IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

COURT OF APPEALS OF NEW MEXICO
ALBUQUERQUE
FILED
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Wendy F. Jones

MELISSA GALETTI,

Plaintiff-Appellant,

vs.

No. 32,625

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

Defendants-Appellees.

Appeal from the Second Judicial District Court Bernalillo County, New Mexico

The Honorable C. Shannon Bacon, Judge

ANSWER BRIEF

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Introduction

There is a First Amendment bar to interference by the state in the governance and internal affairs of a religious organization. The church autonomy doctrine, and specifically the so-called "ministerial exception," prohibits adjudication by civil courts of disputes relating to the employment by a church of an individual whose duties are important to delivering the church's doctrinal message. In the present case, Plaintiff's claims against her church and several of its members relating to her termination as a teacher at a religious school fall within the ministerial exception and were properly dismissed by the district court. The judgment below therefore should be affirmed.

Summary of Facts and Proceedings

This lawsuit arises out of the termination of Plaintiff Melissa Galetti's employment by the Texico Conference of Seventh-day Adventists. The Texico Conference is part of the Southwestern Union and North American Division of the Seventh-day Adventist Church. It operates a religious school, Crestview Christian Academy, in Albuquerque. (R.P. 1-2.)

According to her Complaint, Plaintiff was hired by Defendant Texico Conference in 2009 to be the principal of and to teach at Crestview. She served as principal and teacher for the 2009-10 and 2010-11 school years. Defendant Derral

Reeve was Plaintiff's supervisor. (Id.)

Plaintiff claims to have been orally advised by Reeve and by another representative of the Church that her contract as a teacher (but not as principal) would continue for the 2011-12 school year. Plaintiff was replaced as principal by Defendant Kim Gillen. (R.P. 4-6.)

The Complaint indicates that concerns – disputed by Plaintiff – were expressed by Reeve, Gillen, and Defendant Brenda Conyne and others about Plaintiff's classroom performance, preparation, conduct, manner of dress, character, failure to pay tuition charges for her children, and failure to return a required tithe, as well as about her children's behavior at school. (R.P. 4-5, 9-10.) In May 2011, at a meeting which Plaintiff contends was procedurally irregular, the Texico Conference school board voted to terminate Plaintiff's employment. (R.P. 6.)

Relying on alleged express agreements, oral representations, a teaching manual, and "Texico and Southwestern Union board procedures and policies" (see R.P. 3, 6, 7), Plaintiff brought a claim for breach of express and implied contract against the Texico Conference (R.P. 6).[1] Additionally, alleging that Reeve acted

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[1]Plaintiff also asserted a claim of misrepresentation against the Conference (R.P. 7), which she subsequently dismissed voluntarily (R.P. 38).

in retaliation for complaints of harassment that she had made against him, Plaintiff asserted a claim for retaliatory discharge in violation of the New Mexico Human Rights Act against Reeve. (R.P. 8.) She also claimed that Reeve, Gillen, and Conyne had intentionally interfered with her contractual relationship with the Texico Conference (R.P. 9) and that statements made about her by Reeve, Gillen, and Conyne were defamatory (R.P. 10). She sought compensatory damages and other monetary relief. (Id.)

Defendants moved to dismiss all of Plaintiff's claims pursuant to Rule 1-012(B)(6) NMRA. (R.P. 17.) They argued that the claims were barred by First Amendment considerations embodied in the church autonomy doctrine, which was recognized in Celnik v. Congregation B'Nai Israel, 2006-NMCA-039, 139 N.M. 252, 131 P.3d 102. (R.P. 18-23.)

Together with the motion to dismiss, Defendants submitted excerpts from the Texico Conference employee handbook (R.P. 25-30) and the Southwestern Union education code (R.P. 31-34) to demonstrate the applicability of the church autonomy doctrine to Plaintiff's claims. Plaintiff filed a memorandum brief raising various arguments in opposition to the motion. (R.P. 37-44.)

While the motion to dismiss was in the briefing phase, Plaintiff served discovery requests on Defendants (R.P. 45-49), prompting Defendants to move for

a protective order to stay discovery based on their claimed right to dismissal (R.P. 50). Responding to that motion, Plaintiff reiterated her arguments in opposition to dismissal and urged the validity of her claims. (R.P. 64-69.) Plaintiff attached additional excerpts from the Southwestern Union education code to her response, which she referenced in support of her claims. (R.P. 65-66, 74-78.)

The documents submitted by the parties illustrate the religious character of Plaintiff's employment. It is the mission of the Church "to proclaim to all peoples the everlasting gospel" through preaching, teaching, and healing. (R.P. 26.) "Seventh-day Adventist schools are an integral part of the Seventh-day Adventist Church . . . . The Seventh-day Adventist school system has as its basic evangelistic task the education and redemption of the children and youth of the Church." (R.P. 33.) "Seventh-day Adventists conduct their own schools . . . for the purpose of transmitting to their children their own ideals, beliefs, attitudes, values, habits, and customs. . . . There is peculiar to the Church a body of knowledge, values, and ideals that must be transmitted to the younger generation in order that the Church may continue to exist." (R.P. 32.)

