THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

John M. Milling, Circuit Court Judge

Civil Action No. 2007-CP-10-896
Case Tracking No. 2011-188006

Ira Banks, James Bell and Vernon Holmes, Respondents,

v.

St. Matthew Baptist Church, an unincorporated association and Clinton Brantley of whom Clinton Brantley is the Petitioner.

RETURN OF RESPONDENTS

Pursuant to Rule 240(e), SCACR, Respondents Ira Banks, James Bell and Vernon Holmes ("Respondents") submit this Return at the Court's request. In rendering its decision that Respondents' defamation claims can be resolved through the neutral principals of law approach, the Majority considered and understood both the over-arching law and all points made by the parties.

ARGUMENTS

I. PETITIONER BRANTLEY'S DISPARAGING REMARKS AGAINST RESPONDENTS ARE NOT INTERTWINED WITH CHURCH GOVERNANCE.

Petitioner Clinton Brantley ("Petitioner Brantley") claims his slanderous

remarks are protected, because they were made during his request to the congregation for removal of the Respondents from their positions as trustees. The freedom to believe is absolute, but the freedom to act is not. Malicki v. Doe, 814 So.2d 347, 354 (Fla. 2002). The First Amendment does not give Petitioner Brantley, as pastor, *carte blanche* to defame church members and ex-members (see Bilbrey v. Myers, 91 So.3d 887, 892 (Fla. App. 5 Dist. 2012). Petitioner Brantley's secular and slanderous remarks are not rooted in religious belief. Malicki at 354, *supra.* While he attempts to bootstrap "internal church administration and governance" onto his remarks, they go well beyond asking the congregation to remove Respondents as Trustees in the course of church governance and administration. First of all, Respondents are not contesting their removal as trustees, and they have ceased attending church. Church governance is not in issue here. As such, the church autonomy doctrine is not triggered. Secondly, Petitioner could have asked the congregation to remove the trustees *without accusing them* of stealing money or *without accusing them* of being dishonest in their dealings with church money and property. Furthermore, Petitioner Brantley could have asked Respondents privately to step down. Handling the issue in one of these two ways would have kept Petitioner Brantley in the safe harbor of church governance. Aside from this, Petitioner Brantley's argument about the court's focus misses the mark. The court's focus should be on the *intent* of the defamation law itself.

Even if Petitioner Brantley's slanderous remarks are rooted in religious belief (which Respondents deny) as Petitioner suggests, then it is plain to see that the defamation law is neutral both on its face and in its purpose, because the object of the defamation law is not to infringe upon or restrict the church's practices because of religious motivation. Malicki at

354, *supra*. The defamation law has a secular purpose, it neither advances nor inhibits religion, and it does not foster excessive government entanglement with religion. Malicki at 355, *supra* citing Lemon v. Kurtzman, 403 U.S. 602, 612-13 (1971).

In House of God v. White, 792 So.2d 491 (Fla. 4th DCA 2001), which is cited in Bilbrey *supra*, the pastor called Plaintiff a "slut" while standing at the church alter and in front of other clergy and parishioners. The court applied the neutral principals of law approach when it allowed Plaintiff's claim for defamation to proceed, recognizing that it could adjudicate this claim outside the context of any religious doctrine or practice. The Majority did the same thing in our case.

In Bilbrey v. Myers, 91 So.3d 887, 892 (Fla. App. 5 Dist. 2012), the senior pastor openly stated to the congregation in a sermon that a parishioner-turned-junior pastor was gay. The court allowed the junior pastor's defamation claim to proceed, holding that the First Amendment does not grant the senior pastor *carte blanche* to defame church members and ex-church members.

Petitioner Brantley's slanderous remarks do not enjoy First Amendment protection. Even though he knew a church audit revealed no money was missing, Petitioner Brantley nonetheless falsely accused Respondents of stealing, and he was aware that the accusation was false. Now, it is self-serving for Petitioner Brantley to argue that his slanderous remarks are protected speech. Petitioner Brantley's argument falls outside the over-arching case law.

The defamation claim against Petitioner Brantley is not intertwined in the congregation's decision to remove Respondents as trustees. Petitioner Brantley's false allegations can be considered in isolation, separate and apart from the congregation's decision to remove Respondents as Trustees and without considering the church's beliefs.

