STATE OF MINNESOTA
IN COURT OF APPEALS
A18-2107

Friends to Restore St. Mary's, LLC,
Appellant,

vs.

Church of Saint Mary, Melrose, et al.,
Respondents.

Filed September 3, 2019
Affirmed
Bjorkman, Judge

Stearns County District Court
File No. 73-CV-17-7601

Erik F. Hansen, Elizabeth M. Cadem, Martin C. Melang, Burns & Hansen, P.A., Minneapolis, Minnesota (for appellant)

Cooper S. Ashley, Cyri A. Van Hecke, Maslon LLP, Minneapolis, Minnesota (for respondents)

Considered and decided by Reyes, Presiding Judge; Bjorkman, Judge; and Rodenberg, Judge.

S Y L L A B U S

The ecclesiastical abstention doctrine bars adjudication of claims under the Minnesota Environmental Rights Act (MERA), Minn. Stat. §§ 116B.01-.13 (2018), if an affirmative defense cannot be resolved without disturbing the ruling of a governing ecclesiastical body with respect to issues of doctrine and without interfering with an internal church decision that affects the faith and mission of the church itself.

O P I N I O N

BJORKMAN, Judge

Appellant challenges summary judgment dismissing its MERA claim, arguing that adjudication of the claim is not precluded by the ecclesiastical abstention doctrine, and that neither the Free Exercise Clause of the First Amendment to the United States Constitution nor the Freedom of Conscience Clause of the Minnesota Constitution bar the MERA claim. Because adjudication of appellant's MERA claim is precluded by the ecclesiastical abstention doctrine, we affirm.

FACTS

This appeal arises from a dispute over whether an arson-damaged church building is a "historical resource" entitled to protection under MERA. Appellant Friends to Restore St. Mary's, LLC, was formed by a group of current and former parishioners of respondent Church of St. Mary, Melrose (St. Mary's or parish), after the St. Mary's church building was damaged by a fire. Appellant seeks an injunction preventing respondents from demolishing the church building "or otherwise impairing its esthetic and historic characteristics, including but not limited to the removal of architectural features," and a declaration that the church building is a natural resource and cannot be demolished under MERA.[1] In addition to the parish, respondents include the Diocese of St. Cloud (the

[1] *See* Minn. Stat. §§ 116B.02, subd. 4 (defining natural resources to include historical resources), .03, subd. 1 (authorizing civil action for declaratory or equitable relief for protection of natural resources, "whether publicly or privately owned").

diocese) and The Most Reverend Donald J. Kettler, Bishop of St. Cloud (Bishop Kettler or the bishop).

The facts relevant to this appeal are undisputed. The St. Mary's church building was dedicated in 1899. It was listed on the National Register of Historic Places in 1993. Although religious properties are not ordinarily listed on the National Register, the registration form states that the church building is historically significant as an institution of outstanding social, cultural, ethnic, and religious importance to the community of Melrose. The Romanesque Revival style recalls the architecture of many of the twin-towered churches and cathedrals of medieval Germany.

In March 2016, the church building was gutted in a fire. The blaze and fire-suppression efforts substantially damaged or destroyed much of the interior of the church, but left the exterior relatively intact. The church building is no longer usable for any parish activities. All masses and worship services since the fire have occurred at a neighboring church or the St. Mary's school gymnasium.

A parish steering committee studied the viability of restoring the church building—in consultation with architects, construction companies, and other restoration professionals—and interviewed four construction companies. Ultimately, the parish presented a "narrative on a proposed restoration post fire damage" to the Diocesan Building Commission (DBC). The narrative recommended restoration to "pre-fire condition to the extent that it is technically feasible and will meet the minimum code requirements," rather than construction of a new church building. But the narrative acknowledged that

> [f]rom a liturgical perspective, our experience on Catholic Church projects over the past 15-20 years would likely indicate the incorporation of a much different interior space than what existed pre-fire. It is likely that relatively drastic changes to the finishes, furnishing and possibly functional layout based on the "Built of Living Stones" document may be suggested if not required. We will defer such opinions to the [DBC] and/or a liturgical consultant to be retained by the Church.

