NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2650-20

SHLOMO HYMAN,

Plaintiff-Appellant,

and

FREIDI HYMAN, BRACHA HYMAN, YAAKOV HYMAN, AHARON HYMAN, TEMIMA HYMAN, and ELIORA HYMAN (a minor, by her parent and guardian SHLOMO HYMAN),

Plaintiffs,

v.

ROSENBAUM YESHIVA OF NORTH JERSEY, ADAM MERMELSTEIN, YEHUDA ROSENBAUM, and DANIEL PRICE,

Defendants-Respondents.

APPROVED FOR PUBLICATION
February 8, 2023
APPELLATE DIVISION

Argued December 12, 2022 – Decided February 8, 2023

Before Judges Gooden Brown, DeAlmeida and Mitterhoff.

On appeal from the Superior Court of New Jersey, Law Division, Bergen County, Docket No. L-8214-19.

Richard I. Scharlat argued the cause for appellant (Fox Rothschild LLP, Robert J. Tolchin (The Berkman Law Office, LLC) and Oleg Rivkin (Rivkin Law Group) of the New York bar, admitted pro hac vice, attorneys; Richard I. Scharlat, Robert J. Tolchin, and Oleg Rivkin, on the briefs).

Akiva Shapiro (Gibson, Dunn & Crutcher LLP) of the New York bar, admitted pro hac vice, argued the cause for respondents (Hartmann Doherty Rosa Berman & Bulbulia LLC, Akiva Shapiro, and Jessica C. Benvenisty (Gibson, Dunn & Crutcher LLP) of the New York bar, admitted pro hac vice, attorneys; Mark A. Berman, Jeremy B. Stein, Akiva Shapiro, and Jessica C. Benvenisty, on the brief).

The opinion of the court was delivered by

MITTERHOFF, J.A.D.

Plaintiff Shlomo Hyman appeals from an April 16, 2021 order granting defendants' motion for summary judgment based on the ministerial and ecclesiastic abstention doctrines. Plaintiff argues the court erred in dismissing his defamation claim because the ministerial exception applies only to employment discrimination claims, and because further discovery was required to determine whether the motivation behind the dissemination of a letter concerning the termination was ecclesiastic in nature.

We reject plaintiff's arguments and affirm. We conclude that the ministerial exception operates to bar any tort claim provided (1) the injured party is a minister formerly employed by a religious institution and (2) the

claims are related to the religious institution's employment decision. Because the ministerial exception alone bars plaintiff's defamation claim, we find it unnecessary to address whether the ecclesiastic abstention doctrine was an independent basis to dismiss the action.

Rosenbaum Yeshiva of New Jersey (RYNJ) is an Orthodox Jewish school. One defining feature of Orthodox Judaism that RYNJ embraces is its commitment to specific principles of behavior and conduct such as restrictions on physical contact between unrelated people of different genders. In making its hiring decisions, RYNJ would consider religion, whether the candidate would regularly conduct themselves in accordance with law according to Jewish practice (halacha) and tenants of Orthodox Judaism, and whether the candidate would be able to inspire students to embrace RYNJ's version of a Torah way of life. If RYNJ determined, based on its understanding of Orthodox Jewish law and in consultation with halachic authorities, that a Judaic studies teacher has behaved in a way that does not adhere to halacha, it would terminate that teacher's employment.

In 1988, plaintiff was hired as a Judaic studies teacher at RYNJ. Plaintiff's role as a rebbe (a rabbi who is an elementary school teacher) and Judaic studies teacher reflected his background and training as a rabbi. Plaintiff used the titles of rabbi and rebbe and exclusively taught Judaic studies

classes during his employment at RYNJ. Through his position as an ordained rabbi teaching at an Orthodox Jewish School, plaintiff applied for and received an annual parsonage[1] allowance from RYNJ.

Since RYNJ does not grant tenure status to staff members, plaintiff was required to sign a new employment agreement each year he received a new offer letter. By signing the employment agreement, plaintiff agreed to abide by certain policies and standards of conduct for teachers that embodied the Orthodox Jewish religious standards and rules of halacha. Plaintiff also acknowledged receipt and understanding of the Staff Handbook, which set out standards of conduct for RYNJ teachers. The Staff Handbook states that RYNJ teachers, particularly those who teach Orthodox Jewish religious law and practices, are expected to conform to the school's religious principles, such as refraining from touching students of the opposite gender that are in the third grade or older.

