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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0744-16T1

JOSE RAFAEL MELENDEZ, a/k/a
THE REVEREND PHOTOPRESBYTER
MELENDEZ,

Plaintiff-Appellant,

v.

EVANGELOS KOUROUNIS, a/k/a
THE MOST REVEREND METROPOLITAN
EVANGELOS, Individually and as
Bishop of GREEK ORTHODOX
METROPOLIS OF NEW JERSEY, INC.,
and Greek Orthodox Metropolis of
New Jersey.

Defendants-Respondents.

Submitted November 14, 2017 – Decided December 13, 2017

Before Judges Yannotti and Mawla.

On appeal from Superior court of New Jersey,
Law Division, Bergen County, Docket No. L-
1569-14.

Chatarpaul Law Offices, PC, attorneys for
appellant (Jay Chatarpaul, on the brief).

Malapero, Prisco, Klauber & Licata, LLP,
attorneys for respondents (Melanie Rowan
Quinn, on the brief).

PER CURIAM

Plaintiff Jose Rafael Melendez appeals from an August 8, 2016 order granting defendants' summary judgment dismissing his complaint for defamation and discrimination. We affirm.

Plaintiff is a priest of the Albanian Orthodox Diocese of America. In October 2013, plaintiff claimed he established the Holy Theotokos Orthodox Christian Chapel (chapel) in Red Bank with approval from His Grace Bishop Ilia of Philomelion (Bishop Ilia), Head of the Albanian Orthodox Diocese of America. The chapel was to serve as a mission to the Hispanic community.

Defendant Greek Orthodox Metropolis of New Jersey, Inc. (Metropolis) is a subdivision of the Greek Archdiocese of North and South America, Inc., comprised of fifty-four parishes. Defendant Evangelos Kourounis, also known as Bishop of the Greek Orthodox Metropolis of New Jersey (Bishop Kourounis), is the highest authority of the Metropolis.

Plaintiff alleges that on November 6, 2012, Bishop Kourounis wrote an encyclical, or open letter for public dissemination, to all the clergy and laity in the Metropolis, which stated:

It has come to my attention that the Rev. Fr. Rafael Melendez has established the so-called Holy Theotokos Orthodox Christian Chapel in Red Bank, New Jersey.

This so called chapel was established without the canonical permission of the canonical

Metropolitan and Chief Shepherd of the Greek Orthodox Metropolis of New Jersey. Therefore, clergy are not permitted to visit or participate in any services that are taking place there. Also, please announce to your parishioners that they should not visit or attend services at this so called chapel. In addition, Fr. Rafael Melendez is no longer permitted to serve at any parish in the Greek Orthodox Metropolis of New Jersey.

On December 3, 2013, Bishop Ilia wrote a letter to defendant, which stated:

it was reported to you our intent to explore the establishment of a Spanish speaking mission under [plaintiff's] leadership. On many occasions, [plaintiff] served parishes of your Metropolis and merited your words of praise, thanks and appreciation . . . [plaintiff] was authorized to open a Hispanic Mission under our jurisdiction on a trial basis More disappointing is your treatment of [plaintiff] and the proposed establishment of the Hispanic Mission. A prudent and fraternal approach would be to communicate with us to learn the circumstances of our actions and to receive in due time accurate information developments Nonetheless, we should proceed in good faith and inform Your Eminence accordingly, trusting that no further objections will hinder [plaintiff] from serving the Hispanic Mission of our Diocese.

Plaintiff filed a Law Division complaint alleging defamation, false light, and racial discrimination in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49. Defendants' filed a responsive pleading and a motion for summary judgment.

After considering oral argument, the motion judge granted defendants' summary judgment motion, finding the court lacked jurisdiction because the dispute was ecclesiastical. This appeal followed.

I.

Our review of an order granting summary judgment is de novo. Graziano v. Grant, 326 N.J. Super. 328, 338 (App. Div. 1999). "[W]e review the trial court's grant of summary judgment . . . under the same standard as the trial court." Templo Fuente De Vida Corp. v. Nat'l Union Fire Ins. Co. of Pittsburgh, 224 N.J. 189, 199 (2016). The court considers all of the evidence submitted "in the light most favorable to the non-moving party," and determines if the moving party is entitled to summary judgment as a matter of law. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995). The court may not weigh the evidence and determine the truth of the matter. Ibid. If the evidence presented "show[s] that there is no real material issue, then summary judgment should be granted." Walker v. Atl. Chrysler Plymouth, 216 N.J. Super. 255, 258 (App. Div. 1987) (citing Judson v. Peoples Bank & Tr. Co. of Westfield, 17 N.J. 67, 75 (1954)).

