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

ORAL ARGUMENT REQUESTED, NMRA 2010, 12-214

APPELLANT MELISSA GALETTI'S BRIEF-IN-CHIEF

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

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Proceedings before the District Court.

This appeal arises out of a Appellant Melissa Galetti's (Galetti) April 4, 2012 complaint for breach of contract against the Texico Conference Association of Seventh-day Adventists (Texico Conference), and claims for retaliation, intentional interference with contract, defamation and conspiracy against the individual defendants. (R.P. 1). Defendants filed a motion to dismiss (R.P. 17) on May 9, 2012, and filed a motion for a protective order (R.P. 50) on June 29, 2012 to avoid answering Galetti's requests for production, interrogatories and admissions served on Defendants' on June 25, 2012.

The Court set the hearing for both motions on November 13, 2012. (R.P. 93). The Court granted Defendants' motion to dismiss finding that all claims against all defendants are barred by the church autonomy doctrine. (R.P. 95). The Court found that the protective order was mooted by the court's setting the motion for protective order at the same time as the motion to dismiss. (R.P. 95). The motion dismissing all claims was entered on November 19, 2012. (R.P. 95). Galetti filed her notice of appeal with the Second Judicial District Court on December 11, 2012. (R.P. 97).

Summary of facts.

Melissa Galetti has been a certified teacher for the Seventh-day Adventist Church for twenty years. (R.P. 2, ¶12). Most of that time was spent teaching at Seventh-day Adventist secondary schools in Southern California. (*Id.*). In fact, Ms. Galetti accepted an assignment as a substitute teacher with a Seventh-day Adventist school in California in April, 2012—after her termination from the Texico Conference. (R.P. 64).

Ms. Galetti's husband, Scott Galetti, is the "voice of the Lobos." (R.P. 3). As a result of his obtaining a broadcast position for Lobos' sports, Ms. Galetti began exploring a transfer to a Seventh-day Adventist teaching position in Albuquerque, New Mexico. She was eventually hired by the Texico Conference for the 2009-2010 school year. (R.P. 2-3).

The Texico Conference's offices are located in Corrales, New Mexico. The Texico Conference is the "local conference" under the Seventh-day Adventist authority charged with operating the Church's school system in New Mexico and parts of Texas. (R.P. 2). The Texico Conference reports to the Southwestern Conference which is the Seventh-day Adventist "regional conference" that covers a number of western states. (*Id.*). The Southwestern Conference reports to the Seventh-day Adventist North American Division (NAD) in Maryland. (*Id.*).

Galetti was hired both as a school teacher and principal for the Crest View

Christian Academy. (*Id.*). As is required by the Southwestern Union policies and procedures that the Texico Conference must follow, Ms. Galetti was provided a written one-year school contract that was required to be returned prior to May 1, 2009 for the fall 2009-2010 school year. (R.P. 3; 71). She received a similar written one-year contract for a school teacher position for the 2010-2011 school year. (R.P. 3; 72).

In July, 2010, Ms. Galetti filed an internal grievance against Texico School Superintendent and defendant Derral Reeve for sexual harassment. (R.P. 4). Sexual harassment, as well as retaliation, is prohibited under Church policies and doctrine. (R.P. 40-41; 73). In January, 2011, the Southwestern Conference found that Ms. Galetti's internal grievance was valid and disciplined Reeve. (R.P. 73). Ms. Galetti hoped that this would be the end of the matter. She was wrong.

The retaliation against Galetti increased after the Texico Conference took disciplinary action against Reeve. (R.P. 4-5). Reeve, with assistance from Defendants Brenda Conyne and Kim Gillan, began to manufacture false claims against Galetti that she was not a fit school teacher. For example, the individual Defendants actively sought out parents and encouraged them to complain about Galetti. Conyne, for her part, made a number of false statements as an alleged "concerned parent" without disclosing the fact that she is blood-relative of Reeve. (*Id.*).

In early May, 2011, Galetti had not received her annual renewal contract. She addressed this issue with Reeve. (R.P. 5-6). Reeve stated that the Board voted that there would be no changes to school personnel for the 2011-12 school year at Crestview. (R.P. 6). However, Reeve also stated, for the first time, that tenured teachers have no contracts. (*Id.*). He claimed that all employees within the Texico Conference, including tenured teachers, are employed "at will." (*Id.*). This is not consistent with Southwestern Union policies and procedures that the Texico Conference must follow under the Seventh-day Adventist hierarchy, nor is it consistent with the Texico Conference's prior practice in sending out yearly renewal agreements. (R.P. 2; 7; R.P. 74-78).

