

IN THE WEST VIRGINIA INTERMEDIATE COURT OF APPEALS

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AMBER B Elmore,
Plaintiff Below, Petitioner

Vs.

No. 25-ICA-234

MOUNT VERNON BAPTIST CHURCH,
FRANK BUDD,
THE BOARD OF DEACONS OF THE MOUNT VERNON BAPTIST CHURCH,
RONALD MCCLUNG,
Defendants Below, Respondents

PETITIONER'S REPLY BRIEF

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ASSIGNMENTS OF ERROR

1. The Circuit Court erred by granting a motion for summary judgment.

STATEMENT OF THE CASE

Petitioner, Amber B. Elmore, respectfully submits the following brief in support of her appeal from the Circuit Court of Putnam County, West Virginia. The Circuit Court

committed reversible error when it granted a motion for summary judgment in favor of the Respondents.

On May 9, 2021, the Petitioner (hereinafter sometimes Ms. Elmore) was preparing for Sunday School, the Children's Message and the Kid's Worship because she was the children's teacher at the Mount Vernon Baptist Church in Putnam County, West Virginia. When the children of a co-worker came into the room, Ms. Elmore asked them "What's one thing you love about your mom?" (May 9, 2021, was Mother's Day). The children answered, "Even though she hits us, she still tries to be patient." Ms. Elmore then said, "She hits you?". The children then responded "Yes, but we're not nearly as scared of her as we are our dad. He says that he can hit us on anywhere on our body to teach us lessons, but it's mainly our back and our legs."

Ms. Elmore continued with her duties that morning but as soon as church was over, she told the head of deacons what she had been told and that she had to report the disclosure. Ms. Elmore is a mandated reporter per West Virginia Code §49-2-803(a) as an "employee...of an entity that provides organized activities for children..." The head of deacons would also be a mandated reporter. Ms. Elmore also reported the situation to the pastor, Ron McClung. Although the pastor is also a mandated reporter,

both under the provisions covering Ms. Elmore and the head of deacons and the separate clause specifically identifying members of the clergy, he told her to not report and that "it can be handled with just a conversation, that Mr. [C] is on our staff, he's our brother, and we have to take care of him." The pastor then announced he was going to meet with the co-worker. Ms. Elmore cautioned him, "Do you understand that if we do something before it's reported and if we alert that, that that is -- if it's happening, it could put the girls more in danger?" The pastor responded, "It doesn't matter. I think he has a right to know."

Despite Ms. Elmore's concerns, a meeting was arranged for later that day at around 3:30 p.m. Present were the co-worker, the Pastor, and Mr. Elmore, although Mr. Elmore did not actually participate in the meeting. Ms. Elmore recounted what the children had told her and repeatedly said she was a mandated reporter and had to make the report. In response, the co-worker threatened Ms. Elmore with legal action. "He said that he -- everything that ever happened to his kids he could sue me for and that it - - escalated to the point he said that this is racially motivated." Even though the co-worker was threatening Ms. Elmore with legal action, he never stated anything that would have supported legitimate legal action against her.

The co-worker also physically threatened Ms. Elmore. At least twice he said, 'Everything you're accusing me of is going to come back to you.' Ms. Elmore testified what her understanding of this threat was. "I believe he was threatening to hit me, and I was fearful that he was going to do that in that moment because his fists were balled up and he was lunged towards me." As the meeting continued, the Respondent threatened Ms. Elmore's daughter. "[T]here were a couple of times that he said, 'You have a daughter too.'" Ms. Elmore believed this to be a threat against the daughter. "I interpreted it to mean that I have a daughter that could also get hurt." The meeting came to an end after the co-worker stated the statements were racially motivated.

After the meeting, Ms. Elmore reported what she had been told to the Putnam County Sheriff's Department and the Department of Human Services, Child Protective Services (DHHR, CPS) by telephone. During the conversation with law enforcement Ms. Elmore's feelings of being threatened came up and she was advised to contact a Putnam County Magistrate.

Notwithstanding the requirements of West Virginia Code §49-2-803(a), the head of deacons nor the pastor, Ron

McClung, made the mandated report to either law enforcement or CPS.

On May 10, 2021, the Petitioner filed a petition for an emergency domestic violence protective order in the Magistrate Court of Putnam County, West Virginia. That same day an emergency domestic violence protective order was issued.

As a result of the actions of the Petitioner, she was fired on June 29, 2021.

The Petitioner filed a civil action alleging violation of substantial public policy, gender discrimination in violation of the West Virginia Human Rights Act, unequal pay based upon gender discrimination, violation of the Petitioner's Constitutional right to freedom of speech and for retaliatory discharge for the filing of a domestic violence protective order against a coworker.

After considering the pleadings of the parties, the Circuit Court granted the Respondents' motion for summary judgment applying the ministerial exception

STATEMENT REGARDING ORAL ARGUMENT

Petitioner respectfully requests oral argument under Rule 20, in that this is a case of first impression, a case involving issues of fundamental public importance, and a

case involving constitutional questions regarding the validity of a court ruling.