On appeal, plaintiff argues summary judgment was not appropriate because the court erred by making findings on contested facts. He asserts his defamation, false light, and discrimination

claims could be litigated without entangling church and state. He contends the alleged wrongdoing is not rooted in religious beliefs, and his claims are independently cognizable under the LAD on the basis of national origin or ancestry discrimination. We address these arguments in turn.

II.

The Establishment Clause of the United States Constitution and the New Jersey Constitution, prohibit the court from adjudicating matters of "ecclesiastical doctrine, cognizance and polity." Kleppinger v. Anglican Catholic Church, Inc., 314 N.J. Super. 613, 620 (Ch. Div. 1998); U.S. Const. amend. I; N.J. Const. art. I, ¶ 4. As a result, "courts lack jurisdiction over spiritual matters and the administration of church affairs that do not affect the civil or property rights of individuals." Chavis v. Rowe, 93 N.J. 103, 109 (1983).

"The Free Exercise Clause . . . provides institutional protection by forbidding governmental action from 'encroaching on the ability of a church to manage its internal affairs.'" McKelvey v. Pierce, 173 N.J. 26, 40 (2002) (quoting EEOC v. Catholic Univ. of Am., 83 F.3d 455, 460 (D.C. Cir. 1996)). Religious organizations have the protected power "to decide for themselves, free from state interference, matters of church government as well

as those of faith and doctrine." Id. (quoting EEOC, 83 F.3d at 460).

To determine whether it has jurisdiction, a court must first "determine whether adjudication would require the court to choose between 'competing religious visions,' or cause interference with a church's administrative prerogatives, including its core right to select, and govern the duties of, its ministers." McKelvey, 173 N.J. at 51. Therefore, the court must find whether the underlying "dispute is secular or ecclesiastical, and therefore about discipline, faith, internal organization, or ecclesiastical rule, custom or law." See Abdelhak v. Jewish Press Inc., 411 N.J. Super. 211, 223 (2009) (quoting McKelvey, 173 N.J. at 45).

As noted by the motion judge, the dispute here required the court to make a determination regarding "[d]efendants' decision-making process in distributing the November 6 [l]etter." Furthermore, the subject matter of the letter involved an ecclesiastical decision. Indeed, Bishop Kourounis instructed his clergy to inform parishioners not to attend plaintiff's chapel, and not permit plaintiff to serve their churches. As the motion judge noted, the guidance to parishioners and the determination regarding who may serve within the church is "strictly ecclesiastical and efforts to adjudicate the matters in the courts

would encroach on the church's ability to manage its internal affairs."

The Supreme Court has held the internal affairs of a religious organization include "the core right to choose and regulate members of its own clergy." McKelvey, 173 N.J. at 44. Courts may not adjudicate issues of "internal organization, or ecclesiastical rule, custom [and] law." Abdelhak, 411 N.J. Super. at 223-24 (quoting McKelvey 173 N.J. at 45). Therefore, the motion judge correctly concluded the court lacked jurisdiction because any inquiry into the intent of the letter would be an inquiry into the church's management choices.

Plaintiff argues the motion judge erroneously granted summary judgment by concluding plaintiff was a member of the Greek Orthodox Church, which was a disputed fact. Plaintiff argues he is not a member of the Greek Orthodox Church, rendering this dispute a secular one between two churches.

As the motion judge noted, plaintiff represented he was a priest in the Greek Orthodox Church for over twenty-two years. The record demonstrated no dispute Bishop Kourounis had authority over the Metropolis of New Jersey and that plaintiff conducted church-related services for the Metropolis. Also, plaintiff testified at his deposition that "[a]ll metropolises in the United States are . . . under the Ecumenical Patriarchate, which is in

Constantinople," and that the Albanian Orthodox Diocese of America was "in communion" with the Metropolis. Bishop Ilia's response to Bishop Kourounis's letter demonstrates the affiliation between the Albanian Orthodox Diocese and the Metropolis.