Based on Reeve's attempt to unilaterally limit her employment rights, a power Reeve does not possess as School Superintendent, it was clear to Galetti that Reeve was not going to stop his retaliation of her. As a result, Galetti filed a formal charge of retaliation with the EEOC on May 17, 2011. (R.P. 1).

After learning of the formal EEOC charge of discrimination, Reeve orchestrated a recommendation by the local Crestview board to not "retain" Ms. Galetti for the 2011-12 school year. (R.P. 6). This statement was inconsistent with Reeve's oral statement made to Galetti three weeks earlier that there would be "no changes" for the following year. (R.P. 6). This board meeting was held on May 23, 2011. In an attempt to pretend the decision was made independent of the

EEOC charge of discrimination, Reeve stated that the Crestview Board recommendation occurred at a meeting on May 4, 2011. (R.P. 82). Reeve then hastily arranged what Galetti contends was an illegal Texico Conference School Board telephonic meeting on May 31, 2011 to approve the recommendation of the Crestview Christian Academy school board to not renew Ms. Galetti's school contract for 2011-12. (R.P. 66).

Regardless of whether the May 31, 2011 telephonic board meeting was legal or not, it was too late under existing Southwestern Union policies to not "retain" Ms. Galetti for the 2011-12 school year. The decision not to retain Ms. Galetti, was required to be made prior to May 1, 2011 under the Southwestern Union policies related to tenured teachers. (R.P. 78). After May 1, 2011, Galetti could only be fired for cause. (R.P. 75). The Texico Conference telephonic board meeting allegedly conducted on May 31, 2011 did not fire Galetti for cause. (R.P. 82). Therefore, her termination was in breach of her contract rights as a Seventh-day Adventist tenured school teacher.

II. Argument.

Introduction

Religious organizations and their members can be sued. The only exception to the rule is when the claim would require a court to become substantially entangled in religious doctrine. Galetti's only claim against a religious

organization is for breach of contract. Because this claim is premised on the violation of secular policies and procedures, there is no First Amendment threat in permitting the court, and jury, to resolve this claim. *Bryce v. Episcopal Church in the Diocese of Colorado*, 289 F.3d 648 (10th Cir.2002) (*quoting Wisconsin v. Yoder*, 406 U.S. 205, 215 (1972)("The church autonomy doctrine is not without limits, however, and does not apply to purely secular decisions, even when made by churches. Before the church autonomy doctrine is implicated, a threshold inquiry is whether the alleged misconduct is "rooted in religious belief.")).

In addition, the church autonomy and ministerial exception doctrines do not apply to claims against individuals acting in their individual capacities. *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."). As a result, Galetti's claims are properly plead and the district court's order of dismissal should be reversed.

Issue 1

The District Court erred in dismissing the Complaint before permitting a factual record to determine whether Galetti's claims would substantially entangle the court in religious doctrine

This issue was preserved by Galetti in her response to the motion to dismiss. (R.P. 38-40). Because the dismissal was under New Mexico Rule of Civil

Procedure 12(B)(6), the Appellate Court's standard of review is *de novo*.1 NMRA 1989, 1-102(B)(6).

The ministerial exception and church autonomy doctrines are fact-specific inquiries. *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)("The court concludes that the ministerial exception does not apply in the case at bar....").

Even if Galetti is deemed a "minister", the courts are uniform in holding that religious organizations are not immune from all claims brought by their ministers, in particular, breach of contract claims. *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."). It is only when a claim would require a court to become ***substantially*** entangled in religious affairs that the claim must

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1The issues raised in Galetti's appeal are all subject to *de novo* review under NMRA 1989, 1-012(B)(6). *See Celnik v. Congregation B'Nai Israel,* 2006 NMCA 39, 139 N.M. 252 (Ct. App. 2006)("We believe that a claim of constitutional immunity based on the church autonomy doctrine should be treated in the first instance as a motion under Rule 1-012(B)(6), because the court does in fact have jurisdiction to consider the constitutional claim.").