In February 2019, RYNJ learned of allegations of inappropriate interactions between plaintiff and former female students. Prior to these allegations, plaintiff was frequently praised for his teaching and had not received a single written complaint of improper conduct. Following the

[1] Parsonage is a tax benefit for rabbis and other religious figures that allows them to accept a portion of their salaries in the form of payment for their living expenses.

allegations, plaintiff was placed on administrative leave and the Yeshiva Board of Directors (Board) began an investigation into the allegations, hiring the law firm Arnold & Porter Kaye Scholer LLP (Arnold & Porter) to conduct the inquiry. Over the course of several months, Arnold & Porter interviewed numerous witnesses including plaintiff, former students, members of students' families, and both the current and former head of RYNJ.

In May 2019, Arnold & Porter presented its findings to the Board and Rabbi Daniel Price, Head of RYNJ, including that former fifth and sixth grade female students reported that plaintiff had intentionally touched them and other girls in his classes by massaging girls' shoulders, touching them on clothed parts of the body that he should not have touched, placing stickers on or near their chests, and creating classroom games that caused him to touch them. After receiving Arnold & Porter's findings and consulting halachic authorities, RYNJ terminated plaintiff's employment because plaintiff's conduct violated the Orthodox Jewish standards of conduct set out in the RYNJ Staff Handbook. Plaintiff was allegedly never given a chance to defend himself.

Along with considering whether plaintiff's employment should be terminated, RYNJ also considered whether and to what extent to inform its community about the allegations against plaintiff and RYNJ's employment

decision. On May 15, 2019, after consulting with halachic authorities, Rabbi Price emailed the following letter to the parents at RYNJ:

> I am writing to let you know that Rabbi Shlomo Hyman, who has been on leave, will not be returning to RYNJ.
>
> In late February, the leadership of the Yeshiva received information that warranted placing Rabbi Hyman on leave. At the same time, the Yeshiva also retained Arnold & Porter, a highly regarded national law firm to conduct an independent investigation. As a result of that process, it was determined that Rabbi Hyman's conduct had been neither acceptable nor consistent with how a rebbe in our Yeshiva should interact with students. In consultation with counsel and halachic advisors, the leadership of the Yeshiva has terminated his employment and has determined that no further action is necessary at this time. We are confident that this course of action is the right one for the school and its students.
>
> Tomorrow, the students in Rabbi Hyman's classes will be notified that he will not be returning. I am sure that their current teachers will continue to guide them successfully through the remainder of the year. As always, our guidance staff is available to you and your children as needed. I understand that this does not address every question you may have. However, given the sensitive nature of this situation, and the advice we have received from legal and halachic authorities, this is all the information that we can share at this time.
>
> Thank you for your patience, support and understanding.

The letter was spread throughout the entire school community and similar Jewish communities. Additionally, plaintiff's picture appeared on Jewish websites such as "Frums Follies" and "Lost Messiah," and the allegations were disseminated by bloggers. As a result, plaintiff was allegedly branded as a pedophile among the Jewish community, which affected any possibility of him obtaining future employment in education.

On November 29, 2019, plaintiff filed a complaint against defendants, alleging (1) breach of contract; (2) breach of the covenant of good faith and fair dealing; (3) age discrimination under New Jersey Law Against Discrimination; (4) defamation; (5) defamation per se; (6) defamation by innuendo; (7) injurious falsehood; (8) tortious interference with future economic opportunities; (9) negligent infliction of emotional distress; and (10) outrageous conduct causing emotional distress.[2] The complaint alleged RYNJ conducted a "sham investigation" into "baseless allegations." Plaintiff then alleged based on the sham investigation, RYNJ wrongfully terminated him, maliciously emailed the letter to the community, and falsely branded him as a pedophile to accomplish two goals. First, to reduce its payroll and get an older

[2] The injurious falsehood and emotional distress claims were also brought by the other plaintiffs below, but since they are not appealing the decision, they are not before us.

teacher off the books, and second, to rebuild RYNJ's image and reputation as an institution that does not take a casual view of pedophilia.

On February 6, 2020, defendants moved to dismiss the complaint in its entirety for failure to state a claim, namely that plaintiff's claims were barred by the ministerial exception. On June 5, 2020, the judge, although refusing to apply the ministerial exception and the ecclesiastical abstention doctrine without a factual record, partially granted defendants' motion, dismissing only counts eight through ten, without prejudice, in an order and oral decision.

