IN THE SUPREME COURT, STATE OF FLORIDA

VIRGINIA M. CARNESI,

Petitioner/Appellant,

vs. **CASE NO.: SC002579**
LOWER TRIBUNAL NO.: 1D99-4333

FERRY PASS UNITED METHODIST CHURCH, PENSACOLA DISTRICT UNITED METHODIST CONFERENCE, ALABAMA WEST FLORIDA UNITED METHODIST CONFERENCE, and CHET HARRISON, individually, and as a Pastor Parish Relations Committee Chairman,

Respondents/Appellees.
_____/

RESPONDENT-APPELLEE, ALABAMA WEST FLORIDA UNITED METHODIST CONFERENCE ANSWER BRIEF ON THE MERITS

KIM E. WELLS, ESQ.
Florida Bar No. 0629219
KATHY J. MAUS, ESQ.
Florida Bar No. 0896330
Butler Burnette Pappas
3520 Thomasville Road - Suite #102
Tallahassee, Florida 32308
(850) 894-4111/ 894-4999 Facsimile

Attorneys for Respondent-Appellee,
Alabama West Florida United
Methodist Conference

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CITATIONS TO THE RECORD

Citations to the record contained in this Brief will be from the page numbers of the record provided by the Clerk of the Circuit Court of Escambia County, and designated by (R. __).

It appears, by review of Appellant's Brief, that their citations to the record are the number of the instrument listed in the index provided by the Clerk of the Court, rather than, or including, the page number.

STATEMENT OF THE CASE

This Honorable Court accepted jurisdiction to entertain the appeal of Petitioner/ Appellant, Virginia Carnesi (hereinafter referred to as "Carnesi"). Carnesi appealed from an Order of the Circuit Court of Escambia County granting a Motion For Summary Judgment and Final Summary Judgment in favor of Ferry Pass United Methodist Church (hereinafter referred to as "The Church"), the Pensacola District United Methodist Conference (hereinafter referred to as "The District") and Alabama West Florida United Methodist Conference (hereinafter referred to as "The Conference"). (R. 411; Appendix 1).

Carnesi filed a Complaint against these defendants as well as Chester Harrison (hereinafter "Harrison") seeking civil redress for alleged sexual harassment inflicted upon her by Harrison. The complaint included counts alleging hostile work environment, sexual harassment, *quid pro quo* sexual harassment, assault, and false imprisonment. (R. 1 and Appendix 2). Following summary judgment motions by The District, The Church, and The Conference (collectively referred to as the "Church Respondents"), the trial court granted the Church Respondents' motions for summary judgment against Petitioner relying upon the authority of Doe v. Evans, 718 So. 2d 286 (Fla. 4th DCA 1998). The trial court reasoned that it lacked jurisdiction to entertain Carnesi's claim due to the potential for excessive entanglement between

church and state in violation of the Establishment Clause of the First Amendment to the United States Constitution.

Carnesi appealed to the First District Court of Appeals which affirmed, in a two-to-one decision, the decision of the trial court. (See Carnesi v. Ferry Pass United Methodist Church, 770 So. 2d 1286 (Fla. 1st DCA 2000) and, Appendix 3). Carnesi then sought to invoke the discretionary jurisdiction of this Honorable Court, which this Court accepted on March 29, 2001.

STATEMENT OF THE FACTS

Ferry Pass United Methodist Church is a religious organization located in Pensacola, Florida. (R. 272; Appendix 4). The Church is a member of the Pensacola District of the Alabama West Florida United Methodist Conference and the Alabama West Florida United Methodist Conference. (R. 272). Bishop William Wesley Morris is the presiding Bishop of the Conference. (R. 271).

Virginia Carnesi was an employee of The Church in February 1995. (R. 549-552, Appendix 5). Respondent Chester Harrison (hereinafter "Harrison") was a volunteer with the Church who worked on the Pastor/Parish Relations Committee (hereinafter "PPRC"). (R. 273 and 1087 [Appendix 6]).

During the time that Carnesi was employed by the Church and Harrison was a volunteer working on the PPRC, it is alleged by Carnesi that Harrison sexually harassed her by hugging her, touching her, and kissing her. (R. 1-13, 574-593, 642-643, 673-676; Appendices 2, 5 and 7). In addition, it is asserted by Carnesi that in December of 1995, Harrison told her that she was not going to get a raise and that if she "was a good little girl" that she would get a raise the following year. (R. 671-72).

During the time that Carnesi was working at the Church, the Pastor at the Church was either Reverend Fitzgerald or his replacement, Alton Moore. (R. 598-

602, 657; Appendix 5). Once Reverend Moore began working as the Pastor for the Church in June of 1996, Carnesi asserts that she told him about Harrison's conduct. (R. 671). This disclosure resulted in a meeting between Reverend Moore, Carnesi, Harrison and Dr. Bill Renfroe. (R. 671).

