

IN THE SUPREME COURT OF FLORIDA

TALLAHASSEE, FLORIDA

CASE NO. SC18-\_\_\_\_\_

FATHER JOHN GALLAGHER,

Petitioner,

v.

DIOCESE OF PALM BEACH, INC.,

Respondents.

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**PETITIONER'S BRIEF ON JURISDICTION**

On review from the Fourth District Court of Appeal

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## **STATEMENT OF THE CASE AND FACTS**

This defamation case arises out of an incident of sexual misconduct by a Catholic priest which was reported to Father John Gallagher (A3). Father Gallagher was informed that a 14-year old boy claimed that another Catholic priest, Father Palimatton,<sup>1</sup> had shown him child pornography (A3). Father Gallagher responded to the incident and ultimately it was referred to the Palm Beach County Sheriff's Office, which investigated and arrested Father Palimatton. However, Father Gallagher believed that the Diocese attempted to cover up that sexual misconduct and he complained to Catholic Church officials (A3).<sup>2</sup> When that was unsuccessful, Father Gallagher went public with his concerns (A3-4).

The Diocese's response became the basis for Father Gallagher's defamation complaint, because it accused him of lying and impugned his mental competence by claiming that he was "in need of serious professional help" (A4).

In Facebook posts, pastoral letters, and the public press, Diocese officials repeatedly accused Father Gallagher of: 1) "blatantly lying"; 2) making "a complete misrepresentation" regarding the Father Palimatton incident; 3) manipulating a sexual abuse interest group through a "web of lies that he continues to spread"; 4) engaging in "fabrications"; and 5) "spreading lies" about the church's conduct

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<sup>1</sup> Father Palimatton's name is misspelled in the District Court decision.

<sup>2</sup> For some reason the opinion does not provide the facts Father Gallagher revealed as part of his claim of an attempted coverup, even though they were the matters which the Diocese accused him of lying about.

during the investigation of Father Palimatton (A4). Diocese officials also made statements on Facebook and in the public media that Father Gallagher was “in need of professional assistance” and that “he needs serious professional help” (A4-5).

Ultimately, Father Gallagher filed this lawsuit against the Diocese of Palm Beach alleging one count of defamation (A4-5). As damages, Father Gallagher alleged that he had been harmed “in his reputation and in his livelihood,” that he suffered mental and physical pain and suffering, and that lost the ability to lead and enjoy a normal life (A5). He also alleged that his ability to serve as a priest had been greatly diminished or eliminated and sought past and future lost income (A5).

The Diocese responded to the complaint by filing a Motion to Dismiss based on the First Amendment ecclesiastical abstention doctrine, arguing that the defamation claim was the equivalent of a wrongful discharge or employment retaliation case (A5). However, the Diocese’s own allegations were the basis for its mischaracterization of the case, i.e. that Father Gallagher was “spreading lies about the Diocese because he was passed over for a promotion” and that he was “very upset and angry that he was not named a pastor” (A4). However, it is undisputed that Father Gallagher did not seek by this lawsuit to challenge any employment decision of the Diocese nor did he ask the court to order any relief which would interfere with the Diocese’s selection, retention, or assignment of him.

The trial court denied the Diocese’s Motion to Dismiss because it concluded that it could decide whether defamation occurred by applying neutral principles of

law “without inquiry into religious doctrine” (A5).

The Diocese filed a Petition for Writ of Prohibition in the Fourth District. The Chief Judge of that district requested the Chief Justice to reassign the case to a different district, based on an unspecified conflict. The Chief Justice then directed that the Petition be reviewed by Third District judges sitting as associate judges of the Fourth District (A1).

After briefing and oral argument, an Opinion was entered granting the Petition for Writ of Prohibition based on the ecclesiastical abstention doctrine (A11). The Opinion isolated one category of damage sought by the Plaintiff, i.e. past and future income, and concluded that those damages could not be determined without interfering with the Church’s ability to select and assign its priests. The Opinion did not address whether any of the other elements of damage, which are properly recoverable in a defamation action, would create any entanglement with church doctrine or policy.

Additionally, the Opinion chose to construe the alleged defamatory statement that Father Gallagher was “in need of serious professional help” as being only a reference to some type of “lesser disciplinary decision” by the Diocese (A10), which would entangle the court in the Diocese’s employment decisions. Based on those two grounds, the Petition for Writ of Prohibition was granted, and the circuit court was ordered to dismiss Father Gallagher’s entire lawsuit.

