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OCT. 29 1998

IN THE SUPREME COURT OF FLORIDA

CLERK SUPREME COURT
By B. J. [Signature]
Chief Deputy Clerk

CASE NO. 93,832

RABBI ROBERT A. GOODMAN,

PETITIONER,

vs.

TEMPLE SHIR AMI and RICHARD ASHENOFF,

RESPONDENTS.

RESPONDENTS' BRIEF ON JURISDICTION

**ON DISCRETIONARY REVIEW FROM
THE THIRD DISTRICT COURT OF APPEAL**

CONROY, SIMBERG & GANON, P.A.
155 SOUTH MIAMI AVENUE
SUITE IIII
MIAMI, FL 33130

—AND—

LAW OFFICE OF ROBERT S. GLAZIER
THE INGRAHAM BUILDING, SUITE 1020
25 S.E. SECOND AVENUE
MIAMI, FL 33131
(305) 372-5900

ATTORNEYS FOR TEMPLE SHIR AMI

MELVIN S. BLACK, ESQ.
2937 S.W. 27TH AVENUE
SUITE 202
MIAMI, FL 33133

—AND—

CLARK D. MERVIS, ESQ.
2937 S.W. 27TH AVENUE
SUITE 202
MIAMI, FL 33133
(305) 443-1600

ATTORNEYS FOR ASHENOFF

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STATEMENT OF THE CASE AND FACTS

Rabbi Goodman's Statement of the Case and Facts for the most part is based on materials outside the opinion of the district court of appeal, such as the trial transcripts and documents in the record on appeal. Those matters should be disregarded. *See Reaves v. State*, 485 So. 2d 829 (Fla. 1986).

The most important omission in the Petitioner's Statement of the Case and Facts is his failure to note that the district court of appeal held that one of Rabbi Goodman's claims—his claim for breach of the first contract—could be decided by the civil courts.

Otherwise, we adopt that facts as stated in the opinion of the district court of appeal.

SUMMARY OF THE ARGUMENT

The Court should not exercise jurisdiction over this case.

Two of the Petitioner's arguments—that the case presents an issue of great public importance and that the decision of the Third DCA conflicts with another decision of the Third DCA—are not grounds for Supreme Court jurisdiction.

Furthermore, the decision of the district court does not conflict with any other Florida decision. This case involved a dispute between a Rabbi and his synagogue. The opinions which are claimed to be the basis for conflict involved schisms within religious institutions, not employment disputes.

CERTIFICATE OF TYPE SIZE

This brief is in Adobe Caslon, 14 point.

ARGUMENT

I. THE COURT DOES NOT HAVE JURISDICTION OVER A CASE SIMPLY BECAUSE THE CASE (ALLEGEDLY) INVOLVES A MATTER OF GREAT PUBLIC IMPORTANCE

Rabbi Goodman first suggests that the Court should grant review because the case involves a matter of great public importance.

This Court has jurisdiction to hear cases involving great public importance only if the district court certifies the question as being of great public importance. Fla. R. App. P. 9.030(2)(A)(v); Art. V, § 3(b)(4), Fla. Const. Here, there was no such certification, so there is no basis for jurisdiction.

II. THE DECISION OF THE DISTRICT COURT OF APPEAL IS NOT IN EXPRESS AND DIRECT CONFLICT WITH THIS COURT'S DECISION IN *Epperson v. Myers*

Rabbi Goodman has failed to establish that the district court decision is in express and direct conflict with another decision on the same issue of law.

The district court opinion addressed the question of whether the civil courts may exercise jurisdiction over a clergyman's breach of contract and tort claims against his former church/synagogue, where the claims arose

from the religious institution's selection of its religious leader. Courts across the country have addressed this issue, and almost uniformly have held that such claims may *not* be resolved by the civil courts. *See, e.g., Young v. Northern Illinois Conference of United Methodist Church*, 21 F.3d 184 (7th Cir. 1994); *Tran v. Fiorenza*, 934 S.W.2d 740 (Tex. Ct. App. 1996).

Rabbi Goodman asserts that the decision of the district court conflicts with Florida judicial decisions which—he claims—have held that civil courts have authority to decide disputes concerning a religious organization's failure to comply with its own rules of order.

