IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

JACQUELINE NAPOLITANO,

Appellant,

v. Case No. 5D19-3112

ST. JOSEPH CATHOLIC CHURCH AND THOMAS WALDEN, F/K/A THOMAS WANITSKY, AS PASTOR OF ST. JOSEPH CATHOLIC CHURCH, HIS SUCCESSORS AND ASSIGNS IN OFFICE,

Appellees.

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Opinion filed December 18, 2020

Appeal from the Circuit Court
for Orange County,
Kevin B. Weiss, Judge.

Gus R. Benitez, of Benitez Law Group, P.L., Orlando, for Appellant.

Caroline Landt, Kevin W. Shaughnessy and Erin M. Sales, of Baker Hostetler LLP, Orlando, for Appellees.

SASSO, J.

The church autonomy doctrine is a fundamental principle of federal constitutional law, rooted in both the Establishment Clause and the Free Exercise Clause of the First Amendment and reflected in the Florida Constitution's own Religion Clauses. The

doctrine recognizes a structural limitation on secular judicial power, the bounds of which this case now tests. Appellant, Jacqueline Napolitano ("Napolitano"), argues the trial court improperly dismissed her complaint for breach of an employment contract against Appellees, Thomas Walden, f/k/a Thomas Wanitsky, as Pastor of St. Joseph Catholic Church ("Father Walden"), St. Joseph Catholic Church ("St. Joseph"), and John Gerard Noonan, as Bishop of the Diocese of Orlando ("the Diocese") (collectively "the Church Defendants"). We disagree. Contrary to Napolitano's assertions, the trial court appropriately recognized the dispute in this case—whether Father Brown had either actual or apparent authority under Canon Law to form an employment contract that bound successor administrations of St. Joseph—to be one of church governance, which it lacked subject matter jurisdiction to resolve. Accordingly, we affirm.

BACKGROUND AND FACTS

This case involves a dispute over the firing of Napolitano, who was initially hired by then-pastor Father Brown as St. Joseph's office manager.[1] Approximately twelve years after Napolitano was initially hired, and allegedly after Father Brown learned he would be removed as pastor, Father Brown and Napolitano executed an employment agreement for the first time. The agreement purportedly bound St. Joseph and the "Roman Catholic Diocese of Orlando," provided Napolitano with continued employment for the succeeding four years, only allowed termination for cause, and required six months' advance notice to avoid an automatic renewal.

[1] Napolitano managed the day-to-day parish needs, serving as the operational point of contact between the Diocese and the parish and the parishioners and the parish.

Bishop Noonan subsequently removed Father Brown as Parish Pastor of St. Joseph and appointed Father Walden. Father Walden terminated Napolitano without notice, in violation of her employment agreement, allegedly for the purpose of replacing her with two other employees. The formal separation papers informed Napolitano that her termination was due to a reduction in workforce.

Following her termination, Napolitano sued Father Walden, St. Joseph, and the Diocese in separate counts for breach of her employment agreement. The operative complaint alleged the alternative existence of either a written agreement or an oral agreement, and it further alleged Father Brown had the exclusive authority to hire and fire anyone employed by St. Joseph, to enter into employment agreements with employees of St. Joseph, and to operate and manage St. Joseph as he determined appropriate. The Church Defendants filed a motion to dismiss Napolitano's complaint, arguing the trial court lacked subject matter jurisdiction based on the church autonomy doctrine.

In support of their respective positions, both Napolitano and the Church Defendants filed affidavits prepared by competing experts in Canon Law. Each affidavit detailed citations to Canon Law, suggested the manner in which Canon Law should be construed, and explained the relative significance of the provisions as applied to the formation of employment agreements. Both affidavits emphasized a pastor's authority to act based on his stated role as "administrator of the parish's goods" and attempted to explain the meaning of "acts of ordinary administration" under Canon Law as distinguished from "acts of extraordinary administration," which would require approval of the bishop.

In evaluating the motion to dismiss, the trial court recognized the main dispute as "not whether an employment contract was breached, but whether or not Father Brown had the actual or apparent authority within his capacity as Pastor of St. Joseph Catholic Church to enter into an employment contract with Jacqueline Napolitano." The trial court determined that resolving the issue presented would require it to delve into the duties of a pastor and church organization and it therefore lacked subject matter jurisdiction to hear the case. Consequently, the trial court dismissed the complaint.

STANDARD OF REVIEW

This Court reviews de novo an order on a motion to dismiss for lack of subject matter jurisdiction. *See Bilbrey v. Myers*, 91 So. 3d 887, 890 (Fla. 5th DCA 2012).

ANALYSIS

I.

