IN THE COURT OF APPEALS FOR THE STATE OF NEW MEXICO

MELISSA GALETTI,

Plaintiff/Appellant,

vs.

Court of Appeals No. 32,625

Second Judicial District No. D-202-CV-2012-03324

DERRAL W. REEVE, KIM GILLEN, BRENDA CONYNE, and TEXICO CONFERENCE ASSOCIATION OF SEVENTH DAY ADVENTISTS,

Defendants/Appellees.

AN APPEAL FROM THE SECOND JUDICIAL DISTRICT COURT,
THE HONORABLE C. SHANNON BACON

APPELLANT MELISSA GALETTI'S REPLY BRIEF

WAYNE R. SUGGETT
MAESTAS & SUGGETT, P.C.
Attorneys for Plaintiff Melissa Galetti
Sun Valley Commercial Center
316 Osuna Road N.E., Suite 103
Albuquerque, New Mexico 87107
Telephone: (505) 247-8100

TABLE OF CONTENTS

TABLE OF AUTHORITIES

New Mexico Rules and Statutes

New Mexico Case Law

United States Case Law

Other jurisdictions

I. Argument.

Introduction

The ministerial exemption protects religious ***organizations***, not individuals, from ***state created claims*** that interfere with a religious organization's ability to terminate its ministers. Galetti is asserting an express breach of contract claim against the Texico Conference Association of Seventh-Day Adventists (Church) that does not require the court, or jury, to resolve religious doctrine. *Petruska v. Gannon Univ.*, 462 F.3d 294, 310 (3rd. Cir. 2006) (*citing Jones v. Wolf*, 443 U.S. 595, 603(1979)("On its face, application of state contract law does not involve government-imposed limits on Gannon's right to select its ministers: Unlike the duties under Title VII and state tort law, contractual obligations are entirely voluntary....."). Galetti's remaining claims are against individuals acting in their individual, rather than their official, capacities. Those claims also will not turn on Church doctrine. *See Bryce v. Episcopal Church in the Diocese of Colorado*, 289 F.3d 648, 657 (10th Cir. 2002)("We must determine whether the defendants' alleged statements were ecclesiastical statements protected by church autonomy or purely secular ones."). Therefore, the District Court erred in granting Defendants' motion to dismiss and this Court should reverse.

Issue 1

The ministerial exception was never raised by Defendants Before the District Court, and the District Court prematurely dismissed Galetti's claims before a proper factual record could be presented

The ministerial exception and church autonomy doctrines are fact-specific inquiries. *Hosanna-Tabor Evangelical Lutheran Church v.* EEOC, 132 S. Ct. 694, 707, 708 (2012)(declining to adopt "rigid formula" stating that "[w]e express no view on whether someone with Perich's duties would be covered by the ministerial exception in the absence of the other considerations we have discussed."); EEOC *v. The Roman Catholic Diocese of Raleigh*, 213 F.3d 795, 801 (4th Cir. 2000)("While the ministerial exception promotes the most cherished principles of religious liberty, its contours are not unlimited and its application in a given case requires a fact-specific inquiry."). The federal appellate courts are split whether teachers, including Seventh-day Adventist teachers, meet the ministerial exception. *See Redhead v. Conference of Seventh-Day Adventists*, 440 F. Supp. 2d 211, 221 (E.D.N.Y. 2006)(finding that Seventh-Day Adventists elementary school teacher was not a ministerial employee).

On appeal, and for the first time, Defendants argue that the First Amendment defense they raise is governed by the "ministerial exception." (*See*, R.P. 53-54: "Plaintiff argues that dismissal under Rule 1-012(B)(6) NMRA would be improper because the church autonomy doctrine requires a fact-specific inquiry into whether

or not Plaintiff is a 'minister....' However, Defendants are invoking a common-law doctrine that provides an immunity from suit, which the New Mexico Courts have said should be determined in a Rule 12(B)(6) motion to dismiss."). By denying that its motion to dismiss was governed by the ministerial exception, Defendants evaded producing the discovery that was necessary to permit a "totality of the circumstances" factual review to determine whether a Seventh-day Adventist elementary school teacher meets the definition of a "minister." *See McCallum v. Billy Graham Evangelistic Association*, 824 F. Supp. 2d 644, 651 (W.D.N.C. 2011)(denying motion to dismiss finding: "[a]t this stage of the proceedings, BGEA has not demonstrated that the Church Autonomy Doctrine bars Plaintiff's lawsuit or that McCallum's former job as an Administrative Assistant in Global Ministries fall within the ministerial exception."). Therefore, the district court's order of dismissal should be reversed and remanded to the district court so that a proper factual record can presented on the nature of Galetti's religious responsibilities.