yield to the First Amendment protection of religious freedom. *See Geary v. Visitation of the Blessed Virgin Mary Parish Sch.*, 7 F.3d 324, 331 (3rd Cir. 1993)(rejecting ministerial exception finding that facts that supported ADEA claim did not "present a significantly risk of government entanglement in religion..."); *Petruska v. Gannon Univ.*, 462 F.3d 294, 310 (3rd. Cir. 2006) (*citing Jones v. Wolf*, 443 U.S. 595, 603(1979) ("The *Establishment Clause*, by contrast, prohibits government action that serves to advance or inhibit religion or that results in excessive entanglement "in questions of religious doctrine, polity, and practice.")) *Roman Catholic Archbishop of Los Angeles v. Superior Court of Los Angeles County*, 32 Cal Rptr. 3d. 209, 222 (Ct. App. 2005) (*quoting Agostini v. Felton*, 521 U.S. 203, 233 (1997)("Not all entanglements, of course, have the effect of advancing or inhibiting religion. Interaction between church and state is inevitable, and we have always tolerated some level of involvement between the two. Entanglement must be 'excessive' before it runs afoul of the Establishment Clause.")); *Elvig v. Calvin Presbyterian Church*, 397 F.3d 790, 792-93 (9th Cir. 2005)(Kozinski, j.)(holding that sexual harassment claims are not barred by the ministerial exemption: "The First Amendment protects a church's right to hire, fire, promote, and assign duties to its ministers as it sees fit not because churches are exempt from all employment regulations (for they are not), but rather because judicial review of those particular employment actions would interfere with rights

guaranteed by the First Amendment."); *Bollard v. The California Province of The Society of Jesus, 196 F.3d 940 (9th Cir. 1999)*("That Bollard has sued under an employment discrimination statute does not mean that the aspect of the church-minister employment relationship that warrants heightened constitutional protection--a church's freedom to choose its representatives—is present.").

The district court did not undertake this factual analysis. In fact, Defendants maintained that (1) its motion should be limited to the church autonomy doctrine and that (2) the factual inquiry was satisfied through Defendants' attachments to the motion to dismiss. Defendants' arguments, that the district court must have accepted, are contrary to law. (R.P. 18; 53-55).

The church autonomy doctrine does not immunize religious organizations and its members from secular legal claims. *Dausch v. Rykes*, 52 F.3d 1425, 1433 (7th Cir. 1994)("Tort claims for behavior by a cleric that do not require the examination of religious doctrine are cognizable."). The courts have ruled that the church autonomy doctrine only bars claims that would require the courts to become substantially entangled in religious doctrine or affairs. As a result, the linchpin to the church autonomy defense is establishing that a religious issue is central to the resolution of the claim. Defendants did not identify a religious issue that was intertwined with any of Galetti's claims to support dismissal at the motion to dismiss stage.

As a procedural matter, the attachments to the motion to dismiss do not conclusively address the pleadings in the complaint as required under the hybrid Rule 12(B)(6) motion to dismiss. Ruessegger v. Board of Regents, 2007 NMCA 30, ¶ 41, 141 N.M. 306 (Ct. App. 2007)(permitting court to review undisputed documents that were central to the allegations in plaintiff's complaint). The 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).

Defendants attached a portion of the Texico Conference employee manual that states all employees are "at-will." (R.P. 25-30). However, Defendants made no attempt, and submitted no records, that resolved the conflict between their interpretation of the Texico Conference employee manual and the Southwestern Union policies and procedures that specifically discuss the employment rights of Seventh-day Adventist tenured teachers. (R.P. 40; R.P. 74-78).

In fact, because Defendants filed a motion for protective order and refused to answer Galetti's discovery that addressed this issue, there was no evidence before the district court concerning the duty of the Texico Conference to follow the Southwestern Union's policies related to tenured school teachers. As a result,

Defendants' attachments to the motion to dismiss are incomplete and certainly do not constitute "undisputed" materials as required to permit application of the hybrid 12(B)(6) motion to dismiss that the Court recognized in Ruessegger.

Next, Defendants sprinkled in a number of policy references, but certainly not all, concerning the role of teachers in the Seventh-day Adventists' system. (R.P. 31-34). Interestingly, those references are to the Southwestern Union manual, the same manual Defendants avoid in mischaracterizing Galetti's contract rights.

