

FILED

IN THE CIRCUIT COURT FOR KNOX COUNTY, TENNESSEE

2017 NOV 28 AM 11:26

JOSEPH CARSON, P.E.

Plaintiff

v.

REVEREND LARRY TROTTER

Defendant

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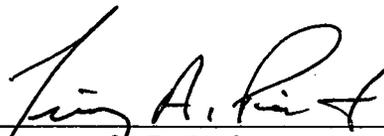
No. 2-399-17

MOTION TO DISMISS

Comes defendant, Reverend Larry Trotter, through counsel, and moves this Court to dismiss the Complaint filed against Reverend Larry Trotter pursuant to Rule 12.02(1) *Lack of Jurisdiction Over the Subject Matter*, and 12.02(6) *Failure to State a Claim Upon Which Relief can be Granted*.

Respectfully Submitted:

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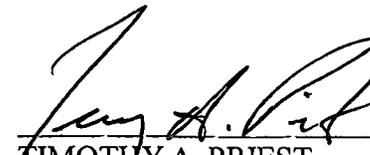


Attorney for Defendant

CERTIFICATE

I hereby certify that a true and exact copy of the foregoing has been furnished to plaintiff, Joseph P. Carson, P.E., 10953 Twin Harbour Drive, Knoxville, Tennessee 37934, by U.S. Mail with sufficient postage thereon to ensure the delivery of same.

This the 28 day of November, 2017.



TIMOTHY A. PRIEST
Attorney for Defendant

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**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT,
REVEREND LARRY TROTTER'S, MOTION TO DISMISS**

The Defendant, Reverend Larry Trotter, Senior Pastor at Concord United Methodist Church in Knox County, Tennessee, pursuant to Tenn. R. Civ. P. 12.02(1) and 12.02(6) has moved this Court to dismiss all of the Plaintiff's claims for lack of subject matter jurisdiction and for failure to state a claim because the allegations in the Plaintiff's complaint arise directly from an internal church matter. The ecclesiastical abstention doctrine bars state courts from adjudicating issues involving theological or spiritual judgment or the internal governance of religious institutions. Since the Plaintiff's allegations stem from internal governance and ecclesiastical issues, this Court has no subject matter jurisdiction over this case.

SUBJECT MATTER JURISDICTION

Subject matter jurisdiction involves a court's lawful authority to adjudicate a controversy brought before it. *Northland Ins. Co. v. State*, 33 S.W.3d 727, 729 (Tenn.2000). The question of whether a court has subject matter jurisdiction over a particular dispute is a question of law. *Anderson v. Watchtower Bible and Tract Soc. of New York, Inc.*, 33 S.W.3d (Tenn. Ct. App. 2007). "Whenever subject matter jurisdiction

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is challenged, the burden is on the plaintiff to demonstrate that the court has jurisdiction to adjudicate the claim.” *Redwing v. Catholic Bishop for the Diocese of Memphis*, 363 S.W.3d 436, 445 (Tenn. 2012). A defendant may use either a facial or factual challenge with respect to a court's subject matter jurisdiction. “A facial challenge attacks the complaint itself and asserts that the complaint, considered as a whole, fails to allege facts showing that the court has subject matter jurisdiction to hear the case.” *Church of God in Christ, Inc. v. L.M. Haley Ministries, Inc.*, S.W.3d (Tenn. 2017), 2017 WL 4183065 at *9. “When a defendant asserts a facial challenge to a court's subject matter jurisdiction, the factual allegations in the plaintiff's complaint are presumed to be true.” *Redwing*. at 445-446. “Thus, when evaluating facial challenges to subject matter jurisdiction, courts are to utilize the familiar analytical framework that applies to motions to dismiss for failure to state a claim.” *Church of God in Christ, Inc.*, at *9, citing *Staats v. McKinnon*, 206 S.W.3d 532, 543 (Tenn.Ct.App. 2006). The Defendant, Reverend Larry Trotter, asserts a facial challenge to this Court's subject matter jurisdiction on the basis that the ecclesiastical abstention doctrine bars this Court from adjudicating this issue.

ECCLESIASTICAL ABSTENTION DOCTRINE

The ecclesiastical abstention doctrine “rests upon a principle long a part of American law, which is that courts in this country do not exercise jurisdiction over purely ecclesiastical, religious, or theological disputes.” *Anderson*, at *4. “It is unquestionably true that the courts have no ecclesiastic jurisdiction, and do not pass upon questions of faith, religion, or conscience; nor will they in fact undertake to revise or to inquire into the propriety or justice of the action of a church upon any matter not affecting a property or

civil right.” *Lewis v. Partee*, 62 S.W. 328 (Tenn.Ch.App. 1901). The ecclesiastical abstention doctrine “is rooted in the First Amendment to the United States Constitution, and its purpose is to prevent the civil courts from engaging in unwarranted interference with the practices, internal affairs, and management of religious organizations. *Anderson*, at *4. “Civil courts cannot adjudicate disputes turning on church policy and administration or on religious doctrine and practice.” *Id.* The Tennessee Supreme Court has applied the ecclesiastical abstention doctrine as a subject matter jurisdictional bar precluding judicial review of ecclesiastical matters. *See Mason v. Winstead*, 196 Tenn. 268, 265 S.W.2d 561, 563 (1954) (removal of a minister); *Travers v. Abbey*, 104 Tenn. 665, 58 S.W. 247, 247-48 (1900) (removal of a minister); see also *Redwing*, 363 S.W.3d at 445 (treating the assertion of the ecclesiastical abstention doctrine as a challenge to the court's subject matter jurisdiction); *Bentley v. Shanks*, 48 Tenn.App. 512, 348 S.W.2d 900, 903 (1960) (“[C]ourts have no ecclesiastic jurisdiction, and do not pass upon questions of faith, religion, or conscience.”).

In cases where a matter can be resolved without addressing issues of religious doctrine, polity or practice, such as a property dispute, trial courts have been found to have subject matter jurisdiction. *See Church of God in Christ*, at *19. Where a court can decide a dispute within a church without unduly entangling itself in matters of doctrine or essentially religious questions, the First Amendment may permit a court to adjudicate the matter. *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 708-09, 96 S.Ct. 2372, 49 L.Ed.2d 151 (1976); *See also, Jones v. Wolf*, 443 U.S. 595, 604, 99 S.Ct. 3020, 61 L.Ed.2d 775 (1979) (holding that a state is constitutionally entitled to adopt neutral principles of law as a means of adjudicating a church property dispute so long as there no

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need to examine a church's ecclesiastical polity or doctrine). However, even where property rights are involved, judicial intervention is still prohibited where courts would be called upon to resolve underlying disputes over religious doctrine or practice. *Milivojevich*, 426 U.S. at 709-10 (holding that because rights to church property were tied to decisions over bishop defrocking, courts could not decide property rights without deciding the underlying religious disputes, which was prohibited). The Defendant, Reverend Larry Trotter, asserts that the ecclesiastical abstention doctrine applies in this case to bar this Court from having subject matter jurisdiction over the issues raised in the Plaintiff's complaint.

FACTUAL ALLEGATIONS

The first question in this case is whether the claims raised by the Plaintiff can be adjudicated without inquiry into the religious doctrine and practice of the United Methodist Church and particularly Concord United Methodist Church, and without resolution of underlying religious controversies. The Plaintiff is employed by the Department of Energy and has had previous disputes with the U.S. Office of Special Counsel and the U.S. Merit Systems Protection Board in his efforts to "resist evil, injustice and oppression" and "reject the powers of evil". (Complaint ¶8). The Plaintiff alleges he was told by Congressman Duncan that an expression of interest by the Plaintiff's faith community's leadership would give Mr. Duncan a reason to bring Congressional oversight to resolving the Plaintiff's claims of "law-breaking" by the above-referenced federal agencies.(Complaint ¶10).

Thereafter, the Plaintiff requested the Defendant to "do something other than bystand to his (Plaintiff's) concerns." (Complaint, ¶10). Because the Defendant refused the

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Plaintiff's request, the Plaintiff then asked the Defendant to file a misconduct complaint against him (plaintiff) pursuant to the Book of Discipline of the United Methodist Church, as the Plaintiff sought a church forum to air out his beef with the Federal government. (Complaint ¶ 11). The Book of Discipline constitutes the law and doctrine of the United Methodist Church.

Because the Defendant refused to file a misconduct complaint against the Plaintiff, the Plaintiff filed a misconduct complaint against the Defendant per the United Methodist Book of Discipline. (Complaint ¶12). This complaint was closed without investigation by Mary Virginia Taylor, the Presiding Bishop of the Holston Conference of the United Methodist Church. (Complaint ¶13) The Plaintiff then filed a misconduct complaint against Bishop Taylor which was also closed without investigation. (Complaint ¶14). Plaintiff alleges he told the Defendant he would continue to pursue claims of the Defendant's professional misconduct in bystanding (not joining defendant's claims versus his employer), by publicizing the Plaintiff's allegations to the general CUMC membership. (Complaint ¶15)

The Plaintiff alleges that the Defendant defamed him as a "threat of violence" when the Defendant instructed that the Plaintiff should be searched when entering the church. It is noted that Plaintiff does not allege publication of the phrase "threat of violence." The Plaintiff also alleges the Defendant engaged in cyber-bullying against him without any factual allegations in support of this claim. (Complaint ¶16).

The Book of Discipline constitutes the law and doctrine of the United Methodist Church. Plaintiff alleges that the Book of Discipline prohibits the Defendant from defaming the Plaintiff as a threat of violence and engaging in cyber-bullying against him to

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drive him from the church membership. (Complaint, ¶18). This Court should also take notice that no allegations of financial loss or damages are alleged in the Complaint.

The Plaintiff's allegations stem directly from the Defendant's decision not to file a misconduct complaint against the Plaintiff per the United Methodist Book of Discipline. Defendant, Reverend Trotter, asserts that the Court is prohibited from adjudicating this dispute as it is a fundamentally ecclesiastical matter. For example, church disciplinary or expulsion proceedings cannot be reviewed by courts for the purpose of granting reinstatement or other relief. *Anderson*, at *10. "As the United States Supreme Court has made clear . . . those who voluntarily join a religious organization consent to its rules and governance structure, and to allow such persons to appeal to secular courts would subvert religious bodies and render the consent of members meaningless. By deferring to the highest judicatory of a religious body, courts also defer to the choice made by church members who voluntarily joined the body and agreed to its rules and governance." *Id.*; *See Watson v. Jones*, 80 U.S. 679, 727 (1872); *Milivojevich*, 426 U.S. 696, 708-09, 96 S.Ct. 2372, 49 L.Ed.2d 151 (1976). (Emphasis added).

DEFAMATION

The law of defamation generally exempts opinions, even when not based on religious belief. *Milkovich v. Lorain Journal, Inc.*, 497 U.S. @20. *See also, Greenbelt Cooperative Publishing Association v. Bresler*, 398 U.S. 6, 14, 90 S.Ct. 1537 (1970), finding that the use of the term "blackmail" to describe the plaintiff's negotiating tactics was not slander. *See also, Old Dominion Branch No. 496 v. Austin*, 418 U.S. 264, 286, 94 S.Ct. 2770 (1974). Tennessee Appellate Courts have stated, "where there is no false

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representation of fact, one may not recover in actions for defamation merely upon the expression of an opinion. . . . *Windsor v. Tennessean*, 654 S.W.2d 680, 685 (Tenn.Ct.App. 1983). The Court further stated that such statements of opinion are not provable as either true or false.