Issue 2:

The ministerial exception and church autonomy doctrines do not bar breach of contract claims as a matter of law

Even if Galetti is deemed a "minister", the courts that have addressed the issue have determined that religious organizations are not immune from all claims

brought by their ministers. *See Rayburn v. Gen. Conference of Seventh-Day Adventists*, 772 F.2d 1164, 1169 (4th Cir. 1985)("Of course churches are not—and should not be—above the law. Churches may be held liable for their torts and upon their valid contracts."). The courts that have applied the ministerial exception to bar discrimination and wrongful termination claims have viewed contract claims differently. *Petruska v. Gannon Univ.*, 462 F.3d 294, 310 (3rd. Cir. 2006)(" Enforcement of a promise, willingly made and supported by consideration, in no way constitutes a state-imposed limit upon a church's free exercise rights.").

Defendants acknowledge that contract claims do not infringe upon a religious organization's Free Exercise rights. (Answer Br. p. 22). However, Defendants assert that the courts that have recognized the courts ability to enforce contracts against religious organizations have not done so on behalf of ministerial employees. (Answer Br. p. 22). This is incorrect. The majority of courts have refused to apply the ministerial exception, at least as a matter of law, to breach of contract claims between ministerial employees and their religious employers. *Petruska v. Gannon Univ.*, 462 F.3d 294 (3rd Cir. 2006)(finding Petruska's chaplain position ministerial and dismissing Title VII claims but reversing dismissal of breach of contract claim); *Minker v. Baltimore Annual Conference of United Methodist* Church, 894 F.2d 1354, 1360 (D.D.C. 1990)(church pastor could

pursue breach of contract claims so long as the Church's reasons for terminating the contract did not require the district court to become substantially entangled in church doctrine); *Second Episcopal District v. Prioleau*, 49 A. 3d 812, 817 (D.C. Ct. App. 2012)(reverend could pursue one-year breach of contract claim against church); *Mundie v. Christ United church of Christ*, 987 A.2d 794, 802 (PA Super 2009)(Reverend's breach of contract claim was improperly dismissed: "Consistent with the rationale espoused by *Minker*, we find that Appellant should be afforded the opportunity to demonstrate that he can prove his [breach of contract] case without resorting to impermissible avenues of discovery or remedies.").

Defendants, admittedly, have cited to a few decisions that have rejected breach of contract claims under the ministerial exception. The opinions Defendants rely on, however, all turned on the court's ability to review the reasons that justified the religious employer's decision, *Gabriel v. Immanuel Evangelical Lutheran Church*, 640 N.E.2d 681 (Ill. Ct. App. 1994), as well as the courts legal determination that subject matter jurisdiction was lacking. *See e.g. Dobrota v. Free Serbian Orthodox Church*, 952 P. 2d 1190 (Ariz. Ct. App. 1998)(affirming trial court's dismissal of contract claim based on court's lack of subject-matter jurisdiction to hear claim between church and its minister); *Lewis v. Seventh-Day Adventists*, 978 F.2d 940 (6th Cir. 1992)(lack of subject matter jurisdiction to hear claim). The remaining cases Defendants cite do not involve breach of contract

claims and are thus irrelevant for this discussion. *See, for example, Combs v. Central Texas Annual Conf. of the United Methodist Church*, 173 F.3d 343 (5th Cir. 1999)(Title VII discrimination and pregnancy case).

