IN THE

Indiana Supreme Court

Supreme Court Case No. 22S-CP-302

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Indiana Supreme Court
Court of Appeals
and Tax Court

Joshua Payne-Elliott,
Appellant,

–v–

Roman Catholic Archdiocese of Indianapolis, Inc.,
Appellee.

Argued: June 28, 2022 | Decided: August 31, 2022

Appeal from the Marion Superior Court
No. 49D01-1907-PL-27728
The Honorable Lance D. Hamner, Special Judge

On Petition to Transfer from the Indiana Court of Appeals
No. 21A-CP-936

Opinion by Justice Slaughter

Justice Massa concurs.
Justices David and Goff concur in the judgment.
Chief Justice Rush not participating.

Slaughter, Justice.

Religious freedom protected by the First Amendment to the United States Constitution encompasses the right of religious institutions "to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049, 2055 (2020) (quoting *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952)). This principle, known as the church-autonomy doctrine, see, e.g., *Brazauskas v. Fort Wayne-South Bend Diocese, Inc.*, 796 N.E.2d 286, 293 (Ind. 2003), applies in this case and requires its dismissal under Indiana Trial Rule 12(B)(6).

I

Joshua Payne-Elliott sued the Roman Catholic Archdiocese of Indianapolis, Inc., in the Marion Superior Court. His complaint, which included attachments as exhibits, asserts claims against the archdiocese for intentional interference with his contract and employment with Cathedral High School, a Catholic school in Indianapolis. He claims the interference was "not justified".

More specifically, he alleges as follows. Cathedral, founded in 1918, was initially owned by the archdiocese, which later turned over care of Cathedral to the Brothers of Holy Cross. Cathedral was incorporated in 1972 "for the sole purpose of maintaining and operating a Roman Catholic secondary school." In substance, Cathedral's bylaws state as follows: "the essential Holy Cross character of Cathedral as a Catholic high school shall be at all times maintained and [] a mission priority is to be an educator in the faith." The archdiocese exercises "significant control" over Cathedral, including "its recognition of Cathedral as a Catholic school."

From 2006 until June 2019, Cathedral employed Payne-Elliott as a world-language and social-studies teacher under a contract that was renewed annually. Payne-Elliott, "a homosexual male", married his same-sex spouse in 2017; his spouse teaches at Brebeuf Jesuit Preparatory School, also in Indianapolis. Cathedral continued renewing Payne-Elliott's

teacher contract through May 2019 for the 2019–2020 school year. The archdiocese knew about Payne-Elliott's contract with Cathedral.

In June 2019, Brebeuf announced that despite pressure from the archdiocese, it would not fire Payne-Elliott's spouse. Brebeuf explained it declined the archdiocese's directive that Brebeuf dismiss the spouse "due to the teacher being a spouse within a civilly-recognized same-sex marriage." The next day, Archbishop Charles C. Thompson issued a decree stating that, after extensive dialogue between the archdiocese and Brebeuf, the archdiocese no longer recognizes Brebeuf as a Catholic institution. The decree states that, in accord with Canon 803 of the 1983 Code of Canon Law, Brebeuf, "by its own selection, can no longer use the name Catholic and will no longer be identified or recognized as a Catholic institution by the Archdiocese of Indianapolis nor included in the listing of The Official Catholic Directory." The decree explains that the archbishop accepted and respected a school's right and responsibility to make decisions, but that it is his "canonical responsibility to oversee faith and morals as related to Catholic identity within the Archdiocese of Indianapolis" and that Brebeuf "ha[d] chosen not to implement changes in accord with the doctrine and pastoral practice of the Catholic Church[.]"

The complaint alleges further that the archdiocese gave Cathedral the same directive it gave Brebeuf. Cathedral chose differently. On June 23, 2019, Cathedral's president informed Payne-Elliott that, according to this directive, Cathedral was terminating his employment. The president stated that the sole reason for his firing was that "the Archbishop directed that we [Cathedral] can't have someone with a public same-sex marriage here and remain Catholic."

Cathedral then posted a letter addressed to the "Cathedral Family" on its website. The letter stated, in part, that "after 22 months of earnest discussion and extensive dialogue" between Cathedral and the archdiocese, "Archbishop Thompson made it clear that Cathedral's continued employment of a teacher in a public, same-sex marriage would result in our forfeiting our Catholic identity due to our employment of an individual living in contradiction to Catholic teaching on marriage." It continued: "Cathedral has been a Catholic school for the past 100 years

and our Catholic faith is at the core of who we are and what we teach at Cathedral. We are committed to educating our students in the tenets of the Catholic faith[.]" It stated further that "to remain a Catholic Holy Cross School, Cathedral must follow the direct guidance given to us by Archbishop Thompson and separate from the teacher." During oral argument, Payne-Elliott's counsel told us that his client "threatened" to sue Cathedral for breach of contract, and Cathedral settled.

