

## LIABILITY IN HIRING

***In a court case adjudicated by a State Court of Appeals, the Court concluded that claims in question could be resolved by application of neutral principles of civil law and, therefore, that the trial court does have subject-matter jurisdiction in an ecclesiastical matter.***

In the case under consideration, the plaintiff was allegedly defrauded and seduced by her pastor and appealed the trial court's dismissal of the complaint against the General Board of the Church, (i.e. General Assembly, GA), and the District Church (i.e. Regional Presbytery). The trial court concluded that it lacked subject-matter jurisdiction because the case against the Board and the District would involve inquiry into the ecclesiastical doctrine, law, and polity of the Church, in violation of the doctrine of ecclesiastical abstention. It was concluded that the claims in question could be resolved by application of neutral principles of civil law and, therefore, that the trial court does have subject-matter jurisdiction.

The plaintiff's amended complaint alleged that the Board and District were guilty of negligent hiring, negligent supervision, negligent retention, and negligence under a theory of respondeat superior, intentional infliction of emotional distress, securities fraud, constructive fraud, and racketeering. Named defendants also included the local church, a church employee, the senior pastor, the executive pastor, and several companies on whose behalf the pastor, and the pastor's brother allegedly solicited investment funds to the plaintiff. The Board (GA) and the District (Regional Presbytery) were the only defendants involved in this appeal.

According to the complaint, at or about the time these defendants hired the staff member (pastor), they had credible information that he had a history of stealing money from, improperly soliciting investments from, and engaging in sexual misconduct with church members in other states. The complaint also alleged that, when the Church was informed that the pastor and the staff member were soliciting money from church members, the Church vouched for the pastor and conducted no investigation despite having knowledge of his reputation and history.

The complaint also alleged that the pastor engaged in sexual relations with the plaintiff by using his position as pastor and spiritual advisor to exert emotional and physical control over her in an attempt to defraud her of money.

In their answer, the Board and District denied that the court had subject-matter jurisdiction, denied having control over the business affairs of the Church, and denied hiring the pastor. The Board (GA) and the District (Regional Presbytery) filed separate Motions to Dismiss.

The Board's motion argued that the doctrine of ecclesiastical abstention required dismissal of the lawsuit against the Board under the State's Rules of Civil Procedure. Citing the "Manual of the Church" (i.e. BCO), and attaching several pages of the Manual to its motion, the Board explained that the church is a hierarchical church composed of three independent authorities: the local churches, the district assemblies, and the General Assembly, over which preside the Board. The Board contended that the authority of the General Assembly, and therefore of the Board, was limited to making rules and regulations for departments related to the church, organizing the membership of the church into district assemblies, determining the qualifications of district assembly representatives and the boundaries of assembly districts, and defining the powers of the district assemblies. The Board maintained that it had no control over and no knowledge of the operations of local churches. The Board argued that, under the ecclesiastical abstention doctrine, civil courts must accept the provisions of the "Manual" and are precluded from inquiring further.

The District's motion to dismiss argued that the court lacked subject-matter jurisdiction under the First Amendment and the doctrine of ecclesiastical abstention. Also citing the "Manual", the District stated that the church was an independent entity that had the right to select and hire its own pastor, manage its own financial affairs, and control its own local work. According to the District, local churches report their activities to the District annually, but the District does not hire or discharge local pastors or staff members or set their duties. The District alleged that its only contact with the pastor was in granting him the status of licensed minister for the church, which authorized him to preach the Word, to administer sacraments, and to officiate at marriages.

The District (Presbytery) asserted that it approved or disapproved of a local church's selection of pastor based on an ecclesiastical review. The senior pastor was required to report annually to the District; other on the staff of the local church reported to the senior pastor. The District would review the status of licensed ministers annually for renewal of the license. Otherwise, the District exercised oversight with respect to its ministers only upon complaint by a church member.

The District argued that, because its role was limited to licensing the pastor, any inquiry into the District's involvement in the case would necessarily require a review of the ecclesiastical doctrine of the church regarding licensing ministers, a matter over which, it asserted, the courts have no jurisdiction.