The Seventh-day Adventist school system "emphasizes the principle of service to God and man." (R.P. 34.) "The educational program of the Church gives primary emphasis to character building and to the spiritual foundation of the

life of its children and youth." (R.P. 32.) "A true knowledge of God, fellowship and companionship with Him in study and service, likeness to Him in character development, are to be the source, the means, and the aim of Seventh-day Adventist education." (R.P. 32.)

One objective of the Church's educational system is to maintain "a high quality of teaching." (R.P. 32.) "Educational employees must be active members of the Seventh-day Adventist Church in good and regular standing, committed to the program of the Church." (R.P. 34.) Conference employees generally must possess "[u]nreserved commitment to [the Church's] goals and objectives" and a "willing, consistent loyalty and cooperation to the [C]hurch organization." (R.P. 28-29.) "[I]t is imperative that careful adherence to Bible teachings and standards of the Church be exemplified in personal conduct." (R.P. 29.)

Employment with the Texico Conference generally may be terminated for "[f]ailure to practice the fundamental teachings and standards of the Seventh-day Adventist Church." (R.P. 30.) An educational employee may be terminated for failing to perform his or her duties "in such a manner as is consistent with the ideals of a member of the Seventh-day Adventist Church and an example of the

standards of Christian conduct." (R.P. 75.)[2]

An employee who questions a termination decision has recourse to the Church's conciliation procedures. (R.P. 77.)

The district court held a hearing on Defendants' motion to dismiss and dismissed Plaintiff's claims with prejudice, holding also that the dismissal mooted Defendants' motion for a protective order. (R.P. 95.) Plaintiff has appealed the dismissal of her claims. (R.P. 97.)

Argument

THE DISTRICT COURT PROPERLY DISMISSED PLAINTIFF'S COMPLAINT UNDER THE MINISTERIAL EXCEPTION BRANCH OF THE CHURCH AUTONOMY DOCTRINE

Standard of Review: The grant of a motion to dismiss under Rule 1-012(B)(6) NMRA is reviewed de novo. "In considering a motion to dismiss under the New Mexico Rules of Civil Procedure, we test the legal sufficiency of the complaint, not the factual allegations of the pleadings which, for purposes of ruling on the motion, the court must accept as true. Dismissal under Rule 1-012(B)(6) is appropriate only if the non-moving party is not entitled to recover

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[2]Defendants do not concede that Plaintiff's employment status was anything but at-will. Consistent with the standard of review and Plaintiff's legal theory, however, Defendants accept for present purposes Plaintiff's contention that she had a contractual right to be terminated only for cause.

under any theory of the facts alleged in their complaint." Madrid v. Village of Chama, 2012-NMCA-071, ¶¶ 12, 18, 283 P.3d 871 (internal quotation marks & citations omitted), cert. denied, 2012-NMCERT-006, 294 P.3d 1243.

Preservation of Issues: The issues presented on appeal were preserved by Defendants' motion to dismiss, Plaintiff's response opposing the motion, and the district court's ruling on the motion. (R.P. 17, 37, 95.)

A. The Ministerial Exception Bars Employment-Related Claims by Employees of a Religious Organization That Would Interfere With the Organization's First Amendment Right to Choose the Individuals on Whom It Confers Significant Religious Responsibilities.

In Celnik, this Court held that a rabbi's prima facie tort claim based on the termination of his employment by a religious congregation was properly dismissed for failure to state a claim for relief. See 2006-NMCA-039, ¶ 9. The Court invoked what it referred to as the "church autonomy doctrine," noting the basis of the doctrine in the First Amendment, its recognition in a line of United States Supreme Court decisions, and its application in a variety of contexts. Id. ¶¶ 1, 10-16. The doctrine protects against violations of both the Establishment Clause and the Free Exercise Clause of the First Amendment.

> First, it prevents civil legal entanglement between government and religious establishments by prohibiting courts from trying to resolve disputes related to ecclesiastical operations. Second, by limiting the

possibility of civil interference in the workings of religious institutions, the free exercise of religion is also protected.

Id. ¶ 11.

The Court in Celnik drew substantial support from a line of federal cases, of which it cited a number of examples, that applied the church autonomy doctrine in the specific context of Title VII and other claims of discrimination and wrongful termination brought by employees with ministerial-type responsibilities – an area which has been recognized as one of "prime ecclesiastical concern." Id. ¶ 19. That specific application of the autonomy doctrine, implicated in Celnik, is known as the "ministerial exception." Id.[3]

In a recent decision, the United States Supreme Court addressed the ministerial exception as applied to a teacher in a religious school. Hosanna-Tabor

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[3]The church autonomy doctrine and the ministerial exception are not independent legal theories; the latter is a particular implementation of the former. See Bryce v. Episcopal Church Diocese of Colo., 289 F.3d 648, 656 (10th Cir. 2002). There is an issue of nomenclature, however. Some courts at least at times appear to view the ministerial exception as a term applicable only to Title VII claims. See, e.g., Bollard v. Calif. Province of Soc'y of Jesus, 196 F.3d 940, 944 (9th Cir. 1999) (referring to "the so-called 'ministerial exception' to Title VII"). It is in that sense that Defendants, in briefing below, rooted their defense in the church autonomy doctrine rather than the ministerial exception, as Plaintiff has not asserted a claim under Title VII. (See R.P. 54.) Plaintiff is wrong to suggest that Defendants have "limited" their ground of defense to the church autonomy doctrine, as if any authorities addressing the ministerial exception have no bearing. (Br. in Chief at 11.) Actually, those authorities that treat the ministerial exception as applicable outside Title VII litigation are directly on point in this case.

