

**JEFFERSON CIRCUIT COURT
DIVISION NINE
JUDGE JUDITH E. McDONALD-BURKMAN
CASE NO. 15-CI-2624**

ROGER DERMODY

PLAINTIFF

v.

ORDER

PRESBYTERIAN CHURCH (U.S.A.)

DEFENDANT

*** **

This matter comes before the Court on Defendant Presbyterian Church (U.S.A.)'s ("PCUSA") Motion for Summary Judgment, Motion to Stay Discovery, and Motion for Third-Party Complaint. Plaintiff Roger Dermody ("Dermody") has responded, and the matters are now submitted.

Dermody had been employed by PCUSA for over 25 years, and has been a Presbyterian pastor for over 20 years. In June 2010, Dermody was hired by the PCUSA to serve as the Deputy Executive Director of Mission. He moved from his Los Angeles, California church to PCUSA's headquarters in Louisville, Kentucky. In his new capacity, Dermody had general oversight of the Presbyterian Ministry Agency's ("PMA") mission work, including oversight of its Directors. Under Dermody's direct supervision was Reverend Eric Hoey ("Hoey"), the Director of Evangelism and Church Growth. Dermody was the indirect supervisor of Reverend Philip Lotspeich ("Lotspeich"), Coordinator for Church Growth, and Reverend Craig Williams ("Williams"), Associate for Church Growth in the Western States.

In July 2012, PCUSA's General Assembly approved an initiative to create 1,001 worshipping communities over a decade. Prior to the General Assembly's approval, Hoey,

Lotspeich and Williams were engaged in conversations about the project and creating a non-profit entity to support it. Dermody alleges this was done without his knowledge or consent or with authority from PCUSA. In November 2013, Williams incorporated the Presbyterian Centers for New Church Innovation, Inc. ("PCNCI") in California, and obtained tax-exempt status from the Internal Revenue Service. In January 2104, PCNCI obtained a \$100,000 grant from PCUSA.

When the PMA's Office of Legal Services discovered PCNCI in March 2014, Hoey, Lotspeich and Williams were ordered to cease and desist operating PCNCI and to return the grant money. All of the money was returned to PCUSA, and there have been no allegations that the money was used for anything other than PCNCI's stated purpose. Dermody claims that it was at this time he learned of PCNCI's existence.

In October 2014, PCUSA issued a written warning to Dermody that he had violated several PCUSA policies, determining that he had violated the PCUSA's ethics policy. Dermody denied any ethical wrongdoing. Pursuant to its internal procedures, Dermody's disciplinary action was reported to the Presbytery of the Pacific. The matter was also reported by the *Presbyterian Outlook*, an independent publication that reports on matters of interest to the Presbyterian community. Dermody alleges the information was furnished by PCUSA, its directors, officers or employees. Dermody also claims that a colleague was sent two unsolicited links to publications detailing his alleged ethical violations.

In November 2014, Dermody was placed on paid administrative leave. His employment was terminated June 1, 2015.

Pursuant to the standards set forth in CR 56 and *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476, 480 (Ky. 1991), summary judgment is only proper if there is no genuine issue of material fact upon which reasonable jurors could differ, and the moving party is entitled to judgment as a matter of law. All of the pleadings must be construed in a light most favorable to the non-moving party. *Id.* Furthermore, in *Paintsville Hospital Co. v. Rose*, 683 S.W.2d 255, 256 (Ky. 1985), the Supreme Court of Kentucky held that for summary judgment to be proper, the movant must show that the adverse party cannot prevail under any circumstances. However, summary judgment is intended to expedite the disposition of cases. *Ross v. Powell*, 206 S.W.3d 327, 330 (Ky. 2006). "If the grounds provided by [CR 56] are established, it is the duty of the trial judge to render appropriate judgment." *Id.*

PCUSA has claimed the Ecclesiastical Abstention Doctrine and Ministerial Exception. The Ecclesiastical Abstention Doctrine prohibits the Court from deciding cases that depend on "doctrine, discipline, ecclesiastical law, rule or custom, or church government." *St. Joseph Catholic Church Orphan Society v. Edwards*, 449 S.W.3d 727, 738 (Ky.2014). It does not apply when the Court can resolve a dispute by the application of neutral principles of secular law. *Id.* at 739. Regardless of those neutral principles, it is not to be extended to internal church government. *Id.*