On June 29, 2020, defendants filed a motion for leave to appeal the trial judge's June 5, 2020 order. On July 24, 2020, we denied defendants' motion for leave to appeal, and stated, "[t]he issues raised concerning the applicability of the ministerial exemption, and whether it covers all or only some of plaintiff's claims, may be renewed on a motion for summary judgment following discovery and the further development of an appropriate and fuller factual record."

On August 26, 2020, defendants filed a motion to bifurcate discovery, requesting that the first phase of discovery be limited to the ministerial exception issue. On September 29, 2020, the judge granted defendants' motion to bifurcate discovery, stating that "the first phase of discovery shall be limited to [d]efendants' ministerial exception argument and shall conclude by

[December 31, 2020] with all other discovery stayed pending resolution of motion for summary judgment on the applicability of the ministerial exception . . . ."

On February 5, 2021, defendants renewed their motion for summary judgment. During the April 16, 2021 summary judgment hearing, plaintiff admitted he was a minister within the meaning of the ministerial exception and agreed to dismiss the age discrimination claim. At the conclusion of the hearing, the judge granted defendants' motion and dismissed plaintiff's entire case, with prejudice, in an order and oral decision, finding that since plaintiff admitted to being a minister and the claims involved RYNJ's employment decision, the judge could not allow the suit to continue under the First Amendment.

The judge, in formulating his decision, stated:

> So we have . . . . [d]efendant in this case, terminating . . . an admitted minister who's a religious teacher.
>
> . . . . [D]oes . . . being a minister, . . . in any way connect to . . . the doctrine of excessive entanglement in ecclesiastical issues. . . . . And the doctrines in my opinion are related, obviously.
>
> . . . .
>
> . . . . [A]nd . . . so what is excessive entanglement in ecclesiastical decisions? If we're talking about . . . an admitted minister who's a

religious teacher, . . . is that ecclesiastical? Well, I think it is. I know it is. If we're going to talk about excessive entanglement, which is something that [plaintiff] conceded, I have to look at, as part of this decision, but I can't look at it because there's no discovery yet, do I have to look at it in terms of whether there's excessive entanglement given [sic] the fact that this [p]laintiff is a minister who taught nothing but religion in this school for its reasons, identified reasons, wants to fire [sic]? Can I get into involvement in that? In other words, . . . the contract based claims and the defamation claims, can they survive?

. . . .

So in this case the school gave a reason for his firing. His firing pre-dated . . . the publication of a letter. The letter was justified by school officials as being consistent with religious law that controlled their school as interpreted by them and perhaps other religious authorities not necessarily associated with them, or not associated by way of employment.

So in concert with who the school contacted and discussed this matter with, they felt that pursuant to their interpretation of religious law the community had to know why [plaintiff] was terminated. And the verbiage in that letter is what it is and no one disputes it.

. . . .

Now in any of these cases where there is a disagreement between the teacher, in this case a religious minister, and the religious school about what the minister did or did not do, if this suit is allowed to progress, then at any time anybody can challenge a religious school's firing of their religious staff in court if they simply say they disagree with the reasons given

> for the firing. And what are the reasons? The reasons are in the letter. The school made a judgment call based upon the reports given that the way the reports were made, what [plaintiff] did or did not do, which wasn't specified in the letter, that causes school officials after discussing the religion and what should or should not be done under Jewish Law, some concerns for the continued employment of [plaintiff].

With that background, the judge found:

> I don't know how I can allow this to continue under the First Amendment. . . . [T]he school had to make a judgment call on the veracity of what took place as reported by the Arnold Porter law firm. And then the school talked to religious authorities about what it should or should not do from a religious point of view considering [plaintiff] was their religious teacher, the very basis, the very essence of the school. To allow the letter to be challenged so to speak in terms of its accuracy in what the basic facts were which led to the letter being published flies in the face of what the school did.
>
> . . . . [A]nd this gentleman was a . . . religious teacher, the school has the authority to figure out who's going to teach their students what the school religious tenets are, or the religious tenets of the school. . . . The [c]ourt is not going to permit the challenge to that because to do that defies, in this [c]ourt's mind, the very essence of the U.S. Supreme Court cases . . . and [New Jersey cases.] . . . [T]he school had the right to fire [plaintiff] after discussion of what the correct religious approach would be to effectuate the termination. And I'm not going to permit the [p]laintiff to challenge that under these circumstances.
>
> So the fact that he is a minister demonstrates that when he's fired for the religious reason placed in

> the letter, that by definition, if I allowed this suit, that would mean that it would be excessive entanglement with ecclesiastical liturgy or tenets. So by definition, if you're a minister that means in this [c]ourt's mind that to allow this suit to occur would be an excessive entanglement with this school's religion.

