BARRED BY THE MINISTERIAL EXCEPTION.

Appellant's final argument is that the ministerial exception does not apply to the Diocesan defendants because these defendants have no ministerial relationship with Appellant. IB. at 19. Appellant's position is no different than that set forth in the myriad cases in which a claimant "is really seeking civil court review of subjective judgments made by religious officials and bodies" about the basis for termination of his employment. Hutchison v. Thomas, 789 F.2d 392 (6th Cir. 1986). These cases have uniformly determined that it is not just the termination

decision that is precluded by the doctrine, but all other claims which might otherwise stem from the decision.

For example, Counts II and III of Appellant's Complaint are premised upon allegations that Dewane, individually and as Bishop of the Diocese of Venice, intentionally used his position to procure Appellant's termination. R. 11; par. 45; 14, par. 55. Thus, any resolution of these claims, necessarily involves inquiry into the rationale behind the church's decision to terminate Appellant. This type of inquiry is not permitted. See, Hosanna-Tabor, 132 S.Ct. at 709 (stating that courts are prohibited from engaging in a determination as to the basis for a church's decision "to select and control who will minister to the faithful").

Appellant's argument has also been rejected by other courts. For example, in Ogle v. Church of God, 153 Fed. Appx. 371 (6th Cir. 2005), Ogle sought reinstatement with the church following a suspension based upon allegations of inappropriate conduct. Ogle also alleged that various individuals were improperly interfering with his efforts to obtain reinstatement. His complaint, like Appellant's, included claims not only against the church, but also claims against various individuals alleging, among other things, interference with a business relationship and intentional infliction of emotional distress. Id. at 374. Affirming dismissal of all such claims, the appellate court determined that all of the claims were barred by

the ministerial exceptions because all of the claims "implicate the Church of God's internal disciplinary proceedings." Id. at 376.

Similarly, in Goodman, the court affirmed the dismissal of counts alleging defamation and tortious interference pursuant to the ministerial exception, even though those counts were not directed against the plaintiff's employer. In reaching this decision, the court observed that "[t]he allegedly defamatory report and tortious interference occurred as apart of this religious dispute and would require the trial court to weigh their effect on the board members as compared to the effects of the other considerations which clearly are religious disagreements. Inquiring into the adequacy of the religious reasoning behind the dismissal of a spiritual leader is not a proper task for a civil court." Goodman, 712 So.2d at 777. Thus, even though the defamation claim was not directed to the plaintiff's employer, it was nonetheless barred because it would have required the court to make determinations involving church doctrine.

Appellant's Complaint requires dismissal for the same reasons. Any contention that the Diocesan defendants interfered with Appellant's contractual rights, necessarily involves an impermissible assessment of the rationale for the termination, including whether the termination was supported by church doctrine or was instead motivated by some other purposes. This type of inquiry has been uniformly found to contravene the ministerial exception.

CONCLUSION

Based on the foregoing, Appellees request the Court affirm the trial court's decision.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been furnished to the following:

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by regular United States Mail, this 14th day of April, 2012.

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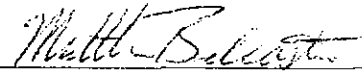
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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing brief satisfies all of the requirements prescribed by Rule 9.210 of the Florida Rules of Appellate Procedure.



J. Matthew Belcastro
Florida Bar No. 0135674