Evangelical Lutheran Church & Sch. v. EEOC, 132 S. Ct. 694 (2012). The plaintiff in that case was employed as a "called" teacher by a religious congregation that operated a Christian school. After she developed a medical condition for which she took a disability leave, the teacher sought to return to work, but the church asked her to resign. When instead the teacher indicated that she intended to take legal action to maintain her job, the church terminated her employment. Id. at 699-700. The church took the position that the teacher's threat of litigation violated its belief that Christians should resolve their disputes internally. Id. at 701.

The Equal Employment Opportunity Commission brought suit against the church, asserting a claim of retaliatory discharge under the Americans with Disabilities Act. The teacher intervened and asserted claims under the ADA and a state anti-discrimination statute. The district court granted summary judgment for the church, relying on the ministerial exception. Id.

The Supreme Court upheld the summary judgment. First, the Court recognized that the First Amendment carves out an exception to applying statutes like the ADA to employment disputes between a church and one of its ministers.

> We agree that there is such a ministerial exception. The members of a religious group put their faith in the hands of their ministers. 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.

Id. at 706.

Next, the Court held that the ministerial exception is not limited in its scope "to the head of a religious congregation." Id. at 707. The teacher's status and duties – "the circumstances of her employment" – brought her within the exception. Id. The teacher was held out by the church, and held herself out, as a minister by virtue of her "called" status, which distinguished her from lay teachers. Her job duties required her to teach the word of God and sacred scripture and to lead her students in prayer. Id. at 707-08. "As a source of religious instruction," the teacher "performed an important role in transmitting the [church's] faith to the next generation." Id. at 708. Even though the teacher's religious duties "consumed only 45 minutes of each workday, and . . . the rest of her day was devoted to teaching secular subjects," the factors the Court identified, including "the nature of the religious functions performed," qualified the teacher as a minister within the exception and required dismissal of her suit. Id. at 708-09.[4]

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[4]It is the latter factor that should be most strongly determinative. The applicability of the ministerial exception depends not on an individual's

The Court's opinion in Hosanna-Tabor makes clear that it is the nature of the inquiry that a court would have to make, not the incidental details of a particular lawsuit, which determines whether the ministerial exception bars the suit. Responding to the teacher's abandonment of her claim for reinstatement, the Court noted that the teacher continued to seek back- and frontpay, compensatory and punitive damages, and attorney's fees. But

> [a]n award of such relief would operate as a penalty on the [c]hurch for terminating an unwanted minister, and would be no less prohibited by the First Amendment than an order overturning the termination. Such relief would depend on a determination that [the church] was wrong to have relieved [the teacher] of her position, and it is precisely such a ruling that is barred by the ministerial exception.

Id. at 709.

"ordination status or . . . formal title" but on his or her "functional status as the type of employee that a church must be free to appoint or dismiss in order to exercise the religious liberty that the First Amendment guarantees." Id. at 716 (Alito and Kagan, JJ., concurring).

> The ministerial exception . . . should apply to any employee who leads a religious organization, conducts worship services or important religious ceremonies or rituals, or serves as a messenger or teacher of its faith. If a religious group believes that the ability of such an employee to perform these key functions has been compromised, then the constitutional guarantee of religious freedom protects the group's right to remove the employee from his or her position.

Id. at 712 (internal quotation marks omitted).

Finally, the Court also made clear that a church's asserted reason for removing a ministerial employee lies beyond judicial examination. Addressing an argument advanced by the EEOC and the teacher that the church's religious justification for firing the teacher was pretextual, the Court observed that such an argument

> 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 . . . is the church's alone.

Id. (citation omitted).[5]

Firmly rooted in the First Amendment and widely recognized judicially even before Celnik or Hosanna-Tabor was decided, see 2006-NMCA-039, ¶ 19; 132 S. Ct. at 705 n.2, the ministerial exception thus bars employment-related claims against religious organizations by individuals whose job responsibilities

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[5]See id. at 715 (Alito and Kagan, JJ., concurring) ("The credibility of [the church's] asserted reason for terminating [the teacher's] employment could not be assessed without taking into account both the importance that the Lutheran Church attaches to the doctrine of internal dispute resolution and the degree to which that tenet compromised [the teacher's] religious function. . . . But . . . 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 to the church's overall mission.").

have a significant religious component. "[I]t is impermissible for the government to contradict a church's determination of who can act as its ministers. . . . The church must be free to choose those who will guide it on its way." 132 S. Ct. at 704, 710.

