

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

SUE ANN DOLQUIST,

Plaintiff,

v.

Case No. 03-2150-KHV

HEARTLAND PRESBYTERY, and
LEAWOOD PRESBYTERIAN CHURCH,

Defendants.

**DEFENDANT LEAWOOD PRESBYTERIAN CHURCH'S
BRIEF IN SUPPORT OF ITS
MOTION TO DISMISS OR FOR SUMMARY JUDGMENT**

Pursuant to Rules 12(b)(1), 12(b)(6), and 56 of the Federal Rules of Civil Procedure, Defendant, Leawood Presbyterian Church, hereby moves to dismiss or for summary judgment as to Count II (sexual harassment) and Count III (retaliation) of Plaintiff's Second Amended Petition for Damages brought pursuant to Title VII of the Civil Rights Act of 1964.

I. STATEMENT OF UNCONTROVERTED FACTS PURSUANT TO LOCAL RULE 56.1

1. At all relevant times, Plaintiff Reverend Sue Ann Dolquist was an ordained minister of the Presbyterian Church, U.S.A., serving within the Heartland Presbytery as an employed minister for the Defendant Leawood Presbyterian Church. See Plaintiff's Second Amended Petition for Damages, paragraphs 2, 5, 16, 17, 18 and 22.

II. ARGUMENT:

A minister's Title VII claim of employment discrimination filed against the church where he or she was employed is prohibited by the "ministerial exception" regardless of whether the nature of the discrimination is characterized as secular or religious.

The federal case law distinguishes between the "ministerial exception" and the "church

autonomy doctrine.” See, e.g., *Bryce v. Episcopal Church in the Diocese of Colorado*, 289 F.3d 648 (10th Cir. 2002). Bryce was a youth pastor and had filed various claims against the church where formerly she had been employed. Joined as a co-plaintiff was Bryce’s domestic partner, Smith, with whom Bryce was in a long-term lesbian relationship. Indeed, it was discovery of this relationship which set in motion events leading to Bryce’s loss of employment at the church. The claims by Bryce and Smith against the church, which included sexual harassment, were dismissed by the district court as claims prohibited by the First Amendment.

The Tenth Circuit Court of Appeals affirmed, relying on the doctrine of church autonomy. 289 F.3d at 657-59. In doing so, the Tenth Circuit took note of the related line of cases involving the ministerial exception (*Id.* at 656) but did not pass on the applicability of the ministerial exception to the situation in *Bryce* (*Id.* at 658 n.2). The circuit panel recognized that the doctrine of church autonomy and the ministerial exception are different, and that on the situation presented in *Bryce* the doctrine of church autonomy was broader in scope as to the variety of situations it covered, namely: claims arising out of non-employment circumstances as well as employment.¹ But where the ministerial exception applies, that is, where a religious minister sues his or her own church for employment discrimination, the exception cuts deeper than the doctrine of church autonomy. See, e.g., *EEOC v. Roman Catholic Diocese*, 213 F.3d 795, 801 (4th Cir. 2000). (“[T]he ministerial exception to Title VII is robust where it applies The exception precludes any inquiry whatsoever into the reasons behind a church’s ministerial employment decision.”).

¹As the panel stated, the "ministerial exception" requires a court to determine whether the plaintiff in question was a religious minister in the employ of the church being sued. As to plaintiff, Bryce, that was likely easily answered in the affirmative; but as to plaintiff, Smith, the question involved serious difficulty. So the applicability of the doctrine of church autonomy had to be faced.

In this Motion, Leawood Presbyterian Church relies on the ministerial exception, not church autonomy. The ministerial exception prohibits a claim by a pastor for employment discrimination regardless of whether the nature of the alleged discrimination is secular or religious.² That's how it is that the exception applies even as to claims for age discrimination or disability discrimination.³ Religious ministers suing the church where they are (or were) employed have challenged the application of the ministerial exception where the nature of the discrimination was secular. They have not been successful.

