No. _____

In The

Supreme Court of the United States

EDWIN R. MELHORN,

Petitioner,

v.

BALTIMORE-WASHINGTON CONFERENCE OF THE UNITED METHODIST CHURCH, et al.,

Respondents.

On Petition For A Writ Of Certiorari To The Court Of Special Appeals Of Maryland

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

In *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, this Court "express[ed] no view on whether the [ministerial] exception bars other types of suits, including actions by employees alleging breach of contract or tortious conduct by their religious employers. There will be time enough to address the applicability of the exception to other circumstances if and when they arise." 132 S. Ct. 694, 710 (2012).

The time has come for this Court to clarify that, consistent with this Court's other First Amendment precedents, the ministerial exception does not absolutely protect breach of contract and tortious conduct.

The question presented is:

> Whether the ministerial exception of the First Amendment absolutely bars breach of contract and tortious conduct lawsuits in situations of illegal conduct or harm to third parties.

PARTIES TO THE PROCEEDINGS BELOW

The following party was a plaintiff below and is Petitioner here: Edwin R. Melhorn.

Cedar Grove United Methodist Church, the Baltimore-Washington Conference of the United Methodist Church, and Rev. Karin Walker were defendants below and are the Respondents here.

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PETITION FOR A WRIT OF CERTIORARI

Edwin R. Melhorn respectfully petitions for a writ of certiorari to review the judgment of the Maryland Court of Appeals.

OPINIONS BELOW

The May 23, 2016, Court of Appeals of Maryland's order denying certiorari is unpublished. Certiorari Petition Appendix [Pet. App.] 30; *Melhorn v. Baltimore-Washington Conference of United Methodist Church*, No. 2065, Sept. Term 2014, 2016 WL 1065884 (Md. Ct. Spec. App. Mar. 16, 2016), *cert. denied sub nom. Melhorn v. Baltimore-Washington Conference*, 136 A.3d 817 (Md. 2016). The Court of Special Appeals of Maryland's opinion and dismissal of all claims on Mar. 16, 2016, is unreported. Pet. App. 1-15. The Circuit Court of Maryland for Baltimore County's order of final judgment dated Nov. 6, 2014, is unpublished. Pet. App. 16-17. The Circuit Court's order referenced its reasons stated on the record in open court. The transcript of the relevant record in open court is reprinted at Pet. App. 18-29.

JURISDICTION

The Court of Special Appeals of Maryland affirmed dismissal of Petitioner Melhorn's claims in its decision filed Mar. 16, 2016, Pet. App. 1, and the order of the Court of Appeals of Maryland denying review

was entered on May 23, 2016, Pet. App. 30. This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

This petition involves the First Amendment's Free Exercise and Establishment Clauses, which state: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." U.S. Const. amend. I.

STATEMENT OF THE CASE

Edwin Melhorn worked at the International Business Machines Corporation ("IBM") for nearly twenty-five years as a financial manager. Then he became Treasurer and Chief Financial Officer of the Oregon-Idaho Conference of the United Methodist Church. He brought that financial experience with him to the Cedar Grove United Methodist Church, where he first became pastor in July 2009. The church renewed his contract annually in July 2010, 2011, and 2012. Melhorn's supervisor, Rev. Karin Walker, also assured him orally that he could remain pastor as long as he wanted. Melhorn received excellent evaluations as pastor.

The financial manager in Melhorn alerted in May 2012, when the Senior Trust & Fiduciary Specialist of Wells Fargo Bank informed Melhorn that Cedar Grove

was a named beneficiary to a $1,224,849.34 trust. The specific terms of the trust earmarked half that sum for the church's Cemetery Fund to provide upkeep of the church's cemetery. Melhorn knew, however, that Cedar Grove had sold the cemetery in 2009. If his church took the trust's money, it could not, and would not, be used for the cemetery's maintenance. Worried about fraud and possible tax evasion by Cedar Grove, Melhorn urged church officials to discuss the terms of the trust with Wells Fargo so that no laws would be broken. Nevertheless, church officials wanted the money to go directly to the church so that they could later transfer it to a separate and non-tax-exempt entity, Cedar Grove Cemetery, without tax liability.

Melhorn warned members of the church's Board of Trustees that taking the money was likely fraud, breach of trust, or tax evasion. Nonetheless, church officials ordered him to request the full amount of the trust from Wells Fargo and deposit the check in the church's bank account. Melhorn refused; as a result, church officials fired him despite his recent contract renewal. Melhorn sued the church defendants for wrongful discharge under Maryland state law.

The Baltimore County Circuit Court granted the church defendants' motion to dismiss, ruling Melhorn's lawsuit was barred because he is a minister. Pet. App. 16. The Maryland Court of Special Appeals affirmed, Pet. App. 1, and the Maryland Court of Appeals denied certiorari. Pet. App. 30. The courts' reasoning suggested that the ministerial exception provides an absolute defense to contract and tort lawsuits, with the

result that every such lawsuit must be dismissed at the defendants' mention of the word minister.

The circuit court ruled that this Court's *Hosanna-Tabor* language about breach of contract and tort lawsuits "in no way changes the Maryland law up to this point." Pet. App. 27. It then relied on Maryland's case law to grant Respondents' motion to dismiss without further inquiry into Melhorn's allegations of resisting participation in fraud or tax evasion. The Court of Special Appeals relied on the same state law, citing *Archdiocese of Washington v. Moersen*, 925 A.2d 659 (Md. 2007); *Prince of Peace Lutheran Church v. Linklater*, 28 A.3d 117 (Md. 2011); *Bourne v. Ctr. on Children, Inc.*, 838 A.2d 371 (Md. 2003); *Bell v. Presbyterian Church (U.S.A.)*, 126 F.3d 328 (4th Cir. 1997); and *Davis v. Baltimore Hebrew Congregation*, 985 F. Supp. 2d 701 (D. Md. 2013). *Melhorn*, 2016 WL 1065884 at *3-5; Pet. App. 11-13.

Yet none of those cases involved a situation like Edwin Melhorn's, where church authorities asked a minister to violate laws and thus possibly cause harm to third parties and interfere with the government's interests in combatting illegal conduct, tax evasion, or fraud. The Maryland courts instead read some old cases dismissing a few wrongful discharge lawsuits and interpreted them to ban ministerial wrongful discharge suits no matter what the surrounding circumstances. That approach was inconsistent with this Court's fact- and lawsuit-specific approach to the ministerial exception in *Hosanna-Tabor*.

Given the confusion and conflict in the lower courts over ministerial breach of contract and tortious conduct cases, Petitioner requests this Court to clarify that the First Amendment does not protect fraud, misrepresentation, or illegal acts. *See, e.g.*, *Employment Div., Dep't of Human Res. of Oregon v. Smith*, 494 U.S. 872, 879 (1990) ("reject[ing] the claim that criminal laws against polygamy could not be constitutionally applied to those whose religion commanded the practice."); *Donaldson v. Read Magazine, Inc.*, 333 U.S. 178, 190 (1948) (the government's power "to protect people against fraud" has "always been recognized in this country and is firmly established"); *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 340 (the "intentional lie" is "no essential part of any exposition of ideas" (internal quotation marks omitted)); *Illinois, ex rel. Madigan v. Telemarketing Associates, Inc.*, 538 U.S. 600, 606 (2003) ("when nondisclosure is accompanied by intentionally misleading statements designed to deceive the listener, the First Amendment leaves room for a fraud claim."); *Schneider v. State (Town of Irvington)*, 308 U.S. 147, 164 (1939) ("Frauds," including "fraudulent appeals . . . made in the name of charity and religion," may be "denounced as offenses and punished by law."); *Listecki v. Official Comm. of Unsecured Creditors*, 780 F.3d 731, 742 (7th Cir.), *cert. denied*, 136 S. Ct. 581 (2015) ("it is unclear whether the intrachurch doctrine is even applicable where fraud is alleged").