Accordingly, the judge granted defendants' motion and dismissed counts three, by plaintiff's concession, and dismissed counts one, two, four, five, six, and seven with prejudice. This appeal followed.

On appeal, plaintiff presents the following arguments:

> POINT I
>
> THIS COURT'S DE NOVO REVIEW OF THE TRIAL COURT'S ORDER GRANTING SUMMARY JUDGEMENT SHOULD RESULT IN A REVERSAL
>
> > A. De Novo Review of the Trial Court's Dismissal
> >
> > B. The Trial Court Applied the Wrong Standard and Incorrectly Treated the Summary Judgment Motion As if it Were a Motion to Dismiss
>
> POINT II
>
> THE TRIAL COURT ERRED BY CONCLUDING THAT [PLAINTIFF'S] STATUS AS A MINISTER ALONE MANDATED A DISMISSAL OF HIS DEFAMATION CLAIM AND THUS MISCONSTRUED THE MINISTERIAL EXCEPTION

A. The Ministerial Exception Applies Exclusively to Employment Discrimination Claims

B. The Ministerial Exception Does Not Apply To [Plaintiff's] Defamation Claims

POINT III

THE TRIAL COURT ERRED IN HOLDING THAT THE ECCLESIASTICAL ABSTENTION DOCTRINE BARS [PLAINTIFF'S] DEFAMATION CLAIMS . . .

A. The Scope of the Ecclesiastical Abstention Doctrine

B. The Trial Court Erred in its Reading of the Complaint, Impermissibly Accepted Respondents' Unsworn Factual Explanations for Their Conduct, And Misapplied the Governing Law

1. The Trial Court Committed Reversible Error By Construing [Plaintiff's] Defamation Claims As a Challenge to his Firing

2. The Trial Court Committed Reversible Error By Finding, Without Allowing [Plaintiff] to Conduct Discovery, that RYNJ's Decision to Terminate [Plaintiff] Was "A Judgement Based on the Reports"

3. The Trial Court Committed Reversible Error by Concluding That RYNJ's

Defamatory Letter Did Not Brand [Plaintiff] a Child Abuser

4. The Trial Court Committed Reversible Error by Allowing Respondents to Hide Behind "Religious Advice" as a Defense to Defamation

POINT IV

[PLAINTIFF'S] DEFAMATION CLAIM CAN BE PROVEN BY THE APPLICATION OF PURELY NEUTRAL PRINCIPLES OF LAW

POINT V

[PLAINTIFF] HAS IDENTIFIED NUMEROUS AND SPECIFIC FACTS WITH PARTICULARITY THAT DEMONSTRATE THE LIKELIHOOD THAT FURTHER DISCOVERY WILL PROVIDE PROOF OF THE NECESSARY ELEMENTS OF HIS DEFAMATION CLAIMS

We review a trial court's grant of summary judgment de novo, applying the same standard as the trial court. Conley v. Guerrero, 228 N.J. 339, 346 (2017). Summary judgment must be granted "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." Templo Fuente De Vida Corp. v. Nat'l Union Fire Ins. Co. of Pittsburgh, 224 N.J. 189, 199 (2016) (quoting R. 4:46-2(c))

Plaintiff first argues the judge effectively treated defendants' motion for summary judgment as a motion to dismiss because discovery on the defamation issues had not yet been completed. Plaintiff contends outstanding responses to interrogatories and document requests that plaintiff sought in connection with his defamation claims before bifurcation of discovery bear on material issues related to his defamation claims and could give rise to a jury question, even if plaintiff were deemed a minister. Plaintiff asserts his status as a minister alone should not have precluded discovery and he should have been given the opportunity to obtain additional discovery prior to summary judgment on the defamation claims.

When "the court considers evidence beyond the pleadings" the motion is treated as "a motion for summary judgment, and the court applies the standard of Rule 4:46." Dimitrakopoulos v. Borrus, Goldin, Foley, Vignuolo, Hyman & Stahl, P.C., 237 N.J. 91, 107 (2019). "Generally, summary judgment is inappropriate prior to the completion of discovery." Wellington v. Estate of Wellington, 359 N.J. Super. 484, 496 (App. Div. 2003). A plaintiff, however, "has an obligation to demonstrate with some degree of particularity the likelihood that further discovery will supply the missing elements of the cause of action." Auster v. Kinoian, 153 N.J. Super. 52, 56 (App. Div. 1977).