Nevertheless, this information relates to whether Galetti meets the definition of a "ministerial employee." Defendants, however, requested that its motion to dismiss be limited to the church autonomy doctrine. (R.P. 54). In short, Defendants rendered immaterial the attachments to the motion to dismiss that were relevant, but far from conclusive, concerning whether Galetti position meets the definition of a "ministerial employee." Therefore, to the extent the district court's order of dismissal was premised on the evidence attached to Defendants' motion to dismiss, this was improper and requires reversal of the district court's order of dismissal.

Issue 2:

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

This issue was preserved by Galetti in her response to Defendants' motion to

dismiss. (R.P. 42-44).

The Courts that have applied the ministerial exception and church autonomy doctrine to bar statutory discrimination claims have viewed contract claims differently. *Skrzypczak v. Roman Catholic Diocese of Tulsa*, 611 F.3d 1238, 1245 (10th Cir. 2010)(*quoting 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 Third Circuit explained the different treatment of contract claims as follows:

> 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.... 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. Accordingly, application of state law to Petruska's contract claim would not violate the Free Exercise Clause.

Petruska v. Gannon Univ., 462 F.3d 294, 310 (3rd. Cir. 2006).

The only claim Galetti has against a religious organization is her claim for breach of the one-year teaching contract for 2011-12 against the Texico Conference. Under existing case law, at a minimum, Galetti has the right to establish that she can prove her breach of contract claim without requiring the court to resolve a religious dispute. *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."); *Minker v. Baltimore Annual Conference of United Methodist Church*, 894 F.2d 1354, 1359 (D.C. Ct. App. 1990)(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.").

Defendants church autonomy position is premised on two cases, *Celnik v. Congregation B'Nai Israel*, 2006 NMCA 39, 139 N.M. 252 (2006) and *Bryce v. Episcopal Church in the Diocese of Colorado*, 289 F.3d 648 (10th Cir. 2002). Neither case supports the legal position Defendants advanced before the district court that resulted in the dismissal of Galetti's complaint.

In *Celnik*, contrary to Defendants motion to dismiss (R.P. 21) the court did not apply the church autonomy doctrine to the claims against the individuals or to Rabbi Celnik's breach of contract claim. The breach of contract was submitted to binding arbitration as required by his 30-year contract with the synagogue. *Celnik*, 2006 NMCA at ¶4. The arbitrator ruled against Rabbi Celnik on all of his claims, or, at least all the claims he submitted to arbitration. *Id.* Thereafter, Celnik

brought suit in the Second Judicial District against the synagogue and two named individuals and ten unnamed board members. *Id.* Rabbi Celnik asserted seven causes of action: (1) violation of New Mexico Human Rights Act, (2) breach of covenant of good-faith, (3) prima facie tort, (4) tortious interference with contract, (5) interference with prospective contractual relations, (6) civil conspiracy by the board members, and (7) breach of fiduciary duty. *Id.*

The district court dismissed the breach of covenant of good-faith claim under the doctrine of collateral estoppel and dismissed the remaining claims under the church autonomy doctrine. *Id.* ¶ 6.2 On appeal, the parties stipulated to the dismissal of all claims against all parties except the prima facie tort claim against the religious organization. Celnik, 2006 NMCA, at ¶ 6.

As to the remaining claim before it, the Court of Appeals found that the elements of prima facie tort would require substantial entanglement into the reasons Rabbi Celnik was terminated. *Id.* at ¶ 16 ("Prima facie tort demands a high degree of judicial inquiry because the trial court must engage in a balancing test that weights "(1) the injury; (2) the culpable character of the conduct; and (3) whether the conduct is unjustifiable under the circumstances.")(citation omitted).

In *Bryce*, a lesbian youth minister and her recently married partner brought claims against the Church and its reverend for sexual harassment under Title VII

2 It is unclear why counts IV and V, for intentional interference with contract and interference with prospective business relations, would not also have been subject to dismissal based on collateral estoppel.

and for civil conspiracy under 42 U.S.C. §1985(3). *Bryce*, 289 F.3d at 653. The claims arose out of letters written by Reverend Henderson and in meetings with the congregation in response to Bryce's disclosure to Reverend Henderson that she had married her female partner. *Id.* at 652. The district court, on summary judgment, dismissed plaintiffs' claims as barred by the church autonomy doctrine. *Id.* at 655.

The Tenth Circuit framed the issue as follows. The church autonomy doctrine protects the fundamental right of churches to decide for themselves matters of church government, faith, and doctrine. *Id.* at 656. However, the court recognized that the doctrine does not "apply to purely secular decisions" made by churches concerning its employees. *Id.* at 657.

