

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED
NOV 05 2019
SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Civil Action No.: 2018-CP-10-3929
Bentley D. Price, Circuit Court Judge

Appellate Case No. 2019-001471

John Doe, Respondent,

v.

The Diocese of Charleston, a Corporation Sole, and
the Bishop of the Diocese of Charleston, in his official capacity, Defendants,

Of whom the Bishop of the Diocese of Charleston,
in his official capacity is the Appellant.

APPELLANTS' RETURN TO RESPONDENT'S MOTION TO DISMISS APPEAL

Richard S. Dukes, Jr.
R. Hawthorne Barrett
TURNER PADGET GRAHAM & LANEY, P.A.
40 Calhoun Street, Suite 200 (29401)
Post Office Box 22129
Charleston, South Carolina 29413-2129
Telephone: 843-576-2810
Email: rdukes@turnerpadget.com

ATTORNEYS FOR APPELLANT

The Appellants, have appealed from two orders issued by Circuit Judge Bentley Price. The first, dated July 24, 2019, ignored clear precedent of the United States Supreme Court and the South Carolina Supreme Court, and impermissibly inserted the civil courts into the ecclesiastical decisions of the organization and administration of a religious organization. Appellants have submitted the initial brief and have designated matters for inclusion in the Record on Appeal for that appeal. The second order, dated October 18, 2019, required Appellants to disclose the names of certain victims of childhood sexual abuse to Respondent. Respondent has now moved to dismiss the two appeals. Appellants oppose Respondent's motion.¹

In seeking to dismiss these appeals, Respondent places too much emphasis on what the challenged orders purport to be and ignore what they actually are. It is not the name or the type of an order that matters for purposes of appealability, but rather the order's overall impact. See *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 773 S.E.2d 144 (2015). In *Morrow*, the Supreme Court concluded an order was immediately appealable, regardless of what it was called, because it implicated the appellant's substantial rights. As the Court stated, "Our review of the trial court order is not constrained by how the order is styled." *Id.* at 539, 773 S.E.2d at 147 (emphasis added). The Court further cited *Thornton v. S.C. Elec. & Gas Corp.*, 391 S.C. 297, 304, 705 S.E.2d 479 (Ct. App. 2011), for the proposition that "an appellate court should look to the effect of an interlocutory order to determine its appealability." *Id.* at 540, 773 S.E.2d at 147 (emphasis added).

In response to Respondent's discovery requests, Appellant produced the priest personnel file of Fr. Frederick Hopwood. It is now known that Fr. Hopwood was a serial sexual abuser. When eight men came forward in 1993, Fr. Hopwood was arrested and charged with criminal

¹ In this appeal, it does not appear there was an order to produce confidential documents below, though Respondent raised both issues in the Motion to Dismiss. Appellants have moved to consolidate the two appeals. In an abundance of caution, Appellants have fully briefed the issues raised by Respondent's Motion to Dismiss.

sexual conduct. With the publicity surrounding his arrest, other victims came forward to detail their abuse at his hands. Some of these victims demanded strict confidentiality to protect their anonymity and others entered into settlement agreements containing provisions that protected their identities. Several of those victims filed suit using aliases. Many of these victims' names and the specifics of their abuse appear in Fr. Hopwood's files. In order to maintain the victims' anonymity, Appellant redacted all victim names from the documents produced to the Respondent.

Respondent filed a motion to compel production of these victim names, and Respondent's counsel stated in open court that he intended to contact every victim and ask them questions about their abuse.² In response the Trial Court ordered Appellants to provide the Hopwood personnel file and a redaction log with the victims' names for an *in camera* review. On October 18, 2019, the Trial Court entered a written order compelling production of the Hopwood personnel file without redactions of victim names. Appellants appealed that order that same day. There is no mechanism by which the confidential information regarding victims of long-past sexual abuse can be protected or effectively retracted once the names have been provided.

As noted in its Initial Brief, the Trial Court's Order regarding the motion for summary judgment filed by the ecclesiastical and canonical office of Bishop violates the First Amendment's Free Exercise and Establishment clauses by refusing to give proper deference to the Church's clear decisions on how Appellants interact with the civil law world – exclusively through the Corporation Sole. The Trial Court's order undermines perhaps the most substantial constitutional rights of the Church by refusing to respect the Roman Catholic Church's organizational structure and its choices regarding how the Church will interact with the secular, civil law world.

² Respondent's motion to compel was very broad, and he sought production of all victim names and information regarding every allegation of sexual abuse against any employee of the Diocese. Respondent also requested the complete, and unredacted, personnel files of all priests or other employees who have ever been accused of sexual abuse of a minor. The Trial Court did not rule on those discovery requests.