ARGUMENT

Standard of review

"We previously have held that our standard of review of summary judgment orders is plenary: A circuit court's entry of summary judgment is reviewed *de novo*. " We also consider the correctness of a court's summary judgment ruling under the following standard: "A motion for summary judgment should be granted only when it is clear that there is no genuine issue of fact to be tried and inquiry concerning the facts is not desirable to clarify the application of the law." **Goodwin v. Shaffer**, 873 S.E.2d 885 (W.Va. 2022).

DISCUSSION

The Respondent misconstrues and overstates the law it claims supports its position.

The Respondents argue that the ministerial exception grants them blanket immunity from state action. They claim that if the plaintiff is a minister no court can act with regard to that minister's employment regardless of the reason for the action against the minister. In the case of **Wisconsin**

v. Yoder, 406 U.S. 205, 92 S.Ct 1526, 32 L.Ed.2d 15 (1972), the Court addressed whether the State of Wisconsin could compel children to attend school to the age of sixteen. The Court stated that for Wisconsin to prevail "...[I]t must appear either that the State does not deny the free exercise of religious belief by its requirement, or that there is a state interest of sufficient magnitude to override the interest claiming protection under the Free Exercise Clause". 406 U.S. at 214. The prohibition the Respondents claim is not absolute. There is a balancing to be had.

The Supreme Court returned to this balancing in **Thomas v. Review Board of Indiana Employment Security Division**, 450 U.S. 707, 101 S.Ct. 1425, 67 L.Ed2d 624 (1981), stating "The state may justify an inroad on religious liberty by showing that it is the least restrictive means of achieving some compelling state interest." 450 U.S. at 718.

In the case at bar, the Petitioner was fired because she obeyed the law and reported child abuse as required by law because she was a mandatory reporter. Interestingly, the Respondents do not deny this. The Respondents also do not deny that the Respondents Budd, McClung and members of

the Respondent Board of Deacons violated the law by not reporting the child abuse.

The State of West Virginia has a compelling interest in both protecting children from child abuse and prosecution those who would protect abusers. This compelling interest is more than sufficient overcome the minimal "inroad on religious liberty", **Thomas**, supra, had by allowing a cause of action to protect those who follow the law and protect our children.

In fact, an opinion cited by the Respondents addresses this very situation. In **Hosanna-Tabor Evangelical Lutheran Church & School v. Equal Employment Opportunity Commission**, et al, 565 U.S. 171, 132 S.Ct. 694, 181 L.Ed2d 650, (2011), the Court observed, "The EEOC and Perich foresee a parade of horrors that will follow our recognition of a ministerial exception to employment discrimination suits. According to the EEOC and Perich, such an exception could protect religious organization from liability for retaliating against employees for reporting criminal misconduct or for testifying before a grand jury of in a criminal trial....Hosanna-Tabor responds that the ministerial exception would not in any way bar criminal prosecutions for interfering with law enforcement investigations or other proceedings." 565 U.S. at 195.

While the Court decided those were questions for another day, it is persuasive that the Petitioner therein predicted the case before the bar and the Respondents therein stated that claims such as made by the Respondents herein were frivolous.

The cases cited by the Respondents do not save them. **Hossanna-Tabor**, supra, **Our Lady of Guadalupe School v. Morrissey-Berru**, 140 S.Ct. 2049, 207 L.Ed2d 870 (2020), and **Shaliehsabou v. Hebrew Home of Washington**, 363 F.3d 299 (4th Cir. 2004), all turn on the question of whether the Plaintiff was a minister, not an issue here. **Rayburn v. General Conference of Seventh-day Adventists**, 772 F.2d 1164 (4th Cir. 1985), involved Title VII which has a specific section which precluded the EEOC from having jurisdiction of the Plaintiff's claims but the Court did note that that section of Title VII did "not confer upon religious organizations a license to make those same decisions on the base of race, sex or nation origin", 772 F.2d at 1166, again demonstrating the Respondents are not as immune from state action as they assert. **Chitekwe v. Mount Vernon Baptist Church**, 3:24-cv-00269(S.D. W.Va. Mar 27, 2025), turned on whether the Plaintiff was a minister and his credibility. **Board of Church Extension v. Eads**, 159 W.Va. 943, 230 S.E.2d 911 (1976) was a property dispute. The

Plaintiff in **Gillespie v. Elkins Southern Baptist Church**, 177 W.Va. 88, 350 S.E.2d 715 (1986), did not allege a violation of a substantial public policy so there is no discussion of that prong of the balancing test at all.

In conclusion, the Court below accepted the Respondents argument they were entitled to blanket immunity and did not apply the balancing test required which was an error of law. The Plaintiff has presented proper claims which advance substantial public policy in a manner which is the least restrictive imposition on the Respondents exercise of their religious freedom.

CONCLUSION

WHEREFORE, for all the foregoing reasons, Petitioner prays that this Honorable Court will reverse the decision of the Court below and remand this matter for trial, and all such further relief as the Court deems fair, just and equitable.

Respectfully submitted,
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THE BOARD OF DEACONS OF MOUNT VERNON BAPTIST CHURCH,
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Respondents Below, Respondents

CERTIFICATE OF SERVICE

I, Clinton W. Smith, counsel for the Petitioner,
certify that a copy of the foregoing Petitioner's Reply
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