B. The Ministerial Exception Bars All of Plaintiff's Claims Against All Defendants.

Celnik and Hosanna-Tabor are the authorities directly controlling in this case. But they do not stand alone for, as the Supreme Court recognized, the federal appellate courts "have had extensive experience with" the ministerial exception. 132 S. Ct. at 705. Those federal appellate decisions and the decisions of state courts, to the extent consistent with the Supreme Court's latest precedent, provide sound guidance in applying the ministerial exception to the situation presented here. Plaintiff's resort to selected, narrow quotation from a handful of cases, not all of which even involve the ministerial exception,[6] fails to present a clear picture of the scope or application of the exception. "The right to choose

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[6]Cf. Bollard, 196 F.3d at 947 (noting that church's freedom to choose its ministers not implicated); Connor v. Archdiocese of Philadelphia, 975 A.2d 1084, 1108-13 (Pa. 2009) (tort claims arising from expulsion of student from parochial school distinguished from claims that implicate ministerial exception); Malicki v. Doe, 814 So. 2d 347, 356 (Fla. 2002) (alleged sexual assault by member of clergy; "Intrachurch disputes . . . must be distinguished from disputes between churches and third parties.").

ministers is an important part of internal church governance and can be essential to the well-being of a church." Bryce, 289 F.3d at 656. The ministerial exception was properly applied to preclude Plaintiff's claims.

1. Plaintiff's responsibilities as a teacher in a Seventh-day Adventist school bring her within the scope of the ministerial exception.

Plaintiff never squarely contests the district court's determination that she occupied a "ministerial" position in the Seventh-day Adventist Church. She simply characterizes the materials supporting Defendants' motion to dismiss as "relevant, but far from conclusive" on that issue. (Br. in Chief at 11.) In fact, the evidence of record brings Plaintiff squarely within the ministerial exception recognized widely and affirmed in Hosanna-Tabor.[7]

As the Supreme Court indicated in Hosanna-Tabor, the ministerial exception is not limited to a religious denomination's ordained clergy but applies more broadly to those who perform "an important role in transmitting" the church's faith or who "guide it on its way." Supra pp. 10, 13. And, as Hosanna-Tabor demonstrates, the ministerial exception may extend to a teacher in a religious school if the circumstances justify that result.

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[7]As to Plaintiff's contention that the record is insufficiently developed to support any such determination, see Point C, infra.

The circumstances here justify treating Plaintiff as falling within the ministerial exception in view of her function as a teacher at Crestview Christian Academy. The basic task of Crestview, as part of the Seventh-day Adventist school system, is to educate and redeem the youth of the church by conveying to them the church's particular knowledge, values, and ideals of "service to God and man." The educational program of the school emphasizes providing a spiritual foundation for the students by imparting the "true knowledge of God." The church's continued existence depends on the vital role played by its schools in transmitting the essentials of its faith to the next generation. Supra p. 4.

Plaintiff's function thus involved the key elements from Hosanna-Tabor of transmitting Seventh-day Adventist beliefs to succeeding generations and guiding the youth of the church in the way of its faith. The Supreme Court has recognized the "critical and unique role of the teacher in fulfilling the mission of a church-operated school." NLRB v. Catholic Bishop of Chicago, 440 U.S. 490, 501 (1979). That special role is underscored here by the requirements of the employee handbook and education code that teachers at Crestview be church members in good standing who are committed to the church's goals and objectives, who display loyalty to and cooperation with the church organization, who exemplify the biblical teachings and standards of the church, and who act consistently with

the ideals of the church and the standards of Christian conduct. Supra pp. 5-6.

Other courts have recognized that teachers in church-affiliated schools are within the scope of the ministerial exception if their role involves teaching and perpetuating the church's beliefs. Cf. Skrzypczak v. Roman Catholic Diocese of Tulsa, 611 F.3d 1238, 1243-44 (10th Cir. 2010) (director of department of religious formation, a position "important to the spiritual and pastoral mission of the church" (internal quotation marks & citation omitted)). "As a general rule, 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.'" Rayburn v. Gen. Conference of Seventh-day Adventists, 772 F.2d 1164, 1169 (4th Cir. 1985) (internal quotation marks & citation omitted). See, e.g., EEOC v. Roman Catholic Diocese of Raleigh, 213 F.3d 795, 802, 804 (4th Cir. 2000) (holding that plaintiff's positions as director of music ministry at cathedral and music teacher at affiliated school both were ministerial; noting the "significance to the school's religious mission" of teaching music); Henry v. Red Hill Evangelical Lutheran Church of Tustin, 134 Cal. Rptr. 3d 15, 26 (Cal. Ct. App. 2012) (teacher in church preschool; plaintiff "introduced her students to Christianity" and "gave them the groundwork" on which religious doctrine could later be built; "She taught religion

and spread the faith. We find the ministerial exception applies[.]"), review denied, 2012 Cal. Lexis 1890 (Cal. Feb. 22, 2012); Gabriel v. Immanual Evangelical Lutheran Church, Inc., 640 N.E.2d 681 (Ill. App. Ct. 1994) (kindergarten teacher in parochial school); see also Little v. Wuerl, 929 F.2d 944 (3d Cir. 1991) (elementary school teacher; finding exclusion within Title VII itself based on factors related to ministerial exception). Plaintiff's role at Crestview put her in an equivalent position to these teachers with ministerial roles. Moreover, Plaintiff's functions correspond to the core religious functions recognized in Hosanna-Tabor as ministerial in nature.