Payne-Elliott then sued the archdiocese, which moved to dismiss the complaint and invoked three First Amendment defenses, including the church-autonomy doctrine. The trial court initially denied the motion to dismiss, but later it reconsidered and dismissed with prejudice for failure to state a claim under Trial Rule 12(B)(6) and lack of subject-matter jurisdiction under Rule 12(B)(1). Payne-Elliott appealed, and the court of appeals reversed and remanded for further proceedings. *Payne-Elliott v. Roman Cath. Archdiocese of Indianapolis, Inc.*, 180 N.E.3d 311 (Ind. Ct. App. 2021), reh'g denied.

We heard oral argument on the archdiocese's transfer petition, which we grant today, thus vacating the appellate opinion.

II

To begin, we agree with Payne-Elliott that the trial court erred by dismissing under Rule 12(B)(1), which allows dismissal for "[l]ack of jurisdiction over the subject matter". Ind. Trial Rule 12(B)(1). In determining whether a court has subject-matter jurisdiction, we ask whether the action or claim falls within the general scope of authority conferred upon the court by the constitution or by statute. *State v. Reinhart*, 112 N.E.3d 705, 711–12 (Ind. 2018) (citing *State ex rel. Young v. Noble Cir. Ct.*, 263 Ind. 353, 356, 332 N.E.2d 99, 101 (1975)). A court with general authority to hear matters like employment disputes is not ousted of subject-matter jurisdiction just because the defendant asserts a religious defense. *Brazauskas*, 796 N.E.2d at 290.

Thus, we turn to consider Trial Rule 12(B)(6) as the trial court's alternative basis for dismissal. A 12(B)(6) motion tests the legal sufficiency of the plaintiff's claim, not the facts supporting it. *Bellwether Properties,*

LLC v. Duke Energy Indiana, Inc., 87 N.E.3d 462, 466 (Ind. 2017) (citing *Thornton v. State*, 43 N.E.3d 585, 587 (Ind. 2015)). Dismissal under 12(B)(6) is not proper "unless it appears to a certainty on the face of the complaint that the complaining party is not entitled to any relief." *Id.* (quoting *State v. American Family Voices, Inc.*, 898 N.E.2d 293, 296 (Ind. 2008)). We review a 12(B)(6) dismissal anew, giving no deference to the trial court's judgment. *Id.* (citing *Veolia Water Indianapolis, LLC v. Nat'l Trust Ins. Co.*, 3 N.E.3d 1, 4 (Ind. 2014)). A reviewing court takes the complaint's allegations as true and considers them in the light most favorable to the nonmoving party, drawing every reasonable inference in that party's favor. *Id.* (citing *Veolia Water*, 3 N.E.3d at 4–5). Dismissal under Rule 12(B)(6) is rarely appropriate when the asserted ground for dismissal is an affirmative defense; but where a plaintiff has pleaded himself out of court by alleging, and thus admitting, the essential elements of a defense, his complaint fails to state a claim on which relief can be granted. *Id.* at 464.

Here, as grounds for dismissal, the archdiocese asserted three affirmative defenses: church autonomy, freedom of expressive association, and the ministerial exception. Based on the complaint and its attachments, we hold that Payne-Elliott has pleaded all elements of the archdiocese's church-autonomy defense. Because the archdiocese is entitled to dismissal on this ground, we need not pass on its other two defenses.

Brazauskas guides our church-autonomy analysis. Brazauskas sued a diocese and a priest for blacklisting and for tortiously interfering with a business relationship. *Brazauskas*, 796 N.E.2d at 288. She alleged the defendants prevented her from obtaining a job at the University of Notre Dame, a Catholic university, by truthfully informing its president (a Catholic priest) about her pre-existing employment lawsuit against the defendants. *Brazauskas*, 796 N.E.2d at 288, 291–92. The defendants asserted a defense under the church-autonomy doctrine. We explained:

> This doctrine deals with a church's First Amendment right to autonomy in "making decisions regarding [its] own internal affairs," including matters of faith, doctrine, and internal governance. [*Bryce v. Episcopal Church in the Diocese of Colo.*, 289 F.3d 648, 655 (10th Cir. 2002)].

> The *Bryce* court cited *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 73 S.Ct. 143, 97 L.Ed. 120 (1952), in which the Supreme Court applied the First Amendment and struck down a statute that reassigned control over a cathedral among church officials. In *Kedroff*, the Court said that religious freedom encompasses "an independence from secular control or manipulation, in short, power [of churches] to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *Id.* at 116-17, 73 S.Ct. 143.