The Majority soundly holds that determining *whether* Petitioner Brantley's slanderous statements were made would not require consideration of *any* religious issues. Likewise, whether the statements harmed Respondents' reputations would not require delving into religious issues.

II. THE MAJORITY CORRECTLY HELD THAT NEUTRAL PRINCIPLES OF CIVIL LAW MAY BE APPLIED TO THE DEFAMATION CLAIM WITHOUT DISTURBING THE CHURCH'S DECISION TO REMOVE RESPONDENTS AS TRUSTEES.

The Majority's decision falls squarely within the over-arching law, and it is supported by Florida Case Law as set forth above. The right to religious freedom and autonomy protected by the First Amendment is not violated by permitting the courts to adjudicate a defamation claim against Petitioner Brantley, because it can be resolved through the neutral principles of law approach without disturbing the church's decision to remove Respondents as trustees and without considering the church's beliefs, policy, governance or doctrine. The Majority properly focused on the fact that the defamation claim is against Petitioner Brantley and not against the church, and the fact that Respondents did not sue to retain their positions as trustees within the church.

The Majority's decision is in-line with All Saints Parish Waccamaw v. Protestant Episcopal Church in Diocese of S.C., 385 S.C. 428, 442, 685 S.E.2d 163, 170 (2009); Jones v. Wolf, 443 U.S. 595 (1979) (the "neutral principles of law" approach permits the application of property, corporate *and other forms of law* to church disputes); Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696, 96 S.Ct. 2372 (1976) (when a civil court can completely resolve a church dispute on neutral principles of law, the First Amendment commands it to do so without resolving underlying controversies over religious

doctrine); and Pearson v. The Church of God, 325 S.C. 45, 478 S.E.2d 849 (1996) (civil courts have jurisdiction as to *civil*, contract and property rights which are involved in a church controversy, even though they do not have jurisdiction of ecclesiastical questions and controversies).

Respondents' defamation claim seeks redress of a civil right. To reverse the Majority's holding would strip away the civil rights of those who belong to an organized religion. Penalizing Respondents for joining an organized religion violates both the First and 14th Amendments of the U.S. Constitution. A reversal would allow parishioners to be harmed by their pastor without redress.

III. THE CASES CITED BY PETITIONER BRANTLEY DO NOT APPLY TO OUR CASE.

To begin with, Petitioner Brantley's reliance on Downs v. Roman Catholic Archbishop of Baltimore, 683 A.2d 808 (Md. Ct. Spec. App.1996) is misplaced. This case involves a church's decision to fire a priest-in-training for alleged sexual misconduct. The court held that it would not disturb a church's decision regarding unsuitability of a candidate for priesthood. This case is far afield from ours.

In Purdum v. Purdum, 301 P.2d 718 (Kan.App. 2013), the wife submitted a written petition to the Catholic Archdiocese requesting an annulment of marriage based upon the husband's mental condition. The husband was not allowed to maintain his cause of action for defamation, because adjudicating his claim would require the court to interpret canon law and because Archdiocese employees might have to be deposed as part of this interpretation. Here, the written petition for annulment was part of ecclesiastical procedure. In our case, no probing of church law is needed in order to address either Petitioner Brantley's slanderous

remarks or Respondents' damages.

Indiana Area Foundation of the United Methodist Church, Inc. v. Snyder, 953 N.E.2d 1174 (Ind. App. 2011) involved a minister who sued the church after its board required him to seek counseling and to take a leave of absence stemming from inappropriate behavior with a parishioner's daughter. The court prevented the minister from pursuing his claim, holding that a church has the right to choose its ministers without court intervention. This does not apply to our case, because we are not involved with the hiring or firing of a minister. Furthermore, a volunteer trustee is not on the same plane as an employed minister.

Drake v. Moulton Memorial Baptist Church, 93 A.D.3d 685 (N.Y. 2012) concerns trustees who sued the church for procedural irregularities in protest of their removal. Because the removed trustees were seeking to be reinstated, the court held that the dispute could not be resolved with the neutral principals approach. Examining the decision to remove the trustees would require impermissible inquiry into religious doctrine or practice. This does not apply to our case, because Respondents do not seek to be reinstated as trustees.

