STATE OF MICHIGAN

COURT OF APPEALS

GUY LYNCH, Plaintiff-Appellant,	UNPUBLISHED January 26, 2001
v CHURCH OF TODAY and ANDY ANDREWS, Defendants-Appellees, and MICHAEL BURSKEY, AL JOHNSON, WILLIAM KLINK, TERRIE VOIGHT, CAROLE MULLINS, GLEN RUETHER, and HAROLD NEWTON, Defendants.	No. 215936 Macomb Circuit Court LC No. 98-003181-NZ

Before: Doctoroff, P.J., and Cavanagh and Meter, JJ.

PER CURIAM.

Plaintiff appeals of right from an order granting defendants' motion for summary disposition. We affirm.

Defendants[1] hired plaintiff as an associate minister in March 1991. Plaintiff was promoted to senior minister in April 1994. As senior minister, plaintiff was responsible for leading worship services, conducting classes for the congregation, furthering the teachings of the church, and making annual reports regarding church activities to the Association of Unity Churches.

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[1] Defendants Michael Burskey, Al Johnson, William Klink, Terrie Voight, Carole Mullins, Glen Ruether, and Harold Newton are not parties to this appeal, and review of the lower court record suggests that they were never properly served with the original complaint in this action. For purposes of this appeal, the term "defendants" refers only to Church of Today and Andy Andrews.

Plaintiff remained employed by defendants as the church's senior minister until July 24, 1997, when defendants terminated his employment. Plaintiff claimed that he was terminated because he sought to have a relationship with a single female employee of the church. According to plaintiff, the church had no policy or by-law prohibiting two single adult employees from pursuing a consensual relationship.[2] Plaintiff further alleged that a just cause employment contract existed based on policies, statements, and representations of defendants.

Plaintiff filed suit against defendants claiming breach of an implied employment contract, discharge against public policy, defamation, intentional infliction of emotional distress, invasion of privacy, and conspiracy. Defendants' moved for summary disposition pursuant to MCR 2.116(C)(4). The trial court issued a written opinion and order granting defendants' motion because it lacked subject matter jurisdiction under the ecclesiastical abstention doctrine.

On appeal, plaintiff argues that the trial court erred when it dismissed his claims against defendants because civil courts have jurisdiction over ecclesiastical matters involving property rights, and a contract, including an employment contract, involves a property right. We review rulings on motions for summary disposition de novo. *Van v Zahorik,* 460 Mich 320, 326; 597 NW2d 15 (1999).

When reviewing a motion pursuant to MCR 2.116(C)(4), this Court must determine whether the pleadings demonstrate that the defendant was entitled to judgment as a matter of law, or whether the affidavits and other proofs show that there was no genuine issue of material fact. *Cork v Applebee's,* 239 Mich App 311, 315; 608 NW2d 62 (2000). Whether the trial court had subject matter jurisdiction is a question of law. *Rudolph Steiner School v Ann Arbor Charter Twp,* 237 Mich App 721, 730; 605 NW2d 18 (1999).

The free exercise of religion is guaranteed by both the United States and Michigan Constitutions. US Const, Am I; Const 1963, art 1, § 4. The ecclesiastical abstention doctrine, which derives from the constitutional free exercise clauses, prevents civil courts from determining the correctness of an interpretation of canonical text or some decision relating to government of the religious polity. *Smith v Calvary Christian Church,* 462 Mich 679, 684; 614 NW2d 590 (2000). Whenever a dispute involves questions of religious doctrine or organization or government of the church, the court loses jurisdiction. *Maciejewski v Breitenbeck*, 162 Mich App 410, 414; 413 NW2d 65 (1987).

In making its determination, the trial court in this case relied on *Dlaikan v Roodbeen,* 206 Mich App 591; 522 NW2d 719 (1994). In *Dlaikan*, the plaintiffs were families whose children were not accepted at the defendants' parochial school. The plaintiffs' complaint alleged intentional misrepresentation, negligence, and breach of contract. The plaintiffs argued that admission to the parochial school was a property right, and civil courts have jurisdiction to determine property rights involving ecclesiastical organizations. This Court disagreed, finding that the plaintiffs' claims were so entangled in questions of religious doctrine or ecclesiastical polity that the civil courts lack jurisdiction to hear them. *Id.* at 594.

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[2] It is undisputed that plaintiff was single at the time he was terminated.

In reaching its conclusion in *Dlaikan*, this Court distinguished between contract rights that involved ecclesiastical policies, such as governance of a church's school, and contracts entered into by ecclesiastical organizations with the secular world, such as a contract to fix the church roof. *Id*. at 593-594. The courts may delve into contract disputes involving churches only where the dispute may be resolved without reference to religious doctrine or ecclesiastical polity. *Id*. at 594.