1. The Trial Court's Order Compelling Production of the Names of Victims of Alleged Sexual Abuse is no Mere Discovery Order and Must Be Immediately Appealable.

As former Chief Justice Toal wrote in her treatise, "If an order requires a party to turn over documents, which the party feels are privileged or contain proprietary or confidential matters, compliance with the order without the ability to seek immediate appeal renders the protections afforded by the privilege or confidentiality a nullity." The Trial Court's Order has the effect of revealing the very thing Appellant is claiming should remain confidential – the identities of those adults who were sexually abused as children. Once the victims' identities are revealed, the resulting pain, anguish, embarrassment, and trauma cannot be corrected. As pointed out to the Trial Court, some of the victims came forward to report their abuse more than 25 years ago, and their childhood abuse largely took place between the 1950s and 1980s. Unless the Trial Court's order is immediately appealable, the Order would be unreviewable on appeal from a final judgment, as any "relief" would be no relief at all. *See BLH v. S.C. Dep't of Social Servs.*, 814 S.E.2d 638 (Ct. App. 2018).

The victims of sexual abuse by Fr. Hopwood have come forward over the years and Appellants have respected and guarded their anonymity. Most, if not all, reached some type of confidential resolution and many have received psychological counseling to help them deal with their abuse. The fact that victims are encouraged to report past sexual abuse and the counseling and pastoral support provided by Appellants could be drastically undermined if victims know that their identities will be provided to a plaintiff's lawyer, who plans to contact them and cross examine them. The very real and imminent threat of harm to innocent third parties merits immediate appeal. Even if the Court eventually disagrees with Appellants' arguments on the

merits, those arguments need to be heard and considered now. An appeal after compliance with the challenged order would be too late to provide any meaningful remedy.

This Court's holdings in *BLH v. S.C. Dep't of Soc. Servs.*, and *Doe v. Howe*, 607 S.E.2d 354, 355 are instructive and determinative. An order is appealable if it "(1) conclusively determines the question, (2) resolves an important question independent of the merits, and (3) is effectively unreviewable on appeal from a final judgment." *Doe* at 356. As was the case in both *BLH* and in *Doe*, the "the appealability criteria were met because the order denying the client's motion to proceed anonymously 'ha[d] the effect of revealing his identity, the very thing he was seeking to keep confidential.'" *Doe* at 356; *quoted in BLH*, 814 S.E.2d at 641-42.

Likewise, the Supreme Court has held, "[a]n order allowing discovery of documents that a newspaper ultimately sought disclosed as the subject of [a] FOIA action was immediately appealable because it in effect determined the action and prevented an appealable judgment." *Knight Publishing Co. v. University of S.C.*, 295 S.C. 31, 367 S.E.2d 20 (1988), *overruled on other grounds*, *Simpson v. Sanders*, 314 S.C. 413, 445 S.E.2d 93 (1994). There, as here, if the discovery is allowed Appellants' objection, the merits of whether Respondent was entitled to receive the documents will become moot because Respondent would already have had the documents. The court-ordered production of confidential document must be immediately appealable, lest any review of the decision become meaningless.

Additionally, the idea of exposing the identities of victims who have nothing to do with this litigation – and potentially exposing them to additional psychological trauma, grief, and embarrassment clearly warrants review of the Trial Court's order on appeal. These victims have a right to their anonymity and to the confidentiality Appellants agreed to afford them. The Trial Court's order to breach that confidentiality must be reviewed now, and it should be reversed.

2. The Trial Court's Order unconstitutional Order ignoring the Roman Catholic Church's self-determination of its organization, structure, and manner of doing business in the civil law world is immediately appealable.

As noted above, the Trial Court's Order denying Appellant's summary judgment motion directly impacts, and violates, Appellant's substantial constitutional rights. Thus, it is immediately appealable in its own right. Yet, even if it were not, the clearly appealable order discussed in the previous section allows the Court to review this issue as well. "An order not immediately appealable will nonetheless be considered if there is an appealable issue before the appellate court, and a ruling on appeal will avoid unnecessary litigation." Toal, et al. *Appellate Practice in South Carolina*, at 88 (citing *Pruitt v. Bowers*, 330 S.C. 483, 499 S.E.2d 250 (Ct. App. 1998)).

The Trial Court's Order ignores the very fundamental freedom of religion enjoyed by religions and enshrined into the First Amendment's Free Exercise and Establishment clauses. The Trial Court's overturning both the Church's and the state's determinations of how the Catholic Church exists in the civil, rather than the ecclesiastical, context constitutes a veritable attack on the First Amendment rights of the Catholic Church and causes the Court to engage in an impermissible inquiry into canon law and Church doctrine. The ruling stands in stark contrast to nearly 150 years' of precedent that civil courts must accept, and give full effect to, the decisions of religious organizations regarding how the church will be organized and structured. Appellants presented the Church documents establishing that Diocese of Charleston operates in civil law as the Corporation Sole and that the Corporation Sole is the only proper defendant in this action.