Consider the recent case of *Alicea-Hernandez v. Catholic Bishop of Chicago*, 320 F.3d 698 (7th Cir. 2003). Alicea-Hernandez brought a Title VII claim for sex and national origin discrimination. She sued the Catholic Archdiocese of Chicago where she was formerly employed. Her job entailed working with the Catholic Hispanic community in Chicago. There was a close question concerning whether Alicea-Hernandez was a “minister” within the First Amendment meaning of that term. *Id.* at 702-04. Having answered that question in the affirmative, the circuit court was faced with Alicea-Hernandez’s argument that the ministerial exception did not apply when the discrimination by the church was secular in nature. *Id.* at 703. Alicea-Hernandez alleged she was fired by the church because of disagreements over how to deal with Hispanics, not for religious reasons. Alicea-Hernandez further alleged that she was ill treated due to her gender and national origin, not due to any religious dispute. *Id.* at 702.

² Defendant, Leawood Presbyterian Church, continues to maintain that the nature of Plaintiff’s alleged employment discrimination implicates religious matters, specifically the relationship between the pastor and her church, and thus is not actionable under the church autonomy doctrine. Defendant plans to later file a motion for summary judgment pursuant to the church autonomy doctrine, as well as raising other points of law.

³ See, e.g., *Scharon v. St. Luke’s Episcopal Presbyterian Hosp.*, 929 F.2d 360 (8th Cir. 1991) (dismissing religious chaplain’s claim brought under the Age Discrimination in Employment Act of 1975).

Alicea-Hernandez's argument was rejected:

It is therefore not our role to determine whether the Church had a secular or religious reason for the alleged mistreatment of Alicea-Hernandez. . . . As the D.C. Circuit stated, “[D]etermination of whose voice speaks for the church is *per se* a religious matter.” *Minker v. Baltimore Annual Conference of the United Methodist Church*, 894 F.2d 1354, 1356 (D.C. Cir. 1990) Indeed, the rationale for the ministerial exception is founded upon the principle that “perpetuation of a church’s existence may depend upon those who it selects to preach its values, teach its message, and interpret its doctrines both to its own membership and to the world at large.” *Rayburn [v. General Conference of Seventh-Day Adventists]*, 772 F.2d [1164] at 1168 [(4th Cir. 1985)].

320 F.3d at 703-04.⁴

The Seventh Circuit relied, *inter alia*, on the Fifth Circuit’s decision in *Combs v. Central Texas Annual Conference of the United Methodist Church*, 173 F.3d 343 (5th Cir. 1999).⁵ Reverend Pamela Combs was a pastor who sued her church under Title VII alleging sex and pregnancy discrimination. She claimed she was deprived of job benefits she was due, and that her salary and treatment was disparate from male clergy. *Id.* at 345. It was stipulated by all parties that the alleged discrimination did not involve religious or ecclesiastical law. *Id.* at 345 n.1. Notwithstanding the secular-like nature of the alleged discrimination, the claim was barred by the ministerial exception:

Reverend Combs argues that because the resolution of her claim... requires no evaluation or interpretation of religious doctrine, her claim should be allowed to proceed. . . . [T]his Court rejected a similar argument in *Simpson v. Wells Lamont Corp.*, 494 F.2d 490

⁴ The Seventh Circuit in *Alicea-Hernandez* dismissed for lack of subject matter jurisdiction, citing the manner by which the First Amendment denies jurisdiction by government over church affairs. 320 F.3d at 702, 704. However, the circuit panel in *Bryce* indicates the correct motion is to dismiss for failure to state a claim. Hence, Leawood Presbyterian Church moves pursuant to both Rules 12(b)(1) and 12(b)(6).

⁵ In *Bryce*, the Tenth Circuit cites *Combs* with approval. 289 F.3d at 656.

(5th Cir. 1974). As this Court observed in *Simpson*, the First Amendment concerns are two-fold. 494 F.2d at 493-94. The first concern is that secular authorities would be involved in evaluating or interpreting religious doctrine. *Id.* The second quite independent concern is that in investigating employment discrimination claims by ministers against their church, secular authorities would necessarily intrude into church governance in a manner that would be inherently coercive, even if the alleged discrimination were purely nondoctrinal. *Id.* This second concern is the one present here. This second concern alone is enough to bar the involvement of the civil courts.