> As an influential commentator has stated,
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> > [c]hurch schools serve multiple purposes. . . . [I]n part . . . they are religious institutions, organized to transmit faith and values to succeeding generations. There can be no more important religious function for an institutional church; the very existence of the church depends on its success. And the employees who must carry out this function are the teachers. . . . Churches have strong claims to autonomy with respect to employment of teachers.

Douglas Laycock, Towards a General Theory of the Religion Clauses: The Case of Church Labor Relations and the Right to Church Autonomy, 81 Colum. L. Rev. 1373, 1411 (1981). The district court did not err in concluding that Plaintiff is a minister within the meaning of the ministerial exception and that her employment-related claims should be dismissed.

2. The exception bars all of Plaintiff's claims arising out of the termination of her employment.

Although the ministerial exception is a narrow construct that pertains "only to claims involving a religious institution's choice as to who will perform spiritual functions," Petruska v. Gannon Univ., 462 F.3d 294, 306 n.8 (3d Cir. 2006), the exception "is robust where it applies," Roman Catholic Diocese of Raleigh, 213 F.3d at 801.

> It has . . . become established that the decisions of religious entities about the appointment and removal of ministers and persons in other positions of similar theological significance are beyond the ken of civil courts. Rather, such courts must defer to the decisions of religious organizations on matters of discipline, faith, internal organization, or ecclesiastical rule, custom or law.

Bell v. Presbyterian Church (U.S.A.), 126 F.3d 328, 331 (4th Cir. 1997) (internal quotation marks & citation omitted).

Plaintiff's opposition to applying the ministerial exception to her claims centers on three points: first, that the claims are "secular" and do not present a risk of "substantial" entanglement with religion (Br. in Chief at 7, 9); second, that the exception does not bar contract claims (id. at 12-13, 16-17); and third, that the exception does not apply to claims against individuals (id. at 19, 22-23). Each of these points is incorrect. The ministerial exception is applicable to all the claims asserted by Plaintiff in this case.

a. Substantial entanglement with religion exists.

It is simply erroneous to argue, as Plaintiff does, that the claims she presents here do not require civil courts to become substantially entangled in religion in violation of the First Amendment. Plaintiff's claims, by their nature, cross the constitutional line because they implicate the ministerial exception. "[A] constitutionally impermissible entanglement with religion" exists "if the church's freedom to choose its ministers is at stake." Bollard, 196 F.3d at 949; see also Minker v. Baltimore Annual Conf. of United Methodist Church, 894 F.2d 1354, 1356 (D.C. Cir. 1990) ("[D]etermination of whose voice speaks for the church is per se a religious matter." (internal quotation marks & citation omitted)); Skrzypczak, 611 F.2d at 1245-46 (rejecting notion that some Title VII claims could be characterized as "exclusively secular" and outside the ministerial exception; "[A]ny Title VII action brought against a church by one of its ministers will improperly interfere with the church's right to select and direct its ministers free from state interference.").

b. Dismissal of Plaintiff's tort and Human Rights Act claims is not specifically challenged.

Plaintiff does not specifically argue that the ministerial exception is inapplicable to tort claims. Any such argument would be futile in any event.

After all, Celnik applied a ministerial exception rationale to a claim for prima facie tort. 2006-NMCA-039, ¶¶ 16-17. Other courts are in accord in applying the exception to various claims sounding in tort. See, e.g., Natal v. Christian & Missionary Alliance, 878 F.2d 1575, 1577 (1st Cir. 1989) ("We look to the substance and effect of plaintiffs' complaint . . . . [O]nce a court is called upon to probe into a religious body's selection and retention of clergymen, the First Amendment is implicated."); Williams v. Gleason, 26 S.W.3d 54, 59 (Tex. App. 2000) ("substance and effect"); Patton v. Jones, 212 S.W.3d 541, 555 (Tex. App. 2006) (claims of contractual interference and defamation "arose from actions taken and communications made in connection with the Church's decision to terminate [plaintiff] from a 'ministerial' position"); Dobrota v. Free Serbian Orthodox Church "St. Nicholas", 952 P.2d 1190, 1195 (Ariz. Ct. App. 1998) (allegedly tortious acts were "inseparable parts of" church's disciplinary process).

Plaintiff also does not argue that the ministerial exception should not apply to a claim for retaliation brought under the New Mexico Human Rights Act. Just as the ministerial exception clearly applies to claims brought under Title VII and other federal civil rights statutes, it should apply in the analogous state law context. Notably, the Supreme Court in Hosanna-Tabor upheld the grant of summary judgment on the plaintiff's claim for violation of a state anti-

discrimination statute as well as for violation of the ADA. See supra p. 9. See also, e.g., Minker, 894 F.2d at 1355-56 (upholding dismissal of claims under state and federal anti-discrimination legislation).

c. Plaintiff's contract claim and claims against individuals are barred.