## SUMMARY OF ARGUMENT

The Fourth District's opinion creates decisional conflict on the ecclesiastical immunity doctrine and a court's role in construing defamatory statements in the context of a motion to dismiss. In Malicki v. Doe, 814 So.2d 347 (Fla. 2002), and Doe v. Evans, 814 So.2d 370 (Fla. 2002), this Court held that the First Amendment does not bar a claim involving religious parties or issues unless it requires extensive inquiry into religious law and polity. Those cases upheld claims against a diocese for, inter alia, negligent hiring and negligent retention of a priest, which necessarily involved greater entanglement than the Fourth District found sufficient to require dismissal of Father Gallagher's law suit. The Fourth District's opinion does not dispute that Father Gallagher's defamation claim can be decided on neutral principles, and thus the only issue is whether it involves extensive inquiry into religious law and polity. The Fourth District found the requisite entanglement based solely on one category of damages and one category of defamatory statements. Neither basis is justifiable. Furthermore, the court improperly construed those defamatory statements in violation of Florida cases which hold that the court's role is simply to determine whether reasonable persons could find the statements to be defamatory. Since the Fourth District's decision is directly contrary to the holdings of Malicki, Evans, and multiple district court opinions, this Court should accept jurisdiction of this case.

## ARGUMENT

THE FOURTH DISTRICT’S OPINION EXPRESSLY AND DIRECTLY CONFLICTS WITH THIS COURT’S DECISIONS IN MALICKI V. DOE, 814 SO.2D 347 (FLA. 2002), AND DOE V. EVANS, 814 SO.2D 370 (FLA. 2002), AS WELL AS OTHER DISTRICT COURT DECISIONS.

The Fourth District’s opinion creates conflict in Florida case law on the ecclesiastical abstention doctrine, i.e. the application of the First Amendment to cases involving religious parties or issues. The conflict is created because the opinion does not address the “neutral principles” doctrine, and finds excessive entanglement based on one subset of damages—lost earnings—and an improper characterization of one category of the defamatory statements at issue.

The decision conflicts with Malicki v. Doe, 814 So.2d 347, 365 (Fla. 2002), that rejected reliance on the First Amendment “at the initial pleadings stage to shut the courthouse door on a plaintiff’s claim” unless the dispute involves “extensive inquiry into religious law and polity.” The holding of the Fourth District cannot be reconciled with that standard. The conflict is starkly demonstrated by the fact that the opinion relies on two defamation cases involving religious parties, both of which were decided pre-Malicki, one of which expressly relies on the Fourth District’s opinion in Doe v. Evans, 718 So.2d 286 (Fla. 4th DCA 1998), which was quashed by this Court in Doe v. Evans, 814 So.2d 370 (Fla. 2002). Furthermore, the opinion does not mention two post-Malicki district court decisions which reversed dismissals

of defamation claims brought by ministers, because the claims could be decided under neutral principles without extensive entanglement in internal church matters.

In Malicki, this Court held that a plaintiff could pursue claims against a diocese for negligent hiring and negligent supervision of a priest because it involved the neutral application of principles of tort law, even though it might result in an “incidental effect of burdening a particular religious practice.” The claims in Malicki involved much greater entanglement than in the case sub judice, yet this Court held that the First Amendment did not justify dismissal of the plaintiff’s claims.

Similarly, in Doe v. Evans, supra, this Court quashed the Fourth District’s decision and held that a parishioner could sue, inter alia, a diocese, not only for negligent hiring and supervision of a priest, but also for breach of fiduciary duty. This Court held that even if resolution of plaintiff’s claims would have an incidental effect on religious practices, the imposition of liability “has a secular purpose and the primary effect of imposing liability ... neither advances nor inhibits religion.” 814 So.2d at 376. The same rationale should have been applied here, but it was not.

The degree of entanglement found insufficient to mandate dismissal in Malicki and Evans is much more excessive than that found by the Fourth District here. Father Gallagher’s defamation claim is a tort action based on neutral principles which serve an important “secular purpose.” In Florida, defamation law vindicates the right of every individual “to be free from malicious publications, designed to give publicity to an imputation injuring one’s good reputation.” Lane v. Tribune Co.,

146 So. 234, 238 (Fla. 1933); see also Jews For Jesus, Inc. v. Rapp, 997 So.2d 1098 (Fla. 2008). The United States Supreme Court has stated that “society has a pervasive and strong interest in preventing and redressing attacks upon reputation.” Rosenblatt v. Baer, 383 U.S. 75, 86 (1966).

Here, Father Gallagher’s defamation claim is based on the Church’s repeated statements on social media and various newspapers that he was lying about the events he believed demonstrated an attempted cover up of Father Palimatton’s sexual misconduct. The determination of the truth or falsity of those events does not involve any church doctrine, but rather the objective facts surrounding that incident.

Father Gallagher also alleged that the Diocese’s assertions that he “needed serious professional help” was defamatory, as implying that he had a mental illness or defect that caused him to lie, or otherwise be untrustworthy. That claim also involves the truth or falsity of objective facts, not church doctrine. The Fourth District’s strained and improper construction of it as a challenge to proposed church discipline is facially unreasonable. It is also in conflict with Florida case law on a court’s role in evaluating the defamatory nature of a defendant’s statements.