Although the church building is owned by St. Mary's, under canon law, the final decision to restore or build rests with the bishop. The DBC advises the bishop as to whether the renovation or building of a worship space meets the liturgical guidelines of the Roman Catholic Church. Applying liturgical guidelines established since the Second Vatican Council, the DBC unanimously recommended construction of a new church building. Bishop Kettler accepted the recommendation, determining that the many changes and developments in liturgy and worship since the 1899 dedication require construction of a new church building.

Apparently due to zoning constraints at the existing site, plans were developed for new construction on nearby land the parish had previously set aside for other purposes. The plans incorporate various components of the existing church building, including stained glass windows, religious statues and other art, bells, the altar, and other salvageable attributes. After removing these features, some of which are identified on the National Register registration form, respondents intend to demolish the church building.[2]

[2] At the outset of this litigation, respondents orally agreed to preserve the church building in its current condition, presumably for the duration of the litigation.

Respondents moved for summary judgment, arguing that granting the relief sought in the complaint would violate the ecclesiastical abstention doctrine and impose an unconstitutional burden on St. Mary's free-exercise rights under the state and federal constitutions. The parties stipulated that discovery was not necessary for resolution of the summary-judgment motion. After a hearing, the district court granted respondents' motion, concluding that the ecclesiastical abstention doctrine "precludes this Court from exercising any authority to issue an injunction under MERA to prevent the demolition of the [church] building."[3] This appeal follows.

ISSUE

Does the ecclesiastical abstention doctrine preclude adjudication of appellant's MERA claim?

ANALYSIS

Summary judgment is appropriate if the record reflects "no genuine issue as to any material fact" and the moving party "is entitled to judgment as a matter of law." Minn. R. Civ. P. 56.01. This court reviews a grant of summary judgment de novo, evaluating whether genuine issues of material fact exist and whether the district court properly applied the law. *See Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017). Interpretation of a statute is a legal question subject to de novo review. *Lewis-Miller v. Ross*, 710 N.W.2d 565, 568 (Minn. 2006). The constitutionality of a statute is also a

[3] The district court did not reach respondents' free-exercise arguments. Because our determination that the ecclesiastical abstention doctrine precludes adjudication of appellant's MERA claim resolves this appeal, we too decline to reach respondents' arguments that the free-exercise clauses of the state and federal constitutions bar relief.

question of law reviewed de novo. *Rew v. Bergstrom*, 845 N.W.2d 764, 776 (Minn. 2014) (citing *Schatz v. Interfaith Care Ctr.*, 811 N.W.2d 643, 653 (Minn. 2012)).

I. MERA protects the church building unless, in relevant part, there is no feasible and prudent alternative to destruction or impairment of the building.

Under MERA, any person or organization may maintain a civil action in district court for declaratory or other equitable relief in the name of the state to protect natural resources located within the state. Minn. Stat. § 116B.03, subd. 1. "Natural resources" is defined to include "historical resources." Minn. Stat. § 116B.02, subd. 4. Minnesota courts have relied principally on the criteria used to determine whether a property qualifies for inclusion on the National Register of Historic Places to determine whether it is a protected historical resource under MERA. *See State by Archabal v. County of Hennepin*, 495 N.W.2d 416, 421 (Minn. 1993); *State by Powderly v. Erickson*, 285 N.W.2d 84, 88 (Minn. 1979). For purposes of this appeal, we assume the church building remains, after the fire, eligible for inclusion on the National Register and is therefore a protected "historical resource."

To obtain relief under MERA, a plaintiff must make a prima facie showing that "the conduct of the defendant has [caused], or is likely to cause the pollution, impairment, or destruction of the air, water, land or other natural resources located within the state." Minn. Stat. § 116B.04(b). If the plaintiff makes this showing, "[t]he defendant may attempt to rebut the plaintiff's prima facie case with a showing of contrary evidence or . . . offer an affirmative defense." *Archabal*, 495 N.W.2d at 422. It is an affirmative defense under MERA

> that there is no feasible and prudent alternative and the conduct at issue is consistent with and reasonably required for promotion of the public health, safety, and welfare in light of the state's paramount concern for the protection of its air, water, land and other natural resources from pollution, impairment, or destruction.