The Court then went on to analyze the statements made by Reverend Henderson and statements made at the congregation meetings set up by the Church. The Tenth Circuit found that the statements were protected by the church autonomy doctrine because they "facilitated religious communication and religious dialogue between minister and his parishioners." *Id.* at 658. Critically, the Tenth Circuit also found that Reverend Henderson's comments were made in "the context of an internal church dialogue." *Id.* at 659. In short, the statements concerned the Episcopalian religious view on homosexuality and were limited to internal church discussions engaged in by a leader of the church acting within the scope of his duties on behalf of the church.

Unlike *Celnik* and *Bryce*, Galetti's breach of contract claim against the Texico Conference does not touch upon Seventh-day Adventist religious doctrine. Galetti's claims are premised on Reeve's violation of Texico and Southwestern Union policies and procedures involving setting board meetings and the grounds to terminate tenured teachers. None of these procedures are religious in nature. *Minker v. Baltimore Annual Conference of United Methodist Church*, 894 F.2d 1354, 1359 (D.C. Ct. App. 1990)(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.").

For example, the centerpiece to Galetti's contract claim is that the Texico Conference did not provide her with timely notice of non-renewal of her 2011-2012 teaching contract on or before May 1, 2011 as required by Southwestern Union policies. As a result, the new contract could only be terminated during its term for "cause." The May 31, 2011 specially called telephonic board meeting—that may constitute another violation of policy—did not terminate Galetti's 2011-2012 teaching employment contract for cause. As stated in the May 31, 2011 minutes that were disclosed to Galetti on June 8, 2011, the board voted not to renew Galetti's 2011-12 teaching contract. (R.P. 82).

Galetti maintains this untimely and improper procedure is a breach of

contract entitling her to damages. Resolving this claim will not require the Court to delve into religious doctrine or polity. The Court, or jury, will only decide the nature of Galetti's contract right and whether the Texico Conference breached the contract as evidenced by the written policies and procedures that have nothing to do with religious doctrine or practice.

In addition, Galetti intends to prove that Reeve also abused his authority in the manner in which he orchestrated Galetti's termination. For example, Reeve hastily called the May 31, 2011 telephonic board meeting after receiving the formal charge of discrimination. Galetti has learned that at least one board member that had previously been favorable to her, Kathy Workmen, was not provided notice of the board meeting that resulted in Galetti's termination. Discovery may uncover that the board meeting itself was not legally constituted. Again, this inquiry has nothing to do with Seventh-day religious doctrine. *See Jones v. Wolf,* 443 U.S. 595, 604 (1980)(court may examine religious documents without running afoul of First Amendment as long as "the interpretation of the instruments of ownership would not require the civil court to resolve a religious controversy."). It is purely a secular matter and, therefore, will not tread on First Amendment concerns. *See Connor v. Archdiocese of Philadelphia*, 975 A.2d 1084, 1113 (Pa. 2009)("Simply put, it does not appear that this case will require "Caesar to enter the Temple and decide what the Temple believes.")(Citations

omitted).

Defendants have not submitted anything to suggest otherwise. As a result, under the current record, there is no evidence that the resolution of Galetti's claims raise the specter of substantial entanglement 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.").

At a minimum, Galetti should have been given an opportunity to establish that she could prove her one or more of her claims without requiring the court to delve into religious doctrine or polity. *Bryce v. Episcopal Church in the Diocese of Colorado*, 289 F.3d 648 (10th Cir.2002) (*quoting Wisconsin v. Yoder*, 406 U.S. 205, 215 (1972) ("The church autonomy doctrine is not without limits, however, and does not apply to purely secular decisions, even when made by churches. Before the church autonomy doctrine is implicated, a threshold inquiry is whether the alleged misconduct is "rooted in religious belief.")); *Malicki v. The Archdiocese of Miami*, 814 So.2d 347, 365 (Fla. 2002)("By holding that the First Amendment does not bar the court's consideration of the parishioners' allegations, we expressly do not pass on the merits of the underlying case. Our holding today

is only that the First Amendment cannot be used at the initial pleading stage to shut the courthouse door on a plaintiff's claims, which are founded on a religious institution's alleged negligence arising from the institution's failure to prevent harm resulting from one of its clergy who sexually assaults and batters a minor or adult parishioner."). Because the district court did not provide Galetti with this opportunity, the order of dismissal must be reversed as premature.