The Supreme Court has rejected that the First Amendment issues create a subject-matter jurisdiction bar. *Hosanna-Tabor Evangelical Lutheran Church v. EEOC*, 132 S. Ct. 694, 709 n.4 (2012)("We conclude that the exception operates as an affirmative defense to an otherwise cognizable claim, not a jurisdictional bar."). Defendants' opinions are, therefore, flawed as the courts did not consider whether the religious organization in question waived its First Amendment protection in voluntarily entering into contracts with its ministers that limited the employer's right to terminate. *Minker*, 894 F.2d at 1359 (holding that pastor's breach of contract claim is not barred by First Amendment: "We find this contention compelling....A church is always free to burden its activities voluntarily through contract, and such contracts are fully enforceable in civil court.").

Based on the Supreme Court's determination that the First Amendment issues are affirmative defenses, it follows that a religious organization could chose to not assert the ministerial exception. The district court could then rule on the breach of contract matter without running afoul of the First Amendment. Therefore, it also follows that if a religious organization can waive its First Amendment defenses at trial, by not asserting them, it can do so before trial by

entering into agreements with its ministerial employees. *Id.*

Nevertheless, Galetti's breach of contract claim is different. Galetti is not maintaining that the Church had insufficient good cause to terminate her contract. Instead, Galetti is maintaining that because the non-renewal period had lapsed, and her contract renewed for the 2011-12 school year, the Church could only terminate the one-year contract under the Southwestern Union's just cause procedures. (*Compare* R.P. 75-76 *with* R.P. 77). However, the Church did not exercise this termination procedure in ending Galetti's employment. Resolving this factual issue would not require the Court to become entangled in religious doctrine. *See Gabriel*, 640 N.E. 2d at 684 ("A church is free to burden its activities voluntarily through contracts and such contracts are fully enforceable in a civil court. But courts may not inquire into contractual matters whose enforcement would require a searching and therefore impermissible inquiry into church doctrine."). Seeking court review of whether the Church was required to, and did invoke, the just cause procedures in terminating Galetti is different from seeking review of whether the Church had just cause to terminate Galetti.

The fact, or threat, the Church may decide to manufacture a "for cause" termination of Galetti does not change the analysis at this stage in the proceedings. Galetti should, at a minimum, be permitted to illustrate she can prove a breach of contract without requiring the court to become entangled in religious doctrine.

McKelvey v. Pierce, 800 A.2d 840, 858 (N.J. 2002)(addressing substantive and procedural entanglement cases and holding that: "We think McKelvey should have an opportunity to demonstrate that he can prove the existence of a contract with the Diocese for education and training without offending First Amendment principles.").

Finally, the blanket ruling Defendants seek is not only inconsistent with the proper interpretation of the ministerial exception as an affirmative defense, but such a blanket ruling would actually harm, rather than enhance, a religious organization's religious freedom. If a court was prohibited from enforcing contractual promises made by a religious organization with its ministers, then those promises would be deemed illusory as a matter of contract law. *Heye v. American Golf Corp. Inc.*, 2003 NMCA 138, ¶12, 134 N.M. 558, 562 (Ct. App. 2003). ("[A] promise must be binding. When a promise puts no constraints on what a party may do in the future—in other words, when a promise, in reality, promises nothing—it is illusory, and it is not consideration."). If a religious entity's contractual promises are illusory, than a minister is likewise relieved of her contractual promises. Such an interpretation of law would inhibit religious organizations from entering into enforceable contracts with its ministers that it may deem necessary to further its religious mission. This is an absurd result and one not required by the First Amendment. Therefore, Defendants' blanket argument that breach of

contract claims are unenforceable under the ministerial exception should be rejected.

Issue 3:

The ministerial exception and church autonomy doctrine do not bar claims brought against individuals acting in their individual capacities

The ministerial exception only applies to claims by ministerial employees against religious entities. *Hollins v. Methodist Healthcare Inc.*, 474 F. 3d 223, 225 (6th Cir. 2007)("In order for the ministerial exception to bar an employment discrimination claim, the employer must be a religious institution and the employee must have been a ministerial employee."); *EEOC v. Hosanna-Tabor Evangelical Lutheran Church and School*, 597 F.3d 769 (6th Cir. 2010), *rev'd on other grounds*, 132 S. Ct. 694 (2012)("for the ministerial exception to bar an employment discrimination claim, two facts must be present: (1) the employer must be a religious institution, and (2) the employee must be a ministerial employee."). The church autonomy doctrine has been applied outside the minister-church context but only if the claim raises ecclesiastical concerns. *See Bryce*, 289 F.3d at 657 ("We must determine whether the defendants' alleged statements were ecclesiastical statements protected by church autonomy or purely secular ones.").