However, the cases which Rabbi Goodman relies upon in support of his claim of conflict jurisdiction do not involve employment disputes between religious institutions and clergy. Rather, they involve church property disputes or disputes between competing factions within a church. *See Epperson v. Myers*, 58 So. 2d 150 (Fla. 1952) (dispute over which faction controlled church); *Hemphill v. Zion Hope Primitive Baptist Church*, 447 So. 2d 976 (Fla. 1st DCA 1983) (dispute among church members about continued employment of pastor, where it was unclear who had authority to make the employment decision); *Covington v. Bowers*, 442 So. 2d 1068 (Fla. 1st DCA 1983) (dispute over which faction controlled church); *Umberger v.*

Johns, 363 So. 2d 63 (Fla. 1st DCA 1978) (dispute over which faction controlled church).

This Court has noted that there is an “abounding array of authorities” which grow out of “church schisms in which both factions lay claim to the church property.” *St. John’s Presbytery v. Central Presbyterian Church*, 102 So. 2d 714, 718 (Fla. 1958). When a church is divided, with both factions making claim to being the true church, there must be a determination of who has control of the church and the property. This sort of dispute must be resolved for various reasons, some practical (who is responsible for paying the water bill? who do the police listen to when called to evict a trespasser?), and some to keep the peace (if no procedure for resolution of the conflict is provided, the factions may resort to physical force).

While the cases upon which Rabbi Goodman relies are church schism cases, there was no schism within Temple Shir Ami. There was merely a dispute between a synagogue and its Rabbi. The cases do not establish conflict.

Moreover, even if there were arguable conflict, there is still no reason for the Court to exercise its discretion in favor of jurisdiction. The decision of the district court is unexceptional. It is well established that “religious

bodies may make apparently arbitrary decisions affecting the employment status of their clergy members and be free from civil review having done so.” *Young v. Northern Illinois Conference of United Methodist Church*, 21 F.3d 184, 187 (7th Cir. 1994). There is no “arbitrariness” exception to the general rule against civil court review of decisions of religious bodies. *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976). The district court merely followed these precedents.

Indeed, the moderation of the district court’s decision can be seen from the fact that the court concluded that some claims—those for breach of the first contract—were properly within the jurisdiction of the civil courts. There is no reason for the Court to review this case.

III. THE THIRD DISTRICT’S DECISION IN *Schreidell v. Shoter* IS NOT A BASIS FOR CONFLICT JURISDICTION

In support of his argument for jurisdiction over the claims against Richard Ashenoff, Rabbi Goodman relies upon the Third District decision in *Schreidell v. Shoter*, 500 So. 2d 228 (Fla. 3d DCA 1986). However, conflict *within* a district is not a basis for Supreme Court jurisdiction. *See State v. Walker*, 593 So. 2d 1049 (Fla. 1992). Such alleged conflict is to be resolved by the district court *en banc*. Rabbi Goodman sought *en banc* review,

but the Third District concluded that there was no intra-district conflict, presumably based on the fact that the jurisdictional issue was never raised in the *Schreidell* case. Because of this Court's limited jurisdiction, the matter ends there.

CONCLUSION

Temple Shir Ami and Richard Ashenoff request that the Court deny the petition for discretionary review.

Respectfully submitted,

CONROY, SIMBERG & GANON, P.A. ✓
155 South Miami Avenue
Suite 1111
Miami, FL 33130

—and—

LAW OFFICE OF
ROBERT S. GLAZIER ✓
The Ingraham Building, Suite 1020
25 S.E. Second Avenue
Miami, FL 33131
(305) 372-5900

Attorneys for Temple Shir Ami

By: Robert S. Glazier
Robert S. Glazier
Florida Bar No. 0724289

MELVIN S. BLACK, ✓ ESQ.
2937 S.W. 27th Avenue
Suite 202
Miami, FL 33133

—and—

CLARK D. MERVIS, ✓ ESQ.
2937 S.W. 27th Avenue
Suite 202
Miami, FL 33133
(305) 443-1600

Attorneys for Richard Ashenoff

By: Robert S. Glazier
for Clark D. Mervis
Florida Bar No. 0220108

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that true and correct copies of the foregoing were mailed this 28th day of October, 1998, to: Raymond Robin, Esq., 1121 South 21st Avenue, Hollywood, FL 33020; and John S. Freud, Esq., 2699 South Bayshore Drive, Suite 300, Miami, FL 33133.

Robert S. Hui