This certiorari petition asks this Court to address whether the ministerial exception of the First Amendment absolutely bars breach of contract and tortious

conduct lawsuits in situations of illegal conduct or harm to third parties. This issue is confusing the state and federal courts post-*Hosanna-Tabor*. Petitioner asks this Court to grant certiorari on the question whether the First Amendment's Religion Clauses absolutely bar ministerial breach of contract and tortious conduct lawsuits. In the alternative, Petitioner requests this Court to summarily reverse the decision below.

REASONS FOR GRANTING THE WRIT

I. There Is a Split in Authority Whether the Ministerial Exception Absolutely Bars Breach of Contract and Tortious Conduct Lawsuits.

State and federal courts disagree about the status of breach of contract and tortious conduct cases post-*Hosanna-Tabor*.

Several courts have held that ministers may sue for breach of contract to receive pay and other employment benefits for completed services. *See, e.g.*, *Second Episcopal Dist. African Methodist Episcopal Church v. Prioleau*, 49 A.3d 812, 813-14 (D.C. 2012) (ministerial exception did not bar Rev. Deloris Prioleau's lawsuit for $39,000 "under the contract covering her final year as pastor"); *Crymes v. Grace Hope Presbyterian Church, Inc.*, No. 2011-CA-000746-MR, 2012 WL 3236290, at *2 (Ky. Ct. App. Aug. 10, 2012) ("A claim for

unpaid wages and benefits for work previously performed under an employment contract is not ecclesiastical and is reviewable by the court."); *Bigelow v. Sassafras Grove Baptist Church*, 786 S.E.2d 358, 365 (N.C. Ct. App. 2016) (ministerial exception does not apply to minister's lawsuit that "seeks to enforce a contractual obligation regarding his compensation and benefits," specifically a promise to provide payment and disability insurance if pastor became disabled).

There is a split in authority, however, whether breach of contract lawsuits may proceed after ministerial employees are fired. The Supreme Court of Kentucky allowed a minister's lawsuit against a seminary for breach of his tenure contract to proceed because the employer had voluntarily agreed to the terms of the employment contract. *See Kirby v. Lexington Theological Seminary*, 426 S.W.3d 597, 615-18 (Ky. 2014) ("[T]his is a situation in which a religious institution has voluntarily circumscribed its own conduct, arguably in the form of a contractual agreement, and now that agreement, if found to exist, may be enforced according to its own terms."); *see also Cropper v. Saint Augustine Sch.*, No. 2014-CA-001518-MR, 2016 WL 98701, at *3 (Ky. Ct. App. Jan. 8, 2016), *reh'g denied* (Apr. 11, 2016) (Catholic school principal who was told her position had been eliminated could pursue breach of contract claim. "A contract claim such as the one before us is not subject to the ministerial exception."); *Jackson v. Mount Pisgah Missionary Baptist Church Deacon Bd.*, 2016 IL App (1st) 143045 (pastor's breach of oral contract claim proceeds because "where a

complaint alleges that a church has violated its own bylaws, a civil court may exercise jurisdiction to decide whether the church has violated its bylaws."). Indeed, the Kentucky Supreme Court warned that all religious employment contracts "would arguably be illusory," and schools would be unable to pursue their accreditation and hiring goals, if courts refuse to enforce such contracts. *See Kirby*, 426 S.W.3d at 616, n. 71.

In contrast, the Wisconsin Supreme Court dismissed a ministerial employee's breach of contract lawsuit against a Roman Catholic church without reaching a majority rationale for dismissal. The court refused to enforce contract language requiring "good and sufficient cause" for termination, with the lead opinion concluding, "the First Amendment gives St. Patrick the *absolute right to terminate DeBruin for any reason*, *or for no reason*, as it freely exercises its religious views." *DeBruin v. St. Patrick Congregation*, 816 N.W.2d 878, 888 (Wis. 2012) (emphasis added); *see also Warnick v. All Saints Episcopal Church*, No. 01539, Dec. Term 2011, 2014 WL 11210513, at *1 (Pa. Com. Pl. Apr. 15, 2014), *aff'd*, 116 A.3d 684 (Pa. Super. Ct. 2014) (dismissing breach of contract and interference with contract claim brought by terminated Episcopal priest because court would "have to decide whether the Bishop can be found liable for interfering with alleged contracts – that is, whether he was a third party to those contracts or whether he had to approve those contracts himself. . . ."); *but see DeBruin v. St. Patrick Congregation*, 816 N.W.2d 878, 905 (Wis. 2012)

(Bradley, J., dissenting) ("DeBruin's contract claims are not precluded by a straightforward application of *Hosanna-Tabor*.").

Justice Bradley's dissent in *DeBruin*, the Wisconsin case, echoed the Kentucky Supreme Court's arguments that churches may voluntarily enter into contracts without running afoul of the First Amendment. She warned; "if courts routinely dismissed this variety of contract claim, they might create an unnecessary roadblock hampering a church's free exercise ability to select its ministers." *Id.* at 907; *see also id.* ("Candidates for ministerial positions might be less inclined to enter into these types of employment arrangements in the first instance. A church's ability to recruit the best and brightest candidates for ministerial positions could be undermined because the church would be unable to offer desirable candidates any contractual assurances regarding job security.").

Thus the split in authority creates the dangerous possibility that "a church's ability to arbitrarily fire ministers is so sacrosanct that the church cannot contract around it," even when it wants to. *DeBruin*, 816 N.W.2d at 907 (Bradley, J., dissenting).

The status of the ministerial exception is even more uncertain, and the state court precedents more split, when contract and tort claims are intertwined in a single lawsuit, as frequently happens in employment disputes. The New Mexico Court of Appeals allowed a teacher at a Seventh-Day Adventist school to proceed with a wrongful termination claim involving breach of

contract, retaliatory discharge, intentional interference with contract, civil conspiracy, and defamation. *See Galetti v. Reeve*, 331 P.3d 997, 999-1000 (N.M. Ct. App. 2014). The teacher alleged her employers had retaliated against her after she reported sexual harassment. Instead of deciding that the ministerial exception absolutely required dismissal of all tort and contract claims, the New Mexico court reviewed the specific allegations connected with each claim, concluding that because all the claims could be "'resolved by the application of purely neutral principles of law and without impermissible government intrusion . . . there is no First Amendment shield to litigation.'" *Id.* at 1001, quoting *McKelvey v. Pierce*, 800 A.2d 840, 856-57 (N.J. 2002) (emphasis, internal quotation marks, and citations omitted). In contrast, although Petitioner's wrongful discharge case could similarly be resolved under neutral principles of law, the Maryland Court of Special Appeals distinguished *Galetti* and dismissed Petitioner's wrongful discharge case as absolutely barred by the ministerial exception. *Melhorn*, 2016 WL 1065884 at *5, Pet. App. 14.

Legal authority is also split over pure tort cases filed by ministers. Some courts have dismissed torts connected to entirely internal disputes about a minister's fitness for office. *See, e.g.*, *Warnick v. All Saints Episcopal Church*, No. 01539, Dec. Term 2011, 2014 WL 11210513, at *1 (Pa. Com. Pl. Apr. 15, 2014), *aff'd*, 116 A.3d 684 (Pa. Super. Ct. 2014) (dismissing defamation claim brought by terminated Episcopal priest

because the allegedly defamatory comments involved his fitness for ministry). Yet other courts have warned, "the Free Exercise Clause does not shield church people from any secular court consideration of what happens in church meetings just because of where it happened. If a church meeting is used as a place to plan to commit torts involving third parties," churches may be liable in tort. *See Barrow v. Living Word Church*, No. 3:15-CV-341, 2016 WL 3976515, at *1-3 (S.D. Ohio July 25, 2016) (claim that church officials violated pastor's right to contract because of his race allowed to proceed).

Some church defendants have unsuccessfully argued that *Hosanna-Tabor* bars third-party lawsuits against religious organizations for the tortious conduct of their ministerial employees. Those cases frequently involve victims of sexual abuse suing church employers for negligent supervision of their abusers. *See, e.g.*, *Doe No. 2 v. Norwich Roman Catholic Diocesan Corp.*, No. HHDX07CV125036425S, 2013 WL 3871430, at *3 (Conn. Super. Ct. July 8, 2013) (*Hosanna-Tabor* does not preclude negligence, reckless conduct, failure to warn, and negligent supervision claims of sexual abuse survivor against diocese that failed to prevent sexual abuse by a priest in its employ); *Lopez v. Watchtower Bible & Tract Soc'y of New York, Inc.*, 246 Cal. App. 4th 566, 599 (2016), *review denied* (July 27, 2016) ("Watchtower has not cited, nor are we aware of, any decisions extending [the ministerial exception] to preclude a third party action against a religious organization for

the tortious conduct of its agents."). The same principles that correctly compel those cases to be litigated are involved in Petitioner's case, where church officials asked Petitioner to participate in possibly fraudulent conduct with potential harm to third parties like the original donors of the trust. *See Listecki v. Official Comm. of Unsecured Creditors*, 780 F.3d 731, 742 (7th Cir.), *cert. denied*, 136 S. Ct. 581 (2015) ("it is unclear whether the intrachurch doctrine is even applicable where fraud is alleged").

In the midst of such disagreements, now is the time for this Court to clarify that the ministerial exception does not ban breach of contract or tortious conduct lawsuits where illegal conduct or harm to third parties is involved.

II. Allowing Absolute Ministerial Immunity in Cases involving Illegal Conduct or Harm to Third Parties Establishes Dangerous First Amendment Precedent.

During this Court's oral argument in *Hosanna-Tabor*, Justice Sotomayor anticipated cases like Petitioner's, where important societal interests other than the purely internal, ecclesial relationship between a church and its ministers are at stake. The Justice asked in particular about teachers who are fired for reporting sexual abuse to the government. Under the Maryland courts' reasoning in Petitioner's case, such lawsuits would be absolutely barred by the ministerial exception. Justice Sotomayor anticipated the serious

problems with that outcome, asking, "Regardless of whether it's a religious belief or not, doesn't society have a right at some point to say certain conduct is unacceptable, even if religious . . . ? And once we say that's unacceptable, can and why shouldn't we protect the people who are doing what the law requires, i.e. reporting it?" Transcript of Oral Argument at *5, *Hosanna-Tabor Evangelical Lutheran Church and Sch. v. E.E.O.C.*, 132 S. Ct. 694 (2011) (No. 10-553), 2011 WL 4593953 (U.S.) [hereinafter *Hosanna-Tabor* Oral Arg.]; *see also Ballaban v. Bloomington Jewish Cmty., Inc.*, 982 N.E.2d 329, 339 (Ind. Ct. App. 2013) (struggling with the ministerial exception analysis in a rabbi's case because the "United States Supreme Court has not determined the applicability of the ministerial exception where a minister's employment was terminated or otherwise impacted for reporting or attempting to report child abuse or neglect. . . .").

This Court should protect the people like Petitioner who are trying to do what the law requires. This Court has repeatedly held that the First Amendment does not protect criminal conduct or fraud. *See, e.g.*, *Employment Div., Dep't of Human Res. of Oregon v. Smith*, 494 U.S. 872, 879 (1990) ("reject[ing] the claim that criminal laws against polygamy could not be constitutionally applied to those whose religion commanded the practice."); *Illinois, ex rel. Madigan v. Telemarketing Associates, Inc.*, 538 U.S. 600, 606 (2003) ("when nondisclosure is accompanied by intentionally misleading statements designed to deceive the listener, the First Amendment leaves room for a fraud claim.");

Schneider v. State (Town of Irvington), 308 U.S. 147, 164 (1939) ("Frauds," including "fraudulent appeals . . . made in the name of charity and religion," may be "denounced as offenses and punished by law."). Moreover, this Court has also recognized that the government's interest in the uniformity of its tax system is "very high." *United States v. Lee*, 455 U.S. 252, 259 (1982). Petitioner asks this Court to clarify that, consistent with this Court's interpretation of the First Amendment in other doctrinal areas, the ministerial exception does not ban breach of contract and tortious conduct lawsuits when important societal interests are at stake.

In response to Justice Sotomayor's important question, even counsel for Hosanna-Tabor Lutheran Church and School acknowledged that the ministerial exception should not be absolute: "if you want to carve out an exception for cases like child abuse where the government's interest is in protecting the child, not an interest in protecting the minister, when you get such a case, we think you could carve out that exception." *Hosanna-Tabor* Oral Arg. at *6. Counsel then provided the "theoretical framework" for the exception requested by Justice Sotomayor:

> First, you have to identify the government's interest in regulation. If the government's interest is in protecting ministers from discrimination, we are squarely within the heart of the ministerial exception. If the government's interest is something quite different from that, like protecting the children, then you can

> assess whether that government interest is sufficiently compelling to justify interfering with the relationship between the church and its ministers. But the government's interest is at its nadir when the claim is we want to protect these ministers as such, we want to tell the churches what criteria they should apply for – for selecting and removing ministers.

Id. at *6-7. Petitioner respectfully asks this Court to pursue that framework here, in a case that has nothing to do with Pastor Melhorn's qualifications for ministry and everything to do with protecting the government's interests in combatting illegal conduct, tax evasion, fraud, and possible harm to third parties associated with the Trust, including the original donors of the money to Cedar Grove.

Such a balanced and non-absolute approach to the ministerial exception would be consistent with this Court's Religion Clause precedents, which have never identified religious freedom rights as absolute when important governmental and third-party interests are at stake. *See, e.g.*, *Estate of Thornton v. Caldor, Inc.*, 472 U.S. 703, 709 (1985) (religious accommodations must take account of third-party interests); *Lee*, 455 U.S. at 261 (same); *Cutter v. Wilkinson*, 544 U.S. 709, 720-22 (2005) (prisoners' demands under RLUIPA must be weighed against the "burden a requested accommodation may impose on nonbeneficiaries" and "measured so that [they do] not override other significant interests."); *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct.

