IN THE SUPREME COURT OF FLORIDA

CASE NO. SC07-1171

LOWER TRIBUNAL CASE NO.: 3D06-3015

Yolanda Miñagorri,

Petitioner,

vs.

Archdiocese of Miami, Inc.,

Respondent.
_____/

RESPONDENT'S BRIEF ON JURISDICTION

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I. STATEMENT OF CASE AND FACTS[1]

The Respondent, Archdiocese of Miami, Inc., owns and operates numerous Catholic schools as part of its religious mission. The Petitioner, Yolanda Miñagorri, was employed as the principal of St. Kevin Catholic Elementary School in Miami, Florida. In her complaint, Petitioner alleges, among other things, that her immediate supervisor, Father Jesus Saldaña, grabbed her by the arm and verbally threatened her. She further claims that when she internally complained to the Archdiocese about her supervisor's behavior, the Archdiocese retaliated by constructively discharging her in violation of Florida's Private Sector Whistleblower Act, Fla. Stat. § 448.102(3).[2] Petitioner stipulated to the trial and appellate courts that as the school principal, she was a ministerial employee.

In response to Plaintiff's allegations, Respondent filed a motion for summary judgment arguing that the trial court lacked subject matter

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[1] In considering a brief on jurisdiction, the only relevant facts are those appearing "within the four corners of the majority decision." *Reaves v. State*, 485 So. 2d 829, 830 (Fla. 1986). Those facts are set forth clearly and concisely at pages 1-2 of the Third District's opinion, to which we respectfully refer the Court.

[2] The statute provides in relevant part: "An employer may not take any retaliatory personnel action against an employee because the employee has . . . objected to, or refused to participate in, any activity, policy, or practice **of the employer** which is in violation of a law, rule or regulation. Fla. Stat. § 448.102(3) (emphasis added).

jurisdiction over the claim because the First Amendment bars secular court review of ministerial appointments by religious institutions. After the trial judge denied the motion, Respondent petitioned the Third District Court of Appeal for a Writ of Prohibition directed to the trial judge on the basis that the circuit court lacked subject matter jurisdiction over the Plaintiff's claim. On March 14, 2007, the Third District Court granted the relief requested. In rendering its decision, the appellate court applied the well-settled constitutional principle of the ecclesiastical abstention doctrine and noted the plethora of legal authority in support of its decision.

II. SUMMARY OF ARGUMENT

The Supreme Court's constitutional jurisdiction is limited to reviewing appellate court decisions that "expressly construe a provision of the state or federal constitution." Fla. Const. art. V, § 3(b)(3). The Third District did not construe a constitutional provision, but rather merely applied longstanding constitutional principles to the facts of this case and did not take the "evolutionary step" necessary to invoke this Court's limited, discretionary jurisdiction. In addition, the Supreme Court's conflict jurisdiction is limited to reviewing appellate court decisions that "expressly and directly conflict with a decision . . . of the Supreme Court on the same question of law." Fla. Const. art. V, § 3(b)(3). Here, the District Court's

decision is consistent with this Court's prior case law. Thus, Petitioner's request for further review should be denied.

III. ARGUMENT

A. Petitioner's Attempt To Invoke This Court's Limited Discretionary Jurisdiction Is Unfounded And Should Be Rejected.

The Third District Court of Appeal did not expressly construe the federal constitution and therefore this Court's limited, discretionary jurisdiction is unwarranted. Indeed, a cursory review of the appellate court's opinion establishes that it did not *construe* the First Amendment, but merely applied well-settled federal and state case law to the facts of this case.

The Florida Constitution is clear. In order to fall within the Supreme Court's constitutional jurisdiction, the appellate court's decision must "expressly construe a provision of the state or federal constitution." Fla. Const. art. V, § 3(b)(3); Fla. R. App. P. 9.030(a)(2)(A)(ii). Absent an **express** construction, there is simply no basis for review. *See id.*

The mere application of constitutional provisions does not provide this Court with jurisdiction. *Dykman v. State*, 294 So. 2d 633, 635-36 (Fla. 1973). "Applying is not synonymous with construing; the former is not a basis for [Supreme Court] jurisdiction, while the express construction of a constitutional provision is." *See, Rojas v. State*, 288 So. 2d 234, 236 (Fla. 1973).

This Court has explained that a decision does not expressly construe a constitutional provision as contemplated by the Florida Constitution unless it "undertakes to explain, define, or otherwise eliminate existing doubts arising from the language or terms of the constitutional provision." *Ogle v. Pepin*, 273 So. 2d 391, 392 (Fla. 1973) (*quoting Armstrong v. City of Tampa*, 106 So. 2d 407, 409 (Fla. 1958) (*reversed on other grounds*)). Indeed, the opinion under review must contain a statement recognizing or purporting to resolve some doubt about a constitutional provision. *See id*. A decision that merely turns on factual applicability does not furnish a basis to invoke discretionary jurisdiction. *See* P. Padovano, 2 Fla. Prac., Appellate Practice § 3.8 (2007) Rather, for jurisdiction to exist, the opinion must explain or amplify the constitutional provision in a way that is an "evolutionary development in the law." Harry Lee Anstead, Gerald Kogan, Thomas D. Hall & Robert Waters, *The Operation and Jurisdiction of the Supreme Court of Florida*, 29 Nova L. R. 431, 504-506 (2005).

In this case, the Third District Court of Appeal did not construe the First Amendment or any other provision of the federal constitution. In fact, the Third District merely applied well-settled constitutional principles. The court's analysis was limited to reiterating the longstanding concept of the ecclesiastical abstention doctrine (including the "ministerial exception") and

citing to twenty-five federal and Florida cases supporting its straightforward application to this case.

In addition, Petitioner conceded that she was a ministerial employee. With this concession, the Third District was not required to examine the ministerial exception's applicability but rather could simply apply the well-established principle and case law to Petitioner's claim.

Moreover, Petitioner's reliance on the District Court of Minnesota's decision in *Maruani v. AER Services, Inc.*, 2006 WL 2666302 (Sept. 18, 2006), is utterly misplaced. Contrary to Petitioner's claim that the decision relates to a "whistleblower claim against a religious institution," the court, in holding that the First Amendment did not bar the former employee's whistleblower claim, explicitly found that the defendant-employer was **not** a religious entity. Indeed, the court, throughout the opinion, noted that allowing the whistleblower claim to proceed did not involve excessive entanglement with religion only because the defendant-employer was already found to be a **non-religious entity**. Thus, any limited persuasive value the opinion originally seemed to offer is negated by the obvious distinction of this case: a minister's internal employment dispute. Moreover, there is a plethora of both federal and state case law applying the ministerial exception to retaliatory discharge cases. *See Alicea-Hernandez v. Catholic*

Bishop of Chicago, 320 F. 3d 698, 703 (7th Cir. 2003) ("[t]he 'ministerial exception' applies without regard to the type of claims being brought"); *EEOC v. Roman Catholic Diocese of Raleigh, NC*, 213 F. 3d 795, 801 (4th Cir. 2000) ("[t]he exception precludes any inquiry whatsoever into the reasons behind a church's ministerial employment decisions"); *Pardue v. Center City Consortium Schools*, 875 A. 2d 669, 673 (D.C. 2005) ("abundant decisional law form this court and others confirms 'the constitutional imperative of governmental non-interference with the ministerial employment decisions of churches'").

Respondent does not dispute that "[r]esolving constitutional doubts is a highly important function because it results in more predictable organic law." *The Operation and Jurisdiction of the Supreme Court of Florida*, at 504-506. As noted by Justice Gerald Kogan, however, no similar purpose is served by the Supreme Court hearing a case that has merely reiterated settled principles. *See id*. Here, the Third District did not take the "evolutionary step" necessary to trigger this Court's limited, discretionary jurisdiction. The decision did not eliminate any existing doubt as to the First Amendment. It merely outlined the relevant, constitutional principles before applying them to this case. Accordingly, Petitioner's request for review

should be denied because it does not present any colorable basis for the exercise of jurisdiction by this Court.