In the present action, the alleged employment contract was not one entered into with the secular world, but was an internal contract between the church and plaintiff, a member and minister of the church. The claimed contractual rights in this case were far more analogous to the rights asserted by the plaintiffs in *Dlaikan* than the rights of a roofing contractor hired to repair a church's roof. *Id*. at 594.

Further, both this Court and our Supreme Court have held that a church's decision regarding assignment or employment of clergy is a matter of ecclesiastical polity in which the courts may not interfere. *Maciejewski*, *supra* at 414; *Borgman v Bultema,* 213 Mich 684, 703; 182 NW 91 (1921); *Assemany v Archdiocese of Detroit,* 173 Mich App 752, 763; 434 NW2d 233 (1988). Similarly, the decision in this case to terminate plaintiff entailed ecclesiastical polity because it was a determination regarding who would minister to defendants' congregation. See also *Hutchison v Thomas*, 789 F2d 392, 393 (CA 6, 1986).

We conclude that the trial court did not err when it determined that the ecclesiastical abstention doctrine prevented it from exercising jurisdiction over plaintiff's employment contract claims, and dismissal of those claims pursuant to MCR 2.116(C)(4) was proper.

Plaintiff next argues that if defendants' board of directors acted outside its authority in terminating plaintiff, as alleged, the constitutional protection is lost pursuant to *Vincent v Raglin,* 114 Mich App 242; 318 NW2d 629 (1982), and *Brooks v January,* 116 Mich App 15; 321 NW2d 823 (1982). Plaintiff's reliance on *Vincent* and *Brooks* is misplaced. These cases merely reinforce the principle that a civil court may determine whether a clergyman was in fact terminated by a church, a principle that was also enunciated by our Supreme Court in *Borgman, supra*. There is a distinction between determining whether a church took a certain course of action and whether it exceeded its authority in so acting.

Contrary to plaintiff's argument, the case law is clear that the ecclesiastical abstention doctrine bars a court from determining whether a church violated its own policies or procedures. *Dlaikan, supra* at 594; *Lewis v Seventh Day Adventists Lake Region Conference,* 978 F2d 940, 942-943 (CA 6, 1992); *Serbian Orthodox Diocese v Milivojevich,* 426 US 696, 713-714; 96 S Ct 2372; 49 L Ed 2d 151 (1976). In this case, whether defendants acted within their authority in terminating plaintiff would entail a determination whether defendants violated their policies and, therefore, was not within the jurisdiction of the trial court.

Next, we address whether the ecclesiastical abstention doctrine applies to plaintiff's tort claims. In *Dlaikan, supra*, this Court held that we must look to the substance and effect of the complaint as opposed to its form in determining whether the First Amendment bars an action. We upheld the dismissal of the plaintiffs' negligence and intentional misrepresentation claims in *Dlaikan* because to allow such actions would entail an excursion into ecclesiastical polity. *Id.* at

594. In this case, plaintiff alleged defamation, intentional infliction of emotional distress, and invasion of privacy, false light. Review of the elements of these causes of action indicates that plaintiff's claims could not be resolved without inquiry into matters of religious doctrine and subjective judgments made by religious officials. A review of that nature is clearly precluded by the ecclesiastical abstention doctrine. *Maciejewski*, *supra* at 414; *Dlaikan*, *supra* at 593.

Plaintiff also alleges that defendants actions constituted a conspiracy. A civil conspiracy occurs where two or more persons, by some concerted action, accomplish a criminal or unlawful purpose, or accomplish a lawful purpose by criminal means. *Feaheny v Caldwell,* 175 Mich App 291, 307; 437 NW2d 358 (1989). A claim for civil conspiracy may not exist in the air, and unless the plaintiff proves a separate, actionable tort, the conspiracy claim must fail. *Early Detection Center, PC v New York Life Ins Co,* 157 Mich App 618, 632; 403 NW2d 830 (1986). In the present case, plaintiff failed to assert a separate tort claim that is within the jurisdiction of the trial court. Therefore, the conspiracy claim fails as a matter of law.

Plaintiff's final argument is that summary disposition was improper because discovery had not yet occurred. However, summary disposition is appropriate if there is no reasonable chance that further discovery will result in factual support for the party opposing the motion. *Mackey v Dep't of Corrections,* 205 Mich App 330, 333; 517 NW2d 303 (1994). Here, discovery was not going to result in factual support for plaintiff's position where the trial court lacked jurisdiction and plaintiff's claims were barred as a matter of law.

Affirmed.

/s/ Martin M. Doctoroff
/s/ Mark J. Cavanagh
/s/ Patrick M. Meter