Thus, the record supports the motion judge's conclusion that the Albanian Orthodox Church, to which the plaintiff belongs, and the Metropolis, over which Bishop Kourounis has authority, were both "part of a larger structure of religious governance under the Ecumenical Patriarchate." Therefore, Bishop Kourounis's letter addressed a dispute within the Greek Orthodox Church.

III.

Plaintiff claims defendants discriminated against him based on his ancestry and race, in violation of the LAD. Specifically, plaintiff argues defendants violated N.J.S.A. 10:5-12(j) by publishing the letter. Plaintiff argues publication of the letter was motivated by a discriminatory animus, separate from an ecclesiastical dispute, and was a question of fact for the jury's consideration.

N.J.S.A. 10:5-12 provides: "It shall be an unlawful employment practice, or, . . . an unlawful discrimination: a. For an employer, because of the race, creed, color, national origin, [or] ancestry, . . . of any individual . . . to discharge . . . from employment such individual." N.J.S.A. 10:5-12(j) expands

acts of unlawful discrimination to include "any person whose activities are included within the scope of this act to refuse to post or display such notices concerning the rights or responsibilities of persons affected by this act."

Plaintiff's reliance on N.J.S.A. 10:5-12(j) misapprehends the statute. N.J.S.A. 10:5-12(j) requires employers to post or inform their employees of their rights under the LAD. N.J.S.A. 10:5-12(j) "authorizes the Director of the New Jersey Division on Civil Rights to promulgate regulations requiring both employers and providers of public accommodations to post public notices informing employees and patrons of their rights under the NJLAD." Presbytery of the Orthodox Presbyterian Church v. Florio, 902 F. Supp. 492, 499 (U.S. Dist. 1995); Roa v. LA FE, 402 N.J. Super. 529 (App. Div. 2008).

Bishop Kourounis's letter was not issued to inform church employees of their rights under the LAD. Therefore, N.J.S.A. 10:5-12(j) is inapplicable to this dispute.

Even if plaintiff articulated a colorable claim under the LAD, the letter does not form a basis for a cause of action. A religious institution's employment decisions are exempt under the LAD "regarding individuals of a particular religion performing work connected with the institution's activities." Gallo v. Salesian Soc'y, 290 N.J. Super. 616, 631 (App. Div. 1996). Courts

may consider LAD claims against religious institutions "[o]nly when the underlying dispute [does not] turn[] on doctrine or polity." Ibid. (quoting Welter v. Seton Hall Univ., 128 N.J. 279, 293-94 (1992)).

To determine whether a religious institution's exemption regarding employment decisions is applicable, courts have used the "ministerial-function test." Ibid. The test states:

if the employee's responsibilities transform the employee into a liaison between the religion and its adherents or if the "employee's primary duties consist of teaching, spreading the faith, church governance, supervision of a religious order, or supervision or participation in religious ritual and worship," the First Amendment precludes judicial resolution of the dispute.

[Id. at 632 (quoting Welter, 128 N.J. at 294-95)].

In Alicea v. New Brunswick Theological Seminary, 128 N.J. 303, 306 (1992), the plaintiff, an ordained minister and assistant professor, filed a complaint alleging a breach of employment promise because he was denied tenure track status. The Supreme Court affirmed the summary judgment dismissal of plaintiff's complaint, holding plaintiff performed a ministerial function in his role in the seminary. Id. at 314. The court concluded adjudication of the employment dispute would violate the seminary's right to the free exercise of religion. Id. at 311.

Here, plaintiff's function was wholly ministerial. Plaintiff's role in establishing the chapel in Red Bank was as a priest in a mission based church serving the Hispanic community. Bishop Kourounis's role was a supervisory one based in church governance. Thus, as in Welter and Alicea, plaintiff's primary function was as a spokesperson for the church, and the letter addressed his actions on behalf of the church.

As the motion judge noted, "the parties' dispute cannot be resolved on purely secular terms, but rather any adjudication would cause interference with a church's prerogatives, including its core right to select, and govern the duties of, its ministers." For these reasons, summary judgment in defendants' favor was properly granted.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION