

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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ROBERT MARTIN HANNEWALD,  
  
Plaintiff-Appellant,

UNPUBLISHED  
March 1, 2011

v

SCOTT A. SCHWERTFEGER, RONALD  
HOFFMAN, and ST. JACOB EVANGELICAL  
LUTHERAN CHURCH,

No. 295589  
Jackson Circuit Court  
LC No. 09-002654-CZ

Defendants-Appellees.

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Before: HOEKSTRA, P.J., and FITZGERALD and BECKERING, JJ.

PER CURIAM.

Plaintiff Robert Hannewald appeals as of right from the December 2, 2009 order granting summary disposition in favor of defendants Scott Schwertfeger, Ronald Hoffman and St. Jacob Evangelical Lutheran Church. We affirm.

This action arises out of comments made by defendant Schwertfeger during the course of a dispute over the appropriate use of a bequest made by plaintiff's uncle, Lawrence Hannewald, to St. Jacob for certain purposes. Plaintiff and his uncle were long-standing members of the St. Jacob congregation.<sup>1</sup> Upon his death, plaintiff's uncle bequeathed to the church approximately \$70,000 to be used for certain specified purposes, including "restoration" of the sanctuary.<sup>2</sup> Schwertfeger serves as the church's pastor and Hoffman serves as its president. As administrator of his uncle's estate, plaintiff took issue with the manner in which defendants proposed to use the bequeathed funds, asserting that the planned construction constituted "renovation" and not "restoration," and so, was improper under the terms of the bequest. Plaintiff alleges that he "informally advised Pastor Schwertfeger and other members of the Church that [the proposed

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<sup>1</sup> Plaintiff alleges that his ancestors were founding members of the church, which was organized in the early 1800s.

<sup>2</sup> Plaintiff notes that this amount had grown to approximately \$75,000 by the time the church began making plans for its use.

use] was not in accordance with [his uncle's] desires." Plaintiff further alleges that, thereafter, Schwertfeger made disparaging comments directed toward him during a prayer<sup>3</sup> to open a congregational meeting at which more than 25 church members were present to discuss use of the bequest. More specifically, plaintiff asserts that Pastor Schwertfeger made the following "hurtful, disparaging, and offensive" comments:

The point of this portion of Scripture is that the dignity and the glory of the Lord were at stake. God showed that his dignity was not something to be tampered with. This is what the dignity of the Lord means to God.

What is before us today has nothing to do with God's glory. This has nothing to do with the dignity of the Lord. That is neither here nor there. The dignity of the Lord is not at stake in this instance. But we do have the will of the congregation on one side and the will of one man on the other side. To me this is a matter of dignity – not of the Lord, but of this congregation – So I ask you today, "What is your dignity worth?" Your actions will show it.

Plaintiff claims that both he and "a number of [his] associates" present at the meeting were "immediately aware" that these comments were directed solely at him and "were meant to depict him in an extremely negative manner." A transcript of the meeting was prepared, including Pastor Schwertfeger's opening prayer. This transcript was made available to members of the congregation.

Plaintiff continued to object to defendants' proposed use of the bequest on the basis that the proposed use was improper under the terms of the gift. As such, renovation of the church was accomplished by other means.<sup>4</sup> In his letter to defendants withdrawing approval of the use of his uncle's funds for the renovation, plaintiff referenced Pastor Schwertfeger's words at the opening of the meeting. Plaintiff requested an apology and an acknowledgement of wrongdoing for the "hurtful, disparaging, and offensive" comments made by Pastor Schwertfeger. Apologies were eventually offered, but they were not satisfactory to plaintiff, at least in part because they were not memorialized as part of the meeting minutes. Thus, plaintiff filed the instant action,

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<sup>3</sup> At the oral argument on appeal, plaintiff's counsel contended that the remarks at issue were not actually made during an opening prayer. Rather, according to plaintiff's counsel, the pastor made the remarks at the beginning of the "informal congregational meeting" after citing a "rather heinous scripture about the wrath of God." After making the remarks at issue, the pastor concluded by saying "let us pray." According to the church's constitution and bylaws, all meetings of the congregation must open with a "short service." We find the distinction between a prayer and what might be deemed a "short service" is not material to our analysis.

<sup>4</sup> Defendants represent that the renovation was paid for by donations from the congregation; the funds from Lawrence Hanneveld's gift to the church were put to another purpose permitted by the terms of that gift. This Court is not presented with any issue relating to the use of the funds or the completion of the renovation.

alleging claims of intentional infliction of emotional distress, false light invasion of privacy, and civil conspiracy.