2751 (2014) (religious accommodations must consider interests of third-party employees).

This Court has always weighed the proposed actions of First Amendment rights holders against potential harm to third parties because "[a]t some point, accommodation [of religious freedom] may devolve into 'an unlawful fostering of religion'" and violate the Establishment Clause. *Corp. of Presiding Bishop of Church of Jesus Christ of Latter-day Saints v. Amos*, 483 U.S. 327, 334-35 (1987) (quoting *Hobbie v. Unemployment Appeals Comm'n of Fla.*, 480 U.S. 136, 145 (1987)). Moreover, Free Exercise values are equally at stake in recognizing that religious employers do not enjoy absolute immunity from civil liability. The ministerial exception must not be interpreted inconsistently with this Court's Free Exercise precedents, which require *all citizens*, even religious ones, to obey neutral laws of general applicability. *See Church of Lukumi Babalu Aye v. Hialeah*, 508 U.S. 520, 531 (1993); *Employment Div. v. Smith*, 494 U.S. 872, 879 (1990). This Court has never granted absolute First Amendment immunity from tort liability to a church for violation of a neutral, generally applicable law. Its doctrine is squarely to the contrary. *See Employment Div. v. Smith*, 494 U.S. 872, 881 (1990); *Church of Lukumi Babalu Aye v. Hialeah*, 508 U.S. 520, 531-32 (1993); *Hosanna-Tabor*, 132 S. Ct. at 710 ("express[ing] no view on whether the [ministerial] exception bars other types of suits, including actions by employees alleging breach of contract or tortious conduct by their religious employers.").

Moreover, this Court has never extended absolute immunity to religious organizations in cases that involve illegal conduct or third party harm and that may be resolved through "neutral principles of law." *Jones v. Wolf*, 443 U.S. 595, 604 (1979); *see also Hosanna-Tabor*, 132 S. Ct. at 710. Neither should the courts of Maryland or any other courts extend absolute immunity to religious organizations. Petitioner Edwin Melhorn respectfully asks this Court to clarify that his employers do not enjoy absolute immunity for his wrongful discharge.

CONCLUSION

Whether the ministerial exception of the First Amendment absolutely bars breach of contract and tortious conduct lawsuits in situations of illegal conduct or harm to third parties is an important issue to ministers like Petitioner, whose lawsuit ended on a motion to dismiss without any consideration of his duties to obey the law and protect third parties. For this reason, Petitioner respectfully asks this Court to grant certiorari in this case.

In the alternative, Petitioner requests that this Court summarily reverse the decision below with a direction that *Hosanna-Tabor* does not authorize absolute immunity from a state's neutral and generally

applicable contract and tort laws, particularly in those situations that involve illegal conduct or possible harm to third parties.

Respectfully submitted,

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UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2065

September Term, 2014

EDWIN R. MELHORN

v.

BALTIMORE WASHINGTON CONFERENCE OF THE UNITED METHODIST CHURCH, ET AL.

Krauser, C.J.,
Berger,
Reed,

JJ.

Opinion by Reed, J.

Filed: March 16, 2016

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This appeal involves an application of the First Amendment's "'ministerial exception,' which provides that a court lacks jurisdiction to intrude into matters

of a church's self-governance." *Herzog v. St. Peter Lutheran Church*, 884 F. Supp. 2d 668, 671 (N.D. Ill. 2012). The appellant, Edwin R. Melhorn, argues that it would not be violative of this exception for Maryland courts to review his termination as pastor of Cedar Grove United Methodist Church, located in Parkton, Maryland. He presents five questions for our review, which we have reduced to one and rephrased:[1]

> 1. Did the circuit court err where it dismissed the appellant's Complaint for failure to state a claim upon which relief could be granted without providing an opportunity for discovery?

For the following reasons, we answer this question in the negative and shall affirm.

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[1] The questions presented by the appellant are as follows:

1. [W]hether the resolution of [the appellant's] unlawful and wrongful termination complaint would excessively entangle the courts in religious matters.
2. [W]hether employment decisions that are not motivated by religious belief receive the protections of the ministerial exception under the First Amendment.
3. [W]hether the circuit court erred when it ruled that courts cannon intrude on church disputes.
4. [W]hether the circuit court erred in dismissing the appellant's complaint before permitting a factual record to determine whether the appellant's claims would substantially entangle the court in religious doctrine.
5. [W]hether the circuit court erred when it ruled that the decision in *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 132 S. Ct. 694, (2012), . . . prevented the appellant's case from going forward.

Factual And Procedural Background

The appellant was hired as pastor of Cedar Grove United Methodist Church (hereinafter "Cedar Grove" or simply "the church") on July 9, 2009. His pastorship was subject to a yearly employment contract, which was subsequently thrice renewed – first in June 2010, then in June 2011, and then again in June 2012. However, on December 31, 2012, the appellant's employment at Cedar Grove was terminated by the Reverend Dr. Karin Walker, superintendent of the Baltimore-Washington Conference of the United Methodist Church (hereinafter "the Baltimore-Washington Conference"), who informed the appellant that the church was "transitioning" because it had "lost faith" in his spiritual leadership.

On December 12, 2013, the appellant filed a Complaint in the Circuit Court for Baltimore County against Cedar Grove, the Baltimore-Washington Conference, and Dr. Walker. The Complaint alleged wrongful termination based on the appellant's refusal to commit certain unlawful acts in connection with the administration of funds from the Eleanor B. Turnbaugh Trust (hereinafter "the Turnbaugh Trust" or simply "the trust"), of which Cedar Grove was a beneficiary.

On May 16, 2012, approximately a year and a half before the appellant's termination, Cedar Grove was informed that it was scheduled to receive a bequest from the Turnbaugh Trust in the amount of $1,224,849.34. The trust provided that one half of the

bequest was to be used for the general operation and maintenance of the church, while the other half was to be used for the upkeep of the church's cemetery. The appellant, who before becoming pastor had worked as a financial manager at International Business Machines Corporation ("IBM") for nearly twenty-five years and then as the Treasurer and Chief Financial Officer of the Oregon-Idaho Conference of the United Methodist Church, was chosen by the congregation of Cedar Grove to administer the bequest.

According to the Complaint, the appellant quickly discovered that the church sold its cemetery in 2009 and no longer maintained a cemetery fund. The appellant "determined that it would be a breach of trust – as well as fraud and tax evasion – for Cedar Grove to accept the portion of the bequest relating to the upkeep of the cemetery." Therefore, the appellant advised Cedar Grove's Board of Trustees to notify Wells Fargo Bank, which was serving as trustee of the Turnbaugh Trust, that it no longer owned the cemetery and to ask the bank for guidance. But despite the appellant's advice, the Vice Chairman of the Board of Trustees instructed the appellant to request the full amount of the bequest ($1,224,849.34) from the bank and deposit it into the church's general operating account. The appellant refused to follow these instructions and, in August of 2012, took his concerns about accepting the portion of the bequest that was meant for the cemetery fund to Dr. Walker. On October 16, 2012, Dr. Walker notified the appellant that his pastorship at Cedar Grove was terminated, effective December 31 of that year.