Galetti's claims against the individuals are not claims against a religious organization nor do they concern ecclesiastical matters. Therefore, the ministerial

exception and church autonomy doctrines do not apply or, at least, cannot be applied at this stage of the proceedings. *McCallum*, 824 F. Supp. 2d at 651 ("At this stage of the proceedings, BGEA has not demonstrated that the Church Autonomy Doctrine bars Plaintiff's lawsuit...."); *Prioleau*, 49 A. 3d at 817 ("The record as developed does not suggest that resolving Reverend Prioleau's contract claim will require the court to entangle itself in church doctrine.").

The thrust of Defendants' argument is that Galetti cannot evade the First Amendment prohibition by simply substituting the individuals for the Church. (Answer Br., p. 27). But Galetti is not simply pleading claims against the individuals in an attempt to end-run the ministerial exception. Galetti is also not bringing defamation claims based on the publication of false statements made in connection with official church meetings or proceedings. *See Williams v. Gleason*, 26 S.W. 3d 54, 58-59 (Tex. Ct. App. 2000)(suing individual church members that were involved in an ecclesiastical trial; no evidence that the individuals were acting inconsistent with their duties or obligations); *Patton v. Jones*, 212 S.W. 3d 541, 554 (Tex Ct. App. 2006)(dismissing defamation claims concerning communications made during official congregation meeting).1 None

1 The Texas opinions Defendants rely on are swimming against the tide of decisions from the federal courts and other states. Part of this flaw is likely due to the Texas' courts erroneous interpretation of the First Amendment ministerial and church autonomy defenses as defeating the courts subject-matter jurisdiction. 212 S.W.3d at 555. Defendants have not cited to a Texas appellate decision that has re-examined Texas law under the Supreme Court's *Hosanna-Tabor* decision that ruled that the First Amendment defense is an "affirmative defense" and not a subject-matter jurisdiction defense.

of Defendants cases that have applied the church autonomy doctrine or ministerial exception to individual church members have addressed the situation present here where an individual was acting contrary to the religious organization's rules and regulations. *See Bryce*, 289 F.3d at 658 (finding that all the alleged defamatory statements were made in the context of official church meetings and letters or in the context of internal church dialogue).

Galetti is asserting a retaliation and contractual interference claim against Reeve in his individual capacity. *Ettenson v. Burke*, 2001 NMCA 3, ¶19, 130 N.M. 67, 74 (Ct. App. 2000)(adopting internal corporate intentional interference with contract where corporate official was not acting on behalf of his employer: "For example, tortious interference with a contract of employment is not privileged if motivated by a corporate officer's anger with the former employee for spurning his sexual advances."). As to the contractual interference claim, if the court or jury find that Reeve was acting on behalf of the Church, the contractual interference claim will fail as a matter of law. *Id.* No First Amendment analysis needed. But that is not the claim.

Galetti intends to prove that Reeve was acting inconsistent with his authority and duties on behalf of the Church to satisfy a personal vendetta against Galetti. This "dual capacity" analysis has not only been accepted by New Mexico's

appellate courts concerning common law tort claims, but has also been applied to constitutional defenses. *See Ford v. New Mexico Dept. of Public Safety*, 119 N.M. 405, 410, 891 P.2d 546, 551 (Ct. App. 1994)("Plaintiff's argument is based on a misconception regarding the distinction made by the United States Supreme Court between a suit against a public official in an *official* capacity and a suit against the official in an *individual* capacity. The Supreme Court has ruled that a suit for damages against a state official in his or her official capacity is essentially a suit for damages against the state itself and therefore is barred by the Eleventh Amendment to the United States Constitution."). As a result, Galetti has pled claims against Reeve that are separate from his capacity as an agent or officer acting on behalf of the Church and, therefore, the ministerial exception does not apply.