Minn. Stat. § 116B.04(b). The critical question in this appeal is whether the district court can evaluate whether there are feasible and prudent alternatives to destroying the church building without implicating the ecclesiastical abstention doctrine.

II. The ecclesiastical abstention doctrine precludes adjudication of this action.

The ecclesiastical abstention doctrine, also known as the church-autonomy doctrine, "has its roots in a line of U.S. Supreme Court decisions regarding church property and church schisms." *Pfeil v. St. Matthews Evangelical Lutheran Church*, 877 N.W.2d 528, 532 (Minn. 2016). In *Pfeil*, the Minnesota Supreme Court clarified that the ecclesiastical abstention doctrine is not a matter of subject-matter jurisdiction. *Id.* at 535. After reviewing the United States Supreme Court caselaw, our supreme court identified helpful general rules for applying the ecclesiastical abstention doctrine. *Id.* at 534.

First, civil courts cannot overturn decisions of governing ecclesiastical bodies concerning purely ecclesiastical matters, such as internal church governance or church discipline. *Id.* (citing *Watson v. Jones*, 80 U.S. 679, 727 (1872)). Second, courts may not decide cases that require extensive inquiry into issues of polity or interpretation of church doctrine. *Id.* (citing *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 720, 96 S. Ct. 2372, 2385 (1976); *Presbyterian Church in the U.S. v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 449, 89 S. Ct. 601, 606 (1969)). Third, courts

may only resolve disputes involving religious organizations if (a) the court is able to rely exclusively on neutral principles of law, (b) the court does not disturb a ruling of a governing ecclesiastical body on a matter of doctrine, and (c) "the adjudication does not 'interfere[] with an internal church decision that affects the faith and mission of the church itself.'" *Id.* (alteration in original) (quoting *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC*, 565 U.S. 171, 190, 132 S. Ct. 694, 707 (2012)).

Before the United States Supreme Court's decision in *Hosanna-Tabor*, Minnesota courts analyzed the ecclesiastical abstention doctrine as solely an Establishment Clause question and applied the three-pronged *Lemon* test. *Id.* at 536-37 (citing *Lemon v. Kurtzman*, 403 U.S. 602, 612-13, 91 S. Ct. 2105, 2111 (1971) (holding that a state action must have a secular legislative purpose, must neither inhibit nor advance religion in its primary effect, and must not foster excessive governmental entanglement with religion); *Odenthal v. Minn. Conference of Seventh-Day Adventists*, 649 N.W.2d 426, 435 (Minn. 2002)). But the court recognized in *Pfeil* that the doctrine is grounded in *both* the Free Exercise and Establishment Clauses of the First Amendment. *Id.* And the supreme court noted that *Lemon*'s excessive-entanglement prong is "substantially similar" to *Hosanna-Tabor*'s faith-and-mission inquiry.[4] *Id.* at 537.

Synthesizing this caselaw in light of the arguments raised in this appeal, we focus our analysis on whether an examination of feasible and prudent alternatives to demolition

[4] We note that the United States Supreme Court recently addressed the *Lemon* test in *Am. Legion v. Am. Humanist Ass'n*, 139 S. Ct. 2067 (2019). The discussion of the *Lemon* test in *Am. Legion* is not helpful to our analysis.

of the church building would disturb a ruling of a governing ecclesiastical body with respect to issues of doctrine, interfere with an internal decision that affects the faith and mission of the church, or foster excessive governmental entanglement with religion.

A. The MERA claim cannot be resolved without disturbing a ruling of the governing ecclesiastical body with respect to issues of doctrine.

Applying *Pfeil*, the district court concluded that any decision about "dealing with the [church building] is an internal church decision that affects the faith and mission of the church itself," that the bishop's decision was grounded in canon law and the norms of the Roman Catholic Church, and that application of a secular statute to interfere with the bishop's decision would foster excessive government entanglement with religion.[5]

Appellant argues that resolution of its MERA claim would not disturb any ruling of a governing ecclesiastical body because Bishop Kettler did not actually decide to demolish the church building. In the alternative, if Bishop Kettler did make the demolition decision, appellant contends that it was not based in theology, faith, or church rule, custom, doctrine, or law. We address each argument in turn.