173 F.3d at 350 (footnote omitted). The *Simpson* case, cited above in *Combs*, involved a claim by a pastor against his church (among others) alleging racial discrimination contrary to various federal civil rights laws. Even if it was agreed, as the pastor argued, that the cause for his discharge was not religious but racially motivated, still the First Amendment barred the suit resulting in a dismissal for lack of subject matter jurisdiction. 494 F.2d at 493-94.

The Eleventh Circuit followed *Combs* in *Gellington v. Christian Methodist Episcopal Church, Inc.*, 203 F.3d 1299 (11th Cir. 2000). In *Gellington*, a male minister sued his church under Title VII for retaliation. The minister alleged he had helped a female co-minister who was the victim of sexual harassment by other church officials. The Eleventh Circuit affirmed a dismissal by the trial court for First Amendment reasons. As in *Combs*, under the ministerial exception it did not matter in *Gellington* that the act of alleged retaliation against the plaintiff was secular or religious in motive. *Id.* at 1303.

See also Starkman v. Evans, 198 F.3d 173 (5th Cir. 1999), where a church's Choirmaster and Director of Music sued her church alleging employment discrimination on the basis of disability and for retaliation. The circuit court affirmed the district court's dismissal of the claims relying on the ministerial exception. There was no attempt by the church to defend its actions on religious grounds. *Id.* at 175 n.1. The nature of the plaintiff's disabilities related to her asthma, migraine headaches, and other maladies, and illness related to a chemical exposure.

Id. at 174. The major issue in the case was whether plaintiff was a “minister” within the First Amendment sense of that term, and whether the ministerial exception should be extended from Title VII claims to claims under the Americans with Disabilities Act. Both questions were answered in the affirmative. *Id.* at 175-76.⁶

CONCLUSION

For the foregoing reason, Defendant, Leawood Presbyterian Church, respectfully prays that this Court dismiss or grant summary judgment as to Count II (Title VII -- sexual harassment) and Count III (Title VII -- retaliation) of Plaintiff’s Second Amended Petition for Damages, and that the Court further, in its sound discretion (*see* 28 U.S.C. § 1367(c)), remand back to the state trial court the remaining claims against this Defendant designated as Count IV (intentional failure to supervise), Count V (negligent infliction of emotional distress), and Count VI (outrage).

⁶ It makes no difference that Plaintiff here has sought only damages, not reinstatement at Leawood Presbyterian Church. That distinction was rejected by this Court in *Knuth v. Lutheran Church Missouri Synod*, 643 F. Supp. 444, 448 (D. Kan. 1986) (holding that in pastor’s claim for breach of contract it makes no difference that only damages were sought). Damage claims alone are chilling to the religious freedom of church organizations. And avoidance of claims for damages disrupts the church, its governance and administration, especially in its relationship with its pastors. "Secular aspects may conceivable exist in the relationship between a minister in the organized church, but the minister plays a particularly sensitive role in any church organization." *Id.* at 448-49.

Respectfully submitted,

/s/ Patrick E. McGrath

Patrick E. McGrath, #14230
Wallace, Saunders, Austin, Brown & Enochs
10111 W. 87th Street
Overland Park, KS 66212
(913) 752-5559 Direct
(913) 888-1000
(913) 888-1065 Fax
E-mail: aharman@wsabe.com
ATTORNEY FOR DEFENDANT
LEAWOOD PRESBYTERIAN CHURCH

Certificate of Service

I hereby certify that a true and exact copy of the above and foregoing Defendant Leawood Presbyterian Church's Brief in Support of its Motion to Dismiss or for Summary Judgment was sent via electronic mail and U.S. Mail, postage prepaid, this 1st day of April, 2004, to:

Mr. Joseph M. Backer
The Backer Law Firm, LLC
1125 Grand Blvd., Suite 1122
Kansas City, MO 64106
ATTORNEY FOR PLAINTIFF

Ms. Kimberly A. Jones
Ms. Hillary L. Hayes
Blackwell Sanders Peper Martin, LLP
2300 Main St., Suite 1100
Kansas City, MO 64108
ATTORNEY FOR DEFENDANT
HEARTLAND PRESBYTERY

/s/ Patrick E. McGrath
Patrick E. McGrath