Plaintiff does argue that her claim for breach of contract lies outside the ministerial exception (e.g., Br. in Chief at 6, 7, 12-13, 16-17) and that claims asserted against individuals also are not reached by the exception because "the employer must be a religious institution" for the exception to apply (id. at 6, 19). But applicability of the ministerial exception does not depend on how a particular claim is framed but on whether adjudication of the claim would pose constitutional risks that the exception is designed to avoid. See Hosanna-Tabor, 132 S. Ct. at 709; supra p. 11. "Just as there is a ministerial exception to Title VII, there must also be a ministerial exception to any state law cause of action that would otherwise impinge on the church's prerogative to choose its ministers or to exercise its religious beliefs in the context of employing its ministers." Bollard, 196 F.3d at 950. All Plaintiff's claims arise from a single factual nucleus: the termination of her employment as a teacher at Crestview, a ministerial position. The ministerial exception therefore stands as a bar to their adjudication.

Breach of contract claim

When applying the ministerial exception to a breach of contract claim is at issue, Establishment Clause rather than Free Exercise Clause concerns come to the fore. A religious organization's free exercise rights are not infringed by enforcement of a contract, because "contractual obligations are entirely voluntary." Petruska, 462 F.3d at 310. Some contract claims may be amenable to judicial determination without violating the Establishment Clause where an examination of religious doctrine is not required. See, e.g., Minker, 894 F.2d at 1358-60 (plaintiff could not pursue claim founded on church's Book of Discipline, which would require court "to interpret or enforce matters of essential religious dogma"; but plaintiff could seek to enforce alleged oral contract to provide him with more suitable congregation – unless that claim also required "inquir[y] into matters of ecclesiastical policy"). But the courts that have recognized that some contract claims against religious institutions may be adjudicated on the basis of "neutral principles" still do not undertake to decide ministerial contract claims on that basis. See, e.g., Hutchison v. Thomas, 789 F.2d 392, 396 (6th Cir. 1986) ("[T]he 'neutral principles' exception to the usual rule of deference . . . has never been extended to religious controversies in the areas of church government, order and discipline, nor should it be."). Plaintiff is wrong to insist that her contract

claim "does not touch upon . . . religious doctrine." (Br. in Chief at 16.) Her contract claim falls outside the category of purely secular claims.

Plaintiff contends that she had an enforceable contract for the 2011-12 school year because she was not given notice by the required date that her contract for the prior year would not be renewed. Consequently, Plaintiff contends that her employment only could be terminated for cause and that she was not terminated for cause. (Br. in Chief at 16.) Plaintiff's claim therefore does not depend entirely on contract terms that can be examined without religious entanglement. Instead, a court would be required to determine whether cause for Plaintiff's termination existed – i.e., whether Plaintiff practiced the "fundamental teachings and standards" of the Church and acted in a manner "consistent with the ideals of a member of the Seventh-day Adventist Church and an example of the standards of Christian conduct." See supra pp. 5-6.

But the ministerial exception "forecloses any inquiry into the Church's assessment of [Plaintiff's] suitability" to hold a ministerial-type position, "even for the purpose of showing it to be pretextual." Minker, 894 F.2d at 1360-61; see also Bell, 126 F.3d at 331-32 (declining to resolve contention that challenged action was result of improper focus on plaintiff's personal life or unjustified claims of misconduct; doing so "would interpose the judiciary into the . . . Church's

decisions"); Rayburn, 772 F.2d at 1169 ("[T]he free exercise clause of the First Amendment protects the act of a decision rather than a motivation behind it."). "[W]e cannot conceive how the . . . judiciary could determine whether an employment decision concerning a minister was based on legitimate or illegitimate grounds without inserting ourselves into a realm where the Constitution forbids us to tread, the internal management of a church." Combs v. Central Tex. Annual Conference of United Methodist Church, 173 F.3d 343, 350 (5th Cir. 1999).

Examining whether Plaintiff practiced the fundamental teachings of the Church or met the ideals of the Church and the standards of Christian conduct, see supra pp. 5-6, "would require the courts . . . to impose a secular court's view of whether . . . religious doctrine and canonical law support the decision the church authorities have made." Scharon v. St. Luke's Episcopal Presbyterian Hosp., 929 F.2d 360, 363 (8th Cir. 1991); see also Little, 929 F.2d at 948 ("[I]f this court were to review the Parish's decision, it would be forced to determine what constitutes 'the official teachings, doctrine or laws of the Roman Catholic Church' and whether plaintiff has 'rejected' them."); Dobrota, 952 P.2d at 1194 ("Review of [plaintiff's] contract claims would have involved the trial court in matters of internal church discipline, faith, and organization." (internal quotation marks & citation omitted). "[A]ny inquiry into the Church's reasons for asserting that

[Plaintiff] was not suited" for continued employment as a teacher at Crestview "would constitute an excessive entanglement in its affairs." Minker, 894 F.2d at 1360.

The Illinois court in Gabriel addressed a claim quite similar to Plaintiff's. There a teacher in a church school argued that her lawsuit did "not involve first amendment issues but [was] a simple breach of contract action." 640 N.E.2d at 683. She contended that "defendant offered her a contract for employment which plaintiff accepted prior to defendant's revocation of the offer on nonecclesiastical grounds." Id. (Cf. Br. in Chief at 16.) The court, however, held that it did

> not matter that subjective employment-related decisions involve no religious beliefs. The first amendment precludes governmental interference with ecclesiastical hierarchies, church administration, and appointment of clergy. A church may adopt its own idiosyncratic reasons for appointing pastors and claim autonomy in the elaboration and pursuit of that goal. The factors relied on by the church need not be independently ecclesiastical in nature; they need only be related to a pastoral appointment determination.