The First Amendment of the United States Constitution provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." Art. I, U.S. Const. Florida's Religion Clauses, found in Article I, section 3 of the Florida Constitution, similarly provide "there shall be no law respecting the establishment of religion or prohibiting or penalizing the free exercise thereof."[2] Together, the Religion

[2] Prior to the 1968 amendments to Article I, Florida's Religion Clauses were found in two separate sections that differed textually, and significantly, from the religion clauses of the United States Constitution. The current version of Florida's Establishment and Free Exercise clauses now tracks the language of the United States Constitution, and those clauses are generally interpreted in the same manner as their federal counterparts. *See, e.g.*, *Williamson v. Brevard Cnty.*, 276 F. Supp. 3d 1260, 1297 (M.D. Fla. 2017); *Todd v. State*, 643 So. 2d 625, 628 n.3 (Fla. 1st DCA 1994). Consequently, the jurisdiction of Florida's Article V courts over ecclesiastical matters is limited both by the First Amendment of the United States Constitution through incorporation and by the structural limitations imposed by Article I, section 3 of the Florida Constitution.

Clauses of both documents serve as a structural barrier against political interference with religious affairs. *See, e.g.*, *Conlon v. InterVarsity Christian Fellowship*, 777 F.3d 829, 836 (6th Cir. 2015) (holding that ministerial exception is "structural" protection, "one that categorically prohibits federal and state governments from becoming involved in religious leadership disputes"); Carl H. Esbeck, *The Establishment Clause As A Structural Restraint on Governmental Power*, 84 Iowa L. Rev. 1, 45 (1998). This provides "a spirit of freedom for religious organizations, [and] an independence from secular control or manipulation – in short, power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 116 (1952).

As to the reach of secular judicial power, the First Amendment's guarantees are recognized as the "ecclesiastical abstention doctrine" that flows from a line of cases distinct from either the Establishment or Free Exercise cases interpreting the First Amendment. As recognized by the Florida Supreme Court in *Malicki v. Doe*, the doctrine precludes secular courts from exercising jurisdiction over ecclesiastical disputes, those about "discipline, faith, internal organization, or ecclesiastical rule, custom, or law," as distinguished from "purely secular disputes between third parties and a particular defendant, albeit a religiously affiliated organization." 814 So. 2d 347, 357 (Fla. 2002) (quoting *Bell v. Presbyterian Church*, 126 F.3d 328, 331 (4th Cir. 1997)).

Napolitano recognizes the authority of the doctrine but nonetheless maintains the trial court erred in dismissing her case. In support, Napolitano argues the trial court can and should apply neutral principles of law to resolve the dispute, thereby avoiding any excessive entanglement with religious issues. This argument misses the mark though. To

explain why, it is necessary to examine the context in which the neutral principles test arose and its scope.

The "neutral principles of law" test to which Napolitano refers is derived from *Jones v. Wolf*, 443 U.S. 595 (1979), where the United States Supreme Court addressed constitutionally permissive approaches for adjudicating church property disputes. *Id.* at 597. Before *Jones*, the Supreme Court held courts must defer to church tribunals if they had already decided an issue that is referred to the civil court system. *See, e.g.*, *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 724–25 (1976). But *Jones* held deference to church tribunals was not the only permissible method of adjudication; rather, states "may adopt *any* one of various approaches of settling church property disputes so long as it involves no consideration of doctrinal matters, whether the ritual and liturgy of worship or the tenets of faith." *Jones*, 443 U.S. at 602 (quoting *Md. & Va. Eldership of Churches of God v. Church of God at Sharpsburg, Inc.*, 396 U.S. 367, 368 (1970) (Brennan, J., concurring)). In addressing the various approaches, the Court specifically approved the method of resolving church property disputes based on "neutral principles of law," which principles the Court noted could be derived from "objective, well-established concepts of trust and property law familiar to lawyers and judges" and applied to interpret secular provisions in deeds, church constitutions, and other legal documents.[3] *Id.* at 603. Importantly though, *Jones* recognized the application of neutral

[3] Justice Brennan labeled this approach the "formal title" doctrine, explaining civil courts adjudicating church property disputes could determine ownership by studying deeds, reverter clauses, and general state corporation laws. *Md. & Va. Eldership of Churches of God v. Church of God at Sharpsburg, Inc.*, 396 U.S. 367, 370 (1970) (Brennan, J., concurring).

legal principles in resolving church disputes is valid only if "no issue of doctrinal controversy is involved." *Id.* at 605.

The church autonomy doctrine extends beyond church property disputes. In *Milivojevich*, the Court held that the right of church autonomy "applies with equal force to church disputes over church polity and church administration." 426 U.S. at 710. And in cases involving disputes over polity and administration, the Court has taken a more categorical approach, recognizing that secular courts may not interfere with matters of internal church governance or interpret a church's written constitution or ecclesiastical law.