B. The District Court's Decision Does Not Expressly And Directly Conflict With This Court's Prior Decisions.

Despite Petitioner's assertion otherwise, the Third District's decision is consistent with this Court's prior decisions and does not in any way create a conflict.[3] Petitioner now claims that the Third District's decision "directly and expressly conflicts" with *Malicki v. Doe*, 814 So. 2d 347 (Fla. 2002), and *Doe v. Evans*, 814 So. 2d 370 (Fla. 2002), which purportedly held that "conduct involving criminal activity is outside the ministerial exception." *See* Petitioner's Jurisdictional Brief at 7.

Petitioner's broad description of those holdings, however, simply fails to recognize this Court's explicit limitations outlined in those opinions. Indeed, while this Court held that the First Amendment could not bar negligent hiring/retention claims brought by third parties against religious institutions, it explicitly limited the decision to third-party tort claims. *See Malicki* at 347. This Court specifically noted that the First Amendment was not applicable to third-party tort claims because they did not involve "internal church matters" such as employment claims brought by ministerial

[3] Petitioner did not include this purported basis for jurisdiction in her Notice To Invoke Discretionary Jurisdiction filed with the Third District Court of Appeal.

employees. *See id* at 355 and 360. Indeed, the *Evans* and *Malicki* holdings were limited to "purely secular disputes between third parties and a . . . religious organization." *See id* at 357.

Here, unlike the claims in *Evans* and *Malicki*, Petitioner's claim is purely an internal employment dispute with a concededly ministerial employee.[4] Thus, the Third District's decision applying the ministerial exception does not conflict with *Evans* or *Malicki* and merely recognizes and respects the distinction between third-party claims and intrachurch disputes already carefully crafted by this Court. Petitioner's tortured reading of *Evans* and *Malicki* is merely an attempt to create conflict jurisdiction where it simply and obviously does not exist. Petitioner should not be permitted to avoid the confines of the Rules of Appellate Procedure simply by the after-the-fact salutary addition of her conflict jurisdiction assertion. Petitioner's request for review should be denied.

C. Even If The Court Were To Find A Jurisdictional Basis For Review, Jurisdiction Should Not Be Exercised.

Even if this Court concludes that it has discretionary jurisdiction over this matter, jurisdiction should not be exercised. The District Court issued a

[4] Moreover, Petitioner to date has not filed a criminal complaint relating to the alleged incident.

thoughtful and well supported opinion, applying principles that have long been established by both Florida state courts and numerous federal courts.

Moreover, Petitioner's underlying whistleblower claim fails to state a cause of action under Florida law. Petitioner bases her whistleblower claim on allegations that she was terminated after complaining to the Respondent that her supervisor assaulted her. Under Florida law, however, the whistleblower statute protects employees who object to an **employer's** violation of a law, rule or regulation, not complaints about an employee's conduct outside the course and scope of employment. *See* Fla. Stat. § 448.102; *see also Ruiz v. Aerorep Group Corp.*, 941 So. 2d 505, 507 (3d DCA 2006) (dismissing employee's whistleblower claim based upon allegation that she had objected to supervisor's battery upon her). Here, Petitioner alleges that she complained to the Respondent that her supervisor violated the law by allegedly assaulting her. She does not, as required by the statute, allege that she objected to the **Respondent's** violation of law. Thus, on the merits, Petitioner's claim fails to even state an actionable claim under the Florida Whistleblower Protection Act.

IV. CONCLUSION

The Petitioner does not present any colorable basis for this Court's exercise of its limited jurisdiction and therefore the petition for review should be denied.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing Respondent's Brief on Jurisdiction was sent via U.S. mail this 30 day of July, 2007 to Counsel for Petitioner, Eddy O. Marban, Esq., The Law Offices of Eddy O. Marban, Ocean Bank Building, Suite 350, 782 N.W. LeJune Road, Miami, FL 33126 and George Reeves, Esq., Davis, Schnitker, Reeves & Browning, P.A., Post Office Drawer 652, Madison, Florida 32341.

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CERTIFICATE OF COMPLIANCE

Pursuant to Fla. R. App. P. 9.210(a)(2), the undersigned hereby certify that Respondent's Brief on Jurisdiction was prepared utilizing 14 point Times New Roman Font in compliance with the font requirements of this Rule.

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