

ORIGINAL

In the Supreme Court of Florida

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Case no. ~~99-549~~
SC01-179

CLERK, SUPREME COURT
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**St. David Catholic Church
and The Archdiocese of Miami,**

Petitioners,

vs.

Jane Doe I and Jane Doe II,

Respondents.

On Discretionary Review
from the Third District Court of Appeal

Petitioners' Brief on Jurisdiction

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CERTIFICATION OF SIZE AND STYLE OF TYPE

It is hereby certified that the size and style of type used in this brief is 14 point Times New Roman, a font that is proportionately spaced.

STATEMENT OF THE CASE AND FACTS

Jane Doe I and Jane Doe II alleged that they were employees and parishioners of the St. David Catholic Church, and that they were sexually assaulted and/or battered by Father Jan Malicki while working at St. David Catholic Church. Doe v. Malicki, 771 So.2d 545, 547 (Fla. 3d DCA 2000). Plaintiffs further alleged that Father Malicki was retained as a Catholic priest by the Archdiocese of Miami and St. David Catholic Church despite Defendants' knowledge that Father Malicki had previously committed sexual assault and/or battery. Id. at 548. Although Plaintiffs' allegations must be accepted as true for purposes of this appeal, the Archdiocese of Miami and St. David Catholic Church adamantly deny these allegations.

These allegations form the basis for Plaintiffs' damages claims against the Archdiocese of Miami and St. David Catholic Church for (i) negligent hiring and supervision of Father Malicki, (ii) respondeat superior, and (iii) breach of implied contract. Id. at 546.

The trial court granted Archdiocese of Miami and St. David Catholic Church's Motion to Dismiss as to all counts on the basis that the claims are barred by the First Amendment. Id. at 545. The Third District Court of Appeal reversed the trial court in a split opinion, holding that the claims were not barred by the First Amendment. Id. at 546. The Third District subsequently denied Petitioners' Motion for Rehearing

and Motion for Rehearing *En Banc*.

SUMMARY OF THE ARGUMENT

The Third District Court of Appeal held that Jane Doe I and Jane Doe II's claims against Archdiocese of Miami and St. David Catholic Church for (i) negligent hiring and supervision of a priest, (ii) respondeat superior, and (iii) breach of implied contract are not barred by the First Amendment and do not require inquiry into the religious doctrines and practices of the Catholic Church. Doe v. Malicki, 771 So.2d 545, 548 (Fla. 3d DCA 2000).

In contrast, the Fourth District concluded in Doe v. Evans, 718 So.2d 286 (Fla. 4th DCA 1998), *rev. granted*, 735 So.2d 1284 (Fla. 1999) that the First Amendment barred a former parishoner's claim that the employment decisions of the church were unreasonable, as such determinations unconstitutionally entangle the court in issues of the church's religious doctrine, practice, and policies.¹

Similarly, the First District in Carnesi v. Ferry Pass United Methodist Church, 770 So.2d 1286 (Fla. 1st DCA 2000) held that the First Amendment's's excessive

¹Petitioners are fully aware that the Florida Supreme Court accepted discretionary review in Doe v. Evans on the same point of law presented in the instant case and heard oral argument on same on December 7, 1999. This Court's Order dated January 5, 2000 requiring briefs on the same causes of action against non-religious entities, however, has caused the Petitioners to speculate whether Evans may be decided on other grounds.

entanglement doctrine barred claims challenging a church's employment practices, as the allowance of such claims would require a secular court to review and interpret church law, policies, and practices.

ARGUMENT

The district court's decision expressly and directly conflicts with Doe v. Evans, 718 So.2d 286 (Fla. 4th DCA 1998) and Carnesi v. Ferry Pass United Methodist Church, 770 So.2d 1286 (Fla. 1st DCA 2000) on the same question of law, as to whether the First Amendment bars a parishioner, who claims to have been sexually assaulted by a clergyman, from bringing action against a religious institution based on their employment of the clergyman

The Third District Court of Appeal's decision conflicts with the decisions of the First District and Fourth District Courts of Appeal in holding that the First Amendment Excessive Entanglement Doctrine does not bar a parishioner from bring action against a religious institution for their employment of a clergyman.

The Third District expressly recognized that their opinion was in conflict with the Fourth District decision in Doe v. Evans, 718 So.2d 286 (4th DCA 1998), and stated as follows:

Most of the courts which rejected these types of claims have done so based on the belief that to determine liability they would be required to interpret church doctrine. See e.g., Evans, 718 So.2d at 291("[A] Court's determination regarding whether the church defendant was 'reasonable'

would necessarily entangle the court in issue of the church's religious law, practices, and policies).

The instant case presents analogous facts and the same question of law as Doe v. Evans, wherein a former parishoner sued her church, diocese, and bishop, alleging breach of fiduciary duty, negligent hiring, supervision, and retention of a pastor, based on the pastor's consensual sexual relationship with the parishioners. In holding that the First Amendment barred the Plaintiff's claims, the Evans court rejected the contention that the negligence claims could be resolved by the application of neutral tort principles. The Court reasoned that an examination of the relationship between a religious institution, its clergy, and its parishoners would necessarily and unconstitutionally require examination of church doctrine. Accordingly, any effort to define the duty owed to the Plaintiff by the Church, diocese, and bishop would impermissibly entangle the secular court in church practices, doctrines, and belief.

In Carnesi v. Ferry Pass United Methodist Church, 770 So.2d 1286 (Fla. 1st DCA 2000), the Court held that a determination whether a Church acted reasonably with regard to its employment of the chairman of the Church's pastor parish relations committee would unconstitutionally require a review and interpretation of the church's law, policies, and practices.

In the instant case, an inquiry as to the the decisions underlying the ordination

and supervision of Father Jan Malicki, a Catholic priest, as well as the nature of his relationship with St. David Catholic Church and the Archdiocese of Miami, would likewise require excessive entanglement with the religious decisions of the church.

CONCLUSION

The Archdiocese of Miami and St. David Catholic Church respectfully request that this Honorable Court exercise jurisdiction in this case, vacate the opinion of the district court, and Order that judgment be enter in their favor.

Respectfully submitted on this 16th day of January, 2001.

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a correct and true copy of the following was served via U.S. Mail to May L. Cain, Esq., and William J. Snihur, Jr., Esq., CAIN & SNIHUR, Skylake State Bank Building, 1550 N.E. Miami Gardens Drive, Suite 304, North Miami Beach, Florida 33179 this 16 day of January, 2001.

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