The only allegation of the Defendant that he has been defamed is the statement that Reverent Trotter had used the phrase "threat of violence" when speaking of the Plaintiff. Obviously, such a statement is an opinion and therefore cannot be defamatory.

The Defendant also contends the ecclesiastical abstention doctrine shields him from any defamation claims. "A majority of courts have held that defamation claims by church members against the religious organization itself and its officials are not justiciable under the Free Expression and Establishment Clauses." *Anderson* at *25. (Emphasis added). Further, "in the context of the motion to dismiss for lack of subject matter jurisdiction based on the First Amendment's protection of ecclesiastical decisions, the most pertinent analysis is one that focuses on the nature of the claim in light of the prohibition on court entanglement in or interference with disputes that are fundamentally religious. Where religious belief or practice is implicated, some claims that could be adjudicated if they arose in a secular context are not subject to court intervention because they do not present the kind of compelling state interest to overcome freedom of religion concerns." *Id*; *See Heard v. Johnson*, 810 A.2d, 871 883 (D.C. Ct. App. 2002) which states that under most circumstances, defamation is one of those common law claims that is not compelling enough to overcome First Amendment protection surrounding a church's decisions. (Emphasis added). When a defamation claim arises entirely out of a church's relationship with its pastor, the claim is almost always deemed to be beyond the reach of

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civil courts because resolution of the claim would require impermissible inquiry into the church's bases for its action.

A number of courts have held that defamation claims arising out of minister employment or discipline disputes are outside the subject matter jurisdiction of the courts because all matters touching the relationship between pastor and church are of ecclesiastical concern and not subject to court review, regardless of assertions that the statements at issue are not based on religious doctrine or practice. *Heard*, at 883-884; *See, e.g., Natal v. Christian and Missionary Alliance*, 878 F.2d 1575 (1st Cir.1989) (discharged pastor's claims, including a claim that his reputation was tarnished, dismissed for lack of subject matter jurisdiction); *Hutchison*, supra, 789 F.2d at 392 (minister's claim of defamation (among others) arising from his enforced retirement, dismissed for lack of subject matter jurisdiction); *Yaggie v. Indiana-Kentucky Synod, Evangelical Lutheran Church*, 860 F.Supp. 1194 (W.D.Ky.1994), aff'd, 64 F.3d 664 (6th Cir.1995) (pastor's defamation claim arising from an attempt to obtain his resignation, dismissed for lack of subject matter jurisdiction); *Goodman v. Temple Shir Ami*, 712 So.2d 775 (Fla. Dist. Ct. App. 1998) (rabbi's defamation claim, arising from termination of his services, dismissed for lack of subject matter jurisdiction), review dismissed, 737 So.2d 1077 (Fla. 1999), cert. denied, 528 U.S. 1075, 120 S.Ct. 789, 145 L.Ed.2d 666 (2000).

“In cases of defamation torts involving church officials, Tennessee courts must look at whether the slanderous or libelous statements were made during the course of an ecclesiastical undertaking.” *Ausley v. Shaw*, 193 S.W.3d 892, 859 (Tenn. Ct. App. 2005). Generally, disputes based on otherwise defamatory statements made in the context of a religious disciplinary proceeding are not resolvable by the courts. *Id.* at 859. The *Anderson*

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decision is most instructive where the court states that “the protection afforded by the First Amendment to church disciplinary proceedings applies to statements made after the church’s decision if the statements or actions are merely implementation of, still part of, inextricably related to, or a consequence of the decision.” *Anderson*, at *28. The *Anderson* court determined:

that the most appropriate approach is to focus on the central question that is always at the core of an intrachurch dispute where the ecclesiastical abstention doctrine is raised. Regardless of how stated or applied, the overriding rule remains that courts cannot intrude into purely religious decisions. Thus, as with any other claim brought in the context of an intrachurch dispute, the question is whether the defamation claims can be determined without running afoul of the First Amendment. That means, can the specific defamation claim alleged herein be adjudicated “without extensive inquiry ... into religious law and polity” and “without resolving underlying controversies over religious doctrine,” *O'Connor v. The Diocese of Honolulu*, 885 P.2d at 368, quoting *Milivojevich*, 426 U.S. at 709-10. That includes inquiry into religious law, court examination of religious belief, or court review of the correctness of the church tribunal's decision. If, to resolve the particular claim brought, a court would need to resolve underlying controversies over religious doctrine, then the claim is precluded. *Milivojevich*, 426 U.S. at 709-10.