On March 31, 2014, the Baltimore-Washington Conference and Dr. Walker filed a Motion to Dismiss the appellant's December 12, 2013, Complaint. A hearing was held on November 5, 2014, the Honorable H. Patrick Stringer presiding. The next day, Judge Stringer issued an Order granting the Baltimore-Washington Conference and Dr. Walker's Motion to Dismiss. The Order references the "reasons stated on the record in open court," which included Judge Stringer's finding that "[the appellant's] claims are fundamentally connected to issues of church doctrine and governance and would require court review of the church's motives for [the] discharg[e]," which is precluded by the ministerial exception.

DISCUSSION

A. Parties' Contentions

The appellant argues that the circuit court erred in applying the ministerial exception, and thus also in dismissing his Complaint. While recognizing that the ministerial exception bars secular courts from hearing disputes over church doctrine, he asserts that courts are not precluded from hearing employment disputes and contract claims like his that are purely secular and not rooted in religious beliefs. "The circuit court erred," he contends, "because it opined that the immunity provided by the ministerial exception is absolute."

The appellant argues that the circuit court also erred by not allowing discovery before dismissing his Complaint. In support of this argument, he cites to the

cases of *Minker v. Baltimore Annual Conference of United Methodist Church*, 894 F.2d 1354 (D.C. Cir. 1990), and *Galetti v. Reeve*, 2014-NMCA-079, 331 P.3d 997, which, he asserts, stand for the proposition that claims like his should not be dismissed unless the court first permits a factual record to be developed and then determines, based on that record, that the claims would substantially entangle the courts in religious doctrine. He contends that "the trial judge [would have] had adequate discretion to control discovery . . . so that if ecclesiastical matters overtook the litigation, the case could [have been] stopped on summary judgement or simply dismissed."

Cedar Grove, the Baltimore-Washington Conference, and Dr. Walker (hereinafter collectively referred to as "the appellees") argue that the circuit court correctly applied the ministerial exception and thus did not err in granting the Motion to Dismiss. Quoting the Supreme Court's decision in *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, the appellees assert that "the Free Exercise Clause prevents [the Government] from interfering with the freedom of religious groups to select their own [ministers]." 132 S. Ct. 694, 703 (2012). This Free Exercise principle is otherwise known as the "ministerial exception." The appellees recognize that the Supreme Court's holding in *Hosanna-Tabor* was limited to precluding ministers[2]

[2] It is undisputed in the present case that the appellant qualifies as a minister. However, we find it to be worth noting that the ministerial exception only applies to claims brought by ministers.

from bringing claims of *employment discrimination* against their religious institution employers. However, they contend that our Court of Appeals, in cases such as *Archdiocese of Washington v. Moersen*, 399 Md. 637 (2007), and *Prince of Peace Lutheran Church v. Linklater*, 421 Md. 664 (2011), has extended the application of the ministerial exception under state law so as to also preclude claims of *wrongful discharge* like the appellant's. The appellees also cite to cases from numerous other jurisdictions, both state and federal, that, like Maryland, have applied the ministerial exception to wrongful discharge claims. In sum, the appellees argue that the appellant's claims would have required the court to engage in an impermissible inquiry into the church's doctrine and self-governance – *i.e.*, to decide whether or not the appellant was actually terminated for the stated reason that the church had "lost faith" in his spiritual leadership.

Additionally, the appellees assert that the circuit court was proper in not permitting pre-dismissal discovery. They contend that the Complaint was sufficient

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See Hosanna-Tabor, 132 S. Ct. at 707. A minister is "any employee whose 'primary duties consist of teaching, spreading the faith, church governance, supervision of a religious order, or supervision or participation in religious ritual and worship.'" *Moersen*, 399 Md. at 644 (quoting *Rayburn v. General Conf. of Seventh-Day Adventists*, 772 F.2d 1164, 1169 (4th Cir. 1985)). "Pursuant to [this so-called "primary duties"] test, the ministerial exception 'does not depend upon ordination but upon the function of the position.'" *Moerson*, 399 Md. at 664 (quoting *Rayburn*, 772 F.2d at 1168).

on its face to demonstrate that the claims were precluded by the ministerial exception. The appellees contend that the present case is easily distinguished from *Galetti* and *Minker*, the two cases cited by the appellant as requiring discovery prior to dismissal on ministerial exception grounds. The appellees argue that the case at bar is instead similar to *Linklater*, in which the Court of Appeals affirmed the trial court's prediscovery, ministerial exception dismissal. 421 Md. at 675.

B. Standard of Review

As the Court of Appeals observed in *McDaniel v. Am. Honda Fin. Corp*., "[t]he standard of review for a grant of a motion to dismiss is well-settled." 400 Md. 75, 83 (2007). The Court in *McDaniel* went on to explain that

> [i]n reviewing the underlying grant of a motion to dismiss, we must assume the truth of the well-pleaded factual allegations of the complaint, including the reasonable inferences that may be drawn from those allegations. In the end, "[d]ismissal is proper only if the complaint would fail to provide the plaintiff with a judicial remedy." In sum, because we must deem the facts to be true, our task is confined to determining whether the trial court was legally correct in its decision to dismiss.

Id. (quoting *Debbas v. Nelson*, 389 Md. 364, 372 (2005) (citations omitted)).

C. Analysis

i. Application of the Ministerial Exception

Two elements must be present for the ministerial exception to preclude a secular court from obtaining subject matter jurisdiction over a claim brought by an employee against his religious institution employer: First, the employee making the claim must qualify as a "minister"; and second, the claim must be the type of claim which would substantially entangle the court in the church's doctrinal decision-making and internal self-governance. *See generally Bourne*, 154 Md. App. at 54-57 (first analyzing whether the former pastor appellant satisfied the "primary duties" test, then whether his defamation claim was barred by the ministerial exception). In the case before us, it is clear that the appellant satisfies the first of the immediately aforementioned elements.[3] It is also clear that, with regard to the second element, wrongful discharge claims like the appellant's are precluded by the ministerial exception under Maryland law. Therefore, we shall hold that the circuit court did not err in granting the Baltimore-Washington Conference and Dr. Walker's Motion to Dismiss. We explain.

Hosanna-Tabor is the most recent Supreme Court case dealing with the ministerial exception. In that case, the Equal Opportunity Employment Commission ("EEOC") filed an employment discrimination suit against the Hosanna-Tabor Evangelical Lutheran Church and School. 132 S. Ct. at 701. The suit alleged

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[3] *See* n. 2, *supra.*

that Hosanna-Tabor had fired one of its former teachers in retaliation for threatening to file an Americans with Disabilities Act ("ADA") lawsuit. *Id.* At the outset, the Supreme Court noted that "the First Amendment permits hierarchicals religious organizations to establish their own rules and regulations for internal disciple and government, and to create tribunals for adjudicating disputes over these matters, . . . [whose decisions] the Constitution requires that civil courts accept . . . as binding." *Id.* at 705 (internal quotations and citations omitted). But furthermore, the Court observed that "[u]ntil today, we have not had occasion to consider whether this freedom of a religious organization to select its ministers is implicated by a suit alleging discrimination in employment." *Id.* Thus began the Court's analysis.