For example, in *Shepard v. Barkley*, the Court held a state court could not interfere with the merger of two Presbyterian denominations. 247 U.S. 1, 2 (1918). Likewise, in *Milivojevich*, the Court noted "the reorganization of the Diocese involves a matter of internal church government, an issue at the core of ecclesiastical affairs," and it therefore refused to delve into the various church constitutional provisions relevant to a dispute over control of the Serbian Eastern Orthodox Diocese for the United States of America and Canada, its property, and assets. 426 U.S. at 721. And several other cases presenting disputes of church polity produced corresponding results. *See, e.g.*, *Presbyterian Church v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 451 (1969) (recognizing that civil courts forbidden to interpret and weigh church doctrine); *Kreshik v. St. Nicholas Cathedral*, 363 U.S. 190, 191 (1960) (recognizing that First Amendment prevented judiciary, as well as legislature, from interfering in ecclesiastical governance of Russian Orthodox Church); *Kedroff*, 344 U.S. at 119 (same). Most recently, in *Our Lady of Guadalupe School v. Morrissey-Berru*, the Court reaffirmed

what that unbroken chain of cases make clear: no state authority has the power to interfere in matters of ecclesiastical government. 140 S. Ct. 2049, 2060 (2020) ("[A]ny attempt by government to dictate or even to influence such matters would constitute one of the central attributes of an establishment of religion."); *accord* Stephanie H. Barclay et. al., *Original Meaning and the Establishment Clause: A Corpus Linguistics Analysis*, 61 Ariz. L. Rev. 505, 534 (2019) (explaining findings that state control over doctrine, governance, and personnel of church was historically understood as establishment).

II.

Applying these principles, we now address whether the trial court erred in dismissing Napolitano's complaint. In doing so, our inquiry is whether this dispute is one of discipline, faith, internal organization, or ecclesiastical rule, custom, or law. If so, secular courts lack the authority to resolve the dispute and there is no need for judicial balancing tests—the First Amendment has already struck that balance. *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171, 196 (2012) ("When a minister who has been fired sues her church alleging that her termination was discriminatory, the First Amendment has struck the balance for us.").

At the heart of the dispute between Napolitano and the Church Defendants is whether Father Brown had the authority under Canon Law to obligate successor administrations of St. Joseph to retain his chosen employees. Simply put, Napolitano has requested that a secular court examine a hierarchical religious organization and determine who has the authority to speak and act on its behalf. Whether based on actual or apparent authority, Napolitano's request would require a court to impermissibly wade into ecclesiastical polity, in violation of the First Amendment.

Take Napolitano's claim that Father Brown had actual authority to form Napolitano's employment agreement. That claim would require an assessment of the interrelationship between the Diocese and St. Joseph and who within the Catholic Church has the power and authority to control the operation of the parishes. Making that assessment, as Napolitano recognizes, would require a court probe into religious Canon Law to discern the respective legal significance and authority of a pastor, a parish, and the Diocese. The risk of constitutional violation posed by this inquiry is evident: incorrectly identifying or describing the authority of a pastor as well as the scope of ordinary acts of administration would undermine the right of a religious organization to choose a structure that best propagates its message. But what is more, the United States Supreme Court has warned that the First Amendment may be violated not only by judicial decisions, but by the very inquiry that results in a court's findings and conclusions of law. *See NLRB v. Cath. Bishop of Chi.*, 440 U.S. 490, 502 (1979).

Napolitano's claims based on apparent authority do not fare any better. Indeed, resolving this dispute based on a claim of apparent authority would require examining the history and operation of the Parish, scrutinizing the governance patterns of the Diocese, and applying secular conceptions of agency to church governance. This exercise too would permit a court to seize control of the church's polity to the extent a religious organization's structure and governance failed to conform with secular expectations. *Accord Schmidt v. Bishop*, 779 F. Supp. 321, 332 (S.D.N.Y. 1991) ("Insofar as concerns retention or supervision, the pastor of a Presbyterian Church is not analogous to a common law employee. . . . The traditional denominations each have their own intricate principles of governance, as to which the state has no rights of visitation.").

So either way, Napolitano's claim fails. Whether Father Brown had the actual or apparent authority to form the employment agreement and bind St. Joseph and the Diocese, even after his removal, is a quintessentially religious controversy—one that would require judicial inquiry into internal church matters—and constitutes a subject matter of which secular courts lack jurisdiction. *See, e.g.*, *Hosanna-Tabor*, 565 U.S. at 187 (quoting *Milivojevich*, 426 U.S. at 720); *Smith v. Clark*, 709 N.Y.S.2d 354 (N.Y. Sup. Ct. 2000) (concluding that court lacked subject matter jurisdiction pursuant to First Amendment over breach of contract suit brought by former church employees against church arising from their termination; suit involved principles of religious doctrine, including whether pastor of church had right to terminate employees holding ministry positions and whether administrator of church had authority under canon law to enter into employment agreements on behalf of church); *Harris v. Matthews*, 643 S.E.2d 566, 571 (N.C. 2007) ("[A] church's view of the role of the pastor, staff, and church leaders, their authority and compensation, and church management" is affected by the church's religious doctrine, and hence "courts must defer to the church's internal governing body" on such matters.) (citation omitted). Consequently, the trial court appropriately recognized the dispute as one it lacked the authority to resolve.

CONCLUSION

Because the dispute in this case is one regarding ecclesiastical polity, a secular court's only legitimate role is ensuring the dispute is committed to religious authorities. The ecclesiastical abstention doctrine bars consideration of Napolitano's claims, and the trial court appropriately dismissed her complaint.

AFFIRMED.

ORFINGER, J., and MCINTOSH, D., Associate Judge, concur.