Defendants are also incorrect in suggesting that the ministerial exemption requires some sort of "prophylactic buffer" to protect non-religious entity employees from litigation. This is not the purpose of the ministerial exception. *Elvig v. Calvin Presbyterian Church*, 397 F.3d 790, 796 (9th Cir. 2005)(Kozinski, j., concurring in denial of en banc hearing)("If sexual harassment suits are to fall within the First Amendment exception to Title VII, it must be because of the presence or absence of First Amendment concerns...."). The ministerial exception's sole purpose is to limit common law and statutory intrusions on a

religious entity's right to hire, fire and discipline its ministerial employees. The ministerial exception does not immunize church employees nor does it in general bar claims brought by religious employees against religious organizations. *See Elvig*, 397 F.3d at 797 ("As it happens, Elvig is claiming that her harasser was another minister, but that's merely incidental. The ministerial exception applies, if at all, based on the plaintiff's status as a minister; the status of the accused harasser is irrelevant....").

For example, if Galetti was Reeve's administrative assistant, it is beyond dispute that the ministerial exemption would not apply. Non-ministerial employees of the Church can sue Reeve, even in his official capacity, for work-place discrimination and retaliation under New Mexico law. Thus, the First Amendment is not concerned with providing church officers with immunity or even qualified immunity to protect them from legal liability.

Because Galetti's retaliation and contractual interference claims against Reeve do not impose any limitations on the Church concerning its ability to hire, fire, or discipline Galetti, the ministerial exception does not apply. In fact, if Reeve was not acting consistent with his duties and authority on behalf of the Church, then the decision to fire Galetti was not actually the Church's decision. *Vann v. Guildfield Missionary Baptist Church*, 452 F. Supp. 2d 651, 656 (W.D. Va. 2006)("Other jurisdictions have also recognized that civil courts may conduct

a limited review to determine whether a religious body has actually spoken."); *see also Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 725 (1976)(White, j., concurring)("Major predicates for the Court's opinion are that the Serbian Orthodox Church is a hierarchical church and the American-Canadian Diocese, involved here, is part of that church. These basic issues are for the courts' ultimate decision...."). If it was not the Church's decision then it follows that permitting retaliation and contractual interference claims to proceed against Reeve raises no First Amendment concern. *See Bollard v. The California Province of the Society of Jesus*, 196 F.3d 940, 947 (9th Cir. 1999)(permitting discrimination claim, including constructive discharge claim, to proceed based on fact that religious employer did not act: "The only relevant decision we can reasonably attribute to the Jesuits on the facts alleged here is the decision not to intervene to stop or curtail the sexual harassment.").

Again, the Church has not answered the allegations in the complaint or responded to Galetti's interrogatories and requests for admission related to Reeve's authority and power on behalf of the Church. As a result, there is no evidence before the Court that Reeve's actions were approved by the Church or were consistent with his authority and duties on behalf of the Church. *Vann*, 452 F Supp. 2d at 656 ("Other jurisdictions have also recognized that civil courts may conduct a limited review to determine whether a religious body has actually

spoken."); *Jones*, 443 U.S. at 604 (1980)(court may examine religious documents without running afoul of the First Amendment as long as "the interpretation of the instruments of ownership would not require the civil court to resolve a religious controversy.").

This individual-official distinction equally applies to the defamation and conspiracy claims against defendants Gillen and Conyne. *Bilbrey v. Myers*, 91 So.3d 887, 891 (Fla. Ct. App. 2012)(reversing dismissal of plaintiff's individual claims against pastor for defamation stating: "The First Amendment does not grant Myers, as pastor of FPC, carte blanche to defame church members and ex-members."). The complaint is not asserting that Gillen and Conyne defamed, or conspired with Reeve, as part of their official duties on behalf of the church. In fact, Galetti is unaware of any official duties Conyne has in relationship to the Church and Defendants conceded this point. (R.P. 86).