The trial court granted defendants summary disposition of the complaint, finding that, as explained by this Court in *Maciejewski v Breitenbeck*, 162 Mich App 410, 413-414; 413 NW2d 65 (1987), the ecclesiastical abstention doctrine applied to deprive it of subject matter jurisdiction over plaintiff's claims. The trial court also concluded that plaintiff's claims were barred under *Smith v Calvary Christian Church*, 462 Mich 679; 614 NW2d 590 (2000), because, as a church member, plaintiff had specifically consented to the practices of the church, including the manner in which the church chooses to discipline its members. Additionally, the trial court noted that in the alternative, it would also conclude that plaintiff's claim for intentional infliction of emotional distress was not timely filed, and that Pastor Schwertfeger's remarks were not actionable because they were statements of opinion, and further that having been made during a church service to other church members, the remarks were covered by a qualified privilege.<sup>5</sup>

On appeal, plaintiff argues that the trial court erred in each of its conclusions. We conclude that the trial court correctly dismissed plaintiff's claims pursuant to *Smith*, 462 Mich at 679, on the basis that plaintiff consented to the church's practices of disciplining, correcting or admonishing its members, and therefore, he cannot now complain about damages resulting from those practices.

As our Supreme Court explained in *Smith*,

Under tort law principles, a person who consents to another's conduct cannot bring a tort claim for the harm that follows from that conduct. This is because no wrong is done to one who consents. Without a wrong, plaintiff has no compensable claim. [*Id.* at 689, citing Restatement, § 892A(1).]

In *Smith*, the plaintiff asserted several claims, including intentional infliction of emotional distress and invasion of privacy, based on the pastor's "marking" of the plaintiff by singling him out as a person involved in sin and causing division within the church and by detailing his sins before the church congregation.<sup>6</sup> *Id.* at 681-682. Our Supreme Court observed that the plaintiff had formally become a member of the defendant church, specifically consenting not to cause division within the church, to be faithful to Matthew 18:15-17,<sup>7</sup> and to accept discipline imposed

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<sup>5</sup> The court noted that, were qualified privilege the only basis for dismissal, it would permit plaintiff to amend his complaint to allege actual malice, and would only dismiss the case if plaintiff were unable to do so.

<sup>6</sup> After advising plaintiff's wife and family that the plaintiff would be "marked" and cautioning them against attending services on that day, the pastor revealed to the congregation that the plaintiff had formerly visited prostitutes. *Smith*, 462 Mich at 681-682.

<sup>7</sup> Matthew 18:15-17 has been translated as follows:

by the church. *Id.* at 681. The Court then determined that summary disposition of plaintiff's intentional tort claims was appropriate, explaining that:

the extent of plaintiff's actions do not leave a genuine issue of material fact whether he consented to the defendants' allegedly tortious acts. Because plaintiff had consented to the church's practices, his claims fail as a matter of law and defendants are entitled to judgment under MCR 2.116(C)(10).

Plaintiff manifested his consent to the church's practices in several ways. First, he became actively engaged in the church in 1985, and shortly after, he explicitly consented in writing to obey the church's law, and to accept the church's discipline "with a free, humble, and thankful heart." Thus, plaintiff can be taken to have impliedly consented by his active engagement and participation in the church, or to have expressly consented through his writing. 4 Restatement Torts, 2d, § 892, p. 362. Any doubt whether plaintiff appreciated the scope of his consent by his active engagement is certainly resolved by the explicit writing. Further, as the Supreme Court stated over 130 years ago, "[a]ll who unite themselves to such a body do so with an implied consent to this [church] government, and are bound to submit to it." *Watson [v Jones]*, 80 US (13 Wall) 679,] 729[; 20 L Ed 666 (1871).] [*Id.* at 685-686.]

The Court further ruled that the plaintiff's continued active participation, even following his formal resignation of church membership, constituted continued consent to the church's

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Moreover if thy brother shall trespass against thee, go and tell him his fault between thee and him alone: if he shall hear thee, thou hast gained thy brother.

But if he will not hear thee, then take with thee one or two more, that in the mouth of two or three witnesses every word may be established.

And if he shall neglect to hear them, tell it unto the church; but if he neglect to hear the church, let him be unto thee as an heathen man and a publican. [*The Holy Bible*, Matthew 18:15-17 (King James Version), as per [www.BibleGateway.com](http://www.BibleGateway.com); see also *Smith*, 462 Mich at 681, n 1.]

And as,

If your brother or sistersins, go and point out their fault, just between the two of you. If they listen to you, you have won them over.

But if they will not listen, take one or two others along, so that 'every matter may be established by the testimony of two or three witnesses.'