640 N.E.2d at 684 (citations omitted). The court concluded that "[s]ince the matter of whether to employ plaintiff as a parochial school teacher is an ecclesiastical issue into which a civil court may not inquire, the complaint was properly dismissed." Id. So too here.

Furthermore, to the extent Plaintiff's contract claim may be predicated on

the Church's alleged failure to follow its internal procedures in her case (see Br. in Chief at 16-17), that claim, too, is precluded by the First Amendment.

> The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, and to create tribunals . . . for the ecclesiastical government of all the individual members . . . is unquestioned. All who unite themselves to such a body do so with an implied consent to this government . . . . But it would be a vain consent and would lead to the total subversion of such religious bodies, if anyone aggrieved by one of their decisions could appeal to the secular courts and have them reversed. It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for.

Watson v. Jones, 80 U.S. 679, 728-29 (1872). See, e.g., Lewis v. Seventh Day Adventists Lake Region Conference, 978 F.2d 940, 942-43 (6th Cir. 1992) ("Even when . . . the plaintiff alleges that the religious tribunal's decision was based on a misapplication of its own procedures and laws, the civil courts may not intervene."); Natal, 878 F.2d at 1577 ("Plaintiffs' effort to distinguish the long line of precedents on the ground that the Church in this case failed to follow its own rules, thereby denying the pastor 'due process,' is unavailing."). Plaintiff had a mechanism available within the Church to challenge the termination of her employment. See supra p. 6. But a judicial challenge is not available to her.

Claims against individuals

Plaintiff supports her contention that the ministerial exception does not bar her claims against the individual Defendants by pointing to authority stating that "the employer must be a religious institution" in order for the exception to apply. Supra p. 21. That proposition, of course, is true: the First Amendment concerns that underlie the exception simply do not arise unless an employment relationship between a church and a ministerial employee is at issue. But the truism Plaintiff cites does not say anything about who may be a defendant, as opposed to who must be the employer, in a lawsuit that is subject to the ministerial exception.

Courts that have addressed that issue do not hesitate to include claims against individuals within the scope of the ministerial exception when the claims are "part and parcel" of an internal dispute over a church's employment of a ministerial employee. Higgins v. Maher, 258 Cal. Rptr. 757 (Cal. Ct. App. 1989). In Williams, the court recognized that such a result must follow: "Ecclesiastical immunity would be an empty protection if a disgruntled member, denied the chance to sue the religious body, sued instead the members of the religious body who disciplined him." 26 S.W.2d at 59. The court there dismissed claims against individual defendants because "the genesis of [the] lawsuit implicates and, is permeated throughout by, what is essentially an ecclesiastical dispute." Id. at 60.

See Jennison v. Prasifka, 391 S.W.3d 660, 668 (Tex. App. 2013) (holding that trial court properly dismissed defamation claim by Episcopal priest against church member whose allegedly defamatory statements were "inextricably intertwined with the church's investigation of his performance as a priest and the discipline imposed by the church for inadequate performance"). See also Higgins, 258 Cal. Rptr. at 761 (tortious acts allegedly committed by bishop were "inseparable parts of a process of divestiture of priestly authority" and were "simply too close to the peculiarly religious aspects of the transaction to be segregated and treated . . . as simple civil wrongs); cf. Bryce; Hutchison; Petruska, 462 F.3d at 309.

As the court in Hutchison observed in terms that resonate in the present case: "Appellant is really seeking civil court review of subjective judgments made by religious officials and bodies that he had become 'unappointable' due to recurring problems in his relationships with local congregations. This Court cannot constitutionally intervene in such a dispute." 789 F.2d at 393. Nor can the Court here intervene, no matter how Plaintiff has chosen to frame her claims. Litigation against the Church or the involved individuals arising out of Plaintiff's termination as a teacher in a Seventh-day Adventist school falls squarely within the scope of the ministerial exception and cannot be pursued in the state's civil courts.

C. The District Court Did Not Err by Considering Supplemental Information in Granting Defendants' Motion to Dismiss.

Plaintiff complains that the district court's order of dismissal is erroneous "to the extent [it] was premised on the evidence attached to Defendants' motion to dismiss." (Br. in Chief at 11.) Actually, both sides submitted additional evidentiary material which was before the district court when it ruled on Defendants' motion. Defendants included with their motion to dismiss excerpts from the employee handbook of the Texico Conference (R.P. 25-30) and the education code of the Southwestern Union (R.P. 31-34). Plaintiff attached additional excerpts from the education code to her response to Defendants' motion for a protective order to stay discovery. (R.P. 74-78.) See supra pp. 3-4. Because this material is "integral to" Plaintiff's alleged implied employment contract, see Ruegsegger v. W. N.M. Univ., 2007-NMCA-030, ¶ 41, 141 N.M. 306, 154 P.3d 681 (filed 2006), the district court could properly consider it. See also GFF Corp. v. Associated Wholesale Grocers, Inc., 130 F.3d 1381, 1384 (10th Cir. 1997) ("[I]f a plaintiff does not incorporate by reference or attach a document to its complaint, but the document is referred to in the complaint and is central to the plaintiff's claim, a defendant may submit an indisputably authentic copy to the court to be considered on a motion to dismiss.").