As with the order to produce confidential material regarding victims of sexual abuse, the Trial Court's Order denying summary judgment to the ecclesiastical office of Bishop is more

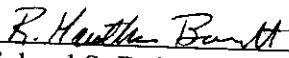
than it seems. The substance of the Order means that an ecclesiastical office, and just the office not an individual holding that office, is being forced to engage with the civil law even though the ecclesiastical office does not have a civil law presence. The diocesan bylaws spell that out distinctly – that the Bishop of Charleston is NOT a civil law title and that Bishop of Charleston, a Corporation Sole is THE civil law entity with the legal name of “Bishop of Charleston.” The Trial Court’s reordering the allocation of both ecclesiastical and civil authority constitutes governmental establishment of religion – determining how a church must function under state authority.

Thus denial of summary judgment to the ecclesiastical office of Bishop of Charleston, which exists only in canon law, erroneously trod on the First Amendment rights of the Roman Catholic Diocese. The Trial Court ignored the Church’s own determinations regarding its presence in civil law, as well as the state’s own law recognizing the Corporation Sole and the civil law presence of the Bishop of Charleston and the Catholic Diocese. In doing so, the Trial Court engaged in its own reordering of the Catholic Diocese and established a church of the Court’s making.

Because the Trial Court erroneously violated the First Amendment rights of a religious organization, violated the Establishment Clause by determining how the Trial Court believed Appellants of Charleston should be present in the secular world, and violated the Free Exercise Clause by denying the Roman Catholic Church its absolute right to control how it is organized and administered, the Trial Court’s Order must be immediately appealable and should be reversed.

CONCLUSION

For all of these reasons, the Court should deny the motion to dismiss and allow the appeal to proceed.


for Richard S. Dukes, Jr.
TURNER PADGET GRAHAM & LANEY, P.A.
40 Calhoun Street, Suite 200 (29401)
Post Office Box 22129
Charleston, South Carolina 29413-2129
Telephone: 843-576-2810
Email: rdukes@turnerpadget.com

ATTORNEYS FOR APPELLANT

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Civil Action No.: 2018-CP-10-3929
Bentley D. Price, Circuit Court Judge

RECEIVED
NOV 05 2019
SC Court of Appeals

Appellate Case No. 2019-001471

John Doe, Respondent,

v.

The Diocese of Charleston, a Corporation Sole, and
the Bishop of the Diocese of Charleston, in his official capacity, Defendants,

Of whom the Bishop of the Diocese of Charleston,
in his official capacity is the Appellant.

PROOF OF SERVICE

The undersigned, an attorney in this matter, certifies that I have this **5th day of November, 2019**, served a copy of the **Return to Respondent's Motion to Dismiss** upon all counsel of record by causing them to be deposited in the United States mail with sufficient postage attached, addressed to:

Mr. Lawrence E. Richter, Jr.
The Richter Firm, LLC
622 Johnnie Dodds Blvd.
Mt. Pleasant, SC 29464

R. Heather Bennett
for Richard S. Dukes, Jr.
TURNER PADGET GRAHAM & LANEY, P.A.
40 Calhoun Street, Suite 200 (29401)
Post Office Box 22129
Charleston, South Carolina 29413-2129
Telephone: 843-576-2810

Email: rdukes@turnerpadget.com

ATTORNEYS FOR APPELLANT

Turner | Padget

Richard S. Dukes, Jr.

REPLY TO:

E-Mail: RDukes@TurnerPadget.com
Writer's Direct Dial: (843) 576-2810
Writer's Direct Fax: (843) 577-1646

November 5, 2019

Via Hand Delivery

The Hon. Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate St.
Columbia, 29201

RECEIVED
NOV 05 2019
SC Court of Appeals

Re: John Doe v. The Diocese of Charleston, et al.
Case No. 2019-001471
Our File No. 8724.252

Dear Ms. Kitchings:

Enclosed are the original and seven copies of the Return to Respondent's Motion to Dismiss and the original and one copy of the Proof of Service. Please file the originals and necessary copies and return the stamped copies to our courier. Thank you for your kind assistance.

Sincerely,

TURNER PADGET GRAHAM & LANEY P.A.

R. Heath Bennett

for Richard S. Dukes, Jr.

RHB
Enclosures

cc: Lawrence E. Richter, Jr.