In the June 1996 meeting, Harrison apologized to Carnesi for his alleged improper conduct with Ms. Carnesi. (R. 617-618, 623, 624; Appendix 5). Ms. Carnesi accepted his apology for allegedly inappropriately kissing, hugging and grabbing her. (R. 617-618, 623-624). Harrison, while admitting hugging and kissing Carnesi, denied that he was ever told by Carnesi that the activity was inappropriate and denied ever telling Carnesi that if she was a good little girl she would get a raise. (R. 1136-1148; Apendix 6).

Ultimately, Ms. Carnesi was terminated from employment on July 29, 1996. (R. 654-655; Appendix 5). Carnesi was terminated for problems with job performance, attendance and improper utilization of the computer. (R. 1161-1167; Appendix 6). This litigation followed.

ISSUES PRESENTED FOR REVIEW

I.

THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION AND THE COURT'S INTERPRETATION THEREOF, BARS JUDICIAL REVIEW AND ENFORCEMENT OF THE CIVIL ACTION BROUGHT BY PETITIONER CARNESI FOR THE ALLEGED SEXUAL HARASSMENT OF HER BY A VOLUNTEER OF THE CHURCH MR. HARRISON AGAINST RESPONDENT ALABAMA WEST FLORIDA UNITED METHODIST CONFERENCE.

II.

ASSUMING ARGUENDO THE COURT WAS NOT BARRED BY THE FIRST AMENDMENT FROM RULING ON THE CLAIM OF CARNESI, THE RECORD IS DEVOID OF QUESTIONS OF FACT WHICH WOULD COMPEL REVERSAL OF THE SUMMARY JUDGMENT ENTERED IN FAVOR OF THE CONFERENCE ON THE ISSUE OF AGENCY.

SUMMARY OF ARGUMENT

The excessive entanglement doctrine contained in the establishment clause of the First Amendment to the United States Constitution bars judicial review and enforcement of civil laws which require interpretation of church laws, practices or policies.

Subjecting the Church Respondents, including The Conference, to the Court's jurisdiction under a theory of vicarious liability would require the finder of fact to examine the fundamental principles and policies inherent in the hierarchy of the United Methodist Church. If the Conference were subjected to the Court's jurisdiction it might have a chilling effect upon its internal practices or that of its subordinate entities, including various districts and churches, which might require the United Methodist Church to alter the entire hierarchal structure. This could result in the Conference or the United Methodist Church imposing complete control of the member churches and districts thereby removing the independence and autonomy currently present, under the Book of Discipline, the United Methodist Church's doctrine outlining the rights and responsibilities of independent churches, districts, and conferences, including the Bishop and Superintendent.

A Court's determination regarding whether a church defendant's conduct was reasonable would necessarily entangle the court in issues of the church's religious

laws, practices and policies. A court faced with the task of determining a claim of negligent hiring, retention and supervision would be required to measure the church defendant's conduct against that of a reasonable employer, a proscribed comparison. A church's policies differ from the rules of any other employer which may ultimately require a secular employer to respond differently when faced with similar situations as those faced by a non-secular employer. When a Court of Law interprets church laws, policies and practices, it becomes excessively entangled in religion.

Neither Respondent Harrison nor Petitioner Carnesi, were, at any time, employed by, agents of, or otherwise affiliated with the Conference. In order to determine the question of agency, it would require the trier of fact to evaluate the internal operations and relationships between not only the Petitioner and Respondent Harrison, but also the Church, the District, and the Conference, and their various duties and responsibilities under the Book of Discipline. It would be inappropriate and unconstitutional for a finder of fact to determine whether the ecclesiastical authority negligently supervised or retained a volunteer, and any award of damages would have a chilling effect leading directly to state control over the future conduct of the affairs of a religious denomination.

Petitioner continued to work at the Church following the alleged hugging and kissing episodes, did nothing to actively curtail the activity, submitted herself to a

form of dispute resolution in accordance with the internal rules and regulations of the United Methodist Church as found in the Book of Discipline, and accepted that tribunal's decision. In the absence of fraud, collusion or arbitrariness, the decisions of the proper church tribunal on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclusive.

There is no evidence in the case at bar, nor was any presented in the trial court, to establish that The Conference could or should be liable for the acts of Respondent Harrison, even if true. A principle is only liable for the acts of an agent 1) if the acts are within the scope of his or her apparent or actual authority, or 2) the acts outside of the agent's authority are subsequently ratified by the principle. The only evidence regarding the affiliation of The Conference, with any entity sued herein, is that of the Book of Discipline and the Affidavit of Bishop William Wesley Morris which shows that in regard to this case, there was no employee/employer relationship between The Conference and any party and that The Conference had no direct control over any entity.