Here, the judge decided defendant's motion for summary judgment based on evidence beyond the pleadings as evidenced by the comment, "I saw somewhere in the papers that he has never [t]aught a secular class, it's totally religion." The fact that plaintiff exclusively taught religious classes was not included in the pleadings, and therefore the judge properly decided defendant's motion as a motion for summary judgment based on the discovery conducted. Although the parties did not conduct full discovery, further discovery would not save plaintiff's defamation claims from summary judgment for the reasons more fully addressed below.

Plaintiff argues the ministerial exception is a narrowly tailored principle that provides religious institutions with a shield specifically against employment discrimination claims. Plaintiff contends the ministerial exception does not apply to his defamation claims. Plaintiff asserts the judge's logic would mean that a minister could never bring an action against their employer for any tort because his status as a minister alone would preclude the tort claims. Plaintiff argues the implausibility of the judge's ruling is further exacerbated by the fact that he was no longer an employee at RYNJ when the school emailed the letter.

Defendants argue the ministerial exception applies because plaintiff is a minister, and his defamation claims arise out of the religious school's decision

to terminate his employment as a religious studies teacher. Defendants assert the allegedly defamatory statement, that plaintiff's conduct was neither acceptable nor consistent with how a rebbe in the Yeshiva should interact with students, is defendants' explanation of its employment decision. Defendants contend a ruling on the defamation claims would thus necessarily require a review of RYNJ's termination decision, which is what the ministerial exception prohibits. Further, since the letter was drafted in consultation with and reflected the advice of religious authorities, defendants contend a secular court could not determine whether the letter was defamatory without calling into question a religious judgment regarding employment. Defendants argue the ministerial exception applies to cases beyond employment discrimination cases, but it would not apply to all tort cases as plaintiff alleges. Defendants assert the fact that plaintiff was no longer an employee does not matter because the judge would still have to improperly delve into and second guess RYNJ's decision to terminate one of its religious teachers.

The First Amendment of the United States Constitution provides, in part, that "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof." The Supreme Court of the United States has recognized that "both Religion Clauses bar the government from interfering with the decision of a religious group to fire one of its ministers."

Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC, 565 U.S. 171, 181 (2012). In Hosanna-Tabor, the Court "recognized the existence of a 'ministerial exception,' grounded in the First Amendment, that precludes application of [Title VII] to claims concerning the employment relationship between a religious institution and its ministers." Id. at 188. After concluding "that there is a ministerial exception grounded in the Religion Clauses of the First Amendment," the Court found the ministerial exception applied to an employment discrimination claim brought by an elementary school teacher against the religious school where she taught. Id. at 176-77, 190.

In explaining the rationale for the ministerial exception, the Court stated,

> [t]he members of a religious group put their faith in the hands of their ministers. Requiring a church to accept or retain an unwanted minister, or punishing a church for failing to do so, intrudes upon more than a mere employment decision. Such action interferes with the internal governance of the church, depriving the church of control over the selection of those who will personify its beliefs. By imposing an unwanted minister, the state infringes the Free Exercise Clause, which protects a religious group's right to shape its own faith and mission through its appointments. According [to] the state the power to determine which individuals will minister to the faithful also violates the Establishment Clause, which prohibits government involvement in such ecclesiastical decisions.
>
> [Id. at 188-89.]

The Court further explained, "[t]he purpose of the exception is not to safeguard a church's decision to fire a minister only when it is made for a religious reason. The exception instead ensures that the authority to select and control who will minister to the faithful . . . is the church's alone." Id. at 194-95.

In reference to requests for money damages, the Court reasoned,

> [a]n award of [damages] would operate as a penalty on the Church for terminating an unwanted minister, and would be no less prohibited by the First Amendment than an order overturning the termination. Such relief would depend on a determination that Hosanna-Tabor was wrong to have relieved [the teacher] of her position, and it is precisely such a ruling that is barred by the ministerial exception.
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> [Id. at 194.]

In other words, the ministerial exception still applies even if the plaintiff is not seeking reinstatement. Ibid.

