No. 17-3086

In the United States Court of Appeals
for the Third Circuit

REV. DR. WILLIAM LEE

V.

SIXTH MOUNT ZION BAPTIST CHURCH OF PITTSBURGH,
TIMOTHY RALSTON,
NATHANIEL YOUNG,
GEOFFREY KEVIN JOHNSON,
ROCHELLE JOHNSON,
ALEXANDER HALL,
RAYMOND JACKSON,
JAMES GROVER,
ARTHUR HARRIS,
JEROME TAYLOR,
TOMMIE NELL TAYLOR, and
ROY ELDER

On Appeal from the U.S. District Court
for the Western District of Pennsylvania (Fischer, J.)
Civil Action No. 2:15-cv-01599-NBF

APPELLANT'S REPLY BRIEF

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May 16, 2018

I. APPELLANT'S REPLY

Appellant Lee disagrees fundamentally with the Appellee's characterization that Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC, 132 S. Ct. 694 (2012) squarely addresses the issue at hand. It does not. As expressed by the Hosanna-Tabor Court, "[t]he case before us is an *employment discrimination* suit brought on behalf of a minister, challenging her church's decision to fire her. Today we hold only that the ministerial exception bars such a suit. *We express no view on whether the exception bars other types of suits, including actions by employees alleging breach of contract tortious conduct by their religious employers*. There will be time enough to address the applicability of the exception to other circumstance if and when they arise" (emphasis added) Hosanna-Tabor, 132 S. Ct. at 710.

The Supreme Court, through Hosanna-Tabor, clearly and emphatically declined to rule on whether an employment contract is barred by the ministerial exception. Here, this Court is confronted for the first time since Hosanna-Tabor with an employment contract involving a minister. While the Appellee urges this Court to find Hosanna-Tabor controlling, it definitively does not control by its own language.

Rather, this Court is urged to examine whether this matter can be tried on a secular basis. Nothing in Appellee's current brief before this court or its submissions below indicate that it cannot.

Appellee's brief at Pages 32-41 cites various cases wherein church and state have been intertwined in spiritual matters that are forbidden to be adjudicated by courts. None of those matters involve an employment contract where the terms are limited to matters of "law" as in this matter.

Moreover, Appellee's attempt to entangle itself in religious matters must fall flat here. Appellee argues that "[Appellant's] claims sits in the heartland of the ministerial exception… This case involves the fundamental question who will preach from the pulpit of a church … the bare statement of the question should make it obvious …" (citations omitted). Appellee's brief at Page 47. Curiously, Appellee would have this court find that an employment agreement, drafted by secular attorneys and defining the secular parameters of the parties' agreement is *per se* religious; by contrast, employment itself is not religious, and there are many instances where, as in here, an employment contract defining "cause" for termination need not be decided through examining religion. As noted in the opening brief, there is no argument being made by Appellee that Appellant gave bad sermons, interpreted religious doctrine inappropriately, or presided over religious ceremonies in some inappropriate manner. None of that is present here.

Rather, this matter involves the question of whether or not the attendance and financial issues plaguing Appellees were the fault of Appellant. These are secular, factual questions that are proper to be presented to a jury.

Appellee argues that its defense of fraud is enough to entangle religion in this matter. Again, fraud is a law/business term. It is not a religious term. Appellee cannot argue that something is fraudulent and religious at the same time without defining what fact in the case is religious. Appellee has not identified any fact, and merely relies on its own characterization of the matters as “spiritual.” If there was something lacking with Appellant’s "spirituality in leadership" there should be some fact of religion that can show this. None exists here.

Appellee wants this Court to instill a bright line rule wherein certain words such as "minister" and "spirituality" are invoked by a church as a full defense to contractual responsibilities. Appellee correctly notes that there is a slippery slope attached to this Court's opinion here. It is admitted that there is not much ground at the top of the mountain on these issues and the Court must choose which slope from the peak that it wishes to defend. On the one hand, the Appellee would have this Court allow all religious organizations to invoke and entangle religion where none would otherwise be present, at their choice. This slope would lead to ministers never being privy to an enforceable contract. On the other hand, Appellant seeks a ruling in this matter of much less bredth. That ruling would be

to consider these matters on a case by case basis and determine wherein a determination can be made about whether a jury would have to make any decisions relating specifically to religious doctrine. Here, the slope is much less steep and manageable. Absent defining some religious doctrine, Appellee can, if this breach of contract matter is allowed to be tried, can put on a defense demonstrating that Appellant in this matter was responsible for the lack of attendance and financial diminution of the church. Appellee can do so by showing the numbers and producing witnesses to attest that they failed to attend church or spend money on the church due to Appellant's, for example, supposed mismanagement of church resources. Appellant can then refute this evidence with his own evidence showing that it was not his mismanagement that caused the church to lose members or dollars. In short, a trial can be held in this matter without either party discussing or invoking religion.

II. CONCLUSION

Because this case can be tried without undue religious entanglement, this Honorable Court should REVERSE and REMAND this matter for trial.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Gregg L. Zeff, hereby certify that on this 16th day of May, 2018, I caused a true and correct copy of Plaintiffs-Appellants' Brief to be served upon all counsel of record, via the e-filing system.

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CERTIFICATION OF BAR MEMBERSHIP

I certify that I am a member of the bar of this Court, having been admitted on May 9, 1990.

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CERTIFICATE OF COMPLIANCE WITH F.R.A.P. 32(a)

This brief complies with the word limit requirements of F.R.A.P. 32 (a) because:

a. The brief is approximately 874 words as calculated by Word processing software, and prepared in Times New Roman, 14 point font.

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HARD COPY AND ELECTRONIC COPY CERTIFICATION

The PDF of Plaintiffs-Appellants' Brief filed through the electronic filing system, is identical to the hard copy mailed to the Court, and to Appellees.

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