As such, even if the trial court and the district court of appeal were held to have erred in holding that the excessive entanglement clause of the First Amendment barred the claim of Carnesi, it was harmless error as to The Conference because liability could not have been found for the actions alleged by Carnesi in her Complaint. Since

there are no facts supporting the alleged employee/employer relationship between the Conference and Mr. Harrison, summary judgment was appropriately affirmed on appeal.

ARGUMENT

I.

STANDARD OF REVIEW

This case is before this Court on discretionary jurisdiction following entry by the Circuit Court in and for Escambia County, Florida, of a summary judgment in favor of Respondents, and the First District Court of Appeal's affirmation of that Order. (R. 411).

The standard of review of a trial court ruling on a summary judgment is *de novo*. Dr. James Armstrong v. Catherine Harris, et al., 773 So. 2d 7, 9 (Fla. 2000), and Volusia County v. Aberdeen at Ormond Beach, 760 So. 2d 126 (Fla. 2000).

Florida Rule of Civil Procedure 1.510(c), provides with regard to Summary Judgment (in pertinent part):

> The judgment sought shall be rendered forthwith 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 and that the moving party is entitled to a judgment as a matter of law.

There was no issue of material fact for the Circuit Court upon which a summary judgment might have been overturned upon appellate review. In fact, the Petitioner does not espouse anywhere in her argument that any genuine issue of material fact

exists. (See Petitioner's Brief). As such, the issues before this court are simply issues of law and the applicability of prior precedent to the facts peculiar to this case.

II.

THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION AND THE COURTS' INTERPRETATION THEREOF, BARS JUDICIAL REVIEW AND ENFORCEMENT OF THE CIVIL ACTION BROUGHT BY PETITIONER CARNESI FOR THE ALLEGED SEXUAL HARASSMENT OF HER BY A VOLUNTEER OF THE CHURCH MR. HARRISON AGAINST RESPONDENT, ALABAMA WEST FLORIDA UNITED METHODIST CONFERENCE.

The Circuit Court of Escambia County Florida and the District Court of Appeal were correct in their holdings that the First Amendment's excessive entanglement doctrine would be violated by having a secular court review and interpret church law, policies, and practices. It would also be violated by the Court's determination as to whether an agency relationship existed between Harrison, the Pastor Parish Relations Committee (PPRC) and the various "Church Respondents," including The Conference.

The First Amendment to the United States Constitution provides, in pertinent part:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof....

The United States Supreme Court, in Lemon v. Kurtzman, 403 U.S. 602, 612-613 (1971), developed a three-prong test when evaluating the constitutionality of state

action which can or will affect religion. Under the Lemon test, state action must have a secular purpose; not have the primary effect of advancing or inhibiting religion; and, not foster excessive entanglement between church and state. Id. at 612.

Numerous cases have held that it is constitutionally prohibited, due to the potential for excessive entanglement between the church and state, to subject a religious organization to the jurisdiction of a court in a matter concerning the interpretation of church laws, practices or policies. The principles limiting the role of civil courts in the resolution of religious controversies that incidentally affect civil rights were initially set forth in Watson v. Jones, 80 U.S. 679 (1871). There, the court held:

> ...the rule of action which should govern the civil courts. . . is, that whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them in their application to the case before them.

Id. at 727.

In the case of Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976), the Court stated:

> . . .it is easy to see that if the civil courts are to inquire into all these matters, the whole subject of the doctrinal theology, the usages and customs, the written laws, and fundamental organization of every religious denomination

> may, and must, be examined into with minuteness and with care, for they would become, in almost every case, the criteria by which the validity of the ecclesiastical decree would be determined in the civil court. This principle would deprive these bodies of the right of construing their own church laws, would open the way to all the evils which we have depicted as attendant upon the doctrine of Lord Elden, and would, in effect, transfer to the civil courts where property rights were concerned the decision of all ecclesiastical questions.

Id. at 715.

In Milivojevich, the church removed the respondent as a bishop of the church. Id. at 696. The respondent brought an action to declare that the actions of the church were procedurally and substantively defective under petitioner's internal regulations. Id. The Illinois Supreme Court held that the respondent's removal and defrockment was arbitrary and had to be set aside because the proceedings were not conducted according to the church's constitution. Id. The United States Supreme Court reversed the Illinois Supreme Court holding that its probe into the allocation of power within the church in order to decide religious law violated the United States Constitution's First Amendment. Id. The Court further held that the court must accept ecclesiastical decisions of church tribunals as binding upon them. Id. at 724. The court also stated:

> We will not delve into the various church constitutional provisions relevant to this conclusion, for that would repeat the error of the Illinois Supreme Court. It suffices to note that the reorganization of the diocese involves a matter of

> internal church government, an issue at the core of ecclesiastical affairs....