1. Demolition Decision

The record includes the affidavit of the vicar general of the diocese, who chairs the DBC and is a representative of and advisor to Bishop Kettler. The vicar general avers that

[5] Appellant argues that the district court erred because the application of neutral principles of law would resolve its MERA claim. But we need not evaluate whether neutral principles could resolve the dispute if the application of those principles would otherwise violate the ecclesiastical abstention doctrine. *See Pfeil*, 877 N.W.2d at 534. Because other *Pfeil* considerations resolve this appeal, we do not address appellant's neutral-principles arguments.

"[t]he decision by Bishop Kettler to demolish the Church building and build a new one is a decision that impacts the faith and mission of the Roman Catholic Church" and that "Bishop Kettler has the final say for all decisions made about the church buildings in his Diocese" under canon law. It is undisputed that the parish's recommendation to restore the church building was directed to the DBC, and the DBC's recommendation to build anew was directed to Bishop Kettler. The bishop's own affidavit states that he has final legislative, executive, and judicial authority to govern the parishes in his diocese. And a declaration submitted by appellant states that the parish, diocese, *and the bishop* "have made it clear that their intention is to demolish" the church building. Indeed, appellant's complaint alleges that demolition is imminent and seeks an order enjoining respondents from doing so.

Moreover, appellant points to no record evidence that a person or body other than Bishop Kettler made the demolition decision. Nor does appellant argue that the bishop is not the governing ecclesiastical body charged with making the decision. And the parties stipulated that discovery was unnecessary to decide the summary-judgment motion. On this record, it is undisputed that the governing ecclesiastical body—the bishop—decided to demolish the church building.

2. Basis for Decision

Appellant asserts that "there is nothing codified in church teaching or doctrine that disallows multiple structures or the continued existence of a former church building, nor would resolution of this matter . . . dictate church worship practices." Because this argument is unsupported by citation to legal authority or the record, other than the district

court's decision, we need not address it. *See Ganguli v. Univ. of Minn.*, 512 N.W.2d 918, 919 n.1 (Minn. App. 1994) (stating arguments unsupported by legal analysis or citation need not be addressed). We nevertheless consider the argument because it implicates other issues in this case.

Canon law provides that "[i]f a church can in no way be employed for divine worship and it is impossible to repair it, it can be relegated to profane but not sordid use by the diocesan bishop." *See* 1983 Code C.1222, § 1. Appellant does not dispute that the bishop is charged with determining the appropriate use, if any, of a church structure that can no longer be used for worship. But appellant contends that it is not challenging a decision of the bishop as to how to *use* the church building. Rather, appellant asserts its MERA claim—and respondents' affirmative defense—turns on whether the church building can be used by any entity for activities other than worship:

> [F]ormer church buildings may be used for many purposes. For example, a former Seventh Day Adventist Church in Duluth has been converted into a book store and a former church in Dundas, Minnesota, was renovated and adapted into a single-family residence. Other worship spaces have been rehabilitated and transformed into schools, condominiums, lofts, restaurants, and hotels. . . .
>
> The Building has many potential alternative uses that do not affect Catholic tenets, including housing a church of another denomination, a community center, or an institution commemorating the historical significance of Melrose and the German immigrants that founded the city. These would be feasible and prudent alternatives to demolition that in no way invoke an analysis of Canon Law and prevent respondents from showing that "no alternative was available that did not itself create extreme hardship." *Archabal*, 495 N.W.2d at 426. The test is not limited to analysis of possible ways the Catholic Church could use the building.

This argument is unavailing.

In *Piletich v. Deretich*, our supreme court observed that states have an "'obvious and legitimate interest in the peaceful resolution of property disputes, and in providing a civil forum where the ownership of church property can be determined conclusively.'" 328 N.W.2d 696, 700 (Minn. 1982) (quoting *Jones v. Wolf*, 443 U.S. 595, 602, 99 S. Ct. 3020, 3024 (1979)). The *Piletich* court declined to apply the ecclesiastical abstention doctrine because the court could resolve a property-ownership and member-qualification dispute by applying purely secular law, the matter was not "committed to adjudication by the highest tribunal in a hierarchical church," and the dispute was not doctrinal. *Id.* But the supreme court reiterated, "It is axiomatic that civil courts may not constitutionally decide ecclesiastical or doctrinal disputes." *Id.* at 699. The United States Supreme Court similarly concluded that civil courts may resolve questions of church-property ownership with reference to deeds and trust law, where no interpretation of religious doctrine was required. *Jones*, 443 U.S. at 602-05, 99 S. Ct. at 3024-26. "Indeed, a State may adopt any one of various approaches for 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." *Id.* at 602, 99 S. Ct. at 3025 (quotation omitted).