Ultimately, the Supreme Court held that the ministerial exception, which "the Courts of Appeals have uniformly recognized . . . [as] grounded in the First Amendment," *id.*, does apply to employment discrimination claims brought under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.*, and that it applied so as to bar the EEOC's claims. *Id.* at 706-07. In reaching this conclusion, the Court first determined that the former teacher qualified as a "minister." *Id.* at 707-09.[4] It then explained that "[t]he

[4] The Court concluded that the former teacher qualified as a "minister" because of "the former title [of "Minister of Religion, Commissioner,"] given to [her] by the Church, the substance reflected in that title, her own use of that title, and the important religious functions she performed for the Church." *Hosanna-Tabor*, 132 S. Ct. at 708.

purpose of the [ministerial] exception is not to safeguard a church's decision to fire a minister only when it is made for a religious reason. The exception instead ensures that the authority to select and control who will minister to the faithful – a matter 'strictly ecclesiastical,' – is the church's alone." *Id.* at 709 (quoting *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 119 (1952)).

Although the Supreme Court has not addressed whether the ministerial exception applies to wrongful discharge claims,[5] the Court of Appeals, our Court, the United States Court of Appeals for the Fourth Circuit, and the United States District Court for the District of Maryland have all held that it does. *See Moersen*, 399 Md. 637; *Linklater*, 421 Md. 664; *Bourne*, 154 Md. App. 42; *Bell v. Presbyterian Church (U.S.A.)*, 126 F.3d 328 (4th Cir. 1997); *Davis v. Baltimore Hebrew Congregation*, 985 F. Supp. 2d 701 (D. Md. 2013). For instance, in *Bourne*, much like in the present case, a former pastor sued his church, the church's regional supervisory body, and the supervisory body's district superintendent, among others, for breach of employment contract. 154 Md. App. at 45. Although we concluded that "[the] appellant fail[ed] to set out any details of the contract allegedly violated by [the] appellees," we went on to state in *dicta* that

[5] As we previously indicated, *Hosanna-Tabor* dealt strictly with the ministerial exception's application to claims of employment discrimination under Title VII.

> [e]ven assuming there was a contract, in evaluating the parties' adherence to such a contract, the court would have to make a determination regarding whether appellant met the qualifications to act as a minister for the Church. It appears that appellant's responsibilities included faithfully attending church services, committing to the church, giving tithes and offerings, and maintaining "a spirit of Christian cooperation with staff," and "a spirit-filled relationship with the Lord." In considering the issues raised by appellant, the court would have to consider whether appellant was properly performing his job. Doing so would mandate the court to consider appellant's adherence to religious tenants, his spiritual successfulness, as determined by the church, his teaching skills, and his relationship with both clergy and worshipers. Such determinations are clearly prohibited by the case law outlined above.

Id. at 55-56. This is so because "religious organizations must be allowed to hire and fire their clergy members without government interference." *Id.* at 53. Therefore, as the *Bourne* case demonstrates, the case law of our own Court has extended the ministerial exception to cover breach of employment contract claims in addition to the employment discrimination claims contemplated by the Supreme Court in *Hosanna-Tabor*.

The Court of Appeals has also recognized a broader ministerial exception under Maryland law. In *Linklater*, for example, the Court of Appeals held that the ministerial exception precluded a former church

employee's claims of "Retaliatory Harassment and Constructive Discharge," "Intentional Infliction of Emotional Distress," "Negligent Retention and Supervision," "Breach of Contract," and "Breach of Implied Contract." 421 Md. at 1189-90. The Court concluded that each of these claims "would necessarily involve judicial inquiry into church governance, and such an inquiry is prohibited by the First Amendment." *Id.* at 1189.

We need not go any deeper into the litany of the state and federal cases cited above to reach our holding, which is that the appellant's wrongful discharge claim, like the "Retaliatory Harassment and Constructive Discharge" claim in *Linklater*, "would . . . 'encroach on the ability of a church to manage its internal affairs,'" *id.* at 1190 (quoting *EEOC v. Roman Catholic Diocese*, 213 F.3d 795, 801 (4th Cir. 2000)), and is thus precluded by the ministerial exception. The court could not have heard the appellant's wrongful discharge claim without having to make a determination as to whether the appellant was terminated in retaliation for refusing to obey the Vice Chairman's instruction regarding the portion of the bequest that was meant for the cemetery fund, or because the church had "lost faith" in his spiritual leadership. Such a determination is of the precise type that the ministerial exception precludes secular courts from making.

ii. The Need for Discovery

The appellant also argues that the circuit court erred in that it did not permit discovery before it ruled on the Motion to Dismiss. For the following reasons, we disagree.

The appellant's reliance on *Galetti* and *Minker* with regard to this issue is misguided. In both of those cases, the respective appellate court remanded for discovery because the claims on their face did not clearly require an inquiry into religious matters. In *Galetti*, the Court of Appeals of New Mexico noted that "[t]he district court does not need to determine whether the [church] had cause to terminate Plaintiff's employment, but only whether the Conference complied with its contractual obligation with respect to the timeliness of the notice it provided to Plaintiff." 331 P.3d at 1001. Therein lies the difference between *Galetti* and the case at bar. Here, the circuit court could not have heard the appellant's wrongful discharge claim without determining whether the church had cause to carry out the termination.

In *Minker*, the United States Court of Appeals for the District of Columbia Circuit, like the Court of Appeals of New Mexico in *Galetti*, remanded for discovery on a claim that was potentially precluded by the ministerial exception. 894 F.2d at 1361. However, the claim in *Minker* was also one that would not necessarily require an inquiry into religious matters. In fact, the *Minker* Court even warned that "any inquiry into the Church's reasons for asserting that Minker was not

suited for a particular pastorship would constitute an excessive entanglement in its affairs." *Id.* at 1360. In the present case, the circuit court could not have heard the appellant's claim without performing the exact type of inquiry that was warned against in *Minker*.

The Court of Appeals has affirmed pre-discovery dismissals of claims barred by the ministerial exception in cases where it was clear based on the face of the complaint that an inquiry into religious matters would have been necessary. *See, e.g.*, *Linklater*, 421 Md. 664. We are currently presented with such a case, one in which the church has said all along that its decision to terminate the appellant's employment was motivated entirely by reasons of faith. Therefore, discovery was not necessary for the circuit court to properly determine that the appellant's claim was barred by the ministerial exception, and, as such, we hold that the circuit court did not err in granting the Baltimore-Washington Conference and Dr. Walker's Motion to Dismiss.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

APPENDIX

EDWIN MELHORN	*	IN THE
Plaintiff,	*	CIRCUIT COURT
v.	*	OF MARYLAND
CEDAR GROVE UNITED METHODIST CHURCH, *et al*.	*	FOR BALTIMORE COUNTY
Defendants.	*	CASE NO. 03-C-13-014153

* *

ORDER

UPON CONSIDERATION of Defendant Cedar Grove United Methodist Church's Motion to Dismiss and Memorandum of Law in support thereof, and Plaintiff's response, if any, thereto, and this Court having found that Plaintiff has failed to state a claim upon which relief can be granted because even the allegations in Plaintiff's Complaint were proven true, the ministerial exception bars plaintiff's suit against Cedar Grove [and for the reasons stated on the record in open court] it is this 6th day of November, 2014, by the Circuit Court of Maryland for Baltimore County,

ORDERED that Plaintiff's Complaint against Cedar Grove United Methodist Church be, and hereby is, dismissed with prejudice.