Id.

Further, the Milivojevich Court stated:

> In short, the First and Fourteenth Amendments permit hierarchal religious organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters.

Id. at 724.

In the case of Sharone v. St. Luke's Episcopal Presbyterian Hospital, 929 F.2d 360, 363 (8th Cir. 1991), the Circuit Court of Appeals held that the trial court lacked the jurisdiction for age and sex discrimination claims against a church affiliated hospital because the mere fact of judicial inquiry itself would cause excessive entanglement between church and state. The court reasoned, citing Norb v. Catholic Bishop of Chicago, 440 U.S. 490, 502 (1979), that:

> ...the resolution of such charges . . . will necessarily involve inquiry into the good faith of the position asserted by the clergy administrators... it is not only the conclusion that may be reached...which may impinge on rights guaranteed by the religion clauses, but also the very process of inquiry.

Similarly, in Schmidt v. Bishop, 779 F.Supp. 321, 327 (S.D.N.Y. 1991), the District Court held that a state court could not adjudicate a "clergy malpractice" claim.

The court found that determining the proper standard of care that a clergy owes would cause the court or jury to consider the fundamental perspectives and practices to counseling which are inherently religious in nature. Id. at 328. As a result, the Schmidt court reasoned that this determination would "lead to a slippery slope" because the secular standard of care would be applied to subsequent cases and therefore may have a chilling affect on the clergy's activities. Id.

In the case at bar, subjecting the "Church Respondents," including The Conference, to the Court's jurisdiction under a theory of vicarious liability would require the finder of fact to examine the fundamental principals and policies inherent in the hierarchy of the United Methodist Church. If The Conference were subjected to the court's jurisdiction, it might have a chilling affect upon its internal practices or that of its subordinate entities, including, but not limited to, the Pensacola District United Methodist Conference and Ferry Pass United Methodist Church, which could alter each entity's internal practices and policies which had previously hereto been properly determined by religious considerations. If The Conference were held liable, the potential is present that it would be required to alter the hierarchical structure and impose complete control over the member churches and districts thereby removing the independence and autonomy of its member churches which currently exist.

The "Book of Discipline" of the United Methodist Church (R. 274-343) recognizes the Church as a distinct and independent entity with its own managerial and employment policies independent of the District and Bishop (or The Conference).[1] It is neither The District's nor The Conference's responsibility to exercise day-to-day control over The Church, but their responsibility is to provide nominal advice and support.

In the case of Doe v. Evans, 718 So. 2d 286 (Fla. 4th DCA 1998), the Fourth District Court of Appeal upheld the dismissal of a parishioner's lawsuit which alleged breach of fiduciary duty, negligent hiring, supervision and retention, and outrageous conduct, based upon the First Amendment of the United States Constitution. The court held:

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[1]See the Book of Discipline; (R. 274-343; Appendix 8). Part 1 of the Constitution, in the Preamble, states that the church is a community of all true believers under the Lordship of Christ, and whose purpose is to provide for the maintenance of worship, the edification of believers and their redemption of the world; Sections 201-204 regards the duties and responsibilities of the local church; Section 205 regards a pastoral charge; Sections 245 sets out its primary tasks and responsibilities; Section 246 requires provision for certain units within the local church; Chapter 3, The Superintendency, includes their tasks, guidelines for superintendency, selection and assignment, limitations on years of service, and specific responsibilities to oversee the programs of the church within the bounds of the district; Section 426, et seq. found in Section VII, Expressions of Superintendency regards the office of Bishop, Council of Bishops (such as the head of the Alabama West Florida United Methodist Conference); and, Part 3 of Section 427 states the Council of Bishops is charged with the oversight of the spiritual and temporal affairs of the whole church to be executed in regularized consultation and cooperation with other councils and service agencies of the church.

> In a church defendant's determination to hire or retain a minister, or in its capacity as supervisor of that minister, a church defendant's conduct is guided by religion and/or practice. Thus, a court's determination regarding whether the church defendant's conduct was "reasonable" would necessarily entangle the court in issues of the church's religious law, practices and policies. A court faced with the task of determining a claim of negligent hiring, retention and supervision would measure the church defendant's conduct against that of a reasonable employer; a proscribed comparison.

Id. at 291 (emphasis added).

As such, the Evans court held that the evaluation of a church's internal employment practices inherently resulted in an entanglement between church and state. Id. Similarly, the Evans court held that a breach of fiduciary duty was barred by the First Amendment "because in order to determine the duty owed by a church, the court was required to define a reasonable duty standard and to evaluate the Cleric's conduct against that standard, an inquiry of doubtful validity under the free exercise clause." Id., citing Amato v. Greenquist, 679 N.E.2d 446, 454 (Ill. Ct. App. 1997).