We agree with appellant that this caselaw permits Minnesota courts to apply and interpret a church's charter, constitution, bylaws, and other internal documents where interpretation is not reserved to the highest tribunal in a hierarchical church and does not involve a doctrinal matter. But that is not the situation here. Appellant implicitly concedes

that the Roman Catholic polity is hierarchical and that the bishop has the ultimate authority to make decisions regarding the use of church property. And appellant's contention that Roman Catholic doctrine is irrelevant to the use of a former worship space is not supported by the record.

At oral argument, appellant's counsel asserted that it is "undisputed" that the church building "isn't a sacred space anymore." We disagree. Implicit in the bishop's decision to destroy the burned church building is a determination that there is no acceptable secular use of the building. Respondent's counsel confirmed on the record at the summary-judgment hearing that the church building has not been deconsecrated. Although it is undisputed that the church building is no longer used for worship, nothing in the record supports appellant's assertion that the structure therefore lacks religious significance or has become secular in nature.

As noted above, canon law authorizes the bishop to choose a "profane but not sordid use" for a church building that can no longer be used for worship. 1983 Code C.1222 § 1. Roman Catholic doctrine informs that choice. The record contains a 72-page document issued by the National Conference of Catholic Bishops regarding the liturgical standards that apply to church structures. Nat'l Conf. of Catholic Bishops, *Built of Living Stones: Art, Architecture, and Worship* (2000). This document states that "special care" must be taken "when it becomes necessary to raze an old church." *Id.* at 44. And it highlights the importance of respecting and preserving church artifacts and furnishings. *Id.* When a church building is to be torn down, *Built of Living Stones* stresses the importance of recognizing the building's significance; "the most appropriate ritual" is the celebration of

a final mass at the old worship space followed by a procession of the people to the new worship space. *Id.*

Appellant also argues that, although the bishop has the authority to choose a use for the church building, this authority does not extend to demolition. We are not persuaded. Indeed, appellant's argument demonstrates that resolution of its MERA claim implicates church doctrine. Only an interpretation of canon law and related doctrinal guidelines could resolve the question whether demolishing or repurposing an arson-damaged church building located on church property, where church activities continue, constitutes a "profane but not sordid use." On this record, we cannot conclude that the church building is, as appellant asserts, "[a] secular building [that] requires an application of secular law," or that a decision about its use does not implicate the ritual and liturgy of worship or the tenets of faith.

In sum, on the undisputed facts presented, the use of the church building—even though it is no longer suitable for worship—is reserved to the bishop's authority and implicates Roman Catholic tenets and beliefs. Appellant's MERA claim is premised on the existence of feasible and prudent alternatives to demolition. Asking the district court to determine whether the church building could be used for secular purposes would disturb a ruling of the governing ecclesiastical body with respect to issues of doctrine.

B. The MERA claim cannot be resolved without interfering with an internal church decision that affects the faith and mission of the church itself.

Appellant next argues that adjudication of its MERA claim does not implicate the ecclesiastical abstention doctrine because St. Mary's will continue to celebrate the liturgy,

perform sacraments, house its congregation, and otherwise fulfill its mission in a new church building, regardless of whether the damaged church building is demolished. The district court noted the significance of church buildings in the Roman Catholic faith tradition. Because these buildings play an important role in facilitating a regular unfolding of the Christian mystery, the district court concluded that "any decisions about renovating or otherwise dealing with the [church building] is an internal church decision that affects the faith and mission of the church itself." Appellant does not directly challenge this determination, but suggests that the impact of its MERA claim on faith and mission is not substantial enough to apply the ecclesiastical abstention doctrine. We disagree.