Within the Ecclesiastical Abstention Doctrine is the Ministerial Exception. *Kirby v Lexington Theological Seminary*, 426 S.W.3d 597, 604. It bars a secular court from reviewing employment-related claims (typically discrimination claims) of ministers against their employing faith communities. *Id.* at 605. The rationale behind the principle is that churches have the right, without a secular court's interference, to have "control

over the selection of those who will personify its [sincerely held] beliefs...no matter how distasteful society may find it or how strong the societal interest." *Id.* at 614-15. However, not all claims asserted by an employee against a faith community are barred by this exception. Like the Ecclesiastical Abstention Doctrine, a secular court may resolve disputes as long as they do not involve church doctrine.

It is undisputed that PCUSA is a church, and Dermody was employed as a minister. Dermody has asserted a defamation claim against PCUSA, not employment discrimination. To establish an action for defamation, Plaintiff must establish as to each Defendant the following: (1) defamatory language; (2) about the Plaintiff; (3) which is published; and (4) which causes injury to his reputation. *Columbia Sussex Corp., Inc. v. Hay*, 627 S.W.2d 270 (Ky.App.1982). Defamatory language "tends to (1) bring a person into public hatred, contempt or ridicule; (2) cause him to be shunned or avoided; or (3) injure him in his business or occupation." *McCall v. Courier-Journal & Louisville Times*, 623 S.W.2d 882, 884 (Ky.1981). "[I]t is beyond dispute that in this state, truth is a complete defense, and thus a defendant able to prove the truth of the defamatory statement at issue cannot be held liable for defamation." *Stringer v. Wal-Mart Stores, Inc.*, 151 S.W.3d 781, 795-796 (Ky. 2004)(citing *Bell v. Courier-Journal and Louisville Times Co.*, 402 S.W.2d 84, 87 (Ky. 1966); *Pennington v. Little*, 99 S.W.2d 776, 778 (Ky. 1936); and *Buchholtz v. Dugan*, 977 S.W.2d 24, 27 (Ky. App. 1998))(internal quotations omitted).

Dermody's claim is based on PCUSA allegedly informing people outside of the governing body of the church that Dermody had committed ethical violations. Dermody was found to have violated PCUSA's ethics policies in the October 2014 written warning.

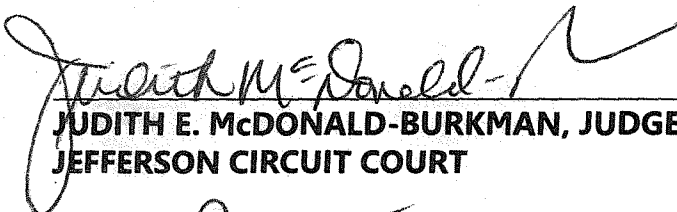
Dermody objected to that finding, but signed the warning. That he disagrees with the outcome of the internal investigation does not negate the fact that he was found to have committed ethics violations. Therefore, PCUSA's statements to that affect are true.

To overcome the truth of PCUSA's statements, the Court would be required to determine if Dermody had in fact committed ethics violations. This would necessitate interpreting church doctrine and policies, which is impermissible under the Ecclesiastical Abstention Doctrine.

Therefore, after a careful review of the record, applicable law and the Court being otherwise sufficiently advised, **IT IS HEREBY ORDERED AND ADJUDGED THAT** Defendant Presbyterian Church (U.S.A.)'s Motion for Summary Judgment is **GRANTED**. Plaintiff Roger Dermody's Complaint is **DISMISSED WITH PREJUDICE**.

IT IS FURTHER ORDERED THAT Defendant Presbyterian Church (U.S.A.)'s Motion to Stay Discovery and Motion for Third-Party Complaint are hereby moot.

This is a final and appealable order there being no just cause for delay.



JUDITH E. McDONALD-BURKMAN, JUDGE
JEFFERSON CIRCUIT COURT
DATE: 9-21-15

Distribution to:

Hon. Stephen B. Pence
Hon. John O. Sheller