Similarly, citing HRB v. JLG, 913 S.W.2d 92 (Mo. Ct. App. 1995), the Evans' court reasoned that a breach of a "fiduciary duty claim would inevitably require inquiry into the religious aspects of this relationship, that is, the duty owed by Catholic priests, parishes, and dioceses to their parishioners, a sectarian question

beyond the reach of the secular court." Id. at 293. The Evans' court also held there was an obvious difference between a church and any other "employer" stating:

> However, the church's policies undoubtedly differ from the rules of another employer, and may require the non-secular employer to respond differently when faced with such allegations. When a secular court interprets church law, policies, and practices, it becomes excessively entangled in religion. We align ourselves with those courts finding a First Amendment bar to a breach of fiduciary claim as against church defendants, concluding resolution of such a claim would necessarily require the secular court to review and interpret church law, policies, and practices.

Id.

In Petitioner's Complaint, (R. 1; Appendix 2) contained in the "Common Allegations," she repeatedly refers to herself as an employee of not only The Church, but also of The District, and The Conference. Furthermore, she refers to Respondent, Chet Harrison, as an employee of all three entities. In paragraph 11 of the Common Allegations, it is alleged that Respondent Chet Harrison was acting not only for himself individually, and as Pastor Parish Relations Committee Chairman for The Church, but also The District and The Conference. In each count of the Complaint, these allegations are reasserted.

Clearly then, to hold The Conference liable for Mr. Harrison's alleged acts, there must be a determination of whether or not either Petitioner Carnesi or

Respondent Harrison were employees of, or if Respondent Harrison was the agent of, The Conference. The only possible manner in which this can be done would be to evaluate the internal operations and relationship between 1) Petitioner, Harrison and The Conference, 2) The Conference, The District and The Church, and 3) Petitioner, Harrison and The Church. The relationships between The Conference and The District, The District and The Church, and The Church with its employees is governed by the Book of Discipline. The relationship between The Church, Respondent Harrison and Petitioner Carnesi is governed solely by The Church's internal policies and committees with no regard to The Conference. Thus, this Court should refrain not only from exercising jurisdiction over The Church in this case, but particularly from exercising jurisdiction over The Conference, which is twice removed in the religious hierarchicary from The Church itself.

Similarly, because of the fact that The Church's policies are different from the rules of any other employer, the fact finder in the instant case would not have the capacity to determine the proper internal employment relationship between The Conference, The District, The Church, and The Church's employees or volunteers without resort to the internal policies and practices of the United Methodist Church. Under the Constitution, The United Methodist Church, itself, is the only entity to have the capacity to determine the proper internal employment practices.

The cases cited by Petitioner in this matter as conflicting precedent with the Fourth District's decision in Evans, such as Doe v. Malicki, 771 So. 2d 545 (Fla. 3d DCA 2000), are clearly distinguishable. That case, as well as Doe v. Dorsey, 683 So. 2d 614 (Fla. 5th DCA 1996), both involve allegations of sexual misconduct by members of the clergy with minors. The Malicki court distinguished the Evans decision relied upon by the District Court of Appeal in this instance, by stating that Evans "involved a voluntary sexual relationship between the parishioner and her pastor during marital counseling." Malicki, at 547. The court recognized that this presented a "less compelling factual scenario" than cases involving criminal assaults, especially against children such as in the Malicki and Dorsey cases. Evans, at 289-90.

However, while the Malicki court pointed out that a split of authority exists in other jurisdictions, most of the courts which have rejected these types of claims have done so based on the belief that to determine liability would require them to interpret church doctrine. Id. at 547 (emphasis added). The Malicki court found that since the plaintiffs were sexually assaulted and/or battered by Father Malicki while working at the church, and despite knowing that Father Malicki had committed several sexual assaults and/or batteries he was retained by the defendants as a priest and given the task of directly supervising the plaintiffs, the plaintiffs' complaint must stand. This

was due to the criminal nature of the assault by Father Malicki. Id. at 548 (emphasis added).

In a well reasoned dissent by Chief Judge Schwartz in Malicki, he stated "it is fundamentally, [and] constitutionally impermissible for a judge or jury to determine whether civil liability arises from decisions made in such an obvious sectarian context and upon such an obviously non-secular basis." Id. Judge Schwartz cited to the case of Swanson v. Roman Catholic Bishop of Portsmouth, 692 A.2d 441 (Me. 1997), which held:

> It would ... be inappropriate and unconstitutional for this court to determine after the fact that the ecclesiastical authorities negligently supervised or retained the defendant ... any award of damages would have a chilling effect leading directly to state control over the future conduct of affairs of a religious denomination.