The plaintiff responded that the complaint did not involve ecclesiastical issues; it involved a determination whether the Board and the District breached a secular duty by hiring and licensing the pastor despite knowledge of his prior victimization of parishioners. The plaintiff also argued that the "Manual" was outside the pleadings, and requested a continuance to conduct further discovery if the court considered the "Manual" in reaching its decision. The plaintiff argued that attempts to depose the Board and the District had been unsuccessful and that the plaintiff expected that the depositions would demonstrate that both the Board and the District had in fact been involved in hiring the pastor.

The court ruled that the "Manual" set out the duties of the Church, the District, and the Board, and that any review of the District's and the Board's role in the case "would necessarily require a review of the ecclesiastical doctrine, law and polity of the Church (denomination) as it relates to granting licenses to ministers". The court concluded that the First Amendment of the United States Constitution, and the doctrine of ecclesiastical abstention precluded such an inquiry. The court granted the Board's and the District's motions to dismiss, and it denied the plaintiff's motion, finding that the requested discovery would not "defeat the basis of the Court's granting dismissal".

The Appeals court further said, civil courts must accept "the decisions of the highest judicatories of a religious organization of hierarchical polity on matters of discipline, faith, internal organization, or ecclesiastical rule, custom, or law". However, when a church-related dispute can be resolved by applying neutral principles of law without inquiry into religious doctrine and without resolving a religious controversy, the civil courts may adjudicate the dispute.

Because religious organizations are part of the civil community, they are subject to societal rules governing property rights, torts, and criminal conduct. The First Amendment does not excuse individuals or religious groups from complying with valid neutral laws.

The question in this present case is whether the civil court can adjudicate claims against certain officials of a religious organization based on their alleged licensing and hiring of a

pastor whom they knew, or had reason to know, was likely to victimize members of that organization. Courts addressing this kind of issue have reached various conclusions.

In the present case, the plaintiff claims injury by the tortuous conduct of individuals whom church officials placed in a position to injure her when they knew, or should have known, of the risk of harm presented by those individuals. In our opinion, the Appeals' court resolution of these claims does not require the interpretation of religious doctrine or ecclesiastical law; it requires application of tort law principles that are neutral and generally applicable.

The Board contends that, even if neutral principles of tort law applied, the court would still have to examine the structure of the Church (Denomination) to properly define the duties of the various defendants. Maybe so, but the court can examine the structure of a religious organization for such a purpose. A court may examine religious documents so long as it is done in purely secular terms. Any inquiry into the structure of the religious organization would not be undertaken to resolve any internal organizational dispute or the appropriateness of the conduct of the parties in relation to their religious beliefs or obligations. Inquiry into the organizational structure would be to factually determine the roles the parties played in the licensing and hiring of an employee.

The District (Presbytery) argues that the plaintiff seeks to have it assert control over local churches and pastors in contradiction to the polity of the Church (denomination) , which precludes interference with the local church by the District. Plaintiff's claims are not that broad. Also note that the "Manual" provides for the possibility of a district superintendent disapproving a proposed pastor to a local church. Consequently, the application of neutral tort principles in this case does not conflict with the polity of the Church.

The parties here have not specifically addressed individual claims at this stage of the litigation. Because the Board and District presented a general challenge to the court's jurisdiction to consider the case, we have addressed the matter generally.

Because of our resolution of the jurisdiction issue, we do not decide whether the trial court abused its discretion when denying the plaintiff's motion, or when including (Rule) language in its dismissal order.

It is concluded that the trial court erred in concluding that it lacked subject-matter jurisdiction to adjudicate any of the plaintiff's claims against the Board and the District. The judgment of dismissal is therefore reversed and the matter is remanded to the trial court for further proceedings.

*Synopsis by PCA Stated Clerk's Office, 12/4/02*

*Court of Appeals, State of Arizona, Rashedi v. General Bd of Church of the Nazarene, 9-19-02*