/s/ Patrick Stringer
Judge, Circuit Court for
Baltimore County

EDWIN MELHORN	*	IN THE
Plaintiff	*	CIRCUIT COURT FOR
VS	*	BALTIMORE COUNTY
CEDAR GROVE UNITED METHODIST CHURCH, ET AL.	*	Civil Proceeding
Defendant	*	Case No: 03-C-13-014153
* * * * * * * * *	*	* * * * * * * * *

TRANSCRIPT OF PROCEEDINGS:

November 05, 2014

Judge H. Patrick Stringer, Jr., presiding

ANDREW DANSICKER, ESQUIRE
Counsel for the Plaintiff

J. BROOKS LEAHY, ESQUIRE
ALISON HURT, ESQUIRE
Counsel for the Defendant

[29] JUDGE STRINGER: All right. I've got it underlined in red and highlighted in yellow and I still can't find it my own – in my own copy of the case in front of me. (PAUSE) – All right. I thank the parties for their memoranda and arguments today. I know you put a lot of time and effort into it. And they're – all of the memo's were instructive to the Court. And I appreciate the research you did. I'm bound to follow the Maryland law. And that's what I'm going to try to do. I'm first referring to the Moersen case. That's Archdiocese of Washington versus Moersen, M-O-E-R-S-E-N, 399 Md.637, a 2007 case. This is the case about the organist

and he filed a suit for wrongful discharge, which is what – and, and some other claims. And that's what this case is. It's a case for wrongful discharge by a minister or pastor. And the Court of Special – the Court of Appeals rather, this is 399 Md.637, said that whatever the role of music in, in the Catholic faith, this case involves the ministerial exception. That in turn implicates and requires examination of the role that the respondent plays in the church. So, my first point is that in this case before the Court, the Melhorn case, it's a claim for wrongful discharge. And according to the analysis by the Court of Appeals in Archdiocese of Washington versus Moersen, that claim involved the ministerial exception. So, [30] I'm going to apply the ministerial exception. There is case law including the Moerson case, which refers to the primary duties test. And under the primary duties test, to be deemed nonsecular the respondent's role must consist of teaching, spreading the faith, church govern and supervision of the religious order or supervision in religious ritual and worship Mr. Dansicker has conceded that Reverend Melhorn – Pastor Melhorn would satisfy the primary duties test. His duties are described in the complaint. He was employed as Pastor at Cedar Grove. And in paragraph seventeen of the complaint it is alleged that Pastor's, Pastor Melhorn's duties at Cedar Grove included, among other things, leading the congregation in study and worship, delivering sermons, performing personal spiritual or grief counseling, administering the affairs of the church and promoting financial stewardship in caring for Cedar Grove's financial obligations and records. That clearly satisfies

the primary duties test. And again, which Mr. Dansicker concedes. And again, in a claim for wrongful discharge the Court of Appeals has applied the analysis of the ministerial exception. And so, I believe that the ministerial exception analysis applies to this case. And that Pastor Melhorn satisfies the primary duties test. The next case that I believe is important is the Prince of Peace Lutheran Church versus Linklater, L-I-N-K-L-A-T-E-R, 421 Md.664, decided in 2011 by the Maryland Court of Appeals. And in this case the [31] Court of Appeals went through a, I think it was a sixteen count complaint and decided whether each count could go forward or whether it was barred by the First Amendment applying this ministerial exception. And I'm gonna read liberally from that decision because again it deals with a number of, of the causes of action. And if some of the language is repetitive, it's because they're so many counts in the complaint. So, again looking at Prince of Peace versus Linklater, 421 Md.664, with respect to (PAUSE) – count two of the complaint which was a quit pro quo sexual harassment claim against the Defendant's. The Court of Appeals held that we agree with the Court of Special Appeals that adjudicating the quit pro quo claim would require the Court to assess whether Linklater was otherwise qualified to receive a job there? And thus would necessitate an evaluation of Linklater's job performance which would run afoul of the ministerial exception. We therefore, hold that the ministerial exception prohibits respondent from proceeding to trial on count two of the complaint. Further on in the opinion the Court looked at counts four, five, ten, fourteen and fifteen. Count

four was retaliatory harassment and constructive discharge. Count five was a count for intentional infliction of emotional distress. Count ten was negligent retention and supervision. Count fourteen was breach of contract. And fift – count fifteen was breach of implied contract. The Court said we hold that the claims asserted in [32] counts four, five, ten, fourteen and fifteen would necessarily involve judicial inquiry into church governance and such an inquiry is prohibited by the First Amendment. The uniform line of cases that are consistent with this holding include Black V. Synder Super. I think that was a case from another jurisdiction. In that case, while holding that the Plaintiff was entitled to proceed on her sexual harassment claim, the Minnesota Court of Appeals explained why she was not entitled to proceed on her breach of contract, reprisal, retaliation and defamation claims. And then the – our Court of Appeals quoted from the Minnesota Court of Appeals, Black's breach of contract, retaliation and statutory whistle blower claims relate specifically to factors of her appointment as an Associate Pastor and discharge. These claims are fundamentally connected to issues of church doctrine and governance and would require Court review of the church's motives for discharging Black. And that's why I was asking Mr. Daniel – Dansicker about his argument. That's what the Plaintiff is asking the Court to do here. Even to allow further discovery as to what was the reason for the discharge? The Plaintiff's are asking the Court to review the church's motives for discharging Melborne – Melhorn, I'm sorry, or inquire into those motives. The Court of Appeals went on to quote from the Minnesota

Court of Appeals, Black's defamation claim is based on the church's stated reason for her discharge as [33] inability to conduct her ministry efficiently. This claim would require a similar review of the church's reasons for discharging Black an essentially ecclesiastical concern. The Court of Appeals quoted the Minnesota Court as saying the prohibition against litigating matters at the core of a church's religious practice requires dismissal of Black's discharge related claims. And then our Court of Appeals went on to say, a trial on the merits of the claim asserted in count four would necessarily involve an inquiry into the various employment actions taken by the church and would therefore encroach on the ability of a church to manage its internal affairs. A trial on the merits of the claim asserted in count five would necessarily involve an inquiry into various employment actions taken by the church as well as an inquiry into matters of church governance. A trial on the merits asserted in count ten would necessarily involve an inquiry into the church's employment decisions. And the ministerial exception precludes any inquiry whatsoever into the reasons behind a church's ministerial employment decisions. A trial on the merits asserted in counts fourteen and fifteen would necessarily involve an inquiry into matters of church governance and discipline. So that's our Court of Appeals addressing these various claims as recently as 2011. And again, I believe that what Mr. Dansicker has asked this Court to do is exactly what the Court of Appeals is saying it is not [34] to do. And that is make an inquiry into the reasons behind a church's reasons to discharge Pastor Melhorn. In

Bourne versus Center on Children, Inc., 154 Md.App.42, the Plaintiff filed a claim for breach of employment contract, defamation and false light. And the Court of Special Appeals did an analysis of the First Amendment Freedom of Religion provision. It cited its own decision in Downs versus Roman Catholic Archbishop of Baltimore, 111 Md.App.616. And the Court of Special Appeals in Bourne in its own statement as to what Downs held was quote "this Court held that decisions regarding appointment and employment of a church minister must be left to the discretion of the religious organization and it may not be second guessed by a Civil Court." And the Court of Special Appeals went on to say in the Bourne decision, significantly because religious organizations must be allowed to hire and fire their clergy members without government interference. Numerous Courts have carved out a ministerial exception to an otherwise neutral employment discrimination laws allowing religious institutions to select their clergy members without fear of reprisal from Civil Courts. This prohibition has grown to include employees whose primary duties consist of teaching, spreading the faith, church governance, supervision of a religious order or supervision or participation in relig – religious ritual and worship or any position that is important to the spiritual and pastoral mission [35] of the religious organization. The Court of Appeals recently cited Rayburn with approval and noted that the Constitutional Free Exercise Guarantee restricts governmental interference with a religious organizations hiring and firing of employees who are involved in the religious activities of the organization.