Swanson at 444 (emphasis added). The Swanson court also stated:

> When a civil court undertakes to compare the relationship between a religious institution and its clergy with the agency relationship of the business world, secular duties are necessarily introduced into the ecclesiastical relationship and the risk of constitutional violation is evident ... to permit civil courts to probe deeply enough into the allocation of power within a [hierarchical] church so as to decide ... religious law [governing church body] ... would violate the first amendment in much the same manner as civil determination of religious doctrine.
>
> Even assuming that the trial court could discern the existence of actual authority without determining questions

> or church doctrine or polity or could base the requisite agency relationship on a parent authority, constitutional obstacles remain. The imposition of secular duties and liability on the church as a "principle" will infringe upon its right to determine the standards governing the relationship between the church, its bishop, and the parish priest. ...to import agency principles wholesale into church governments and to impose liability for any deviation from the secular standard is to impair the free exercise of religion and to control denominational governments.

Id. at 445 (emphasis added). Judge Schwartz concluded his dissent by succinctly stating the following:

> The archdiocese could be held liable in this case only if the jury determined either that it did not act as a reasonable business man or as a reasonable church. Because the former process is inconceivable and the later unconstitutional, I would affirm.

Malicki, at 50 (emphasis added).

Respectfully, The Conference is even further removed from liability than the Archdiocese of Miami in the Malicki case. As such, this Court should not accept the Petitioner's assertions that the church is throwing "its constitutional protection" up as a shield, when in fact, that constitutional protection is afforded any member of any church.

Further, Doe v. Dorsey, 683 So. 2d at 617, appears to require injuries from criminal acts against a child victim in order to disregard the First Amendment prohibition against excessive entanglement. In this case, Chet Harrison did not

commit criminal acts by his alleged conduct. By Plaintiff's own account, she not only continued to work at the church, she failed to make much of an effort to resist or remedy the alleged hugging and kissing episodes. (R. 586; Appendix 5). She did not inform Mr. Harrison's wife of the alleged episodes (R. 585; Appendix 5), did not tell Mr. Harrison to stop until approximately a month after the alleged episodes began (R.589; Appendix 5), never directly told Mr. Harrison not to hug her (R. 596; Appendix 5), and stated that the problem was internally resolved, that she was satisfied with the resolution, she agreed to forgive Mr. Harrison, within the confines of the church's mediating of the problem (R. 606-611; Appendix 5), and that after the meeting and her acceptance of his apology, no alleged hugging and kissing episodes occurred. (R. 648-663 and 693-706; Appendix 7).

The internal rules and regulations of the United Methodist Church, as found in the Book of Discipline (R. 274-343; Appendix 8), provide for dispute resolution in both formal and informal quasi judicial manner. In the instant case, the matter was properly resolved by an informal meeting, as set forth in the Book of Discipline, between Rev. Moore, Dr. Renfroe, Harrison, and the Petitioner on June 12, 1996. (R. 606-611; Appendix 5). Despite these alleged episodes involving civil rights, it does not affect the right of the United Methodist Church or The Church itself to internally resolve such disputes. See Yannie v. Indiana-Kentucky Synod Evangelical Lutheran

Church, 860 F.Supp. 1194 (W.D.Ky. 1994) (wherein it is firmly established that in the absence of fraud, collusion or arbitrariness, the decisions of the proper church tribunal on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclusive). It makes no difference that the ecclesiastical dispute fails to touch on church or religious doctrine. Id.

Specifically, the Yannie court stated:

> This court recognizes that none of the above-cited decisions involve the defamation action brought by a minister against the hierarchy of his church. The importance we glean from each opinion is the court's extreme reluctance to interfere with the internal workings of the church. We are also cognizant of the fact that, in this case, the alleged defamatory statements do not express any religious principles or beliefs. However, the fact remains that this action is the result of a conflict confined within the Resurrection Lutheran Church, concerning the employment relationship of its minister, and addressed in accordance with the church constitution. As will be discussed, we find these circumstances dictate our lack of jurisdiction over the matter.

Id. at 1198 (emphasis added).

Contrary to the assertions by Petitioner, religious groups and institutions do not rely upon the excessive entanglement doctrine to place their actions beyond the review of courts; the courts have made the determination that, based upon the Constitutional protections afforded religious freedom, certain actions of a religious institution are beyond review of the courts.

As pointed out in Moses v. Diocese of Colorado, 693 P.2d 310, 323-327 (Colo. 1993), a prerequisite to establishing negligent hiring and supervision is an employment or agency relationship. To determine whether such a relationship exists, it would be necessary in the instant case, to review and analyze the Church policies, procedures and practices, including those at various levels within the Church:

> When a civil court undertakes to compare the relationship between a religious institution and its clergy and the agency relationship of the business world, secular duties are necessarily introduced into the ecclesiastical relationship and the risk of constitutional violation is evident. The exploration of the ecclesiastical relationship is itself problematic. To determine the existence of an agency relationship based on actual authority, the trial court will most likely have to examine church doctrine governing the church's authority over [the alleged agent].