If they still refuse to listen, tell it to the church; and if they refuse to listen even to the church, treat them as you would a pagan or a tax collector. [*The Holy Bible*, Matthew 18:15-17 (New International Version), as per [www.BibleGateway.com](http://www.BibleGateway.com).]

practices. *Id.* at 688. Therefore, the Court concluded that because “reasonable minds cannot disagree that plaintiff consented to the church’s practices, and manifested his continuing consent by remaining actively engaged with the church, his intentional tort claims against the defendants fail as a matter of tort law.” *Id.* at 689.

Here, as in *Smith*, “plaintiff consented to the church’s practices, and specifically consented to accept discipline,” *id.* at 688, in the form of admonition and correction, by signing the church’s constitution and bylaws, as well as by his ongoing active engagement in the church. St. Jacob’s constitution and bylaws specify that members “permit themselves to be fraternally admonished and corrected when they have erred according to Matthew 18,15-17 [sic].” Viewing the allegations most favorably to plaintiff, including that Pastor Schwertfeger’s comments were directed solely at him to implore him to cede to the will of the congregation, the challenged comments constituted the sort of admonition or correction to which plaintiff specifically consented as a member of the church. Further, unlike the plaintiff in *Smith*, plaintiff here had not undertaken any efforts to resign his church membership or to disassociate himself from the church, or to otherwise revoke his consent to the church’s admonition or correction of him. Therefore, here, as in *Smith*, plaintiff’s intentional tort claims against defendants must fail as a matter of law. *Id.* at 689.<sup>8</sup>

Plaintiff asserts that he was not acting as a member of the church in matters related to the bequest, but rather was acting in a wholly separate legal role as administrator of his uncle’s estate. Therefore, plaintiff argues that that his consent to discipline, admonition and correction as a church member does not bar his claims. We agree that, at times, plaintiff was acting as administrator of his uncle’s estate in opposing use of the bequest for renovation of the church. However, plainly, the damages he alleges to have resulted from Pastor Schwertfeger’s comments are dependent on plaintiff’s status as a member of the church and on his participation in the activities of the congregation. That is, it is damage to plaintiff’s reputation among his fellow congregants, as well as emotional harm arising from his attachment to the church, that plaintiff alleges to have resulted from Pastor Schwertfeger’s comments. Thus, plaintiff’s attempt to distinguish *Smith* based on his involvement as administrator of his uncle’s estate is unavailing.

Likewise, plaintiff’s reliance on the recent Supreme Court order in *Dadd v Mount Hope Church*, 486 Mich 857; 780 NW2d 763 (2010), reversing in part this Court’s decision in *Dadd v Mount Hope Church*, unpublished opinion per curiam of the Court of Appeals, issued April 9, 2009 (Docket No. 278861), is also unavailing. *Dadd* arose after a congregant was injured during an “altar call.” The plaintiff sought payment for medical bills incurred for treatment of her

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<sup>8</sup> In *Smith*, the parties presented our Supreme Court with the question whether the ecclesiastical abstention doctrine applied to bar plaintiff’s claims. However, the Court declined to address that issue, finding it unnecessary to do so because, even assuming the doctrine did not apply, “plaintiff’s claims fail as a matter of tort law.” *Smith*, 462 Mich at 685. We find the same to be true here. Therefore, we likewise decline to address application of the ecclesiastical abstention doctrine in the instant case.

injuries. After being informed that the church's insurance would pay up to \$5,000 of those bills, the plaintiff filed suit against the church, alleging negligence. Thereafter, the defendant pastor addressed the plaintiff's negligence claim from the pulpit and in a letter to certain church members, questioning the merits of the claim as well as plaintiff's moral and spiritual character for bringing the claim, intimating that the plaintiff was malingering, and was attempting to commit insurance fraud. Thereafter, the plaintiff amended her complaint to add claims for intentional infliction of emotional distress, false light, slander and libel. The matter proceeded to trial and the jury found in favor of plaintiff on all counts. On appeal, this Court determined, *inter alia*, that the trial court erred by failing to properly instruct the jury regarding qualified privilege, and on that basis, reversed the jury's verdict as to the plaintiff's claims for false light, libel and slander and remanded for a new trial on those claims. Our Supreme Court disagreed with this Court, concluding that the trial court's error in not instructing the jury on qualified privilege regard was harmless, because the jury found that the defendant acted with malice in making the statements. *Dadd*, 486 Mich at 857. The Supreme Court thus reinstated the jury's verdict. *Id.* The *Dadd* case did not present, and neither this Court nor our Supreme Court in any way addressed therein, the issue of a church member's consent to discipline, admonition or correction by the church. Therefore, *Dadd* has no bearing on resolution of the instant case.

Having concluded that plaintiff's claims are barred under *Smith*, 462 Mich at 685, we need not address the remaining allegations of error raised on appeal.

Affirmed.

/s/ Joel P. Hoekstra  
/s/ E. Thomas Fitzgerald  
/s/ Jane M. Beckering