And then the Court cited Montrose Christian School, 363 Md.App.594. (PAUSE) – And to continue reading from the Bourne versus Center on Children case, the Court noted the Plaintiff's argument that the Circuit Court should have reviewed the purely secular claims of breach of employment contract, defamation and false light. The Court of Special Appeals said even assuming there was a contract and evaluating the parties adherence to such a contract, the Court would have to make a determination regarding whether Appellant met the qualifications to act as a minister for the church. Further down the Court said in considering the issues raised by Appellant the Court would have to consider whether Appellant was properly performing his job? Doing so would mandate the Court to consider Appellant's adherence to religious tenets, his spiritual successfulness as determined by the church, his teaching skills and his relationship with both clergy and worshipers. Such determinations are clearly prohibited by the case law outlined above. I'm repeating myself, but again I believe that's what Mr. Dansicker is asking this Court to do, even if it allowed discovery and then heard [36] the case on Summary Judgment. The Plaintiff is asking the Court to determine whether the church's reasons for terminating Mr. Melhorn are valid. And again the complaint alleges, we've gone over this, paragraphs thirty and thirty-one of the complaint, Mr. Melhorn was told by Reverend Dr. Walker that Cedar Grove was transitioning and his services were no longer required. He was told that his employment was terminated because the church had lost faith in Mr. Melhorn's spiritual leadership. So,

those are the allegations in the complaint as to what the Plaintiff was told. And the Plaintiff is asking the Court to determine whether those, those reasons given to him are valid? Even further down in the Bourne case, the Court of Special Appeals then addresses the torte claims. And the Court said this Court may not consider the issues because it relates to Appellant's employment with the church. Clearly any statements made by Appellee's with regards to Appellant's performance as a minister are protected by the case law outlined above. And as I already indicated in Bourne, the Court of Special Appeals also addressed the contention whether the individual employees of the church were protected. And the Court of Special Appeals held that they were also protected by the First Amendment. And then finally, I get to the Supreme Court case of Hosanna-Tabor Evangelical Lutheran Church and School versus the Equal Employment Opportunity Commission, 132 Supreme Court 694, [37] decided in 2012. Now the Supreme Court held that because Perich was a minister within the meaning of the exception the First Amendment required dismissal of the employment discrimination suit against a religious employer. That by itself is not determinative because this is not an employment discrimination case. But there's other language that is instructive in the Supreme Court decision. One is even though Pastor Melhorn has not sought reinstatement, but rather money damages, the Court addresses that issue. It says Perich no longer seeks reinstatement having abandoned that relief before the Court. But that is immaterial, Perich continues to seek front pay in lieu of reinstatement, back

pay, compensatory and punitive damages and attorney's fees. An award of such relief would operate as a penalty on the church for terminating an unwanted minister and would be no less prohibited by the First Amendment then an order overturning the termination. Such relief would depend on a determination that Hosanna-Tabor was wrong to have relieved Perich of her position and it is precisely such a ruling that is barred by the ministerial exception. The EEOC, and I'm continuing to read from Hosanna – the Hosanna-Tabor decision, the EEOC in Perich suggests that Hosanna-Tabor's asserted religious reason for firing, firing Perich that she violated the synog's commitment to internal dispute resolution was pretextual. Now that suggestion misses the point of the ministerial exception. The [38] purpose of the exception is not to safeguard a church's decision to fire a minister only when it is made for a religious reason. The exception instead ensures that the authority to select and control who will minister to the faithful, a matter strictly ecclesiastical, is the church's alone. Once again, I point out that the Plaintiff is asking this Court do – that it may proceed in – the Plaintiff's case may proceed because the decision was not really religious in nature. And the Court of Appeals, I mean the Supreme Court addresses that argument. (PAUSE) – And then as to whether case law decided prior to Hosanna-Tabor is still valid? Well the Supreme Court said we express no view on whether the exception bars other types of suits, including the actions of employees alleging breach of contract or tortious conduct by their religious employers. And

the Court said we only hold that the ministerial exception bars employment discrimination suits. So, the decision of the Supreme Court in Hosanna-Tabor in no way changes the Maryland law decided up to this point. So, my reasons of – my reading of this case law is that the – this Court is not to make an inquiry into the employment decision behind the decision to terminate Pastor Melhorn. In fact, the case law prohibits this Court from making that inquiry or prohibits this Court from making the determination whether Pastor Melhorn was discharged for reasons relating to his spiritual leadership or whether it was because he didn't want to accept the gift to [39] the cemetery that the church no longer owned. And because of the very specific language in these decisions, the Maryland decision as well as the Supreme Court case, that this Court is not to make an inquiry. This Court is not to make a determination. Again the Court, quoting from Prince of Peace Lutheran Church versus Linklater, a trial on the merits of the claim asserted in count ten would necessarily involve an inquiry into the church's employment decisions and the ministerial exception precludes any inquiry whatsoever into the reasons behind a church's ministerial employment decision. So for those reasons and given the allegations in the complaint, I believe the case can be decided on a Motion to Dismiss. And I'm going to grant the Defendant's, all Defendant's Motion – Motions to Dismiss the complaint on the grounds of the ministerial exception. And for that reason I'm not going to de – and there's no need decide the question whether the Adler holding barred

the suit and whether there's any public policy involved? I don't need to, to make that determination. So the Defendant's Motions to Dismiss are granted. Now Mr. Dansicker the question is whether they should be granted with or without leave to amend? I'll ask you if there's some other allegations you believe you haven't made yet and can be made to overcome the ministerial exception? But if you've alleged everything there is to allege, then there's no reason to grant leave to amend.

[40] MR. DANSICKER: I, I'm not aware of any specific other allegations that we would pursue.

JUDGE STRINGER: Okay.

MR. DANSICKER: Again –

JUDGE STRINGER: All right. Well I appreciate your candor. Then I'll, I'll grant the Motion to Dismiss without leave to amend if there's nothing further you wish to allege. Okay?

MR. DANSICKER: Thank you, Your Honor.

JUDGE STRINGER: It will be granted with prejudice. All right. Again, thank you all very much for the memoranda, they're very professional, very well done. I appreciate it.

MR. LEAHY: Thank you, Your Honor.

MS. HURT: Thank you, Your Honor. Do you want me to submit an Order?

JUDGE STRINGER: If you haven't already I'll do it.

MS. HURT: Okay.

(OFF THE RECORD AT 11:02 AM) –

***Melhorn* v. Baltimore-Washington Conf.**

Court of Appeals of Maryland

May 23, 2016, Decided

Pet. Docket No. 57, September Term, 2016

2016 Md. LEXIS 336

Opinion

Petition for Writ of Certiorari denied.