McCain v. Brightharpe, 730 S.E.2d 916 (S.C. Ct. App. 2012) involves a pastor who had agreed to resign when asked by the joint board to do so. Later, he changed his mind and refused to leave. Next, he removed two of the trustees who had requested his resignation. The procedures set forth in the bylaws for the removal of the pastor and for the removal of trustees were not followed. As such, the court intervened only to restore the *status quo* so that the church bylaws could be followed. This does not apply to our case, because Respondents are not challenging any church procedure at all.

Similarly, our case is distinguishable from Jae-Woo Cha v. Korean Presbyterian Church of Washington, 553 S.E.2d 511 (Va. 2001) wherein a pastor sued his church and its

governing board for wrongful termination and for the resulting defamation. The court held that because the defamation was intertwined with the termination, it could have a potentially chilling effect on the performance of the duties of a religious board's members. In our case, Respondents have neither contested their termination as Trustees, nor were they employees of the church, nor did they sue a governing board. Further, Petitioner Brantley fails to assert any potential chilling effect on operation of the church.

Also, Petitioner Brantley's reliance upon Sherbert v. Verner, 374 U.S. 398, 83 S. Ct. 1790 (1963) is misplaced. Sherbert held that South Carolina's denial of unemployment benefits to an employee who was fired for refusing to work on the Sabbath Day (a Saturday) of her faith was unconstitutional, because such a policy required the employee to abandon her religious convictions. Such drastic action has not occurred in our case.

Further, Petitioner Brantley's reliance upon Hutchison v. Thomas, 789 F.2d 392 (6th Cir. 1986) is misplaced. Our case is easily distinguishable. In Hutchison, a minister was forced into retirement because of repeated complaints that he was hard to get along with. The Neutral Principles Doctrine was not applied, because the complaints concerned matters of internal church discipline, faith and organization. As such, these issues were governed by ecclesiastical rule, custom and law. In this case, the minister was fighting his forced retirement. In our case, Respondents are not contesting their removal as Trustees.

It is important to observe what Respondents have not done. They have not challenged Petitioner Brantley's authority as pastor. They have not challenged their removal as Trustees. They have not challenged any procedure or decision of the church. The trial court took notice of this when it admitted, "I don't know that the

decision of the body is what's being called into question." (Appx. p. 51, lines 16-18). This alone distinguishes our case from all of the cases relied upon by Petitioner Brantley.

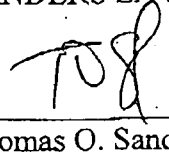
Petitioner Brantley fails to show that the trial court's hearing the Defamation claim would violate religious freedom. Further, Petitioner Brantley fails to show even a potential chilling effect upon the Church's operation or its beliefs, because none exists.

To reverse the Court of Appeals and to embrace the trial court's ruling would shield pastors or other church leaders from his/her wrongful actions by hiding behind the protective cloak of his/her church, thus granting a privilege to pastors and to other church leaders not generally available to other people. Thus, pastors or other church leaders would be allowed to commit all kinds of atrocious behavior at his/her church without redress by the aggrieved.

CONCLUSION

The Majority correctly decided that the defamation cause of action against Petitioner Brantley falls squarely within the claims susceptible to the neutral principals of law approach. The defamation cause of action can be decided without any consideration of the Church's beliefs, policy, governance or doctrine. Aside from the civil court, Respondents have nowhere else to turn for redress. Whether or not Petitioner Brantley decides to appeal to the United States Supreme Court should have no bearing on the Court's decision as to rehearing. The Court should deny the Petition without oral argument.

SANDERS LAW FIRM, LLC



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Nov 20, 2013
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PROOF OF SERVICE

I certify that I have served the *RETURN OF RESPONDENTS* on Petitioner Clinton Brantley by depositing a copy of it in the United States Mail, postage prepaid, on November 20, 2013 addressed to its attorney of record, Weston Adams, III (PO Box 12519, Columbia, SC 29211-2519) and upon St. Matthew Baptist Church, an unincorporated association by depositing a copy of it in the United States Mail, postage prepaid, on November 20, 2013 addressed to its attorney of record, Richard C. Thomas (PO Box 8448, Columbia, SC 29202).

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