Further, “where the allegedly defamatory statements refer to or are based upon religious doctrine or church governance, resolution of the truth or falsity of those statements, a determination critical to a defamation action, would require courts to inquire into and resolve issues of church teachings and doctrine, clearly matters of ecclesiastical cognizance.” *Anderson*, at 30. Similarly, the court in *Kyritsis v. Vieron*, 382 S.W. 2d 553 (Tenn.Ct.App. 1964), ruled that “because the defamation claim was inextricably linked to the question of defrocking, it was also not subject to review.” *Id.* at 559. The *Anderson* court explains that the “jurisdictional question” for courts “must be decided by determining whether the specific allegations of defamation made” can be “adjudicated

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without the court becoming excessively entangled in religious doctrine, being the arbiter of religious belief, determining the correctness of scriptural interpretation, or otherwise making a clearly ecclesiastical decision.” *Anderson*, at 31. Although Defendant has not located a case squarely on point, the security and safety of worshipers is clearly a worship issue and ecclesiastical in nature.

To establish a claim for defamation in Tennessee, a plaintiff must show that the defendant “published a statement with knowledge that it was false and defaming to the plaintiff, with reckless disregard for the truth of the statement, or with negligence in failing to ascertain the truth of the statement.” *Id.* The allegations contained in the Plaintiff’s complaint surrounding defamation relate to the Plaintiff’s insistence that he was going to pursue his claims of the Defendant’s professional misconduct by publicizing them to the general CUMC membership.

In order to determine whether the statements at issue were defamatory, a court would be required to determine, among other things, if they were false. Such an inquiry cannot be conducted and adjudication made without encroaching on religious matters, i.e. the Plaintiff’s claim that the Defendant would not file a misconduct complaint under the United Methodist Book of Discipline against him and the Plaintiff’s charge that the Defendant was guilty of professional misconduct for not doing the same.

Finally, compelling evidence that the issues raised by the Plaintiff are ecclesiastical in nature is found in Plaintiff’s allegations in ¶11 and ¶12 of his Complaint that Plaintiff has previously filed misconduct complaints against the Defendant (as well as United Methodist Bishop for the Holston Conference) based on the Book of Discipline of the United Methodist Church. Those misconduct complaints were summarily dismissed to the

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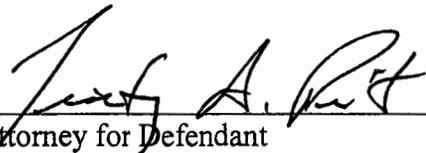
apparent chagrin of the Plaintiff who now seeks to involve this Court in the ecclesiastical matters of Reverend Larry Trotter and Concord United Methodist Church. The law simply does not allow this Court to intervene in such ecclesiastical matters.

CONCLUSION

The question for the court to determine in this case is whether, viewing the factual allegations as prescribed, the Plaintiff has stated a claim that the court has the authority to hear, or has subject matter jurisdiction to adjudicate. Because the ecclesiastical doctrine bars this court from subject matter jurisdiction, the Plaintiff's complaint should be dismissed.

Respectfully Submitted:

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Attorney for Defendant

CERTIFICATE

I hereby certify that a true and exact copy of the foregoing has been furnished to plaintiff, Joseph P. Carson, P.E., 10953 Twin Harbour Drive, Knoxville, Tennessee 37934, by U.S. Mail with sufficient postage thereon to ensure the delivery of same.

This the 28 day of November, 2017.



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