The Court later addressed the issue of the ministerial exception in the case Our Lady of Guadalupe School v. Morrissey-Berru, holding that the ministerial exception applied to two teachers' lawsuits even though they were not given the title of "minister." 140 S. Ct. 2049, 2055 (2020). Although the ministerial exception was again confined to employment discrimination claims, the Court noted,

> [t]he religious education and formation of students is the very reason for the existence of most private religious schools, and therefore the selection and

> supervision of the teachers upon whom the schools rely to do this work lie at the core of their mission. Judicial review of the way in which religious schools discharge those responsibilities would undermine the independence of religious institutions in a way that the First Amendment does not tolerate.
>
> [Ibid.]

The Court later explained, "[w]hen a school with a religious mission entrusts a teacher with the responsibility of educating and forming students in the faith, judicial intervention into disputes between the school and the teacher threatens the school's independence in a way that the First Amendment does not allow." Id. at 2069.

Even though the Court has yet to decide whether the ministerial exception applies to cases beyond employment discrimination cases, the Court's decisions in Hosanna-Tabor and Our Lady of Guadalupe undoubtedly left the door open for a broader application of the ministerial exception. In fact, the Court in Hosanna-Tabor explicitly stated, "[w]e express no view on whether the exception bars other types of suits, including actions by employees alleging breach of contract or tortious conduct by their religious employers. There will be time enough to address the applicability of the exception to other circumstances if and when they arise." 565 U.S. at 196.

In New Jersey, there is no published case directly addressing whether the ministerial exception applies to cases beyond employment discrimination

cases. We therefore consider jurisdictions that have addressed the issue to provide insight into the permissibility of a broader application of the ministerial exception. In Petruska v. Gannon University, a Third Circuit held, "[t]he ministerial exception, as we conceive of it, operates to bar any claim, the resolution of which would limit a religious institution's right to select who will perform particular spiritual functions." 462 F.3d 294, 307 (3d Cir. 2006) (emphasis added). In Petruska, the defendant, a private catholic diocesan college, underwent a restructuring of the chaplain's division, resulting in the plaintiff being ousted from her job as University Chaplain. Id. at 299-301. Thereafter, the plaintiff filed a complaint with the Equal Employment Opportunity Commission and asserted six claims: two violations of Title VII, fraudulent misrepresentation, civil conspiracy, breach of contract, and negligent supervision and retention. Id. at 301-02.

Regarding the plaintiff's state tort claims, the court found the ministerial exception applied to the civil conspiracy claim and the negligent supervision and retention claim because the claims "turn on [the plaintiff's] ability to prove that [the defendant's] restructuring constituted an unlawful or tortious act." Id. at 309. The court reasoned that "the First Amendment protects [the defendant's] right to restructure[,] regardless of its reason for doing so[,]" and thus the court could not "consider whether the act was unlawful or tortious[.]"

Ibid. The court, however, did not apply the ministerial exception to the plaintiff's fraudulent misrepresentation claim because "[u]nlike [the plaintiff's] civil conspiracy or negligent supervision claims, which require proof of the unlawful act or intentional harm, the resolution of [the plaintiff's] fraudulent misrepresentation claim does not turn on the lawfulness of the decision to restructure, but rather upon the truth or falsity of the assurances that she would be evaluated on her merits when she was initially appointed as University Chaplain in July of 1999." Id. at 310. In other words, the ministerial exception did not apply because the fraud claim did not infringe upon the defendant's decision to select its ministers. Ibid.

In the California Appeals Court case Gunn v. Mariners Church, Inc., the court ruled the ministerial exception applies to tort claims where the tortious acts and statements are "part and parcel" of the termination. 167 Cal. App. 4th 206, 217 (2008). In Gunn, the plaintiff filed a complaint alleging tort claims of defamation, invasion of privacy, and intentional infliction of emotional distress, after the defendant terminated the plaintiff from his position as worship director upon discovering he was a homosexual. Id. at 208. After the plaintiff's termination, the senior pastor told the congregation that the church fired the plaintiff "because he had admitted to acts the church considered to be a sin." Ibid.