In *Pfeil*, our supreme court held that "adjudicating a defamation claim based on statements made during a church disciplinary proceeding and published only to members of the religious organization and its hierarchy would 'interfere[] with an internal church decision that affects the faith and mission of the church itself' and would excessively entangle the courts with religion." 877 N.W.2d at 541 (alteration in original) (quoting *Hosanna-Tabor*, 565 U.S. at 190, 132 S. Ct. at 707). Notably, the supreme court did not premise its decision on whether the church could continue to pursue its faith and mission *generally*. Rather, the focus was on whether the defamation claim could be resolved without interfering with church decision-making that implicates faith and mission. *Id.* In *Hosanna-Tabor*, the United States Supreme Court likewise focused its analysis on the precise church conduct at issue, holding that resolution of employment-discrimination claims brought by ministers would interfere with the religious organization's right to select its own ministers to shape its faith and mission. 565 U.S. at 188, 132 S. Ct. at 706.

But in *Odenthal*, the supreme court held that allowing a negligent-counseling claim to proceed against a minister did not create excessive entanglement, as long as neutral principles of law could be applied without regard to religious doctrine. *Odenthal*, 649 N.W.2d at 436. Unlike *Pfeil* and *Hosanna-Tabor*, *Odenthal* did not involve an institutional decision. *See id.* at 435. But the supreme court reaffirmed that, "Under the entanglement doctrine, a state may not inquire into or review the internal decisionmaking or governance of a religious institution." *Id.*

Similarly, in *Black v. Snyder*, this court held that a former pastor's employment-discharge claims were barred due to excessive entanglement, but her sexual-harassment claims were not. 471 N.W.2d 715, 721 (Minn. App. 1991), *review denied* (Minn. Aug. 29, 1991). We concluded that the discharge-related claims "are fundamentally connected to issues of church doctrine and governance and would require court review of the church's motives for" discharge. *Id.* at 720. But because the sexual-harassment claim was "unrelated to pastoral qualifications or issues of church doctrine," the First Amendment did not bar it. *Id.* at 721. In *Hill-Murray Fed'n of Teachers v. Hill-Murray High Sch.*, lay teachers petitioned for determination of an appropriate bargaining unit and certification to exclusively represent the teachers on issues related to hours, wages, and working conditions. 487 N.W.2d 857, 860-61 (Minn. 1992). Noting that "[t]he first amendment wall of separation between church and state does not prohibit limited governmental regulation of purely secular aspects of a church school's operation," our supreme court allowed the litigation to proceed because "the level of state intervention is minimal." *Id.* at 864.

Here, the bishop made an internal, institutional decision to demolish the church building; the question is the degree to which the decision is connected to the church's faith and mission. "Excessive entanglement is, ultimately, a question of degree." *Black*, 471 N.W.2d at 721; *see also Pfeil*, 877 N.W.2d at 537 (determining that "faith and mission" factor and "excessive entanglement" question under *Lemon* test are substantially similar). We conclude that claims relating to a religious organization's internal decision on what to do with an arson-damaged, consecrated worship space are more analogous, with respect to faith and mission, to selecting ministers or determining church membership than to claims relating to secular aspects of an employment relationship or sexual harassment. On the record before us, the decision to remove features of religious significance and demolish the church building is an internal decision that affects the faith and mission of the church. Appellant's MERA claim cannot be adjudicated without violating the ecclesiastical abstention doctrine.

We recognize that the loss of this beautiful, old, treasured church building is, and will continue to be, keenly felt. And we are cognizant that our ruling leaves appellant without a remedy under the law. "Sometimes . . . the courts cannot award a remedy, no matter how valid the claim. These are not easy decisions. But they are necessary decisions, particularly where, as here, the right to a remedy must be weighed against constitutionally enshrined commitments to religious freedom." *Pfeil*, 877 N.W.2d at 542.

D E C I S I O N

The ecclesiastical abstention doctrine precludes adjudication of this MERA claim. Respondents' affirmative defense that there are no feasible and prudent alternatives to

demolishing the church building cannot be resolved without disturbing a ruling of the governing ecclesiastical body with respect to issues of doctrine, interfering with an internal decision that affects the faith and mission of the church, and fostering excessive governmental entanglement with religion. The district court properly granted summary judgment.

Affirmed.