Swanson, at 444.

As the U.S. Supreme Court noted in Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696, 708-709, determining the authority of a religious body under religious law:

> ...necessitates the interpretation of ambiguous religious law in usage. To permit civil courts to probe deeply enough into the allocation of power within a hierarchical church so as to decide...religious law [governing church polity]...would violate the First Amendment in much the same manner as civil determination of a religious doctrine.

Accordingly, based upon the foregoing, it is clear that as applied to the case at

bar, to have the trier of fact attempt to discern the employment relationships between the various parties to this appeal would require an improper evaluation of Church policies, practices and procedures, resulting in an excessive entanglement between church and state. As such, the decision of the District Court of Appeal should be Affirmed.

III.

ASSUMING ARGUENDO THE COURT WAS NOT BARRED BY THE FIRST AMENDMENT FROM RULING ON THE CLAIM OF CARNESI, THE RECORD IS DEVOID OF QUESTIONS OF FACT WHICH WOULD COMPEL REVERSAL OF THE SUMMARY JUDGMENT ENTERED IN FAVOR OF THE CONFERENCE ON THE ISSUE OF AGENCY.

The record evidence in the case at bar fails to establish that The Conference would be liable for the acts of Mr. Harrison. A principle is only liable for the acts of an agent which are within the scope of his or her apparent or actual authority, or the acts outside of the agent's authority are subsequently ratified by the principle. See Aetna Insurance Co. v. Holmes, 52 So. 2d 801 (Fla. 1910); Robinson v. Abreu, 345 So. 2d 404 (Fla. 2d DCA 1977).

Other than the bare allegations of the Plaintiff's Complaint (R. 1), there is no evidence that Harrison was ever, in any way, affiliated with The Conference. In addition, the affidavit of Bishop William Wesley Morris (R. 271-343; Appendix 4), shows that The Conference is an affiliation of nine districts in Alabama and West Florida representing distinct geographical regions. (R. 272). Each district has its own District Superintendent and within each district there are member churches. (R. 273). The Conference, The District, and The Church are separate and distinct entities. (R. 272). The Conference does not have any managerial power or control over member

churches such as Ferry Pass United Methodist Church, and each member church is responsible for the hiring, firing, and supervision of its own staff and employees. (R. 272; Appendix 4).

Bishop Morris stated in his affidavit that,

> As specifically related to this case, the Plaintiff, Virginia Carnesi, was not an employee of the Conference. Rather, she was an employee of Ferry Pass. She was never paid compensation for her work by the Conference. She was paid by Ferry Pass, which derived its revenue for payment of employees through the contributions of its individual members.

(R. 273; Appendix 4).

Similarly, the Bishop stated,

> Chester Harrison was not an employee or agent of The Conference. During the Plaintiff's employment with Ferry Pass, he served as a Chairman of the Pastor Parish Relations Committee, which is also known as the Staff Parish Relations Committee. Mr. Harrison was appointed to the position of Chairman of this committee from its membership. This position was strictly voluntary and he was not employed by Ferry Pass. The Conference had no authority to determine his membership in the committee or his chairing of it. Such authority or control rested only with the membership of the committee. As Chairman, Mr. Harrison did not act on behalf of the Conference in any capacity. He was never an employee or agent of the Conference.

(R. 273; Appendix 4). There is no record evidence contradicting Bishop Morris' affidavit.

For an "employee's" conduct to be within the scope of employment, it must have been the kind of conduct the employee was employed to perform; have occurred within the time and space limits of the employee's employment; and have been activated at least in part by a purpose to serve the master. Schwartz v. Zippy Mart Inc., 470 So. 2d 720, 723 (Fla. 1st DCA 1985), rev'd on other grounds, Byrd v. Richardson-Greenshield Secur., Inc., 552 So. 2d 1099 (Fla. 1989). See also, Gowan v. Bay County, 744 So. 2d 1136 (Fla. 1st DCA 1999) (utilizing the same test to determine if an employee's acts are within the scope of his/her employment), Morrison Motor Co. v. Manheim Services Corp., 346 So. 2d 102, 104 (Fla. 2d DCA 1977) (establishing the above test and encapsulating it stating: "the convenient test is whether the employee was doing what his employment contemplated").