Since Malicki and Evans were decided, two district courts have determined that defamation claims brought by ministers were not barred by the First Amendment. In LeGrande v. Emmanuel, 889 So.2d 991 (Fla. 3d DCA 2004), a minister filed a defamation action against two members of his congregation claiming that he lost over 60% of his congregation as a result of their false statements. The

minister also made a claim for, inter alia, lost income as result of this conduct. The trial court had dismissed the claim under the ecclesiastical immunity doctrine and the Third District reversed stating (889 So.2d at 994):

[T]his suit involves a neutral principle of tort law that does not involve “excessive” entanglement in internal church matters or in the interpretation of religious doctrine or ecclesiastical law, the dismissal of this complaint, at this stage of the proceedings, on First Amendment grounds was error.

In Bilbrey v. Myers, 91 So.3d 887 (Fla. 5th DCA 2012), a pastor sued a senior pastor for defamation and the trial court dismissed the complaint based on the First Amendment. The Fifth District reversed, holding that the defamation claim could be adjudicated based on neutral tort law principles without implicating the First Amendment, stating, “the First Amendment does not grant Myers, as pastor of FPC, carte blanche to defame church members and ex members.” Id. at 892.

For reasons unclear, the Fourth District never distinguished, or even mentioned, Bilbrey or LeGrande. Instead, the panel relied on two pre-Malicki and pre-Evans district court decisions, Goodman v. Temple Shir Ami, Inc., 712 So.2d 775 (Fla. 3d DCA 1998), and Kond v. Mudryk, 769 So.2d 1073 (Fla. 4th DCA 2000). Neither of those cases applied the neutral principles analysis adopted by this Court in Malicki and Evans. In fact, the Kond decision explicitly relied on the Fourth District’s decision in Doe v. Evans, which this Court quashed (A8, n.7).

The Fourth District’s opinion also creates conflict, through misapplication of

this Court's precedent<sup>3</sup> in its analysis regarding entanglement. The Fourth District concluded that one category of damages, lost income, creates entanglement sufficient to justify dismissal of the entire law suit. The Fourth District's claim that an award of lost income would "be a penalty for the Diocese exercising its right to determine which priest to promote and assign to its parishes" (A9) cannot be reconciled with Malicki or Evans. Those cases allowed damages specifically based on a decision to hire or retain a priest, yet damages in those cases were not considered to be a penalty for an employment decision sufficient to invoke First Amendment protection. Moreover, any damages awarded to Father Gallagher would not be a penalty, but rather compensation for the intentional misconduct of the Diocese in defaming him.<sup>4</sup>

The Fourth District's characterization of the assertion that Father Gallagher needed "serious professional help" is inconsistent with a court's function at the motion to dismiss stage. The Fourth District states, "whether Father Gallagher was actually in need of professional help is beside the point." However, that is precisely the point in a defamation case! Florida recognizes that defamation by implication is

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<sup>3</sup> Misapplication of this Court's precedent constitutes grounds for conflict jurisdiction. Fla. Ins. Guar. v. Devon Neighborhood Ass'n, 67 So.3d 187 (Fla. 2011).

<sup>4</sup> The opinion below relies on Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity Comm'n, 565 U.S. 171 (2012), which has no relevance to this issue. That was an EEOC case specifically challenging the termination of a minister and the decision was based on the "ministerial exception" which the court specifically noted is an affirmative defense, not a basis for dismissal. Id. at 195 n.4.

actionable, see Jew for Jesus, supra, and a reasonable implication of those statements is that Father Gallagher has a mental defect or disease which, if false, is actionable. A court's function in a defamation case is not to decide the underlying merits nor adopt a strained construction of the statements at issue, but simply to determine whether the statements at issue could "be reasonably understood by ordinary persons" to be defamatory. Madsen v. Buie, 454 So.2d 727 (Fla. 1st DCA 1984); Stembridge v. Mintz, 652 So.2d 444 (Fla. 3d DCA 1995). Instead, the Fourth District decided that, as a matter of law, the statements could only be understood as a proposed "disciplinary decision[]" of the Diocese, and then used that to support its erroneous entanglement analysis (A10). Thus, not only is the Fourth District's decision inconsistent with Florida case law on First Amendment ecclesiastical immunity, but it creates decisional conflict regarding the proper role of a court in construing allegedly defamatory statements.

### **CONCLUSION**

For the reasons stated above, this Court should accept jurisdiction of the case based on Article V, section 3(b)(3), of the Florida Constitution.

**CERTIFICATE OF SERVICE**

WE HEREBY CERTIFY a true copy of the foregoing was furnished by email to ELAINE D. WALTER, ESQ. (ewalter@gaebemullen.com), MICHAEL A. MULLEN, ESQ. (mmullen@gaebemullen.com, jhart@gaebemullen.com), and JOSEPH M. WINSBY, ESQ. (jwinsby@gaebemullen.com, khoward@gaebemullen.com), 420 S. Dixie Hwy, Coral Gables, FL 33146; and J. PATRICK FITZGERALD, ESQ., and ROBERT J. DIAZ, ESQ. (jpf@jpfitzlaw.com, rjd@jpfitzlaw.com, erg@jpfitzlaw.com), 110 Merrick Way, Suite 3-B, Coral Gables, Florida 33134, on May 25, 2018.

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