Id. at 293; see *Dwenger v. Geary*, 113 Ind. 106, 115, 14 N.E. 903, 908 (1888) ("No power save that of the church can rightfully declare who is a Catholic. The question is purely one of church government and discipline, and must be determined by the proper ecclesiastical authorities."). Thus, we rejected Brazauskas's claim because to allow it to proceed would violate the church-autonomy doctrine. *Brazauskas*, 796 N.E.2d at 294.

This doctrine's vital protection for religious institutions is not unlimited, however. *Brazauskas* also explained that the "First Amendment does not immunize every legal claim against a religious institution and its members", and that the analysis in each case "is fact-sensitive and claim specific, requiring an assessment of every issue raised in terms of doctrinal and administrative intrusion and entanglement." *Id.* at 293–94 (quoting *McKelvey v. Pierce*, 800 A.2d 840, 844 (N.J. 2002)). In other words, the church-autonomy doctrine does not provide an automatic per se defense simply because a religious organization invokes it. And *Brazauskas* explained further that criminal conduct is not protected by the church-autonomy doctrine—even if carried out using communications about church doctrine or policy. *Id.* at 294 n.6.

In sum, *Brazauskas* teaches that under the church-autonomy doctrine a civil court may not (1) penalize via tort law (2) a communication or coordination among church officials or members (3) on a matter of internal church policy or administration that (4) does not culminate in a criminal act. *Id.* at 294, 294 n.6. Here, based on the complaint's allegations, the church-autonomy doctrine bars the case. First, the complaint alleges tort claims, i.e., intentional interference with contract and employment.

Second, the complaint rests on communications between church officials and members, here the archbishop and Cathedral. It alleges that the archdiocese "directed" Cathedral to fire Payne-Elliott in accordance with the archbishop's "directive"; that the archbishop "directed" Cathedral that it could not have Payne-Elliott on staff and remain Catholic; that the archbishop "made it clear" that if Cathedral were to continue to employ Payne-Elliott, it would forfeit its status as a Catholic school; and that Cathedral must "follow the direct guidance given to us by [the] Archbishop".

Third, the archdiocese's decision whether a school maintains its Catholic identity is an internal matter that concerns both church policy and administration. The gist of Payne-Elliott's claims is communication between the archbishop and Cathedral, a Catholic school, over a matter involving church discipline and doctrine: whether and when the archdiocese would continue to recognize Cathedral as Catholic is at the heart of the communication (i.e., the "directive" to Cathedral). The complaint and attachments show the directive was, like the one to Brebeuf, a choice the archdiocese gave Cathedral. It could either retain its recognition as a Catholic school by following the archdiocese's instruction on what was required to be recognized as a Catholic school or forfeit continued recognition. This choice reflects the archdiocese's authority to declare which schools are Catholic, consistent with *Dwenger.*

Fourth, the complaint does not allege the archdiocese's tortious conduct ended in a criminal act. Thus, Payne-Elliott's complaint establishes the church-autonomy defense and requires dismissal for much the same reason Brazauskas lost.

Payne-Elliott also argues the trial court had no basis for reversing its original ruling that denied the motion to dismiss. Substantively, the basis is Rule 12(B)(6). And, procedurally, the court had authority to "reconsider previous orders in the case" while the case remained *in fieri*, or pending resolution. *State ex rel. Roman Cath. Archdiocese of Indianapolis, Inc. v. Marion Superior Ct.*, 160 N.E.3d 182, 183 (Ind. 2020) (citing *Matter of Est. of Lewis*, 123 N.E.3d 670, 673 (Ind. 2019)).

Finally, we note that when a motion to dismiss is sustained under Rule 12(B)(6), "the pleading may be amended once as of right pursuant to [Trial] Rule 15(A) within ten [10] days after service of notice of the court's order sustaining the motion[.]" T.R. 12(B). The archdiocese observes correctly that Payne-Elliott did not amend within ten days. But this omission is not fatal here because, on this record, it would have been futile for the plaintiff to have amended his complaint. This is so because the trial court dismissed Payne-Elliott's claims under Rules 12(B)(6) and 12(B)(1), which means that an amended complaint that actually stated a claim would have still failed on jurisdictional grounds, under the trial court's judgment. Thus, we modify the trial court's dismissal under Rule 12(B)(6) to allow leave to amend.

* * *

For these reasons, we hold that dismissal under Rule 12(B)(1) was improper. But because the complaint shows the church-autonomy doctrine bars Payne-Elliott's claims, we affirm the judgment of dismissal under Rule 12(B)(6) but modify it to reflect the dismissal is without prejudice.

Massa, J., concurs.
David and Goff, JJ., concur in the judgment.
Rush, C.J., not participating.

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