Issue 3:

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

This issue was preserved by Galetti in her response to Defendants' motion to dismiss. (R.P. 40-42).

Regardless of whether the ministerial exception and church autonomy doctrines may apply to Galetti's teaching position, the doctrines only apply to religious organizations, not individuals. *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.").

Defendants argue that the federal courts limitation of the ministerial exception to "organizations" is a quirk in federal law. (R.P. 57). Defendants argue that since individuals cannot be held liable under Title VII, the federal courts have not had reason to specifically distinguish between organizational and individual liability under the ministerial exception or church autonomy doctrines. (*Id.*). Defendants further maintain that because "the people are the church," the church autonomy doctrine must be applied to individual church members, and not just the organization. (R.P. 58).

Defendants' argument is swimming against the tide of bedrock common law jurisprudence. It is true that a church, like any corporate entity, can only act through its employees and representatives. But it does not follow, however, that all acts of its employees and representatives are the acts of the church. Galetti's claims illustrate this legitimate distinction between the acts of the individual defendants and the acts that can be attributed to the church. *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.").

Galetti is claiming that Reeve retaliated against her for personal reasons inconsistent with his duties as superintendent of the Texico Seventh Day Adventist Schools. *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.").

There is no evidence that Seventh-day Adventist religious doctrine approves of sexual harassment. In fact, the genesis of Galetti's retaliation claim against Reeve is his retaliation against her, in concert with Gillen and Conyne, after the Texico Conference took formal disciplinary action against Reeve in January, 2011. (R.P. 4-5). In short, Galetti is claiming, through both the retaliation claim and the intentional interference with contract claim, that Reeve was acting out of spite and contrary to his duties as Superintendent of the Texico Seventh-day Adventist Schools. *Hagebak v. Stone*, 2003 NMCA 7, ¶13, ¶16, 133 N.M. 75, 79 (Ct. App.

2002)("Qualified privilege allows the fact finder to balance the competing interests at stake: shielding corporate officers when they act in good faith in furtherance of corporate goals, but withdrawing that protection if they use corporate power simply to serve their own, personal ends....Although corporate officers may be the embodiment of a corporation, they remain individuals with distinct personalities and opinions, which opinions may be affected just as surely as those of other employees by the spread of injurious falsehoods.").

Defendants have failed to uncover a single precedent that would immunize an officer of a religious organization who committed a tort or other statutory violation that was contrary to his or her religious duties or power. Galetti is not asserting a claim that the Texico Conference is liable for the individual defendants' wrongful actions through the doctrine vicarious liability. On the contrary, Galetti is asserting that Reeve's actions are not the actions of the church, or Texico Conference, and thus the Texico Conference is not a defendant to any of the claims with the exception of the breach of contract claim. *McCarthy v. Fuller*, 868 F. Supp. 2d 781, 784 (D. Ind. 2012)(rejecting application of church autonomy doctrine finding that "[t]here is no possibility that anything that happens in this case will interfere with the Church's religious endeavors. Indeed, this case does not implicate the property rights of the Church at all; the Church is not a party to this suit, and thus will not be bound by any decision that may be made here....").

This 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. *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."). In fact, Galetti is unaware of any official duties Conyne has in relationship to the Texico Conference and Defendants conceded this point, at least at this stage in the proceedings. (R.P. 86). Therefore, the district court erred in finding, as a matter of law, that the individual claims were also prohibited by the church autonomy doctrine.

III. 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.

IV. Request for oral argument

Galetti requests oral argument. This matter involves a complex issue of

constitutional law and how it impacts important rights of employees who are employed by religious institutions. Galetti believes that due to the recency of the Supreme Court's decision adopting the ministerial exception, and the fact that there is only one published New Mexico decision that interprets the church autonomy doctrine, oral argument is likely to be beneficial to discuss the contours of the doctrine.

V. Certificate of page-limit compliance

The following brief used 14 point Times New Roman type face and is 6,109 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 May 2, 2013 as follows:
Edward Ricco
Rodey, Dickason, Sloan, Akin & Robb, P.A.
Post Office Box 1888
Albuquerque, New Mexico 87103
sgordon@rodeylaw.com

By: _____
Wayne R. Suggett