The court affirmed the trial court's dismissal of the plaintiff's entire complaint because it found that the ministerial "exception applies to otherwise actionable claims of defamation and invasion of privacy, when based on statements 'related to the hiring, firing, discipline or administration of clergy.'" Id. at 217 (quoting Higgins v. Maher, 210 Cal. App. 3d 1168, 1175 (1989)). The court rejected the plaintiff's argument that the ministerial exception has no application to statements or acts that occur after termination, stating the exception "would encompass post-termination acts if they were part of the process of termination." Ibid. The court noted "this is not a case . . . in which [defendant's] acts occurred at some remote time unrelated to the termination of his pastoral employment." Ibid. The court also explained that evaluating the truth or falsity of the defendant's defamatory statements "necessarily requires inquiry into the doctrinal beliefs of [the defendant] – something we cannot undertake to do." Id. at 216. "[O]nce it has been established the statements were made in relation to the process of [the plaintiff's] termination the ministerial exception applies regardless of the tortious nature of the statements." Ibid.

In another California Appeals Court case, Sumner v. Simpson University, the court applied the ministerial exception to the plaintiff's three tort claims: defamation, invasion of privacy, and intentional infliction of

emotional distress because they were "part and parcel of the actions involved in her termination." 27 Cal. App. 5th 577, 581 (2018). In Sumner, the plaintiff brought suit after she was terminated from her position as the Dean of the Tozer Seminary, which educated clergy and was owned by the defendant. Id. at 581. The plaintiff challenged the circumstances surrounding her termination and the reasons and procedure for her termination. Id. at 594. In addressing the fact that the reasons given for terminating the plaintiff were not strictly religious, the court noted that the "First Amendment protects the act of a decision rather than a motivation behind it." Id. at 596 (quoting Schmoll v. Chapman Univ., 70 Cal. App. 4th 1434, 1440 (1999)).

Finally, in the Texas Appeals Court case Patton v. Jones, the court held "actions taken as part [of] the Church's employment decision are ecclesiastical matters protected from secular review by the 'ministerial exception' afforded under the Free Exercise Clause." 212 S.W.3d 541, 552 (Tex. App. 2006). In Patton, the plaintiff was fired from his position as the Director of Youth Ministries after allegations arose that the plaintiff "had upset congregation members by dating certain women and by putting his arm around girls at the church[,]" and had used internet pornography for recreation. Id. at 545-46. Later, the committee chairwoman of the Staff Parish Relationship Committee wrote to two concerned members of the congregation, informing them that the

committee shared their concern for the youth program and that the church would begin a search for a new youth director after speaking with the district superintendent and other members of the committee. Id. at 546. The plaintiff subsequently brought suit alleging defamation and tortious interference with an employment contract. Ibid.

The court affirmed the trial court's dismissal of the plaintiff's claims "because they arose from actions taken and communications made in connection with the [defendant's] decision to terminate [him] from a 'ministerial' position and the First Amendment prohibits secular review of a church's employment decisions about its ministers." Id. at 555. The court stated, "if the claim challenges a religious institution's employment decision, the sole jurisdictional injury is whether the employee is a member of the clergy or otherwise serves a 'ministerial' function . . . ." Id. at 548. "If the employee is a minister, then the 'ministerial exception' applies preventing secular review of the employment decision without further question as to whether the claims are ecclesiastical in nature." Ibid. The court found if the injured party is considered a minister, "then pursuant to the ministerial exception . . . claims for defamation and tortious interference are not subject to secular review." Ibid. In rejecting the plaintiff's argument that the ministerial exception does not apply to one of his defamation claims because those allegedly defamatory

statements were made after his termination, the court stated "we find ample support for the conclusion that allegedly defamatory statements made in connection with a church's decision to terminate a minister's employment are protected from secular review, even if the statements do not expressly involve religious doctrine or are not made prior to the church's decision." Id. at 552. The court reasoned that because of the church's freedom to make decisions regarding church governance and faith, "actions taken as part the Church's employment decision are ecclesiastical matters protected from secular review by the 'ministerial exception' afforded under the Free Exercise Clause." Ibid.

We find persuasive the reasoning of the foregoing cases and conclude that the ministerial exception applies to bar tort claims, provided (1) the injured party is a minister formerly employed by a religious institution and (2) the claims are related to the religious institution's employment decision. In this case, there is no dispute whether plaintiff is a minister since he conceded the fact. We conclude that the second requirement is also satisfied, as plaintiff's defamation claims are "part and parcel" and connected to RYNJ's decision to terminate him. See Gunn, 167 Cal. App. 4th at 217; Patton, 212 S.W.3d at 555.