The statements published by Defendants Conyne and Gillen that Galetti maintains are defamatory concerned Galetti's alleged negligent supervision of her students, alleged unequal disciplinary treatment of students, "bullying" certain students, and classroom untidiness. There has been no reason given to date, and Galetti has not alleged any in the complaint, that any defamatory matter or other wrongdoing relates to religious doctrine or belief. *See Bryce*, 289 F.3d at 657 ("We must determine whether the defendants' alleged statements were ecclesiastical

statements protected by church autonomy or purely secular ones."). This is consistent with the fact Galetti remains a certified Seventh-day Adventist teacher to this day.

In addition, Galetti maintains that Conyne and Gillen's defamatory statements were knowingly orchestrated by Reeve. Conyne and Gillen knew the statements were not "official" church business but part of a conspiracy on behalf of Reeve to retaliate against Galetti. *Kliebenstein v. Iowa Conference of the United Methodist Church*, 663 N.W.2d 404, 407 (Iowa 2003)(applying qualified privilege analysis to "communications between members of a religious organization concerning the conduct of other members or officers in their capacity as such...."). At this stage in the proceedings, there is no evidence that the defamatory statements were made in good-faith or in connection with legitimate church meetings or investigations concerning Galetti. Therefore, the district court erred in finding, as a matter of law, that the individual claims were barred by the First Amendment.

Issue 4.

The hybrid Rule 12 evidentiary rule cannot be applied to this case because there are legitimate factual challenges to the applicability and enforceability of the Texico Conference handbook

Defendants are wrong in arguing that the district court, and this Court, can accept wholesale its version of the documentary evidence at the motion to dismiss

stage. This is not the purpose of the narrow exception adopted by *Ruessegger v. Board of Regents*, 2007 NMCA 30, ¶ 41, 141 N.M. 306 (Ct. App. 2007), that permits the courts to consider certain matters outside the pleadings in resolving 12(B)(6) motions.

The purpose of the narrow exception is to discourage misleading complaint draftsmanship. Where a plaintiff's claim is dependent on an undisputed written document, a defendant can submit the critical document to combat incomplete and misleading averments. *Ruessegger*, 2007 NMCA 30, at ¶ 41 (permitting court to review undisputed documents that were central to the allegations in plaintiff's complaint). This exception to the four-corners pleading rule is limited to "dispositive documents." *See GFF Corp. v. Associated Wholesale Grocers, Inc.*, 130 F.3d 1381, 1384 (10th Cir. 1997)("If the rule were otherwise, a plaintiff with a deficient claim could survive a motion to dismiss simply by not attaching a *dispositive document* upon which the plaintiff relied.")(emphasis added).

Galetti is relying on the Southwestern Union Conference procedures and the yearly letters she received to support her year-to-year express contract rights. The Church has not challenged Galetti's interpretation of those documents. Instead, the Defendants, without addressing the rights and duties between the Southwestern Union and the Texico Conference, attached a portion of the Texico Conference employee handbook that states that all employees are "at-will." (R.P. 25-30). This

manual makes no reference to tenured teaching positions. As stated in Galetti's brief-in-chief, this type of conflict was not intended to be resolved by the hybrid motion to dismiss procedure. Therefore, it was improper for the district court to rely on Defendants' documentary cherry-picking in granting the motion to dismiss.

II. Prayer for relief

Appellant Melissa Galetti respectfully requests that the district court's November 19, 2012 order dismissing her complaint be reversed and this matter be remanded.

III. Certificate of page-limit compliance

The Reply Brief used 14-point Times New Roman type face and is 4,041 words.

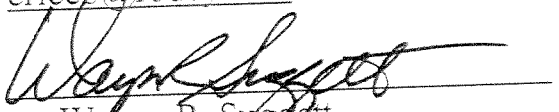
MAESTAS & SUGGETT, P.C.

By: _____
WAYNE R. SUGGETT
Attorneys for Plaintiff Melissa Galetti
Sun Valley Commercial Center
316 Osuna Road N.E., Suite 103
Albuquerque, New Mexico 87107
Telephone: (505) 247-8100

CERTIFICATE OF SERVICE

Undersigned counsel certifies that it served Defendants by United States first class mail and electronically on July 22, 2013 as follows:

Edward Ricco
Rodey, Dickason, Sloan, Akin & Robb, P.A.
Post Office Box 1888
Albuquerque, New Mexico 87103
ericco@rodey.com



Wayne R. Suggett