The Complaint refers generally to agreements, representations, publications, procedures, and policies of the Texico Conference and the Southwestern Union as the basis for Plaintiff's implied contract claim. See supra p. 2. But there is no question that the education code provides a foundation for the claim. Plaintiff quotes from it, although without specific attribution, in the Complaint. Compare R.P. 3 with R.P. 75. In opposing Defendants' motion for protective order, Plaintiff specifically identified the education code as the source of the Southwestern Union "policies and procedures" on which she was relying. (R.P. 65, 74.)

The Texico employee handbook also is foundationally relevant to Plaintiff's claim. Plaintiff was employed by the Texico Conference. (R.P. 2.) She refers in the Complaint to "Texico . . . board procedures and policies." Supra p. 2. In her response to the motion for protective order, Plaintiff included an e-mail message which shows that she had reviewed the employee handbook and understood it to contain terms relating to her employment rights. (See R.P. 81 (e-mail from Plaintiff asking for copy of local education code because she did not find it in employee handbook).)

In moving to dismiss, Defendants were entitled to present documentary evidence that served as the source of the rights claimed by Plaintiff, so that the

district court could accurately determine whether Plaintiff stated a claim on which relief could be granted. Cf. Ruegsegger, 2007-NMCA-030, ¶ 41 ("Plaintiff's breach of contract and breach of implied contract claims are dependent on the terms of the Scholarship Agreements and the Student Handbook. Therefore, these documents effectively merge into the pleadings and can be reviewed in deciding a motion to dismiss."). Defendants were not limited only to the excerpts from the education code that Plaintiff chose to put in the record. See GFF Corp., 130 F.3d at 1385 (noting that, otherwise, a plaintiff could survive a motion to dismiss "simply by not attaching a dispositive document upon which the plaintiff relied").[8]

Plaintiff is off track in objecting that Defendants did not submit evidence that resolved the question whether Plaintiff was an at-will employee or was covered by an implied contract. (Br. in Chief at 10.) That was not the issue presented by the motion to dismiss. As Plaintiff recognizes, the supplemental information that was submitted "relates to whether [Plaintiff] meets the definition of a 'ministerial employee.'" (Br. in Chief at 11.) In other words, the

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[8]The court in GFF Corp. also noted that because a plaintiff was "obviously on notice" of the contents of a document that was central to the plaintiff's claim, "th[e] rationale for conversion [of a motion to dismiss] to summary judgment dissipates." 130 F.3d at 1385. The record here demonstrates that Plaintiff was unquestionably on notice of the contents of the Texico employee handbook and the Southwestern Union education code underlying her implied contract claim.

supplemental information directly informed the central question whether Plaintiff's employment relationship with the Church, as framed by the relevant documents, provided her with any actionable claim.[9]

Finally, Plaintiff complains that the material submitted to the district court comprised "certainly not all" of the Church's policies relating to "the role of teachers in the Seventh-day Adventists' system." (Br. in Chief at 11.) Plaintiff has no basis to object that the record is not sufficiently complete. Since Plaintiff had access to both the employee handbook and the education code, she could have presented any other portions of these central documents that she considered relevant to whether she was a ministerial employee. Moreover, Plaintiff had the best, first-hand knowledge of her job duties and could have responded to the motion to dismiss by contesting the facts established by the documentary materials. She did none of this; nor did she indicate to the district court (and she has not revealed to this Court) what additional facts she desired to present or what discovery she needed to undertake in order to meet Defendants' motion. Cf. Celnik, 2006-NMCA-039, ¶ 21 (plaintiffs "have not indicated that they would have obtained any specific information that would have changed or explained the

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[9]Defendants did not render this information immaterial by "limit[ing]" their motion to dismiss "to the church autonomy doctrine." (Br. in Chief at 11.) See note 3, supra.

basic nature of [plaintiff rabbi's] claims so as to overcome an overwhelming weight of authority against judicial intervention"); Skrzypczak, 611 F.3d at 1242-43 (noting plaintiff's own knowledge of "what she did in her position with the Diocese," which she "could easily have presented . . . to the court").

Conclusion

"To be sure, where an ecclesiastically-based action clearly is present, such as the propriety of a church's choice concerning the hiring, termination, relocation, benefits, or tenure of a person whose function at the church concerns the propagation of its faith, the First Amendment shields the religious organization from suit." McKelvy v. Pierce, 800 A.2d 840, 858 (N.J. 2002). That principle, fully applicable here, compels affirmance of the district court's judgment.

Statement Regarding Oral Argument

Defendants join in Plaintiff's request for oral argument, should the Court determine that oral argument would be helpful to resolution of the issue presented in this appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

We certify that a copy of the foregoing pleading was served upon

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electronically and by first-class mail this 19th day of June, 2013.

Respectfully submitted,

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