In that regard, the letter stated, in pertinent part, that plaintiff would not be returning to RYNJ because an independent investigation concluded that his

conduct had been neither acceptable nor consistent with how a rebbe in the Yeshiva should interact with students. As the judge pointed out,

> [t]he school made a judgment call based upon the reports given that the way the reports were made, what [plaintiff] did or did not do, which wasn't specified in the letter, that causes school officials after discussing the religion and what should or should not be done under Jewish Law, some concerns for the continued employment of [plaintiff].

The judge's decision reflects his consideration of the ministerial exception when he stated, "the school has the authority to figure out who's going to teach their students what the school religious tenets are, or the religious tenets of the school[,]" and "the school had the right to fire [plaintiff] after discussion of what the correct religious approach would be to effectuate the termination." The judge correctly determined that plaintiff's status as a minister barred his defamation claims under the ministerial exception because to allow the suit to continue would force the judge to question RYNJ's employment decision and thereby violate the First Amendment.

The application of the ministerial exception to plaintiff's defamation claims would preserve the meaning of the exception, which exists to protect religious institutions right to internal governance and "to select and control who will minister to the faithful." Hosanna-Tabor, 565 U.S. at 188-89, 194-95. If plaintiff's defamation claims were to proceed, the court would have to

inquire into RYNJ's reasons for terminating plaintiff and RYNJ's decision to email the letter. As the judge noted, "[t]o allow the letter to be challenged so to speak in terms of its accuracy in what the basic facts were which led to the letter being published flies in the face of what the school did." In addition, awarding plaintiff the monetary relief he seeks would serve as a penalty on RYNJ for its employment decision. Id. at 194.

We reject plaintiff's argument that a minister could never bring an action against their employer for any tort because his status as a minister alone would preclude the tort claims. The ministerial exception requires not only for the plaintiff to be a minister, but also that the claim be related to the religious institution's employment decision. Plaintiff uses the example of a parochial school bible teacher who was hit by a school bus in the school parking lot, stating that the teacher would have no recourse against the parochial school that employed her. The ministerial exception would not apply to plaintiff's hypothetical because in that case the claim has no relation to an employment decision, and it would not require the court to infringe on a religious institution's decision to select its ministers. See Petruska, 462 F.3d at 307.

We also reject plaintiff's argument that the ministerial exception does not apply because he was no longer an employee at RYNJ when the school emailed the letter. We concur with the decisions in Gunn, Sumner, and Patton,

that the ministerial exception applies even after a minister is terminated provided the allegedly defamatory statements are made in relation to the religious institution's employment decision. Similar to Gunn, "this is not a case . . . in which [defendant's] acts occurred at some remote time unrelated to the termination of [plaintiff's] employment." 167 Cal. App. 4th at 217. In this case, defendants emailed the letter two days after plaintiff's termination and the letter clearly related to RYNJ's employment decision and reasons for its employment decision.

Equally unavailing is plaintiff's argument that application of the ministerial exception requires courts to consider much more than one's status as a minister and that the trial court must make a finding that the dispute underlying a cause of action is truly religious and involved a fundamentally ecclesiastical concern. As explained in Patton, "if the claim challenges a religious institution's employment decision, the sole jurisdictional injury is whether the employee is a member of the clergy or otherwise serves a 'ministerial' function . . . ." 212 S.W.3d at 548. "If the employee is a minister, then the 'ministerial exception' applies preventing secular review of the employment decision without further question as to whether the claims are ecclesiastical in nature." Ibid. Here, the judge properly determined that

plaintiff's status as a minister precluded secular review, and under Patton, that finding alone was sufficient to dismiss the claims.

Finally, we reject plaintiff's argument that the letter was not directly associated with defendants' decision to fire him and instead that the letter spread false information and served another secular purpose. As the court stated in Gunn, "once it has been established the statements were made in relation to the process of [the plaintiff's] termination the ministerial exception applies regardless of the tortious nature of the statements." 167 Cal. App. 4th at 216. In this case, the plain language of the letter clearly communicates RYNJ's decision regarding plaintiff's employment and indicates the reason for his termination. Although plaintiff questions the motivation behind sending the letter, as the court in Sumner found, the "First Amendment protects the act of a decision rather than a motivation behind it." 27 Cal. App. 5th at 596. Therefore, plaintiff cannot get around the protections of the ministerial exception by claiming that there are allegedly tortious motivations behind sending the letter.

Having concluded that the ministerial exception bar is dispositive, we find it unnecessary to address whether the ecclesiastical abstention doctrine is an independent basis for the dismissal of plaintiff's claims.

Affirmed.