

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC00-2579

VIRGINIA CARNESI,

PETITIONER,

VS.

FERRY PASS UNITED METHODIST CHURCH, ET AL.

RESPONDENTS.

**AMICUS BRIEF OF
CHURCH MUTUAL INSURANCE COMPANY**

ON DISCRETIONARY REVIEW
FROM THE FIRST DISTRICT COURT OF APPEAL

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INTEREST OF AMICUS

Church Mutual Insurance Company is a national insurer of religious institutions. It has frequently litigated religious freedom issues in its own name, and on behalf of its insureds. *See, e.g., Miriam T. v. Church Mut. Ins. Co.*, 578 N.W.2d 208 (Wisc. 1998) (available on Westlaw, 1998 WL 99470); *Christopher B. v. Schoeneck*, 608 N.W.2d 437 (Wisc. App. 1999) (available on Westlaw, 1999 WL 1102901). The issues in this case, effecting the constitutional rights of all religious institutions, are of importance to Church Mutual Insurance Company.

STATEMENT OF THE CASE AND FACTS

We rely upon the opinion of the district court, and the briefs of the parties.

SUMMARY OF THE ARGUMENT

The district court properly dismissed the claims against Pensacola District United Methodist Conference and the Alabama West Florida United Methodist Conference. The Plaintiff's attempt to impose a duty on the hierarchy defendants would require a judicial restructuring of the Methodist Church. This is a matter in which the courts should not intervene. Church structure is related to church beliefs, and this is protected by the United States and Florida Constitutions.

ARGUMENT

THE DISTRICT COURT PROPERLY DISMISSED THE CLAIMS AGAINST THE METHODIST HIERARCHY DEFENDANTS

The district court did not err in dismissing the claims against the two church hierarchy defendants.

The circuit court and district court held that under the principles stated in *Doe v. Evans*, 718 So. 2d 286 (Fla. 4th DCA 1998), *review granted*, 735 So. 1284 (Fla. 1999), the lawsuit could not proceed against what the district court lumped together as the “church defendants.” We suggest that a different analysis must be applied to different church defendants.

The church: The Plaintiff sued her employer, Ferry Pass United Methodist Church. (Petitioner’s initial brief, at 3). The district court held that this claim was barred because of religious freedom concerns. We express no opinion on the correctness of this holding.

The Methodist hierarchy: The Plaintiff has also sued two levels of the church hierarchy, the Pensacola District United Methodist Conference and the Alabama West Florida United Methodist Conference. The district court dismissed these claims. We submit that this holding was proper, and should be affirmed.

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The clear targets of the Plaintiff's case are the perpetrator and the Plaintiff's employer, the local church. Indeed, the Petitioner's brief barely mentions the Methodist hierarchy defendants. The brief states only that "The District as well as the West Florida Conference was aware of the harassment, Ms. Carnesi's allegations, and the decision to terminate Ms. Carnesi. The District and Conference failed to perform any investigation into Ms. Carnesi's allegations or her subsequent retaliatory termination or take any remedial action or enforce the limited sexual harassment policy." (Petitioner's initial brief, at 7).

We submit that the district court properly concluded that the claim against the Methodist hierarchy defendants would infringe upon constitutionally-protected religious freedom.

As explained in the other briefs, the local church hired employees, supervised employees, disciplined employees. The local church's control is apparent from the statement of the facts in the parties' briefs. Nevertheless, the Plaintiff has sued the Methodist hierarchy. The Plaintiff's intent is to have a court inquire into the assignment of responsibilities within the Methodist Church, and then to declare that the Methodist hierarchy has an obligation to involve itself in personnel matters in its local churches.

The Plaintiff seeks nothing less than a judicial restructuring of responsibilities within the Methodist church. The balance between local control and national bodies, according to the Plaintiff, should be determined by a jury, rather than by the church itself. This attempt to have the courts decide matters concerning the internal structure of religious groups is contrary to the Supreme Court's repeated warnings that government may not interfere in the internal workings of religious institutions. *See Watson v. Jones*, 80 U.S. 679 (1872); *Gonzalez v. Roman Catholic Archbishop*, 280 U.S. 1 (1929); *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94 (1952); *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976).

The internal structure of a group, the division of authority, is a reflection of core beliefs. This is true of our government's system of federalism, which allocates authority between national government and state government. This is also true of authority within religious groups. The history of religion, certainly the history of Christianity, demonstrates that the division of authority within a religious group is dictated by the beliefs of that group. A commentator has explained this:

Church polity, often referred to as 'church order,' may determine the relationship between the denomination itself and the local churches. . . . The polity of the churches is primarily a matter of ecclesiology, of faith and belief. It is not subject to judicial determination. Indeed, ***the Supreme Court's free exercise jurisprudence is entirely consistent that the choice by members of organizational structures, church order, is a protected exercise of religious freedom. The internal polity of the***

churches may not be subject to judicial determination.

WILLIAM W. BASSETT, RELIGIOUS ORGANIZATIONS AND THE LAW § 3.1, at 3-11 (2000) (emphasis added).

The Plaintiff is requesting the court to determine the way in which Methodists should structure their church. That is not a matter within the competence of the courts, it is not a matter within the jurisdiction of the courts. The Court should approve the district court's dismissal of the Methodist hierarchy defendants.

CONCLUSION

We request that the Court uphold the district court's holding dismissing the claims against the Pensacola District United Methodist Conference and the Alabama West Florida United Methodist Conference

Respectfully submitted,

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CERTIFICATE OF SERVICE AND TYPE SIZE

WE HEREBY CERTIFY that true and correct copies of the foregoing were faxed this 23rd day of May, 2001, to: Troy A. Rafferty, Esq., Levin Middlebrooks, 316 Baylen Street, Suite 600, Pensacola, FL 32501; and mailed to William R. Mitchell, Esq., and Stephen F. Bolton, Esq., Hook Bolton, P.O. Box 30589, Pensacola, FL 32503-1589; Kathy J. Mau, Esq., and Kim E. Wells, Esq., Butler, Burnette, 3520 Thomasville Road, Tallahassee, FL 32308; W.H.F. Wiltshire, Esq., Harrell & Wiltshire, P.A., 201 East Government Street, Pensacola, FL 32501; Timothy O'Brien, Esq., Oliver, Maner & Gray, 218 W. State Street, Savannah, GA 31401-3232; Michael W. Kehoe, Esq., Fuller, Johnson & Farrell, 700 S. Palafax, Suite 170, Pensacola, FL 32501; James F. Gilbride, Esq., and Adam D. Horowitz, Esq., Gilbride, Heller & Brown, P.A., One Biscayne Tower, Suite 1570, 2 S. Biscayne Boulevard, Miami, FL 33131; J. Patrick Fitzgerald, Esq., 110 Merrick Way, Suite 3B, Coral Gables, FL 33134; and Eric D. Stevenson, Esq., 190 Governmental Center, P.O. Box 12726, Pensacola, FL 32575-2726.

We certify that this brief is in Times Roman, 14 point, proportional type.