The Schwartz case involved allegations of sexual assault and battery as a result of a supervisor's improper hugging, kissing, and touching of employees. 470 So. 2d at 721. The First District Court of Appeal held that the supervisor was not acting within the scope of his employment, holding that the assaults and batteries were undertaken for reasons which were purely personal to the employee and were neither activated by a purpose to serve Zippy Mart nor related in any way to the furtherance of its business. Id. at 724. The First District Court of Appeal further stated "when the person who intentionally injures the employee is not the employer in person or a

person who is realistically the alter ego of the corporation, but merely a foreman, supervisor or manager, both the legal and moral reasons for permitting a common law suit...collapse." Id.

In addition, sexual assaults and batteries by an employee have generally been held to be outside the scope of employment and therefore insufficient to impose vicarious liability on an employer. See Nazareth v. Herndon Ambulance Service Inc. 467 So. 2d 1076, 1079 (Fla. 5th DCA 1985), Liberty v. Walt Disney World Co., 912 F.Supp. 1494, 1507 (M.D.Fla. 1995). When an assault is purely personal to the servant, having no real connection with the master's business, the doctrine of *respondeat superior* is inapplicable to fasten liability upon the master. Ayres v. Wal-Mart Stores Inc., 941 F.Supp. 1163, 1169 (M.D.Fla. 1996).

In the case at bar, the alleged hugging and kissing episodes had absolutely no connection whatsoever with The Conference's role in the church hierarchy to provide limited guidance and support to The District, or the churches comprising each district. Obviously, based upon the affidavit of Bishop Morris (R. 271-346; Appendix 4), The Conference neither had the ability nor authority to supervise or control Mr. Harrison's church related activities, nor his personal departure from appropriate behavior, if it indeed occurred. The uncontroverted evidence in this matter was that Mr. Harrison was not an agent of The Conference, and was simply a volunteer within the Church.

Further, the evidence also clearly shows that The Conference was neither the employer, nor had any supervisory control over Petitioner, Carnesi.

Accordingly, even if, assuming for the sake of argument, the trial court and District Court of Appeal erred in holding that the excessive entanglement clause of the First Amendment barred the claim by Carnesi, it was harmless error as to The Conference, because liability could not have been found against The Conference for the actions alleged by Carnesi in her Complaint since no facts exist supporting the alleged employee relationship between The Conference and Mr. Harrison, no liability can or should attach to The Conference.

CONCLUSION

For the reasons set forth herein, the judgment of the First District Court of Appeals should be affirmed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven (7) copies, along with a 3.5 diskette appropriately marked, has been furnished to this Court by HAND DELIVERY, on this 11TH day of MAY, 2001, with copies of same being provided by U.S. MAIL, to:

STEPHEN F. BOLTON, ESQ.
Hook, Bolton, et al.
Post Office Box 30589
Pensacola, FL 32503

TIMOTHY M. O'BRIEN, ESQ.
Levin, Papantonio, Thomas, Mitchell,
Echsner & Proctor, P.A.
Post Office Box 12308
Pensacola, FL 32581

MICHAEL KEHOE, ESQ.
Fuller, Johnson & Farrell
700 S. Palafox Place
Suite #170
Pensacola, FL 32501

W.H.F. WILTSHIRE, ESQ.
Harrell, Wiltshire, P.A.
201 E. Government Street
Pensacola, FL 32501

BUTLER BURNETTE PAPPAS

_____

KIM E. WELLS, ESQ.
Florida Bar No. 0629219
KATHY M. MAUS, ESQ.
Florida Bar No. 0896330
3520 Thomasville Road - Suite #102
Tallahassee, Florida 32308
(850) 894-4111 / 894-4999 Facsimile
Attorneys for Respondent-Appellee,
Alabama West Florida United
Methodist Church

CERTIFICATE OF FONT SIZE

I HEREBY CERTIFY that the foregoing Brief was type in New Times Roman 14 font, a font that is not proportionally spaced.

BUTLER BURNETTE PAPPAS

_____

KIM E. WELLS, ESQ.
Florida Bar No. 0629219
KATHY M. MAUS, ESQ.
Florida Bar No. 0896330
3520 Thomasville Road - Suite #102
Tallahassee, Florida 32308
(850) 894-4111 / 894-4999 Facsimile
Attorneys for Respondent-Appellee,
Alabama West Florida United
Methodist Church

APPENDIX

1) Order (dated March 26, 1999) and Final Judgment (dated November 19, 1999)

2) Complaint of Virginia M. Carnesi

3) Opinion, First District Court of Appeal,
Carnesi v. Ferry Pass United Methodist Church,
770 So. 2d 1286 (Fla. 1st DCA 2000)

4) Affidavit of Bishop William Wesley Morris
(Excluding excerpts of the Book of Discipline)

5) Excerpts of Deposition of Petitioner (Volume I)

6) Excerpts of Deposition of Respondent Harrison

7) Excerpts of Deposition of Petitioner (Volume II)

8) Excerpts of the Book of Discipline, United Methodist Church